



AL - HAQ

Settling Area C: The Jordan Valley Exposed



Al-HAQ©

2018



A L - H A Q

Settling Area C : The Jordan Valley Exposed

Al-HAQ©

2018



AL - HAQ

AL-Haq . 54 Main Street 2nd & 3rd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O. Box 1413 . Ramallah - West Bank – Palestine
Tel: + 970 (0)2 2954646/7/9
Fax: + 970 (0)2 2954903

www.alhaq.org

Author: Mercedes Melon

Cover photo: Jordan Valley, Tony Kane © 2013

Publisher: Al-Haq - © All Rights Reserved

ISBN: 978-9950-327-52-8

Any quotation of up to 500 words may be used without permission provided that full attribution is given. Longer quotations or entire chapters or sections of this study may not be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature, without the express written permission of Al-Haq.

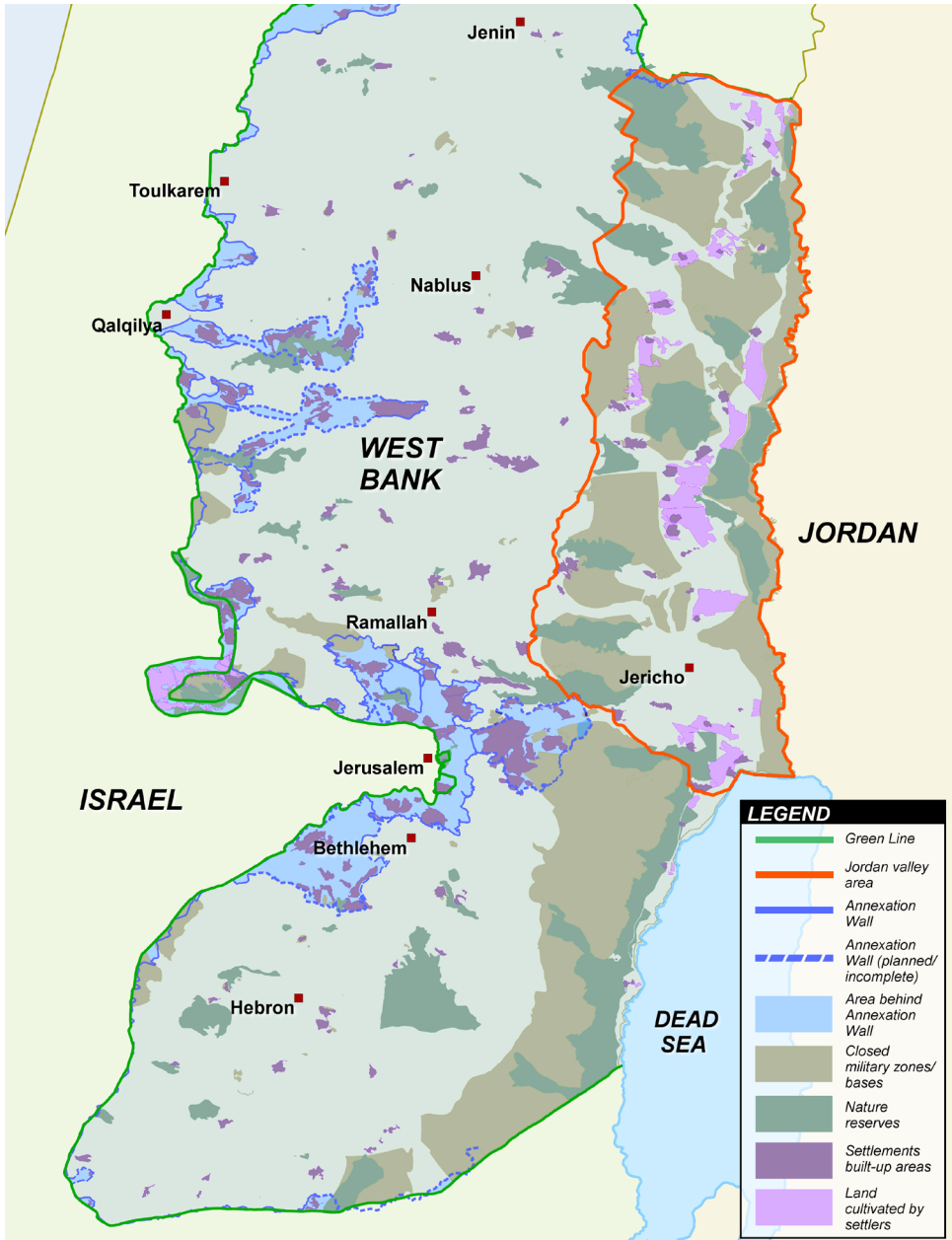
Acknowledgements

The author would like to thank Al-Haq's staff for their help in preparing the report, in particular Manaf Abbas for sharing with the author his experience and knowledge of the area. Special thanks go also to Thomas Palmer for designing the maps included in the report, and to Marya Farah, Aseil Abu-Baker, Fares Fuqha, Wesam Ahmad, and Shawan Jabarin.

Table of Contents

Executive Summary	7
Glossary	13
Introduction	15
1. Historical Context	16
2. Israeli Policies of Annexation of the Jordan Valley	20
2.1 Appropriation of Land	20
2.1.1 Abandoned Land	21
2.1.2 Closed Military Areas and Firing Zones	24
2.1.3 'State Land'	27
2.2 Establishment and Financing of Settlements	30
2.3 Exploitation of Natural Resources	33
2.3.1 Disparity in Water Usage	34
2.4 Movement and Access Restrictions	39
2.5 Building Restrictions and House Demolitions	43
2.6 Creating A Coercive Environment	47
3. Legal Analysis	49
3.1 International Humanitarian Law	50
3.1.1 Administration of the Occupied Territory	50
3.1.2 The Property Regime during Military Occupation	52
A. Appropriation and Destruction of Property	53
B. Violations of the Usufructuary Rule	54
3.2 The Prohibition of Forcible Transfer	55
3.3 International Criminal Law	58

A. Grave breach of the Extensive Destruction and Appropriation of Property	59
B. Grave Breach of Unlawful Transfer	61
3.4 International Human Rights Law	63
3.4.1 The Right to Self-Determination of the Palestinian People	63
3.4.1.1 Prohibition of Colonialism	65
3.4.2 Freedom of Movement	66
3.4.2 Economic, Social, and Cultural Rights	67
3.5 Responsibility	68
3.5.1 Israel's State Responsibility	68
3.5.2 Third-Party Responsibility	69
3.5.3 Individual Criminal Responsibility	70
3.5.4 Corporate Responsibility	71
Conclusion and Recommendations	71



Map 1: West Bank map. The different coloured areas show the extent of land closed to Palestinian access and development. The maps included in this report are based on GIS Data provided by the UN Office for the Coordination of Humanitarian Affairs, OPT - Al-Haq© 2018.

Executive Summary

The Jordan Valley comprises over a fifth of the territory of the West Bank and contains vital land reserves for the natural expansion of Palestinian towns and cities. It has abundant water resources – including one-third of the underground water reserves in the West Bank – and has vast potential for agricultural, industrial and tourism industries. The economic development of the Jordan Valley is considered essential for Palestinian growth and recovery and is therefore crucial for the sustainability and viability of an independent Palestinian State.

Since the beginning of its military occupation in 1967, the Israeli authorities have been systematically appropriating Palestinian land for the establishment and expansion of Israeli settlements in the Jordan Valley, as well as unlawfully exploiting Palestinian natural resources in the area. As recently as March 2016, Israel appropriated a large tract of land in the Jordan Valley for settlement expansion, declaring the land as ‘state land.’¹ The appropriation of 2,342 dunums (579 acres) was the largest land seizure by Israel in the West Bank since August 2014.²

In addition to land confiscation, the Israeli authorities have imposed severe building restrictions on Palestinians living in the Jordan Valley and have carried out extensive demolitions of Palestinian structures in the area. While demolitions and evictions are a long-standing part of Israel’s on-going practice of forcibly transferring the Palestinian population, over the past few years there has been a significant increase in demolitions in the Jordan Valley. Between January and October 2017, Al-Haq documented the demolition of 32 structures in the Jordan Valley area, displacing 71, including 31 children. Meanwhile, 2016 marked the highest number of demolitions by the Israeli Civil Administration of Palestinian structures across the West Bank on record. Al-Haq documented 597 “administrative” demolitions, causing the displacement of 1,708 Palestinians.³ The overwhelming majority of these demolitions have occurred in Area C, most of them in the Jordan Valley. More specifically, in 2016, Al-Haq documented the administrative demolition of 156 Palestinian structures in the Jordan Valley, displacing 426 people including 190 children. In 2015, 84 Palestinian

¹ Haaretz, ‘Israel Seizes Large Tracts of Land in West Bank, Report Says’ (Haaretz, 15 March 2016) (hereinafter Haaretz, Israel Seizes Large Tracts of Land), available at: <http://www.haaretz.com/israel-news/1.709043>

² Haaretz, Israel Seizes Large Tracts of Land.

³ Al-Haq documented an additional 27 punitive demolitions in 2016 throughout the West Bank.



structures were demolished in the Jordan Valley area, displacing a total of 221 people, including 113 children.

Through these efforts, the Israeli authorities continue to illegally exercise sovereign rights over the Jordan Valley and create facts on the ground with the intent of forcibly transferring the Palestinian population from this region and permanently annexing the land. As highlighted in the 2013 report of the United Nations (UN) 'Fact-Finding Mission on 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' (hereafter Fact-Finding Mission on Israeli Settlements), Israel's illegal settlement enterprise is leading to a 'creeping annexation' of the occupied territory, which seriously undermines the right of the Palestinian people to self-determination.⁴

The decrease in the local population rates in the Jordan Valley area provides tragic evidence of Israel's illegal policies in this region. Although the population levels in the past are unclear due to restricted access to official historical records, the Palestinian population of the Jordan Valley prior to the Israeli occupation in 1967 was estimated at 250,000 people.⁵ Today, Palestinians there number approximately 53,562.⁶ While this dramatic decline is partly due to the high number of Palestinians who were forced to leave their homes as a direct result of the 1967 war, it should be highlighted that Israel has consistently prevented Palestinians from returning to their homes since. In addition, Israel's practices and policies in the occupied territory over the past 50 years have contributed to the creation of an increasingly unliveable environment for Palestinian communities in the Jordan Valley, often forcing them to relocate.

⁴ OHCHR, Report of the Independent International Fact-Finding Mission on 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, 7 February 2013, (hereinafter OHCHR, Report of the Independent International Fact-Finding Mission, 2013), available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf

⁵ Palestine Liberation Organisation Negotiations Affairs Department, Israeli Annexation Policies in the Jordan Valley Destroying the Future of the Palestinian State, September 2013, available at: <http://www.nad-plo.org/userfiles/file/Factsheet%202013/JORDANVALLEY%20FACTSHEET.pdf>

⁶ According to statistics recorded by the Palestinian Central Bureau of Statistics, the population in 2016 was approximately 53,562, source: http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/jerich.htm

Israel's intention to annex the Jordan Valley is evidenced by its exclusion of this region from any territorial negotiations with the Palestinians, a policy which is actively supported by the Israeli 'national consensus.'⁷ Indeed, when proposal relating to Israel ceding some control in the Jordan Valley was presented during the negotiations spearheaded by John Kerry in 2013, it was vehemently rejected by Israel.⁸ The intention to annex has also been alluded to by Israeli officials, including Prime Minister Benjamin Netanyahu, who has repeatedly reiterated the strategic defensive and security importance of the Jordan Valley, which Israel would not abandon or give up in any peace agreements.⁹ Varying calls by Israeli officials¹⁰ for formal annexation of the occupied West Bank have recently increased, including a proposed bill to annex the illegal settlement of Ma'ale Adomim and the E-1 area.¹¹

The E-1 area covers approximately 22,000 dunums of confiscated Palestinian land which provides a vital passage, connecting the northern and southern sections of the west Bank, as well as Jerusalem. Construction in the E-1 area will lead to the closure of this passage and the division of the west Bank. This, combined with restrictions imposed by the Annexation Wall and the Oslo Accords, creates a clear obstacle to a self-sufficient economically viable Palestinian State. Furthermore, any move to formally annex parts of the occupied West Bank will present serious violations of international law and serve as a detrimental blow to the rights of the Palestinians and any future Palestinian State.

⁷ As represented by 90 per cent of Knesset members and the political platforms of all major Israeli parties. Meron Benvenisti, *The West Bank Data Base Project, 1987 Report* (The Jerusalem Post, 1987) (hereinafter Benvenisti, *The West Bank Data Base Project*), 63.

⁸ Robert Tate, 'Israel insists on Jordan Valley presence as John Kerry pushes peace plan' (Telegraph, 4 January 2014), available at: <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/10551677/Israel-insists-on-Jordan-Valley-presence-as-John-Kerry-pushes-peace-plan.html>

⁹ Jonathan Lis, 'Netanyahu: Israel will Never Cede Jordan Valley' (Haaretz, 2 March 2010) <http://www.haaretz.com/news/netanyahu-israel-will-never-cede-jordan-valley-1.266329> and Yotam Berger, 'Netanyahu: Jordan Valley Will Always Remain a Part of Israel' (Haaretz, 19 October 2017) <https://www.haaretz.com/israel-news/1.818231>

¹⁰ Israeli Minister of Education Naftali Bennett was quoted as saying "...stop walking down the suicide path of a Palestinian state and to apply Israeli law to Ma'ale Adomim, the Jordan Valley, Ofra and all of Area C as soon as possible." Source: Noa Shpigel, 'Unilaterally Annexing Parts of West Bank Would Be Disaster for Israel, Minister says' (Haaretz, 1 January 2017), available at: <http://www.haaretz.com/israel-news/.premium-1.762461>

¹¹ Jonathan Lis, 'Israeli Bill to Annex Jerusalem-area Settlement Will Include Controversial E1 Area' (Haaretz, 19 January 2017), available at: <http://www.haaretz.com/israel-news/.premium-1.765878>



Israel's illegal policies and practices in the Jordan Valley area constitute serious violations of international humanitarian, human rights, and criminal law. In order to end these persistent and continual violations of international law, the Israeli authorities must cease the unlawful appropriation and exploitation of natural resources in the Jordan Valley, including land and water, to Israel's exclusive benefit, and stop the confiscation, demolition and destruction of Palestinian infrastructure in the area. Israel must halt its discriminatory policies and practices that deprive the occupied Palestinian population in the Jordan Valley of essential means of livelihood, and must put an end to the forcible transfer of the Palestinian population.

The unlawful, wanton and extensive destruction and appropriation of Palestinian property not justified by military necessity, the transfer of Israel's civilian population into the occupied territory and the unlawful transfer of the protected Palestinian population constitute war crimes. Israel must, therefore, conduct investigations and prosecute individuals involved in these practices. Israel must also cease the construction of settlements in the West Bank, including East Jerusalem, and must withdraw from and dismantle the existing settlement enterprise. Ultimately, Israel must promptly afford effective legal remedy and reparations to Palestinian landowners and communities affected by its violations of international law, in accordance with international law standards. However, in lieu of Israel's continued failure to do so, the international community must support Palestine's efforts to hold Israel accountable using international justice mechanisms, including the International Criminal Court.

Third Party States must also take immediate action to end Israel's violations of international law in the Occupied Palestinian Territory (OPT), including in the Jordan Valley. To this end, Third Party States must openly call on Israel to halt and reverse its settlement policy, and must actively pressure the Israeli authorities to promptly and unconditionally cease the illegal confiscation and demolition of Palestinian structures, the forcible transfer of the occupied Palestinian population from their land and the transfer of Israeli citizens into the OPT. Israel's practices and policies in the Jordan Valley is a form of colonialism which denies the Palestinian people their right to self-determination, access and sovereignty over their land and natural resources. Given these peremptory norms of international law, Third Party States have the obligation not to recognise Israel's conduct as lawful, not to render aid or assistance in maintaining the illegal situation, and to cooperate to bring it to an end.

In particular, High Contracting Parties to the Geneva Conventions must ensure Israel's respect for the Conventions by adopting effective measures to pressure the Israeli government to abide by its obligations under International Humanitarian Law (IHL). Furthermore, they must uphold their obligations under Article 146 of the Fourth Geneva Convention to search for and prosecute those responsible for grave breaches of the Fourth Geneva Convention.

In turn, the UN Security Council and General Assembly must take action and promote mechanisms to reverse Israel's policies of forcible transfer of the Palestinian population and the transfer of its own population into the OPT. In particular, UN Security Council resolution 2334 (2016) provides the international community with an opportunity to take appropriate action against Israel for its non-compliance and repeated violations of international law.

Moreover, all States must refrain from establishing business relationships with economic actors involved in violations of international law in the OPT, and must adopt appropriate measures to ensure that business enterprises domiciled in their territory or under their jurisdiction do not participate in violations of international law relating to settlements in the OPT, including in the Jordan Valley. One important step in line with the 22 March 2016 resolution adopted by the Human Rights Council (HRC) is the creation of a database listing all businesses involved in the illegal Israeli settlement enterprise in follow-up to the 2013 report by the Fact-Finding Mission on Israeli Settlements. The UN must also promote a mechanism to register and value Israel's damage to Palestinian natural resources that have been and continue to be exploited in the OPT. This is keeping in line with the UN General Assembly's and HRC's recognition that Palestinian permanent sovereignty over natural resources is an integral part of Palestinians' right to self-determination.¹²

Given the scale of settlement-produced goods exported to European Union (EU) Member States, the EU must also actively comply with its customary international law obligations and operate in accordance with Article 215(5) of the Treaty on the Functioning of the European Union by banning produce originating from Israeli settlements in the OPT.¹³ On 11

¹² UN General Assembly, Resolution 66/225 (29 March 2012); and UN Human Rights Council on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan (22 March 2016) (hereinafter Human Rights Council, A/HRC/31/L.39).

¹³ Al-Haq, Feasting on the Occupation: The Illegality of Settlement Produce and the Responsibility



November 2015, the European Commission issued the Interpretive Notice on indication of origin of goods from the territories occupied by Israel since 1967, which aims to ensure that EU Member States correctly implement already existing EU legislation on labelling the origin of products. This should provide consumers with clear information about the origin of agricultural produce sold in European stores, thus enabling them to make a conscious and informed choice about the produce purchased. However, it remains unclear as to whether States are implementing clear, consistent labelling for settlement products. Moreover, even if products are accurately labelled, this does not relieve EU Member States of their legal responsibility to prohibit the entry of settlement products into their markets. Therefore, EU Member States must act promptly to exclude settlement produce from their markets.

Finally, while recognizing the limitations and obstacles created by the occupation, and specifically Israel's control over Area C, the State of Palestine should play a role in supporting the continued presence of Palestinians in the occupied territory, and in particular in the Jordan Valley. Furthermore, the State of Palestine should refrain from negotiating any type of agreement on the status of the occupied territory that could undermine the rights of the occupied Palestinian population enshrined in the law of belligerent occupation.¹⁴ To this end, the State of Palestine must consider that any agreement resulting in any derogation from the protection bestowed on the Palestinian population under international humanitarian law and international human rights law is illegal and, as such, is null and void. Any negotiations must be based on international law, which should not just inform and facilitate the process of negotiating outstanding key issues, but must constitute the foundations upon which this process is based.

of EU Member States under International Law, January 2013, (hereinafter Al-Haq, *Feasting on the Occupation*), available at: <http://www.alhaq.org/publications/Feasting-on-the-occupation.pdf>

¹⁴ See for example: Al-Haq, *Exploring the Illegality of 'Land Swap' Agreements under Occupation*, 2011, available at: <http://www.alhaq.org/publications/publications-index/item/exploring-the-illegality-of-land-swap-agreements-under-occupation>

Glossary

Custodian of Absentee Property: an office of the Israeli Civil Administration vested with the power to issue a declaration assuming possession of property as 'State property.'

Division of the West Bank under the 1995 Interim Agreement on the West Bank and the Gaza Strip (also known as the Oslo II Accord) as part of the phased process to transfer power from the Israeli military and its civil administration to the Palestinian Authority.¹⁵

Area A (18 per cent of the West Bank): under Palestinian civil and security control. However, since 2002, Israel has retained responsibility for overall security in all areas of the West Bank, and has not abdicated full authority over Area A.

Area B (22 per cent of the West Bank): under full Palestinian civil control and Israeli security control.

Area C (60 per cent of the West Bank): under full Israeli control over security, planning and construction.

Dunum: a unit of land equal to 1,000 square metres. Land in Palestine has been measured in dunums since the British Mandate era.

Israeli Civil Administration (ICA): the body responsible for the implementation of Israel's government policy in the West Bank. It is part of the Coordinator of Government Activities in the Territories (COGAT), which is a unit in the Israeli Ministry of Defence.

Occupied Palestinian Territory (OPT): refers to the territory occupied by Israel since the 1967 Six-Day War and is comprised of two non-contiguous areas: the West Bank, including East Jerusalem, and the Gaza Strip.

Settlement Enterprise: the residential communities, industrial zones and agricultural areas illegally established in the OPT and, integrally, the

¹⁵ The Declaration of Principles on Interim Self Government Arrangements (Oslo 1) was signed in 1993 between Israel and the Palestine Liberation Organisation (PLO) and was intended to be a first step in a phased process to transfer power from the Israeli military and its civil administration to the Palestinian Authority. The two parties agreed to the division of the West Bank (with the exception of East Jerusalem) into three areas: A, B and C. In 1995, the second Oslo Accord, also known as the Interim Agreement, was signed. The gradual transfer of power to the Palestinian Authority has never occurred.



activities that help to sustain, promote and expand the settlements. These activities include settlement related infrastructure (including by-pass roads and checkpoints), the Annexation Wall, the bifurcated Israeli legal regime applied in the OPT, settler violence and economic activities in agriculture, manufacturing, service provision and other commercial endeavours provided by or for settlers. Moreover, policies of indirect population transfer of Israeli settlers into the OPT and the forcible transfer of the Palestinian population within and outside the OPT are central to the establishment and maintenance of such an enterprise. Settlements and the settlement enterprise are illegal under international law.

Outpost: a settlement constructed in the West Bank without official authorisation from the Israeli government, but with the support and assistance of government ministries. Despite the illegal nature of outposts under international law and Israeli national law, the Israeli government has nonetheless implicitly supported their maintenance and attempts to legalise them or integrate them into existing settlements.

Introduction

The Jordan Valley extends almost 1,200 square kilometres along the west bank of the Jordan River, from the 1949 Armistice Line (Green Line) in the north, to the Dead Sea in the south, stretching along the entire border between the West Bank and Jordan. As such, the following analysis of Israeli policy towards the Jordan Valley takes into account the Palestinian communities that are under the administrative control of the Palestinian governorates of Jericho, Toubas, and Nablus, as well as Israeli-controlled settlements and closed military areas contained therein.

Since 1967, Israel has implemented a system whereby natural resources in the Jordan Valley are appropriated and exploited for the benefit of its national economy and for its citizens. While this primarily serves the interests of settlers, the Israeli national economy and international businesses also benefit. Israeli practices and policies in this area, including the unrelenting establishment of new settlements and the expansion of existing ones, are aimed at creating increasingly unliveable conditions for Palestinians within the Jordan Valley, in order to force them to relocate and allow Israel to permanently annex the region.

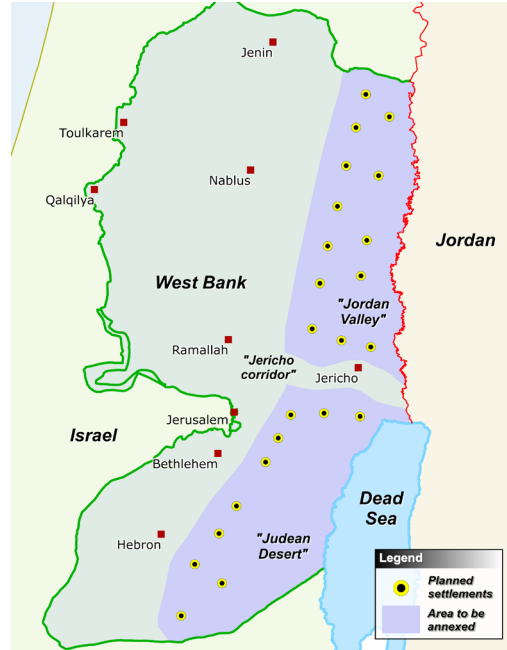
Israel's intention to take permanent control over the Jordan Valley, due to its invaluable economic and strategic potential, dates back to the beginning of its occupation in 1967 and persists to the present day. This report provides a historical and legal analysis of the means by which Israel has asserted control over this vital area, displacing its inhabitants, expanding settlements, exploiting and benefitting from its natural resources, while continually dispossessing the Palestinian people of their land and natural wealth. Through these practices, Israel's ultimate aim of annexing the Jordan Valley is steadily becoming a reality.

1. Historical Context

The Jordan Valley is an important land reserve for the natural expansion of Palestinian towns and cities and has vast potential for agricultural, industrial, transport and tourism development.¹⁶ The Jordan Valley's border with Jordan is the only current international land crossing for the West Bank. It is therefore critical for Palestinian movement and trade with the Middle East and the rest of the world, and essential for the sustainability and viability of an independent Palestinian State.¹⁷

The Jordan Valley, along with the rest of the OPT, has been under Israeli belligerent occupation since 1967. Although Israel has always invoked security needs to justify its control over this area, it is in fact the geopolitical value of the Jordan Valley that underlies Israel's policy of illegally exercising sovereign rights in the region.

As early as 1967, the so-called Allon Plan was developed with the objective of redrawing the borders of the State of Israel to include the Jordan Valley.¹⁸ Although never formally adopted, the Allon Plan defined a 15-kilometre-wide strip in the OPT located along the western side of the Jordan River, which was to be annexed by Israel in order to expand its territory and create a buffer zone against remote military offensives from the east. According to the plan, a narrow strip of land called the 'Jericho



Map 2: Map illustrative of the Allon Plan – Al-Haq© 2012.

¹⁶ The Jordan Valley slopes and mountains offer a unique combination of health, leisure, ecological, agro and religious tourism destinations.

¹⁷ World Bank, The Underpinnings of the Future Palestinian State: Sustainable Growth and Institutions, 21 September 2010, (hereinafter World Bank, The Underpinnings of the Future Palestinian State), available at: <http://www.worldbank.org/en/news/feature/2010/09/21/the-underpinnings-of-the-future-palestinian-state-sustainable-growth-and-institutions>

¹⁸ Tom Segev, 1967: Israel, the War, and the Year that Transformed the Middle East (Metropolitan Books, 2007), 504; and William Harris, Taking Root: Israeli Settlement in the West Bank, the Golan and Gaza-Sinai 1967-1980 (Research Studies Press, 1980) (hereinafter Harris, Taking Root), 106-108.

corridor' would link Jordan and Palestinian population centres in the West Bank.¹⁹

The Allon plan consolidated the military strategy followed by Israel during the 1967 war and its immediate aftermath. This strategy consisted of driving tens of thousands of Palestinians from their villages, towns, and refugee camps in the West Bank and the Gaza Strip,²⁰ resulting in the expulsion of 88 per cent of the population of the Jordan Valley eastwards across the river to Jordan.²¹ In addition, Israel took tough measures to prevent the return of those who fled as a result of the war, including by placing Jordan Valley land owners' names on a 'secret blacklist' to prevent their re-entry into the West Bank.²² The selective geographical character of the refugee exodus that accompanied and followed the 1967 war – with the Jordan Valley suffering the highest population loss of the OPT – provided a clear indication of Israel's colonial intentions for the area.²³

Within the Jordan Valley, the Allon Plan provided the layout for two chains of Israeli settlements. These settlements were intended to constitute a territorial claim over Palestinian land, thus defining the area that would eventually be annexed by Israel.²⁴ The first chain of settlements would have been based on intensive, irrigated cultivation of the Jordan Valley floor, whereas the so-called 'Nahal' outposts' chain would have been higher up on the western side of the Jordan Valley, mainly serving military purposes. According to the original plan, the latter would have been gradually converted into civilian agricultural villages, equipped with the necessary economic and social services.²⁵

Since 1967 the number of Israeli settlements in the area has multiplied

¹⁹ Anthony Coon, *Town Planning under Military Occupation. An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (Dartmouth Publishing Company Limited, 1992) (hereinafter, Coon, *Town Planning Under Military Occupation*), 176.

²⁰ Nur Masalha, 'The 1967 Palestinian Exodus' in Karmi et al. (eds), *The Palestinian Exodus 1948-1967* (Ithaca Press, 1999), 80-81, 89-90, 94-95.

²¹ Harris, *Taking Root*, 16, 21; and Coon, *Town Planning Under Military Occupation*, 14, 176.

²² Peace Now, *Settlements in Focus* (Vol. 4, Issue 4): A New Jordan Valley Settlement- Facts, Background and Analysis, 7 August 2008, available at: <http://peacenow.org/entries/archive5214>

²³ The Jordan Valley and the Golan suffered the settlements' greatest demographic and political impact due to the scale of 1967 refugee outflow. Harris, *Taking Root*, 18-22, 159..

²⁴ Peace Now, *Settlements in Focus* (Vol. 4, Issue 4): A New Jordan Valley Settlement- Facts, Background and Analysis, 7 August 2008, available at: <http://peacenow.org/entries/archive5214>

²⁵ By the end of 1968, two military outposts have already been founded, namely 'Mehola' and 'Argaman,' and few years later they were converted to civilian agricultural settlements. Harris, *Taking Root*, 16, 21; and Coon, *Town Planning Under Military Occupation*, 176.



and the Allon Plan has emerged as the unofficial guideline for colonisation and subsequent formal annexation.²⁶ In particular, during the first decade of the occupation, the number of Israeli settlements in the Jordan Valley increased to 18 and, in the early 1970s, there was a definitive shift from military outposts to predominantly civilian colonisation.²⁷

Furthermore, through the establishment of regional and local councils, the Israeli authorities immediately started to administer these settlements like cities beyond the Green Line, with rights to zoning, urban and local planning, and tax levies.²⁸ In the Jordan Valley, virtually all land, other than that built-up by the Palestinian population, was placed under the jurisdiction of two settlement regional councils, namely 'Arvot Hayarden' (Jordan Valley) and 'Megilot'.²⁹

By mid-1991, ownership of about 60 per cent of land in the West Bank, in particular in the Jordan Valley, had been seized by the Israeli authorities, while "a substantial additional area [was] subject to blanket restrictions on use and access falling short of outright appropriation."³⁰

Significantly, during the Oslo process, the Jordan Valley was excluded from the Israeli 'commitment' to halt the establishment of new Israeli settlements and the expansion of the existing ones in the OPT.³¹ More than 90 per cent of the Jordan Valley was classified as Area C and continued to be under full Israeli administrative and military control, including for land registration, planning, building and designation of land use. Consequently, the Oslo Accords allowed Israel to continue to illegally exercise sovereign rights over this area and have repeatedly been used by the Israeli authorities to effectively appropriate more Palestinian land in the Jordan Valley. The Oslo Accords have further facilitated Israeli regulation of

²⁶ A majority of Labour Party's ministers were in favour of the settlement dimension of the Allon Plan and Menachem Begin, the leader of the far-right opposition party, saw the Plan as the beginning of a process of colonisation, which his party required on a broader scale. Harris, *Taking Root*, 109.

²⁷ Harris, *Taking Root*, 122.

²⁸ Military Order No. 783 regarding the Administration of Regional Councils (25 March 1979) (hereinafter Military Order No. 783); and Military Order No. 892 (1 March 1981) Regarding the Administration of Local Councils (Settlements).

²⁹ Military Order No. 783, annexed map signed by Binyamin Ben Eliazar, Area Commander of the West Bank.

³⁰ Coon, *Town Planning Under Military Occupation*, 158.

³¹ The Knesset, Prime Minister Rabin in Knesset: Ratification of Interim Agreement, 5 October 1995, available at: <http://www.mfa.gov.il/mfa/mfa-archive/1995/pages/pm%20rabin%20in%20knesset-%20ratification%20of%20interim%20agree.aspx>

Palestinian movement, in particular by excluding Palestinian access to large swaths of land sectioned off as military zones. Closed military zones and nature reserves, where Palestinian access and development are forbidden, comprise 60 per cent of the Jordan Valley.³² As a result, the potential for Palestinian economic development has been severely limited.³³

Recent developments in the Jordan Valley are consistent with Israel's colonial aims, consolidated in appropriating land in the Jordan Valley for settler use. In the beginning of 2016, Israel's Coordinator of Government Activities in the Territories confirmed plans to appropriate a large tract of fertile land south of Jericho in the Jordan Valley for settlement expansion, declaring the land as 'state land'.³⁴ Nearly two months after the announcement, Israel appropriated 2,342 dunums (579 acres) of West Bank agricultural land near Jericho, constituting the largest land seizure by Israel in the West Bank since August 2014, when Israel claimed 4,000 dunums (988 acres) of land near the Gush Etzion settlements.³⁵

More recently, on 9 November 2017, a resident of Um Al-Jamal in the northern Jordan Valley came across a military order, left on the side road, to restrict the land of Um al-Jamal and 'Ein Al-Hilwa areas in Al-Maleh of northern Jordan Valley. According to the aerial map attached to the order, the land amounts to approximately 550 dunums in Um al-Jamal and 'Ein Al-Hilwa, most of which are owned by the Latin Patriarch while some are privately owned. The military order explicitly states that "the area is declared restricted... eight days following the publication of this announcement, property owners or managers in the concerned area are obliged to move the property beyond the area in question... immediately following the publication of this announcement, the following procedures are prohibited: any construction in area specified; the entry of any person

³² UN OCHA, The Humanitarian Impact of Israeli Infrastructure in the West Bank, 30 July 2007, (hereinafter OCHA, The Humanitarian Impact of Israeli Infrastructure in the West Bank), available at: <https://www.ochaopt.org/content/humanitarian-impact-palestinians-israeli-settlements-and-other-infrastructure-west-bank>, 42-44.

³³ Leila Farsakh, 'From Domination to Destruction: The Palestinian Economy under the Israeli Occupation' in A Opher et al. (eds), The Power of Inclusive Exclusion. Anatomy of Israeli Rule in the Occupied Palestinian Territories (Zone Books, 2009), 389-390.

³⁴ Maayan Lubell, 'Israel says will seize West Bank land; demolishes EU structures', (Reuters, 21 January 2016), available at: <http://www.reuters.com/article/us-israel-palestinians-idUSKCN0UZ11P>

³⁵ Maan News, 'Israel may revoke 'closed military zone' status of Jordan Valley plots' (Maan News Agency, 24 January 2015), available at: <https://www.maannnews.com/Content.aspx?id=769946> See also: Haaretz, Israel Seizes Large Tracts of Land.



or property into the specified area for the purpose of construction.”³⁶ There are approximately 172 residential structures, animal sheds and other property in the affected area subject to demolition at any time, placing 25 families at imminent risk of forcible transfer. On 12 November 2017, the representative lawyer filed an objection in an Israeli court to which there has been no response. As of 19 January 2018, no substantial developments have been noted.

2. Israeli Policies of Annexation of the Jordan Valley

Israel’s policies in this area manifest themselves in a variety of practices that are geared toward creating increasingly unliveable conditions for Palestinian communities located in the Jordan Valley, de facto forcing them to leave the region. Addressed in turn, these practices include the illegal appropriation of Palestinian land, mainly to build Israeli agricultural settlements in the area; the exploitation of Palestinian natural resources; and the imposition of harsh building and movement restrictions, which also severely hinder Palestinians’ access to and use of their land and other natural resources in the Jordan Valley.

2.1 Appropriation of Land

Since 1967, in an attempt to justify its illegal appropriation of Palestinian land, the Israeli authorities have utilised four complementary methods to seize control of land: (i) declaration of land as abandoned property; (ii) requisition of land for military needs; (iii) expropriation of land for public needs;³⁷ and (iv) declaration of vast portions of land as ‘State land’.³⁸ Each of these methods rests on a distinct legal foundation, which combines and manipulates the legislation that existed prior to the occupation, including remnants of Ottoman and British Mandate law that was subsequently absorbed into the Jordanian legal system, with Israeli Military Orders.³⁹ Through the latter, Israel has introduced substantial legal changes to laws

³⁶ An unofficial translation of the order made available to Al-Haq.

³⁷ The report does not include a detailed analysis on this method as it is not widely used by Israel. See: B’Tselem, *By Hook or By Crook: Israeli Settlement Policy in the West Bank*, July 2010, available at: http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf

³⁸ Oxfam, *On the Brink – Israeli Settlements and their Impact on Palestinians in the Jordan Valley*, 5 July 2012, available at: https://www.oxfamwereldwinkels.be/sites/default/files/case/bp160-jordan-valley-settlements-050712-en_1.pdf, 8.

³⁹ Raja Shehadeh, *Occupier’s Law, Israel and the West Bank* (Institute for Palestine Studies, 1985) (hereinafter Shehadeh, *Occupier’s Law*), 23.

regulating land matters, creating a land regime and corresponding legal framework that has brought about irreversible transformations by imposing facts on the ground.⁴⁰

Revealing the methodical nature of its occupation, Israel has cautiously executed, over a period of years, a complex and legalistic system of appropriation of Palestinian land and has facilitated its enforcement by displacing local court jurisdiction with Israeli military administrative tribunals.⁴¹

All of these changes have been implemented for the sole benefit of Israel and its citizens, primarily settlers, as is evidenced by the Israeli authorities' constant refusal to allocate land for Palestinian use.⁴² These various methods are therefore part of a single mechanism serving a single purpose: the appropriation of Palestinian land for the establishment and expansion of Israeli settlements in the OPT, and in particular in the Jordan Valley.

2.1.1 Abandoned Land

In 1967, Israel promulgated its Absentee Property Law, in the form of Military Order No. 58, to be applied in the OPT. According to the Order, land owned by Palestinians who left the West Bank on or before 7 June 1967, was declared 'abandoned'⁴³ and consequently administered by the Custodian of Absentee Property, an office of the Israeli Civil Administration (ICA) in the OPT. This office is ostensibly charged with 'safeguarding' the property of 'absentee' Palestinians and returning it to its owners upon their return to the region.⁴⁴

⁴⁰ Military orders regulating every facet of life in the OPT have been adopted without any process of consultation at any level with the Palestinian inhabitants and kept unavailable to the public and lawyers until 1982. Raja Shehadeh, *The Law of the Land, Settlements and Land Issues Under Israeli Military Occupation* (Palestinian Academic Society for the Study of International Affairs-Passia, 1993), 19, 103-122.

⁴¹ George Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories' (1994) 43 *The American University Law Review*, (hereinafter Bisharat, *Land, Law and Legitimacy*), 511-512, 552-553.

⁴² UN OCHA, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank*, 15 December 2009, (hereinafter OCHA, *Restricting Space*), available at: <https://www.ochaopt.org/content/restricting-space-planning-regime-applied-israel-area-c-west-bank>, 5.

⁴³ Military Order No. 58 concerning Absentee Property (Private Property) (23 July 1967).

⁴⁴ This 'abandoned' land has been to date subject to appropriation in the same way that property of Palestinians driven out from Israel in 1948 was appropriated. State Comptroller, *Annual Report 56A*, 31 August 2005, (hereinafter *State Comptroller Report*), 220.



Military Order No. 58, in theory, allowed landowners returning to the West Bank to recover their property if they succeeded in their title claim before the Registration Committees.⁴⁵ However, Israel acted to ensure that these claims would never come to fruition by preventing numerous Palestinians from returning to the region. To this end, the Israeli authorities have implemented various techniques. First, since 1967 the Custodian of Absentee Property maintained a secret 'black list' of 'absentee' owners of land in the Jordan Valley in order to deny them entry into the West Bank.⁴⁶ At the same time, from 1967 to 1994, Israel undertook a process of mass withdrawal of residency rights from hundreds of thousands of Palestinians who travelled abroad during that period, effectively preventing them from returning to their homeland.⁴⁷

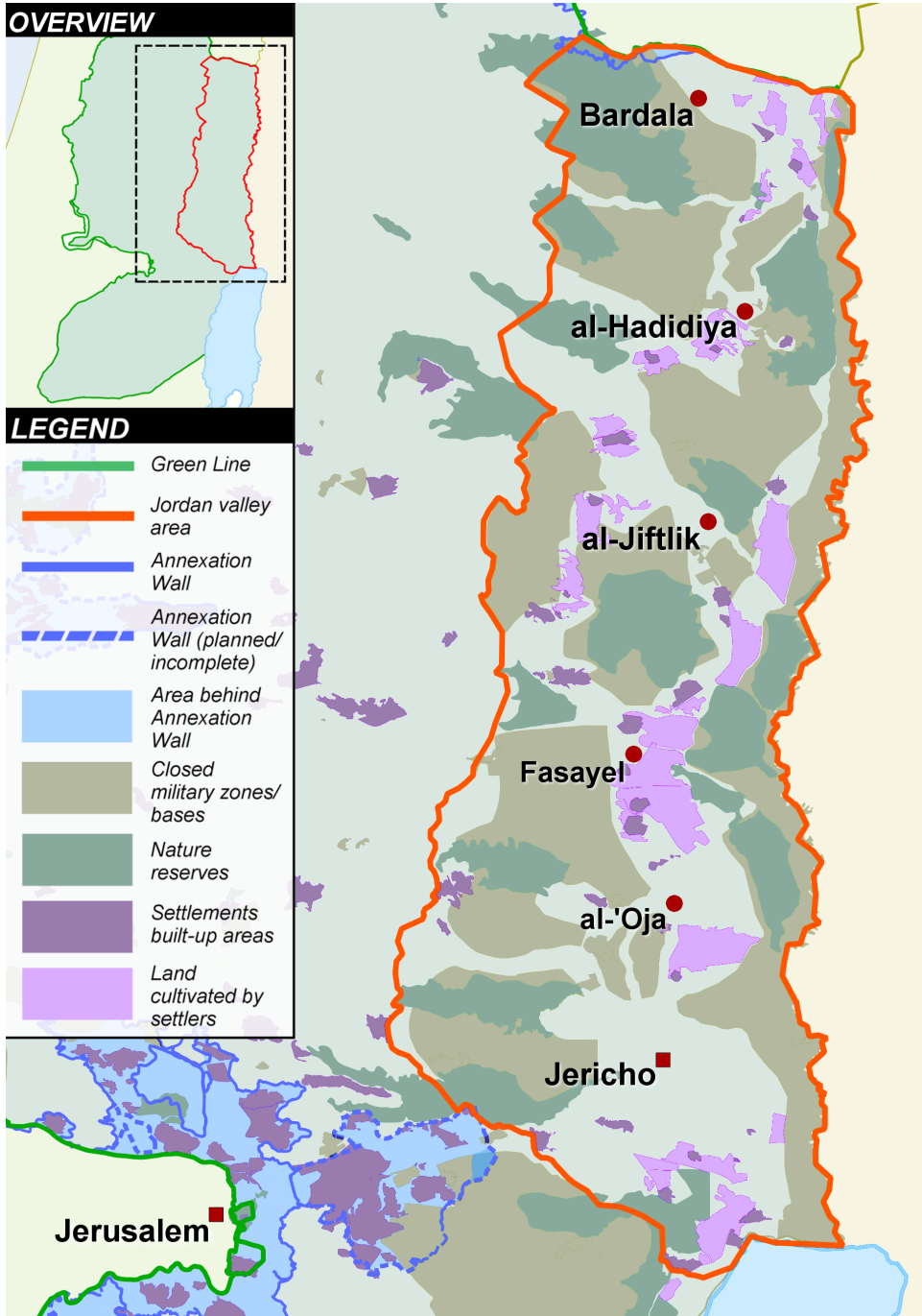
These measures were intended to prevent Palestinian landowners from reclaiming their land, thus facilitating the illegal appropriation of Palestinian property by the Israeli authorities, with the Custodian of Absentee Property serving as a useful legal device to aid this illegal practice. Indeed, far from safeguarding and returning this land, the Custodian has handed over large portions of it to settlements in the Jordan Valley, a practice that even the former Israeli State Comptroller, Talia Sasson, has declared to be 'prima facie unlawful.'⁴⁸

⁴⁵ See also Military Order No. 150 concerning Absentee Property (Private Property) (Additional Regulations) (23 October 1967).

⁴⁶ The blacklist began with 100 people, but swelled to over 2,000 by late 2004. Akiva Eldar, 'Ministry Admits "Blacklist" of Palestinians Who Left the West Bank During Six-Day War' (Haaretz, 5 July 2006), available at: <http://www.haaretz.com/print-edition/news/ministry-admits-blacklist-of-palestinians-who-left-west-bank-during-six-day-war-1.192233>

⁴⁷ Akiva Eldar, 'Israel Admits it Covertly Cancelled Residency Status of 140,000 Palestinians' (Haaretz, 11 May 2011), available at: <http://www.haaretz.com/print-edition/news/israel-admits-it-covertly-canceled-residency-status-of-140-000-palestinians-1.360935>

⁴⁸ State Comptroller Report, 220.



Map 3: Area C – Al-Haq © 2018.



2.1.2 Closed Military Areas and Firing Zones

In parallel, the Israeli government has issued countless Military Orders to requisition thousands of dunums of private Palestinian land, alleging the existence of military needs.⁴⁹ Military requisition has been supplemented by the declaration of vast portions of land in the Jordan Valley as closed military areas through the application of the British Mandate's Defence (Emergency) Regulations.⁵⁰ The declaration of closed military areas is often a prelude to other categories of appropriation,⁵¹ and land initially closed for military purposes is often subsequently allocated to existing Israeli settlements or used to establish new ones.

In addition, Israel has declared large sections of the West Bank, including in the Jordan Valley, to be firing zones, formally prohibiting Palestinian presence in these areas without permission from the Israeli authorities. Approximately 6,200 Palestinians in 38 communities reside in the firing zones, the majority of which are Bedouin or herding communities that resided in the area prior to its expropriation.⁵² Eighty per cent of the 38 communities are located in the Jordan Valley and Dead Sea area or the south Hebron hills,⁵³ and they constitute some of the most vulnerable residents in the West Bank. In 2016, the UN Office for Coordination of Humanitarian Assistance (OCHA) documented 27 incidents of temporary displacements as a result of 'military training' exercises.⁵⁴ As well as being vulnerable to injury as a result of military trainings in the region, residents living within closed military areas and firing zones suffer from restricted access to resources, services

⁴⁹ In 1979, Israel had already taken possession of 1.5 million dunums of Palestinian land in the West Bank to establish settlements, which was in turn 27 per cent of the total area of the occupied West Bank. See: UN Security Council, Report of the Security Council Commission Established under Resolution 446 (1979), 12 July 1979, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/9785BB5EF44772DD85256436006C9C85>, para 48.

⁵⁰ Bisharat, Land, Law and Legitimacy, 534.

⁵¹ In 2005, the State Comptroller found that Military Orders issued to requisition 4,000 dunums of land in the West Bank were not issued for critical military needs of the Israeli army, but rather served to replace a legal analysis prior to declaring most of the land 'State land.' State Comptroller Report, 212.

⁵² OCHA, Large scale forcible displacements in "firing zones" along the Jordan Valley, 30 January 2014, available at: <https://www.ochaopt.org/content/large-scale-forcible-displacements-firing-zones-along-jordan-valley>

⁵³ Also in the Dead Sea area or South Hebron Hills. See: OCHA, The Humanitarian Impact of Israeli-Declared "Firing Zones" in the West Bank, August 2012, available at: https://www.ochaopt.org/documents/ocha_opt_firing_zone_factsheet_august_2012_english.pdf

⁵⁴ This number is from the beginning of 2016 until December 12, 2016. OCHA, Protection of Civilians Weekly Report, 29 November – 12 December 2016, 15 December 2016, available at: <https://www.ochaopt.org/content/protection-civilians-weekly-report-29-november-12-december-2016>

or infrastructure, and have their fields and cultivated areas damaged. These constant threats create a coercive environment that places pressure on Palestinian communities to leave these areas and relocate elsewhere.⁵⁵

On 30 May 2016, a force comprising Israeli military and civil administration raided the town of Tammoun, south of Toubas, in the northern Jordan Valley, where Suleiman Jamil 'Odeh lives with his wife, two children, and parents. The family was forced out of their home and into Al-Hadidiya area approximately three kilometres away. Suleiman recalls that the eviction was based on an eviction order by the Israeli Civil Administration to allow the Israeli military to conduct trainings within his residential area. He stated, "We were out of our homes from 6:00 am until 9:00 pm every day for three days. The training was over on 1 June 2016. We suffered during these three days as we were stranded in the heat, without shelter from the sun or food. My children got sick from sitting in the sun for long hours, and so did our cattle. Meanwhile, I learnt that the Israeli authorities evicted residents of the nearby Al-Maleh, Al-Mita, Humsa, and Ibziq in the northern Jordan Valley during which we could hear the sound of explosions."

Al-Haq Affidavit No. 431/2016. Given by Suleiman Jamil 'Odeh, a resident of Ras Al-Ahmar, Toubas governorate, on 5 June 2016.

⁵⁵ This number is from the beginning of 2016 until December 12, 2016. OCHA, Protection of Civilians Weekly Report, 29 November – 12 December 2016, 15 December 2016, available at: <https://www.ochaopt.org/content/protection-civilians-weekly-report-29-november-12-december-2016>



Sign indicating the entrance to a firing zone area in the Jordan Valley - Al-Haq©

In November 2016, 15 Palestinian Bedouin families were evacuated from their homes in Ibziq, near Toubas, as the Israeli Occupying Forces (IOF) decided to undertake military trainings in the area. Evacuating residents for military trainings is common practice in the area, during which the residents are forced to travel for several kilometres away from their homes and villages, often staying for several days and nights without refuge. Muhammad Ali Nasrallah, 45, a resident of the area further notes that even when the trainings are finished, the people of Ibziq, especially children, remain in danger, as the soldiers leave unexploded ammunitions in the area.⁵⁶

On 13 March 2016, 16-year-old Badran Imad Al-Huroub, from Ibziq, found a M16 bullet on the ground while grazing his sheep approximately 500 metres away from his residence. Out of curiosity, Badran put the bullet on a rock and started throwing stones on it. The bullet exploded and a fragment penetrated his left eyebrow, just above his eye. He was taken to the Toubas Public Hospital, and from there to Rafidiya Hospital in Nablus where he had to undergo an operation.

Al-Haq Affidavit No. 255/2016. Given by Badran Imad Al-Huroub, a resident of Ibziq, Toubas governorate, on 19 March 2016.

⁵⁶ Al-Haq, Updates from Area C.

2.1.3 'State Land'

The Israeli High Court of Justice has played an important role in creating an illusion of legality by promptly approving Israel's policies of land appropriation in the OPT, in particular in the Jordan Valley. Initially, the Court accepted Israel's argument that settlements were required for military needs, so the State of Israel was allowed to seize private Palestinian land in order to establish them.⁵⁷ However, in the 1979 Elon Moreh decision,⁵⁸ the Court held that the law of occupation barred Israel from locating permanent settlements on land that had been temporarily requisitioned, and ordered the evacuation of Israeli settlers and the dismantling of all structures erected by them.

While this decision was 'officially' meant to bring the practice to an end,⁵⁹ Israel continued to build settlements on private Palestinian land in the West Bank by simply devising a new legal basis for the appropriation of Palestinian land. This consisted of declaring vast areas as 'State Land'.⁶⁰ Rather than preventing this new process, the Israeli High Court of Justice allowed large-scale changes in the local law, de facto legitimising Israel's practice, and included settlers in the definition of 'local population'.⁶¹ By adopting a complex legal-bureaucratic mechanism, the central element

⁵⁷ B'Tselem, Seizure for Military Needs and the Elon Moreh Ruling, Settlements, 13 March 2013, available at: http://www.btselem.org/settlements/seizure_of_land_for_military_purposes

⁵⁸ HCJ 390/79, Dweikat v Government of Israel, 1979, 34 PD 11, unofficial translation available at: http://www.hamoked.org/files/2010/1670_eng.pdf

⁵⁹ After the ruling, Israel continued to build settlements on private Palestinian land, mainly without requisition orders. Additionally, after the signing of the Oslo Accords, Israel began once again to make regular use of requisition injunctions for military purposes, mainly to establish bypass roads, "secure zones" around the settlements, as well as to build the Annexation Wall. B'Tselem, Land Grab: Israel's Settlement Policy in the West Bank, May 2002, (hereinafter B'Tselem, Land Grab), available at: https://www.btselem.org/download/200205_land_grab_eng.pdf, 50; and Peace Now, Breaking the Law in the West Bank - One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property, October 2006, (hereinafter Peace Now, Breaking the Law in the West Bank), available at: http://peacenow.org.il/wp-content/uploads/2009/01/Breaking_The_Law_in_WB_nov06Eng.pdf, 11-12.

⁶⁰ Government Decision No. 145 (11 November 1979) formalised the Israeli government's determination to build settlements on land previously declared 'State land.'

⁶¹ Accordingly, "the land in the West Bank was subject to the same ideological basis as the land in Israel [pre-1967]," when 93 per cent of the land came to be designated as public land being administered "for the benefit and use of the Jewish public only." Oren Ben-Naftali, 'PathoLAWgical Occupation: Normalizing the Exceptional Case of the Occupied Palestinian Territory and Other Legal Pathologies' in Ben-Naftali (ed), International Humanitarian Law and Human Rights Law (OUP, 2011), 148; and Shehadeh, Occupier's Law, 9.



of which was the declaration and registration of land in the occupied territory as 'State land,' Israel effectively appropriated hundreds of thousands of dunums of land throughout the West Bank. Significantly, most of the land registered as 'State land' is located in the Jordan Valley.⁶²

The indeterminate nature of land titles in large portions of the West Bank provided Israel with a legal basis for the appropriation of land on which to build settlements.⁶³ Surveys conducted by the Israeli authorities in the late 1970s determined that most of the land in the OPT was privately owned;⁶⁴ yet, little over a third of the land was fully registered. This was largely because surveys conducted by the British and Jordanian authorities were never completed and because Israel cancelled, as early as 1968, the process of registering West Bank property in the Jordanian Land Register.⁶⁵ Since unregistered land is far more vulnerable to appropriation than registered land, the majority of the land in the West Bank became susceptible to claims of State ownership by the Israeli authorities.

In order to articulate the State's ownership claim, Israel first falsified the definition of land categories that existed under the law prevailing at the time that the occupation began. In doing so, it declared as 'State land' all lands that fell within the Ottoman categories of miri,⁶⁶ matrouk,⁶⁷ and mawat.⁶⁸ The British Mandate's 1922 Order-in-Council introduced the category of 'State land,' identifying it as land to be acquired for public service by expropriation; yet this category did not include miri, matrouk or mawat lands.⁶⁹ Additionally, under subsequent Jordanian legislation, 'State land' was only the land actually being used by the government or owned by the government.⁷⁰

⁶² Coon, *Town Planning Under Military Occupation*, 164-165.

⁶³ I Lustick, 'Israel and the West Bank after Elon Moreh: The Mechanics of De Facto Annexation' (1981) 35 *Middle East Journal*, 568-569; and Bisharat, *Land, Law and Legitimacy*, 539

⁶⁴ Shehadeh, *Occupier's Law* 6.

⁶⁵ Military Order No. 291 concerning the Settlement of Disputes over Titles in Land and the Regulation of Water (19 December 1968), Section 3.

⁶⁶ The term miri refers to cultivable fields, pastures and woodland close to villages. Source: Shehadeh, *Occupier's Law*, 21-22.

⁶⁷ The term matrouk indicates lands used for public purposes, lands between villages and used by all inhabitants as common pasture. Source: Shehadeh, *Occupier's Law*, 16.

⁶⁸ The term mawat refers to uncultivated land, mountains and grazing ground far from inhabited areas. The ultimate ownership shall belong to the Sultan, but if the land is turned into arable, private persons may acquire some rights over it. Source: The Ottoman Land Code of 1858, Article 103; and Shehadeh, *Occupier's Law*, 11, 17 and 29.

⁶⁹ Shehadeh, *Occupier's Law*, 25 and 29.

While the Jordanian authorities registered sections of land in the Jordan Valley as government property,⁷¹ the proportion of land registered as ‘State land’ under the Israeli authorities is now four times larger.⁷²

Through Military Order No. 59 of 31 July 1967, Israel vested the Custodian of Public Property with the power to issue a declaration assuming possession of the property belonging to an ‘enemy State,’ in that case Jordan.⁷³ This declaration ensured that it became the responsibility of whoever claimed ownership over the land to prove title.⁷⁴ In many cases, private landowners were unaware of the declaration in time to object.⁷⁵

However, even those who did receive notice of the declaration had difficulty proving ownership because access to land records was denied to the public and, in 1984-1985, thousands of civil case files were intentionally destroyed by fire or shredded by unknown individuals in Nablus, Jenin, Bethlehem, and Ramallah.⁷⁶ In addition, starting from 1980, land in the OPT that was both unregistered and uncultivated was simply declared ‘State land’ by Israel.⁷⁷

Palestinian local civil courts were deprived of their jurisdiction over all

⁷¹ After the beginning of the occupation, the majority of ‘State land’ inherited from the British Mandate and Jordanian governments by the Israeli authorities was concentrated in the Jordan Valley. In 1973, according to an official report of the Israeli Ministry of Defense, in the West Bank there were 678,021 dunums of government-owned land. Some 527,000 dunums of land were registered as ‘State land’ during the British Mandate and Jordanian rule. Source: B’Tselem, *Under the Guise of Legality: Israel’s Declarations of State Land in the West Bank*, February 2012, (hereinafter B’Tselem, *Under the Guise of Legality*), available at: https://www.btselem.org/download/201203_under_the_guise_of_legality_eng.pdf, 13.

⁷² The majority of what Israel defines as ‘State land’ was actually considered by the Ottoman, British and Jordanian rule to be privately entitled land. I Matar, ‘Exploitation of Land and Water Resources for Jewish Colonies in the Occupied Territories’, in E Playfair (ed), *International Law and the Administration of Occupied Territories* (Clarendon Press, 1992), 449; B’Tselem, *Dispossession & Exploitation. Israel’s policy in the Jordan Valley & Northern Dead Sea*, May 2011, available at: <http://www.btselem.org/publications/summaries/dispossession-and-exploitation-israels-policy-jordan-valley-northern-dead-sea>, 20; and B’Tselem, *Under the Guise of Legality*.

⁷³ Through Military Order No. 59 Israel defined ‘State property’ as any property, movable or immovable, which prior to 1967 belonged to a hostile State or to any arbitration body connected with a hostile State.

⁷⁴ Military Order No. 164 concerning Local Courts (in Place of the Authorities of the Israeli Military Forces) (3 November 1967).

⁷⁵ The term for receiving objection is of 45 days. Shehadeh, *Occupier’s Law*, 28.

⁷⁶ Shehadeh, *Occupier’s Law*, 125-126.

⁷⁷ Benvenisti, *The West Bank Data Base Project*, 6.



matters of land when Israel or any of its agents were party to the case. Jurisdiction has instead been given to a special tribunal called the Military Objection Committee. The likelihood of winning a case before this committee is “very rare, if not impossible.”⁷⁸

With Palestinians deprived of all means of legal protection, land appropriated by the Israeli authorities became the subject of long leases exclusive to Israeli settlers and settlement agencies.⁷⁹ Even the former Israeli State Comptroller has concluded that the Civil Administration’s land registry does not properly reflect land rights in the West Bank.⁸⁰ More recently, Israel has started to pave the way for additional appropriations of private Palestinian land, and eventual annexation. In late 2016, the Israeli Knesset provided preliminary approval for a bill to retroactively legalize settlement outposts built on private Palestinian lands.⁸¹ The law, which is in violation of basic principles of international humanitarian and human rights law, was passed by the Knesset in February 2017.⁸²

2.2 Establishment and Financing of Settlements

The current number of settlements and outposts in the Jordan Valley area is 37, with approximately 10,000 settlers therein.⁸³ In this region, more than 70 per cent of Israeli settlements are reportedly built on

⁷⁸ Military Order No. 172 concerning Objection Committee (22 November 1967). Its decisions were no more than recommendations submitted to the Area Commander who may accept or refuse them. Shehadeh, *Occupier’s Law*, 28.

⁷⁹ Recently, the Israeli authorities have admitted that over the past 33 years, the ICA has allocated less than one per cent of ‘State land’ located in the West Bank to Palestinians, compared to 38 percent to Israeli settlers. Chaim Levinson, ‘Just 0.7% of State Land in the West Bank has been Allocated to Palestinians, Israel Admits’ (Haaretz, 28 March 2013), available at: <http://www.haaretz.com/news/diplomacy-defense/just-0-7-of-state-land-in-the-west-bank-has-been-allocated-to-palestinians-israel-admits.premium-1.512126>

⁸⁰ Running in stark contrast to Israeli claims as to what constitutes ‘State land,’ a 1950 United Nations survey concluded that about 88 per cent of the West Bank was privately owned by Palestinians. State Comptroller Report, 214. Also see: UN GA, Official Records Ad Hoc Committee on the Palestine Question, 2d Sess., app. V, UN Presentation B (1950) detailing the survey.

⁸¹ Chaim Levinson, ‘Israeli Lawmakers Back Controversial Outpost Legalization Bill in Preliminary Vote’ (Haaretz, 5 December 2016), available at: <http://www.haaretz.com/israel-news/.premium-1.757153>

⁸² Palestinian Human Rights Organisations Council, PHROC Calls for Immediate Action by International Community on Israel’s “Regularization Law”, 9 February 2017, available at: <http://www.alhaq.org/advocacy/targets/palestinian-human-rights-organisations/1103-phroc-calls-for-immediate-action-by-international-community-on-israels-regularization-law>

⁸³ Peace Now, The Jordan Valley – Policy of Palestinian Dispossession in the Jordan Valley and North Dead Sea Area, 18 April 2017, available at: <http://peacenow.org.il/en/jordan-valley>

land declared 'State land'; over 19 per cent on 'survey land'; i.e., land whose ownership is still being examined and whose standing still has yet to be determined; and 11 per cent on private Palestinian land.⁸⁴ In 2005, Israel's State Comptroller found that between 1968 and 1979, 16 Israeli settlements and six military outposts were established in the Jordan Valley, with at least five of them built almost entirely on private Palestinian land.⁸⁵

The planning, approval and eventual seizure of Palestinian-owned land and subsequent financing of these and all other settlements in the OPT directly involve a number of the Occupying Power's authorities and bodies. Governmental decisions and military orders regulate a complex process where from the first formal step (the authorisation of the Joint Settlement Committee of the Israeli Government and the World Zionist Organisation), to the final signing of the construction contract (either with a cooperative association or a private construction company), a range of ministries and state bodies' permission or approval is required.⁸⁶

The settlement division of the World Zionist Organisation (WZO), an international non-governmental body, is heavily funded and directed by the Israeli government.⁸⁷ The division is actively involved in the governmental mechanism for land appropriation and the establishment of settlements across the OPT.⁸⁸ The WZO regularly supports and invests in settlements, particularly in the development of Jewish-only agricultural projects,⁸⁹ which are especially prevalent in the Jordan Valley. Indeed,

⁸⁴ Peace Now, *Breaking the Law in the West Bank*, 15-20; and State Comptroller Report, 222.

⁸⁵ See database at: <http://peacenow.org.il/eng/content/settlements-and-outposts>

⁸⁶ For a detailed analysis of the bureaucratic procedure and the role of the World Zionist Organisation, see: B'Tselem, *Land Grab*, 20-22.

⁸⁷ Jonathan Lis, 'Knesset Passes Controversial Settlement-funding Bill' (Haaretz, 24 December 2015), available at: <http://www.haaretz.com/israel-news/.premium-1.693775>

⁸⁸ In 2012, the department was granted an annual budget of ILS 60.3 million, while its expenses reached ILS 272 million. The original sum for improving infrastructure in the OPT grew from ILS 4 million to ILS 49 million, and budgets for 'social activities' in the settlements grew from ILS 2.2 million to ILS 2.9 million. Chaim Levinson, 'WZO Settlement Department Gets More Money than It Is Budgeted' (Haaretz, 17 June 2013), available at: <http://www.haaretz.com/news/national/wzo-settlement-department-gets-more-money-than-it-is-budgeted.premium-1.530200#> See also: Human Rights Watch, *Separate and Unequal - Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*, December 2010, (hereinafter Human Rights Watch, *Separate and Unequal*), available at: https://www.hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf, 29.

⁸⁹ Shir Hever, 'The Settlements - Economic Cost to Israel' (Alternative Information Center, July 2005) (hereinafter Hever, *The Settlements*), 4.

exceptionally generous incentives provided from 2005 by the WZO to entice young Israeli couples to move to the Jordan Valley have resulted in a notable growth in some settlements, such as 'Gittit' and 'Netiv HaGdud'.⁹⁰ These incentives include direct payments, tuition assistance and housing subsidies among others.⁹¹

In addition, the special government incentives given to settlements include subsidised loans and grants for settlers to buy their houses, extensive discounts on municipal taxes, and discounts on direct taxes - mainly income taxes.⁹² Since 1967, several representatives of the Israeli government have actively supported the transfer of Israeli settlers in the Jordan Valley, and in 2004 they launched an initiative to double the number of settlers living therein. The project included an increase in agricultural subsidies and the development of additional tourism facilities and buildings in the area.⁹³ Although the status of this specific initiative is unclear, Israel has clearly continued its general aim of settlement expansion in the Jordan Valley. In December 2009, the Israeli Cabinet approved adding settlements in the Jordan Valley to a list of 'national priority' communities that would receive subsidies for education, employment and culture.⁹⁴



Settlement farm in the Jordan Valley - Tony Kane©

⁹⁰ Hever, The Settlements.

⁹¹ Human Rights Watch, *Separate and Unequal*, 51.

⁹² Hever, The Settlements, 3-6. It was only in 2002 that the Israeli Income Tax Order (Amendment 132) made clear that the income of an Israeli citizen or corporation made in the OPT is taxable.

⁹³ This project was primarily supported by the then Israeli Minister of Agriculture, Yisrael Katz. Amiram Cohen and Haaretz Correspondent, 'Agriculture Minister Plans Jordan Valley Settlement Expansion' (Haaretz, 8 September 2004), available at: <http://www.haaretz.com/news/agriculture-minister-plans-jordan-valley-settlement-expansion-1.134128>

⁹⁴ Human Rights Watch, *Separate and Unequal*, 66. As noted later in the report, many settlements remain on this list.



Settlement date farm in the Jordan Valley -Tony Kane©

2.3 Exploitation of Natural Resources

In addition to the illegal appropriation of land and the establishment of settlements in the region, Israel has consistently exploited the natural resources of the Jordan Valley for the benefit of its citizens, including both settlers and Israelis beyond the Green Line. Indeed, Israeli settlers residing in this area make extensive use of water and other natural resources in the occupied territory, mainly for their agricultural purposes. Agriculture, which constitutes a small part of the Israeli economy, is a crucial component of settlement business in the Jordan Valley, providing an important source of revenue for these settlements and contributing significantly to their sustainability.⁹⁵

⁹⁵ "About 30 per cent of the households [in the area] are economically based directly on agriculture and an additional 30 per cent give agriculture related services, packing houses, refrigeration, transport, etc." (emphasis added) Jordan Valley Settlements' Regional Council's website <http://www.jordanvalley.org.il/?categoryId=38842>; and Central Bureau of Statistics (Israel), Press Release, 2 April 2012, available at: http://www1.cbs.gov.il/www/hodaot2012n/07_12_084e.pdf



2.3.1 Disparity in Water Usage

The Jordan Valley has large groundwater resources,⁹⁶ in addition to the Dead Sea and Jordan River. At the beginning of the occupation, Israel issued a series of Military Orders securing its unconditional access to and direct control of the water resources in the OPT;⁹⁷ these orders are still in force and apply to Palestinians only. Israel's total authority in Area C consolidates this control, thus making integrated planning for the extraction and management of water resources virtually impossible for the Palestinian Authority (PA).⁹⁸

Moreover, the Israeli authorities have consistently denied the occupied Palestinian population access to its 'equitable and reasonable share' of the water resources of the Jordan River by preventing Palestinians from physical access to the riverbanks.⁹⁹ The only source of water available to the Palestinians is the shared Mountain Aquifer¹⁰⁰

⁹⁶ Such as the Mountain Aquifer Basin, which is a shared groundwater resource and sub-divided into the Western Aquifer Basin, North-Eastern Aquifer Basin (also known as Northern or North-Western) and Eastern Aquifer Basin. Approximately 80 per cent of the water that flows back into the aquifer, thereby recharging it, comes from the West Bank. It is the largest water resource in the region and provides the highest quality of natural groundwater. Al-Haq, 'Water for One People Only': Discriminatory Access and 'Water-Apartheid' in the OPT, April 2013, (hereinafter Al-Haq, Water for One People Only), available at: <http://www.alhaq.org/publications/Water-For-One-People-Only.pdf>, 25; See also: Al-Haq, World Water Day in the OPT, 22 March 2016, available at: <http://www.alhaq.org/advocacy/topics/housing-land-and-natural-resources/1030-world-water-day-in-the-opt>

⁹⁷ Military Order 92 concerning Jurisdiction over Water Regulations granted complete authority over all water resources and water-related issues in the OPT to the Israeli military authorities (15 August 1967). Military Order 158 concerning Amendment to Supervision over Water Law stipulated that Palestinians could not construct any new water installation without first obtaining a permit from the Israeli army and that any water installation or resource built without a permit would be confiscated or demolished (19 November 1967). Military Order 291 concerning Settlement of Disputes over Land and Water declares all prior settlements of disputes concerning water invalid. Subsequent military orders allowed Israel to establish new regulations for other districts, which consistently curb Palestinians' access to water (19 December 1968). See Also: Al-Haq, Water for One People Only, 34.

⁹⁸ World Bank, West Bank and Gaza - Assessment of Restrictions on Palestinian Water Sector Development, April 2009, available at: <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf>

⁹⁹ This principle, reflective of customary international law, is considered the cornerstone of the law of international watercourses. It requires States to use an international watercourse in a manner that is equitable and reasonable vis-à-vis other States sharing the watercourse. S McCaffrey, 'The UN Convention on the Law of the Non-Navigational Uses of International Watercourses: Prospects and Pitfalls' in S Salman and L Boisson de Chazournes (eds), *International Watercourses – Enhancing Cooperation and Managing Conflict* (World Bank Technical Paper No. 414, 1998), 17-28.

¹⁰⁰ Al-Haq, Water for One People Only, 25-28

which is divided into three aquifers: western, north-eastern, and eastern. The aquifer's water resources are "currently under near exclusive use by Israeli wells and Jordan Valley settler wells".¹⁰¹ Israel extracts 89 per cent of the



water from the Mountain Aquifer system annually - far in excess of the aquifer's yearly sustainable yield - and leaves a mere 11 per cent for Palestinians.¹⁰² Israel exercises full control over these shared water resources, "but also prevents any Palestinian use of them by continuously diverting the flow of water into Israel."¹⁰³

Decommissioned water pump due to lack of water at Al-'Oja spring in the Jordan Valley - Tony Kane©

The deliberately discriminatory nature of Israel's policies results in significant inequality in terms of access to water between Israelis and Palestinians, the latter surviving with far less than the 100 litres per capita daily (lpcd) recommended by the World Health Organisation.¹⁰⁴ The situation is of particular concern for the Palestinian population living in rural communities in the Jordan Valley, most of which are not connected to the water network system. According to the Palestinian Water Authority (PWA), there are 29 Israeli wells located in the Jordan Valley.¹⁰⁵ 'Mekorot,' the Israeli water

¹⁰¹ Clemens Messerschmid, 'Back to the Basics – Policy Options for Palestinian Water Sector Development', Water in Palestine (The Birzeit Strategic Studies Forum, the Ibrahim Abu-Lughod Institute of International Studies) 2013, 1. For instance, in 2005 'Mekorot' extracted some 44.1 million cubic meters (mcm) per year - making up 77 per cent of all Israeli West Bank extractions - from between 38 wells located inside the West Bank and allocates the resources almost exclusively to the settlements in the Jordan Valley. Clemens Messerschmid, 'What Price Cooperation?—Hydro-Hegemony in shared Israeli/Palestinian Groundwater Resources' (House of Water & Environment, 2007), 347-364.

¹⁰² Al-Haq, Water for One People Only, 27.

¹⁰³ Al-Haq, Water for One People Only, 27.

¹⁰⁴ Water consumption by Palestinians in the West Bank is approximately 73 lpcd, compared to about 300 lpcd for Israelis inside Israel and 369 lpcd for Israeli settlers residing in settlements in the OPT. Al-Haq, Water for One People Only, 51.

¹⁰⁵ The Eastern Aquifer is located underneath the Jordan Valley. Israel drilled only 6 wells in the Western and North-Eastern Aquifer Basin, as they naturally drain downstream into Israel, where pumping is much easier than in the West Bank.



company, of which the State of Israel owns 50 per cent, regularly extracts copious amounts of water in order to supply flourishing agricultural enterprises run by settlers in the Jordan Valley.¹⁰⁶ The water is intended for the irrigation of high-intensity and specialised agricultural products, mainly for export.¹⁰⁷ In addition, 'Mekorot' significantly reduces Palestinian supply – sometimes by as much as 50 per cent – during the summer months in order to meet consumption needs in Israel and settlements in the OPT.¹⁰⁸

With no access to running water and obstructed access to springs, Palestinians often have no choice but to buy water. Tankered water is often priced much higher,¹⁰⁹ and the tanks are regularly confiscated by the Israeli army. For example, Kardala is a village located north- east of Toubas, classified Area C, in which 400 residents live. It has been subject to Israeli-imposed water restrictions. In 1972, the Israeli water company (Mekorot) dug a well in Bardala village in the Northern Jordan Valley which directly and negatively impacted the water spring in Kardala. Kardala was mainly reliant on the spring for water for daily human consumption and use, as well as agriculture needs, where hundreds of dunums used to be cultivated. Consequently, the village receives five cubic metres per hour of water which is insufficient and requires residents to buy water. The average resident of the village consumes about 50 litres of water per day while settlers consume an average of 450 litres per day.¹¹⁰

Similarly, the village of Al-'Aqaba, east of Toubas City in the Northern Jordan Valley has suffered water shortage since there is no public water supply network or water source in Al-'Aqaba. This is because the Israeli occupying authorities and the Israeli Water Company 'Mekorot' have refused to install water pipelines and a network to supply the village houses with water.

¹⁰⁶ Al-Haq, *Water for One People Only*, 48.

¹⁰⁷ World Bank, *The Underpinnings of the Future Palestinian State*, 16.

¹⁰⁸ Al-Haq, *Water for One People Only*, 17; and Ma'an News, 'PM: Israel's suspension of West Bank water supplies 'inhuman and outrageous'' (Ma'an News Agency, 16 June 2016), available at: <https://www.maannews.com/Content.aspx?id=771901>

¹⁰⁹ The average expenditure of tanker water was around NIS 12 (approximately 3 USD) per cubic metre in 2010, in comparison to NIS 2.64 (approximately 0.7 USD) per cubic metre in the West Bank for those connected to the water networks. Al-Haq, *Water for One People Only*, 50; and Amira Hass, 'Palestinian Authority: Israel violating Oslo Deal on Water Prices' (Haaretz, 11 October 2012), available at: <http://www.haaretz.com/print-edition/features/palestinian-authority-israel-violating-oslo-deal-on-water-prices.premium-1.469290>

¹¹⁰ Al-Haq Affidavit No. 10687/2015.

My family, 12 members in total, live in a house built of bricks and concrete. I am forced to purchase water from the 'Ein Al-Far'a area, approximately 14 kilometres southwest of the village of Al-'Aqaba. Water is transported by tank trucks to the village. The water is very expensive. Each cubic metre of water purchased and transported from 'Ein Al-Far'a to Al-'Aqaba village costs almost NIS 15 (approximately USD 4.15). I buy water every 10 days. A tank truck can carry 150 cubic metres of water, which costs NIS 150 (approximately USD 41.58). Compared to the winter season, water expenses increase in the summertime. This situation causes me great suffering and is financially burdensome. Especially in the summer, I have to pay around NIS 450 (approximately USD 124.73) a month to purchase water from 'Ein Al-Far'a. All the residents of Al-'Aqaba face this problem. The Israeli occupying authorities and the Israeli water company 'Mekorot' are responsible for our suffering because they refuse to allow us to install water pipelines. According to the Israeli occupying authorities, the village of Al-'Aqaba is considered a closed military zone, in which construction and residences are forbidden. Therefore, they refuse to allow residents to install any pipelines or access water from the aforementioned company's network. If we had been allowed to install water pipelines and access water from the Israeli company, a cubic metre of water would have cost only NIS 3-4 (approximately USD 1.10). I do my best to not waste a single drop of water. For example, I collect and use bathwater for irrigation. Also, I use purchased water very carefully. My family members and I do not use this water for bathing, laundry or other domestic uses. In light of the harsh economic conditions we experience in the village of Al-'Aqaba, I cannot afford to buy water at a high price on a regular basis. Our income is too low. I store purchased water in a well near my home. We pump it to tanks on the roof using an electric water pump, incurring further costs. At the same time, water is available in the 'Mekorot' company's pipelines, which are close to the village. However, the Israeli occupying authorities and company refuse us access to even a single drop of water transmitted by these pipelines.

Excerpt from Al-Haq Affidavit No. 8553/2013. Given by Na'imah Mohammed Dabak, a resident of Al-'Aqaba village, Toubas governorate, on 20 April 2013.

In 2011, Al-Haq found that the approximately 500,000 Israeli settlers¹¹¹ then living in the West Bank consumed approximately six times the amount of water used by the Palestinian population of almost 2.6 million.¹¹² This discrepancy in water use is even greater when water is used for agricultural purposes, in which case settlers have up to 18 times more water available than Palestinians in the West Bank.¹¹³ This is illustrated by the vast green expanses of Israeli settlement farms in the Jordan Valley which tellingly contrast with the parched and impoverished Palestinian villages situated nearby. The case of water use is exemplary of Israel's settlement development and economic exploitation of the natural resources of the occupied territory, in particular in the Jordan Valley area, at the expense of the Palestinian population.¹¹⁴



Israeli 'Mekorot' water pump station at Al-'Oja spring in the Jordan Valley – Al-Haq©

¹¹¹ As of 11 May 2017, it is estimated that there are 600,000 settlers living in the occupied West Bank. Source: B'Tselem, *Statistics on Settlements and Settler Population*, updated 11 May 2017, available at: <http://www.btselem.org/settlements/statistics>

¹¹² Al-Haq and EWASH, *Joint Parallel Report submitted by the Emergency Water, Sanitation and Hygiene group (EWASH) and Al-Haq to the Committee on Economic, Social and Cultural Rights on the Occasion of the Consideration of the Third Periodic Report of Israel*, (hereinafter Al-Haq and Ewash, Joint Parallel Report), September 2011.

¹¹³ Ma'an Development Center, *Draining Away, The Water and Sanitation Crisis in the Jordan Valley*, 2010, 2; and Al-Haq and EWASH, Joint Parallel Report, para 24.

¹¹⁴ Amnesty International, *Troubled Waters - Palestinians Denied Fair Access to Water*, October 2009, available at: <https://www.amnestyusa.org/pdf/mde150272009en.pdf>, 23.



Dried up water channel at Al-'Oja spring in the Jordan Valley - Tony Kane©

2.4 Movement and Access Restrictions

Israel's unlawful appropriation of vast expanses of Palestinian land for the establishment and expansion of its settlements, as well as the declaration of considerable portions of the Jordan Valley as closed military areas, have dramatically reduced the amount of land available to the Palestinian population to approximately one quarter of the Jordan Valley. Although in theory Palestinians can cultivate this remaining land, the Israeli authorities have imposed harsh movement and building restrictions on Palestinians living in the Jordan Valley. Similar to land appropriation, these restrictions aim to create a coercive environment to force Palestinians to leave, while securing vast areas for settlement expansion and improving connectivity between settlements and Israel proper.

With 40 per cent of the Palestinian population in the Jordan Valley comprising semi-nomadic Bedouin and herder communities who have traditionally grazed their herds across the area, movement restrictions have had devastating effects for pasture and agriculture. First, the Jordan Valley is separated from the rest of the West Bank by dozens of physical obstacles, including almost 30 kilometres of trenches and earth walls. As a result, all traffic to and from the Jordan Valley has been limited to five



routes, four of which have checkpoints that are intermittently manned.¹¹⁵ These checkpoints severely restrict access to the Jordan Valley and allow the Israeli authorities control over the flow of traffic in and out of this area. Although some of Israel's restrictions on Palestinian movement were eased slightly in 2007,¹¹⁶ Palestinian access to and movement in the region remains severely curtailed.

In addition to restrictions imposed by the state, Palestinian access to agricultural lands, especially those in the vicinity of Israeli settlements has been limited by means of systematic harassment and violence by settlers. These acts of violence and intimidation are clearly implemented to drive the local Palestinian population away from their lands and allow settlements to expand in the Jordan Valley area.¹¹⁷

In total, these restrictions and limitations on access within the Jordan Valley greatly limit the economic benefits Palestinians are able to derive from their land, including their ability to trade their crops, and are identified as one of the key factors behind the stagnation of the Palestinian agriculture sector overall.¹¹⁸ Indeed, the Jordan Valley has turned into the "least-cultivated governorate by Palestinians".¹¹⁹

Israel's restrictions on movement also have a detrimental effect on Palestinian access to essential services located outside the Jordan Valley

¹¹⁵ Palestinians registered as Jordan Valley residents are allowed to cross with their vehicles through two of the four checkpoints - Tayasir and Hamra – provided that the vehicle is registered in the Jordan Valley in the name of the driver. Residents attempting to enter while driving a vehicle registered in the Jordan Valley, but not in their names, are often denied passage. Non-residents are only allowed to cross these checkpoints as pedestrians or if traveling via registered public transportation. Non-Jordan Valley vehicles or drivers can be exceptionally allowed through these checkpoints after coordination with the ICA. See: OCHA, *The Humanitarian Impact of Israeli Infrastructure in the West Bank*, 23.

¹¹⁶ Between 2005 and 2007, only Palestinians with an ID card proving that they resided in the Jordan Valley could enter this area or live there. All others were excluded, including Palestinians who owned land in the Jordan Valley. Palestinians working inside settlements were issued permits to be present in the Jordan Valley during the day. See: OCHA, *The Humanitarian Impact of Israeli Infrastructure in the West Bank*, chapter IV.

¹¹⁷ OHCHR, *Report of the Independent International Fact-Finding Mission 2013*, 21.

¹¹⁸ World Bank, *Area C and the Future of the Palestinian Economy*, 2 October 2013, available at: [https://openknowledge.worldbank.org/bitstream/handle/10986/16686/AUS29220REPLAC0EVI-SION0January02014.pdf?sequence=](https://openknowledge.worldbank.org/bitstream/handle/10986/16686/AUS29220REPLAC0EVI-SION0January02014.pdf?sequence=,), para 16-23.

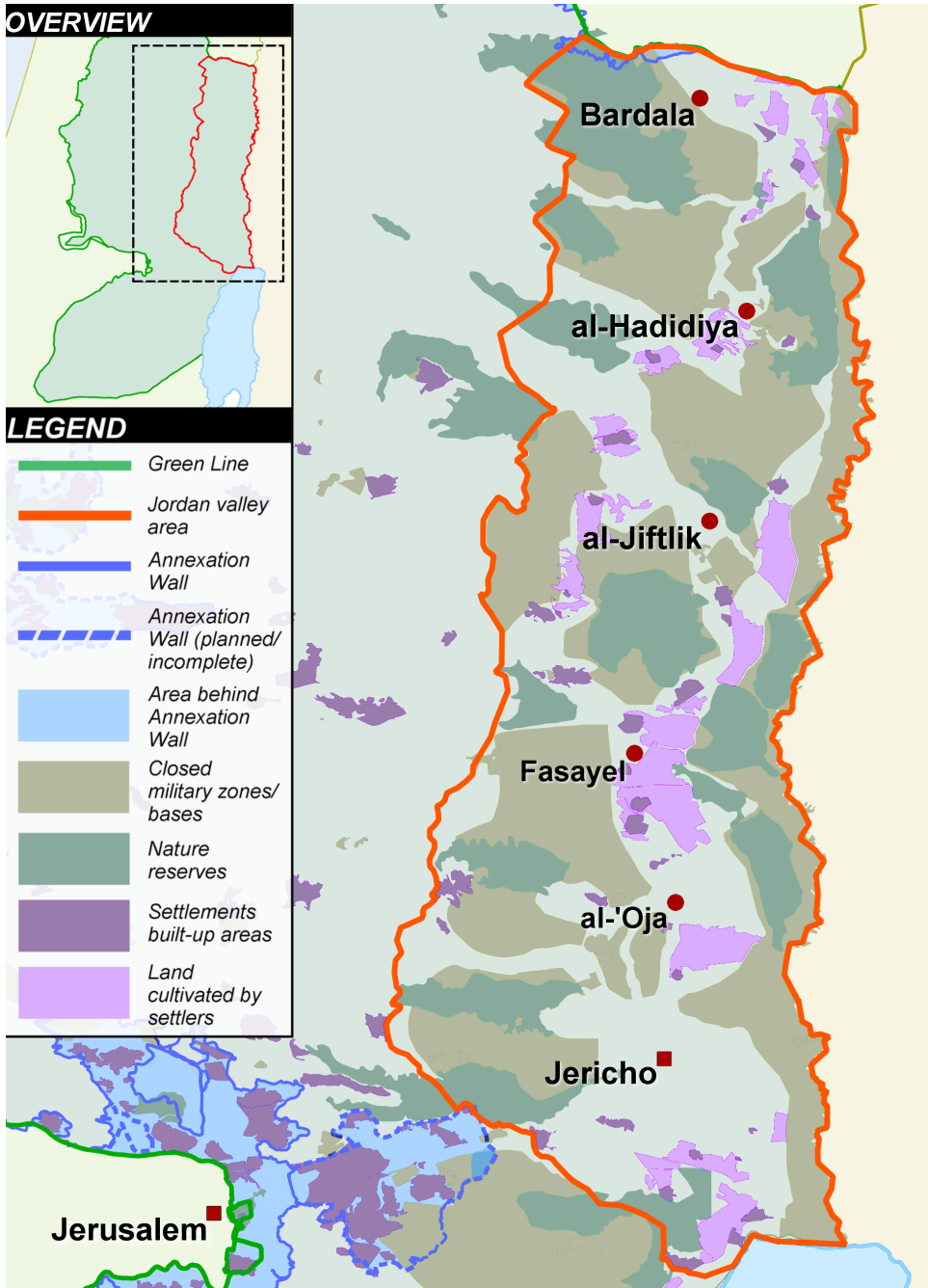
¹¹⁹ If Israel allowed Palestinians to access to thousands of *dunums* of land currently uncultivated in the Jordan Valley, along with the easing of movement restrictions and access to water, this could potentially generate a billion dollars of revenue per year. See: World Bank, *The Underpinnings of the Future Palestinian State*, 15.

region, such as schools and hospitals, further isolating the Palestinian communities living therein from the rest of the West Bank and creating daily hardships for the population.

On 20 December 2016, Hikmat Jawdat Daraghmeh was headed from his home in Ein Al-Beida in the northern Jordan Valley to Toubas city for work:

“When I arrived to Burj Al-Hamamat in Al-Maleh area in the northern Jordan Valley, I was surprised to see a flying checkpoint which prohibited vehicles to pass... tens of people were waiting to pass... the checkpoint mostly delays the movement of Palestinian workers in the settlements of the Jordan Valley. The checkpoint was set up as part of a military training that the IOF conducts in the vicinity... which is inhabited. After waiting in line to cross the checkpoint, for approximately two hours, I heard the sound of explosions [from the military training site] and saw numerous tanks and armoured vehicles passing near us. An ambulance tried to cross the checkpoint but was returned and forced to take a longer route, through the central Jordan Valley area... There were tens of people, residents and workers heading home...”

Excerpt from Al-Haq Affidavit No. 848/2016, given by Hikmat Jawdat Daraghmeh, resident of Al-Naqqar neighbourhood, Toubas governorate, on 20 December 2016.



Map 4: Areas closed to Palestinian access or use – Al-Haq© 2018.

2.5 Building Restrictions and House Demolitions

The restrictive planning regime implemented by the Israeli authorities in Area C prevents Palestinians from constructing any infrastructure or implementing development projects, such as building water wells; reclaiming agricultural land; opening agricultural roads; or extending irrigation networks.¹²⁰

Oslo Accord II called for the gradual transfer of power and responsibility over planning and zoning in Area C from the Israel Civil Administration (ICA) to the PA. This transfer was never implemented and Israel's continued management of planning and zoning in Area C "has become an increasingly severe constraint to [Palestinian] economic activity."¹²¹ Palestinians cannot build or renovate homes or any other structures and infrastructure in Area C without first obtaining permits from the ICA in accordance with master zoning and planning schemes.¹²² These permits, however, are rarely issued.¹²³ In contrast, the Israeli authorities have approved detailed plans for almost all Israeli settlements in Area C, thus allowing for their ongoing expansion.¹²⁴

Israel's building restrictions in this area force many Palestinians to build without the required permits if they are to meet their needs, despite the ever-present risk of demolition.¹²⁵ The Jordan Valley has borne the brunt

¹²⁰ In Area C, 70 per cent of the land is off-limits to Palestinian construction, and 29 per cent is heavily restricted. Less than 1 per cent of Area C has been planned for Palestinian development by the ICA. See: UN OCHA, *Humanitarian Factsheet on Area C of the West Bank*, July 2011, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf

¹²¹ World Bank, *The Economic Effects of Restricted Access to Land in the West Bank*, 21 October 2008, available at: <http://documents.worldbank.org/curated/en/654801468176641469/pdf/473230WP-0GZ0Re101PUBLIC10Box334128B.pdf>, iv.

¹²² For more information on master plans, see: Palestinian Human Rights Organisations Council, *PHROC Raises Serious Concerns Regarding the Development of Master Plans Requiring Israeli Approval in Area C of the West Bank*, 31 December 2014, available at: <http://www.alhaq.org/advocacy/targets/european-union/884-phroc-raises-serious-concerns-regarding-the-development-of-master-plans-requiring-israeli-approval-in-area-c-of-the-west-bank>

¹²³ For instance, of the 444 building permit applications Palestinians submitted in 2010 in Area C, only four (less than one per cent) were approved. See: Jillian Kestler-D Amours, 'The Battle for Area C' (Al-Jazeera, 10 August 2012), available at: <http://www.aljazeera.com/indepth/features/2012/08/201289105546220691.html>

¹²⁴ For instance, the Jordan Valley Regional Council was recently given permission to deposit plans for 170 new houses in the settlement of 'Rotem,' north of the Jordan Valley, by the Israeli Ministry of Defence. See: Tovah Lazaroff, 'Plans for Jordan Valley Settlement Homes Advance' (The Jerusalem Post, 15 January 2013), available at: <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=299596>

¹²⁵ In 2011 alone, the Israeli authorities demolished over 200 Palestinian-owned structures in the area, displacing around 430 people and affecting the livelihoods of another 1,200 Palestinians.



of Israel's policy of demolishing Palestinian structures in Area C, including homes that were built before 1967. In July 2010, the Israeli government expressly instructed the military to increase the demolitions of 'illegal' Palestinian buildings in the Jordan Valley.¹²⁶ Since then the enforcement of such policies has intensified. For example, in 2016, 220 Palestinian structures were demolished in the Jordan Valley, displacing 667 people, including 312 children.¹²⁷ It has been reported that many of these demolished structures were European-funded.¹²⁸ In 2015, 84 structures were demolished in the Jordan Valley, leaving 221 individuals displaced, including 113 children.¹²⁹

I live in Ras Al-Ahmar, south of Toubas city, with my wife and five children. I have lived here for more than 30 years. The area is classified as Area C so we are constantly subject to confiscations and demolitions by the Israeli authorities. On 7 February 2017, the Israeli civil administration along with two military jeeps and a yellow bulldozer arrived and closed down the area. We were taken away from our tents while they ferociously emptied them from our furniture and other belongings. The bulldozer then started demolishing our residential tents and animal sheds. The demolition was without prior notice or warning. Four months ago, our residential tents and animal sheds were also demolished.

Al-Haq Affidavit No. 50/2017. Given by Ali 'Izzat 'Odeh, a resident of Ras Al-Ahmar, Toubas governorate, given on 7 February 2017.

I am 44, and live in Khirbet 'Allan in the Southern Jordan Valley with my family of 12 in two residential barracks (a total of 110 square metres). I have been living in one barracks for over 35 years. On 13 July 2015, while putting up a second barracks, I received a stop-construction order from the Israeli Civil Administration for constructing in Area C. On 10 February 2016, members of the Israeli forces and Civil Administration, accompanied by a bulldozer, raided the area and closed it down. They

See: UN OCHA, *Humanitarian Fact Sheet on the Jordan Valley and Dead Sea Area*, February 2012, available at: <https://www.ochaopt.org/content/humanitarian-fact-sheet-jordan-valley-and-dead-sea-area-february-2012>

¹²⁶ Chaim Levinson, 'Civil Administration Told to Crack Down on Illegal Arab Structures' (Haaretz, 19 July 2010) (hereinafter Levinson, Civil Administration), available at: <http://www.haaretz.com/print-edition/news/civil-administration-told-to-crack-down-on-illegal-arab-structures-1.302692>

¹²⁷ Levinson, Civil Administration.

¹²⁸ Amira Hass, 'Israel Dramatically Ramping Up Demolitions of Palestinian Homes in West Bank' (Haaretz, 21 February 2016), available at: <http://www.haaretz.com/israel-news/.premium-1.704391>

¹²⁹ Al-Haq's Monitoring and Documentation Department.

emptied some furniture and belongings from the barracks while some remained inside. They did not allow me the time to remove everything. The bulldozer demolished and destroyed my home (the two barracks). They also demolished an adjacent barracks. The demolition occurred without any prior notice. I later learnt that the same force demolished other structures in Khirbet Karziliya, south of Al-Jiftlek, and in Al-Fasayel in the central Jordan Valley area on the same day.

Al-Haq Affidavit No. 103/2016. Given by Rashid Salim Hreizat, a resident of Khirbet 'Allan, Al-Jiftlek, Jericho Governorate, on 10 February 2016.



Palestinian tents demolished by the Israeli authorities in the village of Al-Jiftlek - Tony Kane©

In addition to home demolitions, Israel has continuously confiscated and destroyed water cisterns and other basic rainwater collection systems serving rural and herder communities.¹³⁰ These actions compound Israel's strict policy of limiting the amount of water available to Palestinians living in the Jordan Valley and of denying permits to restore old water wells or to build new ones. For example, on 25 December 2014, the IOF demolished a

¹³⁰ Office of the UN Special Coordinator for the Middle East Peace Process, *Statement by the UN Resident and Humanitarian Coordinator for the OPT, Maxwell Gaylard, on Continuing Demolition of Water Cisterns in the West Bank*, 1 February 2011, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/182A8AF1629EE7058525782B0052F20E>



rainwater collection pool in the village of Al-Jiftlek, only a few months after construction on it began. Lack of access to water by this farming village has impacted livelihoods there; the rainwater collection pool was viewed as a means to alleviate their suffering. One farmer from Al-Jiftlek described the pool's destruction and other restrictions on water as part of Israel's policy for displacement.¹³¹ In February 2016, around 2 kilometres of water pipes (servicing 52 families) in the village were destroyed by Israel.¹³²

Furthermore, in October 2016 and February 2017, Israeli forces demolished a water pipeline in Khirbet Al-Hadidiya, in the northern Jordan Valley. The pipeline, funded by foreign donor organisations, was set up to bring water to Al-Hadidiya. There are about 112 residents in Al-Hadidiya¹³³ – all of whom would have benefited from the water pipeline instead of buying tank water which adds financial and physical burdens to the residents.¹³⁴ Similarly, water pipelines connected to Bardala, northern Jordan Valley, were cut and destroyed by the Israeli authorities accompanied by Mekorot company on 5 May 2017.¹³⁵

I live in 'Ein Al-Beida village in the northern Jordan Valley. My family and I depend on agriculture, the only source of livelihood. For the cultivation of our lands, we depend on the water we receive from the Israeli Mekorot company which is inadequate. Therefore, we dug water collection pools, which also collect water from the springs within and nearby the pools. This way, we were able to compensate for the deficiency of water. However, Israeli authorities deemed these pools illegal and consider it a theft of water. As such, on 3 July 2016, the Israeli authorities confiscated the water pumps used to pump water from the pools to the crops. A while later, I went to the authorities to try and reclaim the pumps, for which they asked me to pay a fine of 4,000 shekels (approximately USD 1,130). I did not continue with the process to claim them back as the fine is more than their actual cost. Instead, I hired a lawyer in September 2016 and paid to receive an injunction preventing the Israeli authorities from confiscating [newly installed] pumps for three water pools. We

¹³¹ Al-Haq Affidavit No. 10320/2014.

¹³² Jordan Valley Solidarity, *IOF Demolishes at least 15 Palestinian facilities and destroys water pipes*, 12 February 2016, available at: <http://jordanvalleysolidarity.org/news/iof-demolishes-at-least-15-palestinian-facilities-and-destroys-water-pipes/>

¹³³ Figures on file with Al-Haq

¹³⁴ Al-Haq Affidavit No. 141/2017.

¹³⁵ Al-Haq Affidavit No. 329/2017.

received a receipt of payment but I do not know what happened after. On 16 May 2017, Israeli forces and Civil Administration dismantled and confiscated two pumps and a motor, costing me a loss of more than 10,000 shekels (approximately USD 2,828).

Excerpt from Al-Haq Affidavit No. 328/2017. Given by Mahmoud Fayez Abu Mutawe', a resident of 'Ein Al-Beida, Toubas governorate, on 27 May 2017.

While the responsibility for the provision of education and health services to Palestinians in Area C, including the Jordan Valley, was transferred to the PA as a result of the Oslo II Accords,¹³⁶ the virtual impossibility of obtaining building permits from the Israeli authorities for the construction or expansion of public buildings, such as schools and clinics, seriously impedes the ability of the PA to meet these needs.¹³⁷ Access to basic services is also obstructed due to the PA's inability to undertake infrastructure projects without ICA approval.¹³⁸ Indeed, as the Occupying Power in the OPT, Israel retains the ultimate responsibility for ensuring the enjoyment of these rights by the occupied Palestinian population.

2.6 Creating A Coercive Environment

Israel's practices of building restrictions and home demolitions serve a specific goal: creating conditions leading to the forcible transfer of the Palestinian population from the area. This is especially evident when viewing the many communities that face repeated demolitions by the ICA. In 2011, Israeli bulldozers went to Khirbet Tana School and confiscated a concrete mixer that was being used for the construction of the school. The school was being rebuilt following its demolition by the Israeli occupying authorities on 8 December 2010.¹³⁹ This targeting of Khirbet Tana continued

¹³⁶ Responsibility over schools, teachers, higher education, special education and private, public, non-governmental and other cultural and educational activities, institutions and programs and all movable and immovable education property. See: Article 9 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip - Annex III: Protocol Concerning Civil Affairs.

¹³⁷ OCHA, Restricting Space, 3.

It has been reported that between 2010 and 2014 only 1.5 per cent of Palestinian permits applications have been approved by the ICA. See: OCHA, *Under Threat: Demolition orders in Area C of the West Bank*, September 2015, (hereinafter OCHA, *Under Threat: Demolition Orders in Area C*) available at: https://www.ochaopt.org/demolitionos/demolition_orders_in_area_c_of_the_west_bank_en.pdf

¹³⁸ OCHA, *Under Threat: Demolition Orders in Area C*.

¹³⁹ Al-Haq Affidavit No. 6161/2011.



in 2016¹⁴⁰ to the extent that the UN Humanitarian Coordinator stated, “[i]t’s hard to see how demolitions like the ones in Khirbet Tana are about anything other than pushing vulnerable Palestinians out of certain parts of the West Bank.”¹⁴¹ The experiences of Khirbet Tana and other villages¹⁴² highlight Israel’s policies aimed at forcibly transferring the Palestinian population out of the Jordan Valley area.

In light of the record number of demolitions in 2016,¹⁴³ former UN Secretary-General Ban-Ki Moon noted, “[t]he creation of new facts on the ground through demolitions and settlement-building raises questions about whether Israel’s ultimate goal is in fact to drive Palestinians out of certain parts of the West Bank”.¹⁴⁴

As a result of Israel’s illegal practices in the Jordan Valley, which hinder livelihoods, obstruct the fulfilment of basic needs, and create severe living conditions for the Palestinian population, the number of Palestinians has significantly decreased. Indeed, the Palestinian population of the Jordan Valley prior to the Israeli occupation was estimated at 250,000 whereas it is now slightly over 53,000.¹⁴⁵

¹⁴⁰ B’Tselem, *Extensive demolitions in communities facing expulsion; fourth demolition this year in Kh. Tana, Jordan Valley*, 10 April 2016, available at: http://www.btselem.org/planning_and_building/20160410_april_7_demolitions

¹⁴¹ OCHA, *UN Humanitarian Coordinator visits Palestinian community of Khirbet Tana and warns of risk of forcible transfer*, 28 March 2016, available at: https://www.ochaopt.org/documents/hc_statement_demolitions.khirbet%20tana_english.pdf

¹⁴² For instance, in 2006 the Israeli High Court of Justice rejected a petition against a demolition order for the herding community of Al-Hadidiya (Toubas governorate) issued by the ICA because the affected buildings were in an area defined as ‘agricultural’ rather than ‘residential’ in master plans from the British Mandate period of the 1940s, and because the community’s location in close proximity to ‘Ro’i’ settlement allegedly represented a security threat. The settlement was built in 1976 entirely on privately owned Palestinian land and has since been expanded into the privately owned lands of Al-Hadidiya, which dates at least from the 1950s. Yet, it was included within a closed military area by the Israeli authorities. Multiple demolitions in short succession (1997, 2005-2007, 2008 and 2011), confiscation of water-related equipment and movement and access restrictions have permanently displaced dozens of families from Al-Hadidiya, who had to re-locate to other parts of Area C. See also: OCHA, *Displacement and Insecurity in Area C of the West Bank*, August 2011, available at: https://www.ochaopt.org/documents/ocha_opt_area_c_report_august_2011_english.pdf, 12

¹⁴³ OCHA, *Sharp increase in West Bank demolitions*, 16 March 2016, available at: <https://www.ochaopt.org/content/sharp-increase-west-bank-demolitions>

¹⁴⁴ United Nations Meetings Coverage and Press Releases, *Accelerated Settlement Activity Casts Doubt on Israel’s Commitment to Two-State Solution, Secretary-General Tells Security Council*, 18 April 2016, available at: <http://www.un.org/press/en/2016/sc12327.doc.htm>

¹⁴⁵ Palestine Liberation Organisation Negotiations Affairs Department, *Israeli Annexation Policies*

3. Legal Analysis

Israel's practices and policies in the Jordan Valley violate numerous provisions of international humanitarian, human rights and criminal law. These violations directly stem from Israel's occupation and its annexation policy in the OPT.

Under international law, States enjoy sovereign equality¹⁴⁶ and the prohibition of the threat or use of force against the territorial integrity or political independence of a State is recognised as a peremptory norm of international law, namely a norm from which no derogation is permitted.¹⁴⁷ This provision is an integral part of *jus ad bellum*, which is defined as the set of criteria regulating the legality of the use of force before an armed conflict erupts.

In a situation of occupation,¹⁴⁸ that is, when a State exercises 'effective control'¹⁴⁹ without consent over a territory on which it has no sovereign title, international humanitarian law - *jus in bello* - prescribes that no act of annexation can have any effect on the rights of the protected persons,¹⁵⁰

in the Jordan Valley Destroying the Future of the Palestinian State, September 2013, available at: <http://www.nad-plo.org/userfiles/file/Factsheet%202013/JORDANVALLEY%20FACTSHEET.pdf>; According to statistics recorded by the Palestinian Central Bureau of Statistics, the population in 2016 was approximately 53,562, source: http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/jerich.htm

¹⁴⁶ Charter of the United Nations, Article 2(1).

¹⁴⁷ UN General Assembly, *Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, adopted by the General Assembly 24 October 1970, (hereafter: Declaration on Principles of International Law concerning Friendly Relations); and Charter of the United Nations, Article 2(4); and Article 51 of the Charter reserves the right of individual or collective self-defence only if "an armed attack occurs against a Member of the United Nations."

¹⁴⁸ Common Article 2 of the Fourth Geneva Conventions states: "The present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Power, even if the said occupation meets with no armed resistance." Accordingly, this Article covers occupation pursuant to international armed conflict.

¹⁴⁹ 'Effective control' exists if "the Occupying Power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the Occupying Power felt." *Prosecutor v Naletilić & Martinović "Tuta and Štela"*, ICTY-98-34-T, Trial Chamber Judgement, 31 March 2003, (hereinafter *Prosecutor v Naletilić & Martinović "Tuta and Štela"*), para 217.

¹⁵⁰ Article 4 of the Fourth Geneva Convention defines protected persons as those who find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. The Article explicitly excludes nationals of a State that is not bound by the Convention and the citizens of a neutral State, or an allied State, if that State has



who are entitled to enjoy the rights and protections afforded to them by the Geneva Conventions.¹⁵¹ International human rights law (IHRL) remains in force and is applicable during armed conflict and situations of occupation, and while some derogations from the law are permitted during times of emergency, a State cannot suspend or waive certain fundamental rights that must be respected in all circumstances (e.g. right to life, prohibition of torture and inhuman punishment and treatment).¹⁵²

3.1 International Humanitarian Law

3.1.1 Administration of the Occupied Territory

As the Occupying Power in the West Bank, including East Jerusalem, and the Gaza Strip, Israel's obligations under IHL are set out primarily in the Regulations Annexed to the 1907 Hague Convention respecting the Laws and Customs of War on Land (Hague Regulations) and the Fourth Geneva Convention of 1949, both largely reflective of customary international law.¹⁵³

Repeated resolutions of the UN Security Council (SC), the General Assembly (GA)¹⁵⁴ and statements issued by governments and institutions worldwide, including the International Committee of the Red Cross, have all affirmed the *de jure* applicability of the Fourth Geneva Convention to the OPT, and have called upon Israel to abide by its terms. The International Court of Justice (ICJ) confirmed this position in its July 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*.¹⁵⁵

normal diplomatic relations within the State in whose hands they are.

¹⁵¹ The Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 47. See also: J Pictet (ed), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, Geneva, 1958) (hereinafter Pictet, *Commentary: Fourth Geneva Convention*), 247.

¹⁵² International Committee of the Red Cross, *The law of military occupation put to the test of human rights law*, September 2008, available at: <https://www.icrc.org/eng/assets/files/other/irrc-871-campenalli.pdf>

¹⁵³ While Israel has accepted the applicability of the Hague Regulations on the basis of their customary nature, it has declared that it will only abide by the 'humanitarian provisions' of the Fourth Geneva Convention, although it has refused to specify which provisions it regards as humanitarian. See HCJ 2690/09, *Yesh Din et al. v Commander of the IDF Forces in the West Bank et al.*, Judgment, 23 March 2010, para 6.

¹⁵⁴ UNSC Res 1544 (19 May 2004); UNSC Res 237 (14 June 1967); UNSC Res 271 (15 September 1969); and UNSC Res 446 (22 March 1979). See also UNGA Res 56/60 (10 December 2001); and UNGA Res 58/97 (17 December 2003).

¹⁵⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory

Furthermore, the provisions of customary international law, in particular those included in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977) (Additional Protocol I), as well as general principles of international law, apply to the situation of occupation in the OPT, thereby enlarging the set of obligations incumbent on Israel as an Occupying Power.

Several fundamental principles shape the legal framework applicable to occupied territory. First, occupation is by definition a temporary situation, and therefore Israel's power over the OPT is merely transitory. Secondly, as set out in Article 43 of the Hague Regulations that provide the general framework for the responsibilities of an Occupying Power, Israel is obliged to respect the basic institutions, laws and rules of administration existing prior to the occupation, unless absolutely necessary.¹⁵⁶ Lastly, Israel is not the sovereign of the occupied territory but merely a *de facto* administrator and, as such, it cannot bring about permanent alterations in the occupied territory, except in cases of necessity, as explained below.

Any intervention in the occupied territory must be measured "against the benchmark of the necessity test, in particular the necessity ground based on the welfare of the civilian population in the occupied territory."¹⁵⁷ In this regard, while military necessity may in some instances justify intervention, the striking of this careful balance "should never result in total disregard for the interests and needs of the population."¹⁵⁸ Contrary to Israel's views,¹⁵⁹ under IHL the terms 'civilian' or 'local' population for whose benefit the occupied territory should be administered refer solely to the Palestinians,

Opinion, ICJ Report 2004, (hereinafter ICJ, Wall Opinion), para 78.

¹⁵⁶ The Occupying Power is not required to comply with existing local legislation that entail neglect of human rights. Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, 2009) (hereinafter Arai-Takahashi, *The Law of Occupation*), 106, fn 53; and Antonio Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' in E Playfair (ed), *International Law and the Administration of Occupied Territories* (Clarendon Press, 1992) (hereinafter Cassese, *Powers and Duties of an Occupant*), 420.

¹⁵⁷ Arai-Takahashi, *The Law of Occupation*, 170.

¹⁵⁸ A Cassese, Cassese, *Powers and Duties of an Occupant*, 420.

¹⁵⁹ The Israeli High Court of Justice far from opposing the Israel's government view has endorsed it on several occasions. For instance, in the case: HCJ 256/72, *Electricity Company of Jerusalem v Ministry of Defence et al.*, 27(1) PD, 124, the Court held that the residents(settlers) of 'Kiryat Arba' (an Israeli settlement near Hebron) "must be regarded as having been added to the local public" whose needs had to be taken into account. See also HCJ 393/82, *Jam'iyat Iskan al-Mua'alim al-Thunaniya al-Mahduda al-Masuliya, Teachers' Housing Cooperative Society v Commander of IDF Forces in Judea and Samaria et al.*, 37(4) PD 785.



the protected population,¹⁶⁰ and not to the Israeli population illegally transferred to the OPT, i.e. the settlers.¹⁶¹

Additionally, the Hague Regulations and the Fourth Geneva Convention prohibit the exploitation of the economy of the occupied territory in order to enrich the occupant's economy and inhabitants, or to damage the local economy. As held by the US Military Tribunal at Nuremberg "[j]ust as the inhabitants of the occupied territory must not be forced to help the enemy in waging the war... so must the economic assets of the occupied territory not be used in such a manner."¹⁶²

3.1.2 The Property Regime during Military Occupation

As noted in Section 2.1, Israeli authorities introduced dramatic changes to the legal system regarding property rights in the OPT in order to attempt to justify the appropriation of land belonging to the Palestinian population there. These changes, however, are in stark violation of the general prohibition of the alteration of "the laws in force" in the occupied country, as enshrined in Article 43 of the Hague Regulations.¹⁶³

Through changes to the land regime, Israel deprives Palestinians of a legal means of protection of their land and land rights. It therefore contravenes Article 47 of the Fourth Geneva Convention, which specifically states that the occupied population must not be deprived of the benefits of the Convention by any change introduced into the occupied territory's institutions or government. The aim of this Article is to prevent harm to the occupied population;¹⁶⁴ in contrast, changes to laws instituted by Israel have, amongst other effects, appropriated Palestinian property and facilitated the development of settlements.

¹⁶⁰ Fourth Geneva Convention, Article 4.

¹⁶¹ Fourth Geneva Convention, Article 49(6).

¹⁶² *United States of America v A. Krupp et al.*, US Military Tribunal at Nuremberg, Judgment, 31 July 1948, available at: *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. IX, (hereinafter Krupp Case), 1338, 1342-1343.

¹⁶³ In the *Krupp* case the US Military Tribunal at Nuremberg held that "The Occupying Power is forbidden from imposing any new concept of law upon the occupied territory unless such provision is justified by the requirements of public order and safety." Krupp Case, 1342.

¹⁶⁴ ICRC, Commentary of 1958, Article 47, available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A>

A. Appropriation and Destruction of Property

Israel's extensive appropriation of private Palestinian land in order to establish settlements in the Jordan Valley is in violation of Article 46 of the Hague Regulations, which prohibits the confiscation of private property. According to the law of occupation, an occupant may, in certain instances lawfully requisition or seize private property in the occupied territory for its military needs and "in proportion to the resources of the country,"¹⁶⁵ providing compensation as soon as possible.¹⁶⁶ However, the allocation of private Palestinian land to Jewish settlers and the subsequent broad exploitation of the area for the sole benefit of Israel's settler inhabitants and economy do not constitute, under any logic, imperative military necessity.

Moreover, it is incumbent on the Occupying Power to prove that military necessity justifies the requisitioning of private land, especially because such requisition is an exception to the rule contained in Article 46.¹⁶⁷ Ultimately, the prohibition of transfer of the Occupying Power's own civilian population into the occupied territory set forth in Article 49(6) of the Fourth Geneva Convention (discussed below) contains no exception on the grounds of security considerations, and the latter, therefore, do not render settlements a valid security measure.¹⁶⁸

Notably, Article 56 of the Hague Regulations requires the treatment of "property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property" to be treated as private property, and forbids its destruction or wilful damage.¹⁶⁹ In this regard, irrespective of the illegally distorted classification of Palestinian land as 'State land,' Israel does not acquire the right to dispose of this property, except according to the strict rules laid down in the Hague Regulations.¹⁷⁰

¹⁶⁵ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1907, (hereinafter the Hague Regulations), Article 52.

¹⁶⁶ The Hague Regulations, Article 52.

¹⁶⁷ After all, the doctrine of military necessity has never been internationally recognised as "an unqualified license to disregard the well-being of an occupied people or as a pretext to undermine their underlying sovereign rights." See: Richard Falk and Burns Weston, 'The Relevance of International Law to Israeli and Palestinian Rights in the West Bank and Gaza' in E Playfair (ed), *International Law and the Administration of Occupied Territories* (Clarendon Press, 1992), 137-138; and Cassese, Powers and Duties of an Occupant, 439.

¹⁶⁸ ICJ, Wall Opinion, para 135.

¹⁶⁹ See also Pictet, Commentary: Fourth Geneva Convention, 226.

¹⁷⁰ Krupp Case, 1340.



Article 53 of the Fourth Geneva Convention reinforces this principle by holding “[a]ny 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 organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”.¹⁷¹ The extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is considered a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute.

Any Israeli claim to military necessity is undermined by the establishment of Israeli residential, agricultural and industrial settlements, including those in the Jordan Valley on private Palestinian land, which then, exploit the natural resources located therein for the sole benefit of Israel.

B. Violations of the Usufructuary Rule

Israel’s right to administer resources of the occupied territory is limited by IHL. According to Article 55 of the Hague Regulations, the Occupying Power is “regarded only as administrator and usufructuary of the public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory”. It can, therefore, administer and enjoy the use of this property and consume its fruits,¹⁷² but it is prohibited from exploiting these resources in a way that undermines their capital.¹⁷³ Moreover, while the Occupying Power is entitled to contract out the usufructuary rights of public immoveable property of the occupied territory, such terms must be in line with Article 55 and not exceed the temporary nature of belligerent occupation.¹⁷⁴

The Israeli authorities do not have the right to utilise the occupied territory’s public property for its own economic gain;¹⁷⁵ the benefits

¹⁷¹ For the relationship between the Hague Regulations and Article 53, see the Commentary of 1958, available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>

¹⁷² Such as the crops harvested from agricultural lands pertaining to the occupied territory.

¹⁷³ See extended analysis on usufruct rule: Al-Haq, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory*, 2015, available at: <http://www.alhaq.org/publications/publications-index/item/annexing-energy>, (hereinafter Al-Haq, *Annexing Energy*), 94-96.

¹⁷⁴ Al-Haq, *Annexing Energy*, 95.

¹⁷⁵ *United States of America v F. Flick at al.*, US Military Tribunal at Nuremberg, Judgment, 14 April 1949, in *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. VI, 17; and see *N.V. de*

obtained from such property can be applied only to defraying the expense of the occupation, which “should not be greater than the economy of the [occupied] country can reasonably be expected to bear”.¹⁷⁶ Nevertheless, the systematic exploitation of ‘State land’ in the Jordan Valley, and other resources therein, benefits Israel’s economy and its population, particularly settlers, to the detriment of Palestinians, especially those living in the area. Thus, it severely exceeds what is legally permitted under the law of occupation, representing a violation of the rule of usufruct and an act of pillage.¹⁷⁷

Furthermore, the prolongation of Israel’s military occupation of the OPT makes it even more imperative to take into consideration the social and economic needs of the local population and demands greater restraint to be placed upon the Occupying Power’s interference with property in the OPT.¹⁷⁸ In this respect, it is worth highlighting that no independent or impartial bodies exist in the OPT “with the standing to challenge actions of the military government that may be inconsistent with the temporary nature of the trust” conferred upon the Occupying Power over ‘State land’.¹⁷⁹

Ultimately, the principle of self-determination of a people and the legal concept of permanent sovereignty over natural resources are of special relevance to considerations of exploitation of resources in the OPT, bolstering the underlying rationale of the usufructuary rules during belligerent occupation embodied in the Hague Regulations.¹⁸⁰

3.2 The Prohibition of Forcible Transfer

As previously noted, Israel not only expelled a large number of Palestinians from the Jordan Valley during the 1967 Six-Day War, but it also implemented measures effectively preventing Palestinians living abroad, particularly landowners from the Jordan Valley, from returning to the region. Alongside

Bataafsche Petroleum Maatschappij and others v The War Damage Commission, 23 ILR 810, Court of Appeal Singapore, 1956, in Arai-Takahashi, *The Law of Occupation*, 212.

¹⁷⁶ *United States of America v Goering et al.*, US Military Tribunal at Nuremberg, Judgment, 1 October 1946, in *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. I, 239.

¹⁷⁷ Fourth Geneva Convention, Article 33. Unlawful appropriation of public and private property in armed conflicts has been variously referred to, and proscribed both by law and jurisprudence, as pillage, plunder and spoliation. See for detailed references: *Prosecutor v Naletilić & Martinović “Tuta and Štela”*, para 612.

¹⁷⁸ Cassese, *Powers and Duties of an Occupant*, 439.

¹⁷⁹ Bisharat, *Land, Law and Legitimacy*, 541-542.

¹⁸⁰ Arai-Takanashi, *The Law of Occupation*, 216.



these actions, Israel continually and systematically implements policies that force Palestinians to relocate. In the Jordan Valley in particular, Israel's policies of extensive land appropriation, water deprivation and establishment of settlements and closed military areas in the region have crippled the agricultural and herding economy of the Palestinian residents of the area, virtually depriving them of any substantial means of livelihood.

Given the unbearable living conditions created by Israeli practices in the Jordan Valley, including through movement and building restrictions, it is evident that Palestinian residents of this area do not exercise a genuine choice when they move away from their land.¹⁸¹ Consequently, Israel is contravening the customary prohibition of forcible transfer of protected persons enshrined in Article 49 of the Fourth Geneva Convention.¹⁸² Although Article 49 establishes an exceptional derogation to that prohibition, which allows the transfer only if the security of the occupied population or "imperative military necessity so demand," Israel's transfer policy does not fulfil this exception. 'Imperative military necessity' is a very stringent test restricted to situations where an area is in danger as a result of military operations, liable to be subjected to intense bombing, or when the presence of protected persons in an area hampers military operations.¹⁸³

The demolition of homes¹⁸⁴ and eviction of persons on the basis that

¹⁸¹ The ICTY held that the term 'forcible transfer' is not restricted to physical force, but may include 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. *Prosecutor v Radislav Krstic*, ICTY-98-33-T, Trial Chamber Judgement, 2 August 2001, (hereinafter *Prosecutor v Radislav Krstic*), para 529-530.

¹⁸² The customary law prohibition applies both to deportations outside the borders of an occupied territory and to transfers within that territory. See: *Prosecutor v Radislav Krstic*, para 519 et seq. In addition, the use of coercive measures to enforce relocation may constitute the threat of an act of violence against which protected persons must be protected according to Article 27(1) of the Fourth Geneva Convention. See Michael Bothe, *Expert Opinion on The Limits of the Right of Expropriation (Requisition) and of Movement Restrictions in Occupied Territory (Firing Zones)*, (Diakonia, 2 August 2012) (hereinafter Bothe, Expert Opinion), available at: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl-expert-opinions/limits-of-the-right-of-expropriation-requisition-and-of-movement-restrictions-in-occupied-territory-dr-iur-prof-michael-bothe.pdf>, 4.

¹⁸³ Pictet, Commentary: Fourth Geneva Convention, 278-280.

¹⁸⁴ Article 53 of the Fourth Geneva Convention prohibits the Occupying Power from destroying all property, whether public or private, situated in the occupied territory for any reason other than imperative military necessity. While imperative military requirements may permit the Occupying Power to carry out destruction, in whole or in part, of certain private or public property in occupied territory, it must act in good faith to interpret the provision in a reasonable manner that respects the principle of proportionality. In these instances, this principle must be applied restrictively as the military necessity has to be absolute. See Pictet, Commentary: Fourth Geneva Convention, 301-302.

they live in ‘closed military zones,’ declared as such long after Palestinian communities were established there, are also unjustifiable. While these closed military areas are often for the “declared purpose of military training,” in almost 80 per cent of the area taken, no actual training is held.¹⁸⁵ Indeed, general and permanent training needs are not a ‘direct requirement’ of the army of occupation and cannot justify the forced transfer of the occupied population or the appropriation or destruction of property (as discussed above). There is no evidence that the declaration of military zones, the large areas over which they expand, or their borders are afforded in response to the military necessity of Israel as the Occupying Power.¹⁸⁶ Notably, in 2014 an IOF officer admitted that firing zones in the Jordan Valley served the purpose of limiting ‘illegal’ construction.¹⁸⁷

Accordingly, Israel’s broad policy that manifests in discriminatory planning, the obstruction of the economy, settler attacks, and other push factors create a coercive environment leading to Palestinian transfer. The forcible transfer of the protected Palestinian population is closely linked to Israel’s unlawful transfer of its own civilian population into the occupied territory, which is also expressly prohibited under customary law¹⁸⁸ and by Article 49(6) of the Fourth Geneva Convention, regardless of its motive. Israel’s policy of changing the demographic composition of the OPT in order to create or consolidate territorial claims is particularly evident in the Jordan Valley and contravenes the purpose of this provision.¹⁸⁹

¹⁸⁵ Kerem Navot, *A Locked Garden, Declaration of Closed Areas in the West Bank*, (Diakonia, March 2015), available at: https://www.diakonia.se/globalassets/documents/ihl/external/alockedgarden_keremnavot_finalversion.pdf

¹⁸⁶ Bothe, Expert Opinion, 6.

¹⁸⁷ Amira Hass, ‘IDF Uses Live-fire Zones to Expel Palestinians From Areas of West Bank, Officer Admits’ (Haaretz, 21 May 2014), available at: <http://www.haaretz.com/israel-news/.premium-1.591881>

¹⁸⁸ States may not deport or transfer parts of their own civilian population into a territory they occupy. JM Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law - Volume I: Rules* (ICRC and CUP, 2009) (hereinafter Henckaerts and Doswald-Beck, Customary International Humanitarian Law), Rule 130.

¹⁸⁹ The prohibition enshrined in this Article derived from the general rule of IHL proscribing fundamental changes in the status of the occupied territory (see Article 43 of the Hague Regulations). Arai-Takahashi, *The Law of Occupation*, 346; and M Cottier, ‘Article 8, War Crimes’ in Otto Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article* (2nd eds Beck and Hart Publishers, 2008) (hereinafter Cottier, *Commentary on the Rome Statute*), margin 92.



3.3 International Criminal Law

In failing to adhere to its legal obligations, Israel's acts give rise to criminal responsibility. The Geneva Conventions grave breaches regime, along with the use of universal jurisdiction, and the provisions of the Rome Statute of the International Criminal Court, which codify the grave breaches of extensive destruction and appropriation of property and the unlawful transfer of protected persons as war crimes, allow for the possibility of individual criminal responsibility for Israeli nationals participating in the commission of these crimes.

War crimes are defined as acts and omissions that violate IHL and are criminalized in international criminal law.¹⁹⁰ Some of the most serious violations of the Geneva Conventions, when committed against protected persons or their property, amount to grave breaches of the Fourth Geneva Convention, according to Article 147, and amount to war crimes.

The prohibition against grave breaches of the Geneva Conventions protects fundamental values enshrined in such treaties. They enjoy universal ratification and are largely reflective of customary international law.¹⁹¹ Hence, the definition of the grave breaches contained in the Conventions has been established as a provision of customary international law.¹⁹² Additionally, the ICJ concluded that the prohibition against grave breaches of the Geneva Conventions should be considered amongst those rules of IHL that impose obligations of *jus cogens*.¹⁹³

¹⁹⁰ G Abi-Saab, 'The Concept of "War Crimes"' in SYee and WTieya (eds), *International Law in the Post-Cold War World* (Routledge, 2001), 112; and Cottier, Commentary on the Rome Statute, 283.

¹⁹¹ "[I]t is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and 'elementary consideration of humanity' as the Court put it in its Judgment on 9 April 1949 in the *Corfu Channel* case (ICJ Rep 1949, p. 22) that the Hague and Geneva Conventions have enjoyed a broader accession. Further these fundamental rules should be observed by all States whether or not they have ratified the conventions that contained them, because they constitute intransgressible principles of international customary law." See: *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Report 1996, (hereinafter ICJ, *Threat or Use of Nuclear Weapons*), para 79.

¹⁹² "In the case of what are commonly referred to as 'grave breaches,' this conventional law has become customary law" (emphasis added). Made up of rules that come from 'a general practice accepted as law,' customary international law exists independent of treaty law and is recognised as a source of international law by States, which are therefore bound by it. See: *Prosecutor v Tadic*, ICTY-94-1-T, Trial Chamber Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 10 August 1995, paragraph 52.

¹⁹³ See also *Prosecutor v Kupreskic et al.*, ICTY-95-16-T, Trial Chamber Judgement, 14 January 2000, para 520. "Most norms of international humanitarian law, in particular those prohibiting war crimes [...] are also peremptory norms of international law, or *jus cogens*."

The commission of grave breaches requires States to act and ensure they are punished.¹⁹⁴ Under Article 146 of the Fourth Geneva Convention, High Contracting Parties are under the obligation to “enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches”. High Contracting Parties must also “search for persons alleged to have committed, or to have ordered to be committed, such grave breaches” and bring them, regardless of their nationality, before their courts or extradite individuals to the concerned High Contracting Party.

War crimes, including grave breaches listed in the Geneva Conventions, are comprehensively integrated in Article 8 of the Rome Statute of the ICC, which is largely reflective of customary international law. Palestine acceded to the Rome Statute on 2 January 2015 and the Office of the Prosecutor opened a preliminary examination shortly thereafter.

A. Grave Breach of the Extensive Destruction and Appropriation of Property

A grave breach of the Fourth Geneva Convention occurs when there is “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.¹⁹⁵ As such, an isolated incident would not suffice.¹⁹⁶ These acts also constitute a war crime according to Article 8(2)(b)(xiii) of the Rome Statute. Although Israel has resorted to various legal methods in an attempt to justify its appropriation of Palestinian land, any justification apart from genuine and imperative military necessity becomes irrelevant when considering whether the appropriation constitutes a grave breach and war crime.

Since 1967, Israel has systematically embarked on the illegal appropriation and destruction of Palestinian land in the Jordan Valley, making way for settlements. Israel’s extensive appropriation of land has been complex, legalistic and has been executed cautiously throughout its 50-year-long

¹⁹⁴ International Committee of the Red Cross, *Penal Repression: Punishing War Crimes*, available at: https://www.icrc.org/eng/assets/files/other/penal_repression.pdf

¹⁹⁵ Fourth Geneva Convention, Article 147.

¹⁹⁶ The appropriation and destruction must occur on a large scale. However, “the notion of ‘extensive’ is evaluated according to the facts of the case – a single act, such as the destruction of a hospital, may suffice to characterize an offence under this count.” *Prosecutor v Blaskic*, ICTY-95-14-T, Trial Chamber Judgment, 3 March 2000, para 157; and Pictet, Commentary: Fourth Geneva Convention, 601.



occupation. The legal machinery set into motion by Israel constitutes an integral part of the material element of these grave breaches and, as confirmed in the Krupp case, “acts forbidden by the laws and customs of warfare cannot become permissible through the use of complicated legal constructions.”¹⁹⁷

Furthermore, the property appropriated unlawfully and wantonly includes vast extensions of land and the water resources therein, which are indispensable to the survival of the Palestinian civilian population. Israel’s extensive appropriation of property in the Jordan Valley, particularly within the framework of systematic economic exploitation of the OPT,¹⁹⁸ constitutes a breach of “a rule protecting important values, and the breach must involve grave consequences for the victims.”¹⁹⁹ Hence, it meets the requirements of a serious violation of IHL.²⁰⁰

Moreover, the grave breach of extensive appropriation of property extends to excessive requisitioning of property for military needs.²⁰¹ The grave breach committed by Israel includes, therefore, the requisition of land for military needs carried out on an excessive scale because it is not in proportion to the resources of the occupied territory, as well as the direct unlawful appropriation of privately owned Palestinian land through other means, neither justified by military necessity.

The methodology, along with the legal and administrative measures implemented by Israel in the Jordan Valley, prove that those involved in the appropriation and destruction of Palestinian property acted ‘intentionally,’ with knowledge and will of the proscribed result.²⁰² The numerous documented incidents of Palestinian property being appropriated and

¹⁹⁷ Krupp Case, 1345-1346.

¹⁹⁸ The proposition that unlawful appropriation of property encompasses large scale seizures of property within the framework of systematic economic exploitation of the occupied territory was apparently first presented in the Krupp Case, paragraphs 162-163. See also *Prosecutor v Naletilić & Martinović “Tuta and Štela”*, para 612.

¹⁹⁹ *Prosecutor v. Kunarac, Kovac and Vokovic*, IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgement, 12 June 2002, para 66.

²⁰⁰ *Prosecutor v Zejnil Delalić, Zdravko Mucić also known as “Pavo”, Hazim Delić and Esad Landžo also known as “Zenga”*, ICTY-96-21-T, Trial Chamber Judgment, 16 November 1998, para 1154 (the *Celebici case*).

²⁰¹ Pictet, Commentary: Fourth Geneva Convention, 312.

²⁰² Requirements of the mental element of the grave breach of extensive appropriation of property identified in *Prosecutor v Radoslav Brdanin*, ICTY-99-36-T, Trial Chamber Judgement, 1 September 2004, para 590.

destroyed to systematically make way for Israeli settlements in this area provide convincing evidence to support the claim that the acts were committed both ‘illegally’ – because they are in violation of the relevant provisions of IHL – and ‘wantonly,’²⁰³ and negate Israel’s claim that the appropriation of land is undertaken solely for military purposes. It is important to note that the use of long-term leases or other types of transactions to allocate land to settlers and settlements does not preclude the commission of the crime. As held in the Krupp case, the grave breach is committed “even if no definite alleged transfer of title was accomplished.”²⁰⁴

B. Grave Breach of Unlawful Transfer

The Israeli authorities’ extensive appropriation of Palestinian land and establishment of settlements and closed military areas in the Jordan Valley have prevented Palestinians living abroad from returning to their homes and have forced the transfer of many Palestinians living within the Jordan Valley to other areas in the occupied territory or abroad. Additionally, since 1967 successive Israeli governments have been directly involved in the planning, implementation and financing necessary for the transfer of their own civilian population into the occupied territory, in particular the Jordan Valley. All of which serve Israel’s economic, social and strategic needs.²⁰⁵ This transfer entails severe consequences for the protected Palestinian population living in the area and makes the return of refugees and other displaced people and the restitution of their appropriated property virtually impossible.²⁰⁶

As noted, these practices stand in violation of Article 49 of the Fourth Geneva Convention and amount to a grave breach under Article 147. As such, it is included in the war crimes provision under Article 8(2)(a)(vii) of the Rome Statute. This same act, as well as the transfer by Israel of parts of its own civilian population into the occupied territory, constitutes a war

²⁰³ In satisfying the requirement that the grave breach be committed ‘wantonly’ - at least in reference to the destruction of property - the ICTY indicated that the mental element of the crime is fulfilled when the perpetrator acted with the ‘intent’ to destroy the property in question or in ‘reckless’ disregard of the likelihood of its destruction. Similarly, the same mental element seems to apply to the crime of property appropriation. *Prosecutor v Dario Kordić and Mario Cerkez*, ICTY-95-14/2-T, Trial Chamber Judgement, 26 February 2001, para 341.

²⁰⁴ Krupp Case, 1345.

²⁰⁵ The transfer of Israelis nationals to the occupied territory strengthens Israel’s prohibition of using land belonging to the occupied territory or its inhabitants for the furtherance of its own interests. Cassese, *Powers and Duties of an Occupant*, 432.

²⁰⁶ Cottier, *Commentary on the Rome Statute*, margin 87.



crime recognised as “[o]ther serious violations of the laws and customs of war” under Article 8(2)(b)(viii) of the Rome Statute.

The Israeli government, mainly through its State budget and governmental institutions, provides special incentives to settlements, including subsidised loans and grants for settlers to build their houses, extensive discounts on municipal taxes and discounts on direct taxes, and subsidies on utilities.²⁰⁷ In particular, the production of settlement goods has benefited from Israeli governmental support ranging from low rents, special tax incentives, and lax or non-existent enforcement of environmental and labour protection laws.²⁰⁸ The different subsidies are distributed into countless special budgets, one-time grants, ad-hoc funds and other depositories in order to create a financial maze intended to hide the extent of incentives for would-be settlers. State support is particularly relevant in the Jordan Valley where, in December 2009, the Israeli cabinet approved adding settlements in this area to a list of ‘national priority’ communities that would receive additional subsidies for education, employment and culture.²⁰⁹ Many of these settlements have remained on the list.²¹⁰

Accordingly, the State of Israel is not only directly involved in the appropriation of Palestinian land but in the planning, implementation and financing of the establishment and expansion of Israeli settlements in the Jordan Valley and the OPT in general. In conjunction, Israel is supporting the transfer of its own population into settlements located in the Jordan Valley and Israeli officials repeatedly underscore their intention to maintain control over the region.²¹¹

²⁰⁷ Hever, The Settlements, 6-10.

²⁰⁸ Hever, The Settlements, 8.

²⁰⁹ Barak Ravid, ‘PM’s Plan Would Put Some Settlements on List of National Priority Communities’ (Haaretz, 10 December 2009), available at: <http://www.haaretz.com/print-edition/news/pm-s-plan-would-put-some-settlements-on-map-of-national-priority-communities-1.2448>

²¹⁰ Barak Ravid, ‘Mapping National Priorities// Cabinet Approves new Development Plan to Benefit More Israeli Settlements’ (Haaretz, 4 August 2013), available at: <http://www.haaretz.com/israel-news/premium-1.539667>

²¹¹ See for example: Haaretz, ‘Netanyahu: Israel Can Never Relinquish Security Control of Areas West of the Jordan River’ (Haaretz, 11 July 2014), available at: <http://www.haaretz.com/israel-news/1.604546>; Israeli Minister Naftali Bennett is reported to have stated he would “advance an agenda to ensure that Israeli law also apply to ‘the Jordan Valley’”. See also: Moran Azulay ‘Bennett: We’ll declare sovereignty over Ma’ale Adumim’ (Ynetnews, 29 December 2016), available at: <http://www.ynetnews.com/articles/0,7340,L-4900192,00.html>

3.4 International Human Rights Law

International human rights law applies in times of peace and conflict, and is comprised of treaties and customary international law. The majority of human rights law provisions are enshrined in two wide-ranging covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by Israel in 1991.²¹²

Israel's implementation of unlawful policies in the Jordan Valley lead to violations of these two Covenants. In particular, common Article 1 includes the right to self-determination, and that "[a]ll peoples may... freely dispose of their natural wealth and resources." Israel's illegal practices also constitute a violation of the Palestinian people's right to freedom of movement and to choose their residence, and breach the Palestinian right to an adequate standard of health and of living, including adequate food, housing, and water.²¹³

3.4.1 The Right to Self-Determination of the Palestinian People

Israel's practices and overarching government policy in the OPT are designed to prevent the Palestinian population from exercising their fundamental right to self-determination. Enshrined in the United Nations Charter²¹⁴ and embodied in common Article 1 of the ICCPR and ICESCR, the right to

²¹² Israel denies that the ICCPR and ICESCR are applicable to the OPT, arguing that they were intended "for the protection of citizens from their own Governments in times of peace" and applicable only on the territory of the States Party thereto, namely only in Israel proper. However, drawing from accepted jurisprudence (i.e., the practice of the Human Rights Committee in case No. 52/79, *López Burgos v Uruguay* and case No. 56/79, *Lilian Celiberti de Casariego v Uruguay*), as well as from ICJ, Threat or Use of Nuclear Weapons, para 24, the ICJ rejected these claims, confirming that the two Covenants apply in case of armed conflict and to acts carried out by the Israeli authorities in the occupied territory. See also: ICJ, Wall Opinion, para 102, 109 and 111.

²¹³ See International Covenant on Civil and Political Rights (ICCPR hereinafter), adopted 16 December 1966, entry into force 23 March 1976, Article 12 on "the right to liberty of movement and freedom to choose his residence." See Also: International Covenant on Economic, Social and Cultural Rights (ICESCR hereinafter), adopted 16 December 1966, entry into force 3 January 1976, Article 11(1) on "the right to everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions." ICESCR, Article 12(1) on "right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The Committee on Economic, Social and Cultural Rights has noted that the right to water is essential to the right to health and an adequate standard of living. See UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Articles 11 and 12 of the Covenant)*, 20 January 2003.

²¹⁴ Charter of the United Nations, Article 1(2) and Article 55.

self-determination is recognised as a peremptory norm of international law (*jus cogens*),²¹⁵ and the obligation to ensure the enjoyment of this



right falls on each State and is owed to the international community as a whole (*erga omnes*), as reiterated by the International Court of Justice in its Advisory Opinion of July 2004 on the Annexation Wall in the OPT.

The right to self-determination holds that people of a defined territorial unit have the right to freely “determine, without external interference, their political status and to pursue their economic, social and cultural development.”²¹⁶ This right encompasses the exercise of permanent sovereignty over natural resources, including land and water, in order for people to freely dispose of their natural wealth and resources in accordance with their interests of national development and well-being.²¹⁷

Map 5: Settlements Regional Councils' jurisdiction – Al-Haq© 2012.

While the Palestinian people's right to self-determination has been recognised by numerous UN bodies, including the General Assembly²¹⁸ and the Security Council,²¹⁹ the Palestinian population has been subjected

to Israeli foreign occupation for 50 years. Israel consistently denies Palestinians their ability to exercise this right through a matrix of illegal

²¹⁵ Dugard Armed Activities on the Territory of the Congo - (Democratic Republic of ` v Uganda), Separate Opinion of Judge Ad Hoc, ICJ Report 2005, (hereafter: Democratic Republic of Congo v Uganda), para 4 and 10. See also Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP, 1998), 320; and Arai-Takahashi, *The Law of Occupation*, 66.

²¹⁶ Declaration on Principles of International Law concerning Friendly Relations.

²¹⁷ The principle of permanent sovereignty over natural resources is reflective of customary international law. See *Democratic Republic of Congo v Uganda*, para 244.

²¹⁸ UNGA Res 58 (22 December 2003).

²¹⁹ UNSC Res 242 (22 November 1967).

policies, including by permanently annexing land for the construction and expansion of settlements, military encampments and buffer zones, and the building of the Annexation Wall. This serves to isolate and divide Palestinian communities, depriving them of access to their land and resources and severely inhibiting both social and economic development.

Israel's policies and practices which prevent Palestinians from unreservedly controlling their own resources and determining their own economic development, and allow for Israel's retention of revenue from these resources, violate the Palestinian right to permanent sovereignty over natural resources, and *ipso facto* is a violation of the right to self-determination.²²⁰

3.4.1.1 Prohibition of Colonialism

Israel's policies in the OPT amount to a form of colonialism.²²¹ Colonialism can be distinguished from other forms of foreign domination by an open claim to sovereignty by the dominant power or where a dominant power adopts measures that deliberately deny – or demonstrate an intention to permanently deny – the people of the territory the full exercise of their sovereign rights and their right to self-determination.²²² The establishment of settlements in the Jordan Valley and the creation of flourishing agricultural enterprises for the sole benefit of the settlers reveal Israel's intention to permanently change the status of the occupied territory, *de facto* exercising sovereignty, and affect any final status agreement. The presence of settlements aims to permanently deny the Palestinian population the exercise of their right to self-determination by fragmenting the territory of the OPT²²³ and preventing the Palestinian people from exercising sovereignty over natural resources. The policy of annexation-by-proxy provides a stark indicator of Israel's intent to unlawfully exercise permanent control over

²²⁰ Through Israel's policies that have resulted in the expansion of settlements, including by incentives such as subsidies on utilities, tax benefits, and budgetary grants to settlements and settlers, and the consolidation of its control over natural resources, Israel is in breach of its duties as Occupying Power.

²²¹ 'Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law' (hereafter Occupation, Colonialism and Apartheid Study) (Human Science Research Council, 2009) 120-121, available at: <http://www.setav.org/ups/dosya/24515.pdf>. See also, Russell Tribunal on Palestine, *Findings of the South African Session*, 5-7 November 2011, (hereafter: RToP, Findings of the South African Session), available at: <http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%9494-full-findings>, 18.

²²² Occupation, Colonialism and Apartheid Study, 120-121.

²²³ RToP, Findings of the South African Session, 18.



the Jordan Valley.

The prohibition of colonialism, codified in the UN General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960²²⁴ (Declaration on Colonialism), rejects all forms of colonial domination on grounds that it violates fundamental norms of human rights and is a threat to international peace and security. The Declaration on Colonialism "solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations". Similarly, the UN General Assembly's Declaration on Friendly Relations and Co-operation among States stresses the duty of every State to promote, through joint and separate action, the realisation of the principle of equal rights and self-determination of peoples through, inter alia, "bringing a speedy end to colonialism".²²⁵ Declaratory of customary international law and drawing on several principles of international law, especially the right of peoples to self-determination and the prohibition of annexation by use or threat of force, these two UN General Assembly resolutions reiterate that colonialism is absolutely contrary to international law.²²⁶

3.4.2 Freedom of Movement

Israeli policies and practices in the Jordan Valley have resulted in severely restricting Palestinian freedom of movement to, from, and within the Jordan Valley. Article 12(1) of the ICCPR states that "[e]veryone lawfully in the State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."²²⁷ This fundamental right is also enshrined in Article 13 of the Universal Declaration of Human Rights.²²⁸

Israel imposes harsh restrictions on Palestinian movement through its establishment and expansion of settlements, including the interconnected web of settlement roads and infrastructure, and the declaration of large areas of the Jordan Valley as closed military zones. These restrictions result in limited Palestinian access to agricultural lands and water resources, limited or restricted use of certain roads, and curtailed or obstructed access to other areas in the West Bank due to checkpoints, severely affecting Palestinians' ability to develop their economy and hampering

²²⁴ UNGA Res 1514 (XV) (14 December 1960).

²²⁵ UNGA Res 2625 (XXV) (24 October 1970).

²²⁶ Occupation, Colonialism and Apartheid Study, 120 and 42.

²²⁷ ICCPR, Article 12(1).

²²⁸ Universal Declaration of Human Rights, Article 13.

their enjoyment of other basic human rights.

Permissible restrictions on freedom of movement, a fundamental human right, must be provided by law, and under limited circumstances, such as reasons of national security, public order, public health or morals, or the rights and freedoms of others.²²⁹ While Israel may reserve the right to restrict movement for these reasons, under the ICCPR, these restrictions cannot be based on race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth and other status.²³⁰

Israel's policies and practices relating to restriction of movement are blatant discrimination based on national origin, as Palestinian movement is restricted for the benefit of Israeli settlers. Therefore, Israel's policy violates the right to equality and non-discrimination that is prescribed in all of the human rights conventions to which Israel is a party.

3.4.2 Economic, Social, and Cultural Rights

As a consequence of Israel's illegal appropriation of land for the establishment of its settlement enterprise, and the resulting restrictions on Palestinian movement, as well as Israel's exploitation of Palestinian natural resources in the Jordan Valley, the Palestinian population is subjected to infringements on, and often times, the deprivation of, several economic, social and cultural rights. These rights are enshrined in the ICESCR and include, the right to work (Article 6); the right to an adequate standard of living, which includes the right to adequate housing, food, and water (Article 11);²³¹ and the right to an education (Article 13). Notably, freedom of movement is often seen as a prerequisite for these and others rights. In addition, Israel's control over natural resources, including land and water, and restrictions placed on access to land, Palestinians are largely denied the right to develop their economy.

According to a World Bank report published in September 2017, Israel's continuing restrictions on Area C represents one of the main challenges to the Palestinian economy and which will deprive Palestinians of a 33

²²⁹ Universal Declaration of Human Rights, Article 12(3).

²³⁰ UN Human Rights Committee, *CCPR General Comment 18: Non-discrimination*, 10 November 1989 (hereinafter Human Rights Committee, General Comment 18). There are also permissible derogations for states of emergency. See UN Human Rights Committee, *CCPR General Comment 29: Article 4: Derogations during a State of Emergency*, 31 August 2001.

²³¹ Human Rights Committee, General Comment 18.



percent growth to their economy by 2025.²³² In 2013, the World Bank report on the OPT showed that the direct gains from alleviating restrictions on Area C would amount to at least \$2.2 billion, approximately 23 per cent, to the 2011 Palestinian GDP.²³³ The deprivation of the Palestinian population from the exercise of these rights undermines their ability to live in dignity, and ultimately, to meaningfully exercise their right to self-determination.

3.5 Responsibility

Israel's illegal policies and practices of land appropriation and population transfer give rise to different types of responsibility under international law.

3.5.1 Israel's State Responsibility

Operating in contravention of its role as an administrator and usufructuary of the OPT, Israel's practices in the Jordan Valley represent blatant violations of its obligations as an Occupying Power. In particular, the Israeli authorities are violating Articles 43, 46 and 55 of the Hague Regulations and Articles 47, 49 and 53 of the Fourth Geneva Convention, as well as acting in complete disregard of their duty of due diligence, which requires Israel's respect and protection of the OPT and its population. In particular, through the establishment of settlements in the Jordan Valley, the Israeli authorities are exercising sovereign rights over the OPT and depriving the occupied Palestinian population of the rights and safeguards to which they are entitled to under the law of occupation. Israel's practices in the Jordan Valley violate the right of the Palestinian people to self-determination, creating permanent facts on the ground, which result in de facto annexation of the occupied territory.

In addition, Israel's violations constitute war crimes and amount to grave breaches of the Geneva Conventions. Israel is a High Contracting Party to the Geneva Conventions, and is therefore obligated to put an end to all violations of IHL and investigate and prosecute those responsible for violations of the Conventions. To meet its obligations under international

²³² World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 18 September 2017, available at: <http://documents.worldbank.org/curated/en/515891504884716866/pdf/119657-WP-PUBLIC-on-Monday-1-PM-sept-11-AHLC-report-September-8.pdf>, p 6.

²³³ World Bank, *West Bank and Gaza – Area C and the Future of the Palestinian Economy*, 2 October 2013, available at: <http://documents.worldbank.org/curated/en/137111468329419171/pdf/AUS29220REPLAC0EVISION0January02014.pdf>

law, Israel must immediately cease its unlawful conduct and restore the situation to the way it was prior to the commission of the unlawful acts. Accordingly, Israel must return the property to its legitimate owners and facilitate the return of individuals forcibly transferred from their homes, as well as make full reparation for the loss or injury caused.²³⁴

3.5.2 Third-Party Responsibility

International law sets out rules outlining third-party State obligations vis-à-vis Israel's violations of peremptory norms of international law. For example, Article 41 of the International Law Commission Draft Articles provides that individual States have an obligation not to recognise Israel's illegal conduct as lawful, not to render aid or assistance in maintaining the illegal situation and to cooperate to bring it to an end.

In view of Israel's violations of international humanitarian law, including the violation of the prohibition of forcible transfer of the occupied Palestinian population from the Jordan Valley; the transfer of Israel's own civilian population into the occupied territory; the confiscation of Palestinian private property; and its violation of the rule of usufruct and of its responsibilities as an Occupying Power in the OPT, the High Contracting Parties to the Geneva Convention must fulfil their obligation to ensure Israel's respect for international humanitarian law, as established under Common Article 1 of the Conventions,²³⁵ and must abstain from rendering any support to its illegal practices and policies in the occupied territory. In this vein, States should ban the entry of settlement produce into their national markets and cease any business activity with or within Jordan Valley settlements, as this renders support to the illegal settlement enterprise.

Furthermore, all High Contracting Parties to the Geneva Conventions are under an obligation, as per Article 146 of the Fourth Geneva Convention, to search for, investigate and prosecute individuals responsible for the commission of grave breaches of the Convention. States Parties to the Rome Statute must also cooperate fully with the International Criminal Court.²³⁶

²³⁴ United Nations, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Annex to UNGA Res 56/83 (12 December 2001), and corrected by document A/56/49(Vol. I)/Corr.4 (hereafter: Draft Articles), Articles 30 and 31.

²³⁵ UNSC Res 446 (22 March 1979).

²³⁶ Rome Statute of the International Criminal Court, entry into force 1 July 2002, Article 86.



3.5.3 Individual Criminal Responsibility

Israeli individuals, including political and military officials, involved in the planning, implementation and execution of unlawful appropriation of land and the forcible transfer of the Palestinian population, both considered grave breaches of the Fourth Geneva Convention, may incur individual criminal responsibility under mechanisms of international criminal justice. This includes both the jurisdiction of national courts under the principle of universal jurisdiction, as established under Article 146 of the Fourth Geneva Convention, and that of the ICC.

International law violations are not limited to *de jure* representatives of the State and, as such, acts perpetrated by individual civilians in the context of an armed conflict may not only amount to violations of domestic law, but may also render the perpetrators criminally responsible for violations of international law.²³⁷

Given the seriousness of the offences committed by some individuals, including Israeli settlers, if a sufficient link can be established between the acts committed and the situation of occupation, Israeli settlers may be charged with having committed grave breaches of the Geneva Conventions, such as the extensive destruction and appropriation of property and the unlawful deportation or transfer of the protected Palestinian population, both of which are also considered war crimes under the ICC Statute.²³⁸

Nonetheless, State practice has confirmed the customary principle that States may also establish universal jurisdiction over other war crimes; war crimes that are additional to the grave breaches of the Geneva Conventions, including, for instance, war crimes recognised in the ICC Statute and those existing under customary law. Hence, regardless of whether the ICC exercises its jurisdiction, Israeli nationals participating in the commission of war crimes could be prosecuted and punished by States who have established universal jurisdiction in their national courts over these criminal offences.²³⁹

²³⁷ Also private entities or individuals may violate international humanitarian law even if their conduct is not attributable to the State. *Prosecutor v Jean-Paul Akayesu*, ICTR-96-4, Appeals Chamber Judgement, 1 June 2001, para 432-445; and R Arnold, 'The Liability of Civilians under International Humanitarian Law's War Crimes Provisions' (2002) Yearbook of International Humanitarian Law 5, 346-352.

²³⁸ Article 8(2)(a)(iv), extensive destruction and appropriation of property; Article 8(2)(a)(vii) unlawful deportation or transfer.

²³⁹ In customary international humanitarian law, States have the right to vest universal jurisdiction

3.5.4 Corporate Responsibility

The United Nations Guiding Principles on Business and Human Rights aim to ensure that business enterprises respect human rights and international humanitarian law. Israeli and foreign business activities in the settlements located in the Jordan Valley are crucial for the economic sustainability of settlements and, thus, are an important factor in their continued existence. The economic links with the settlements in the area perpetuate the illegal situation created by the Israeli settlements and sustain a continuing violation of international law.²⁴⁰ Accordingly, corporations operating in the Jordan Valley may be found complicit in aiding and abetting violations of international humanitarian and human rights law, even where they did not directly assist in committing the abuse. In this regard, different branches of law, including international and domestic criminal law, tort law, contract law, consumer law or corporate law, can be used to support legal actions against these legal persons and their representatives.

Conclusion and Recommendations

Israel's unlawful appropriation of land in the Jordan Valley and its allocation of that land to Israeli settlers and settlements is part of a clearly defined annexation policy that began at the time of occupation. Furthermore, such appropriation of land, water and other resources does not meet the test of military necessity and has not been carried out for the benefit of the local population; on the contrary, it is detrimental to the Palestinian population.

In addition, an examination of Israeli policies in the Jordan Valley, starting in 1967, reveals that Israel's occupation has led to a situation of forcible transfer of the protected Palestinian population, as well as of unlawful transfer of Israeli nationals into the occupied territory over time, which must be addressed immediately by Israeli authorities and by the international community as a whole.

Israel's illegal practices in the Jordan Valley entail its responsibility as a

in their national courts also over war crimes. See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Rule 157; and International Committee of the Red Cross, 'The Scope and Application of the Principle of Universal Jurisdiction, 15 October 2010, available at: <https://www.icrc.org/eng/resources/documents/statement/united-nations-universal-jurisdiction-statement-2010-10-15.htm>

²⁴⁰ Al-Haq, Feasting on the Occupation; and FIDH, *Trading Away Peace: How Europe Helps Sustain Illegal Israeli Settlements*, 30 October 2012, available at: https://www.fidh.org/IMG/pdf/trading_away_peace_-_embargoed_copy_of_designed_report.pdf



State; while Israel's violations of peremptory norms of international law and serious violations of international humanitarian law trigger third-party responsibility.

Accordingly,

The Government of Israel, as the primary duty-bearer in the OPT, must:

- Immediately cease the unlawful appropriation and exploitation of the natural resources of the occupied territory, including the illegal appropriation of Palestinian land and water in the Jordan Valley and the confiscation, demolition, and destruction of Palestinian infrastructure in this area. Thereto, Israel must:
 - o Immediately cease its discriminatory policies and practices that deprive the occupied Palestinian population in the OPT of essential means of livelihood, and that forcibly transfer protected persons to areas with minimum resources available and lacking basic services;
 - o Immediately cease the commission of grave breaches of the Fourth Geneva Convention, and investigate and prosecute individuals, including corporate representatives, involved in the commission of war crimes in the OPT. In particular, those involved in the unlawful destruction and appropriation of Palestinian property and the unlawful transfer of the protected Palestinian population;
- Immediately lift physical and administrative restrictions on Palestinian access to and use of all natural resources in the Jordan Valley and guarantee Palestinians the full exercise of their sovereign rights, including permanent sovereignty over natural resources;
- Immediately and unconditionally bring to an end the construction of settlements in the West Bank, including East Jerusalem, as well as withdraw from and dismantle all the existing settlement infrastructure. Furthermore, Israel must immediately cease the transfer of its own civilian population into the occupied territory;
- Promptly afford Palestinian land owners and communities affected by its violations of international law effective legal remedy and reparations in accordance with international law standards.²⁴¹ Because current

²⁴¹ UNGA, *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross*

bodies are structurally discriminatory and do not meet international standards, new mechanisms must be established;

- Transfer planning authority over the occupied territory to the local Palestinian population, allowing them to develop master and local plans for the entire West Bank, including East Jerusalem.

Third-Party States, including the High Contracting Parties to the Geneva Conventions, must:

- Promptly comply with their obligation to ensure respect for the Geneva Conventions, as established under Common Article 1, by adopting effective measures to pressure Israel to abide by its obligations under international humanitarian and human rights law;
- Uphold their obligations under Articles 146 and 147 of the Fourth Geneva Convention to search for and prosecute those responsible for grave breaches of the Fourth Geneva Convention;
- Ensure the full implementation of the recommendations of the report of the Fact-Finding Mission on Israeli Settlements. In particular, States must comply with their obligations under international law to uphold their responsibilities in the face of Israel's breaches of peremptory norms of international law, such as the prohibition of colonialism, extensive destruction and appropriation of property, and the violation of the right of the Palestinian people to self-determination. Thereto, all States must:
 - o Adopt restrictive measures on the import of products originating from Israeli settlements in the OPT, principally by imposing a ban on settlement trade. Interim measures, which should be immediately adopted by individual Third States, include adopting binding guidelines on labelling for retailers, in order to provide customers with clear information about the origin of the agricultural produce sold in stores and thus enabling consumers to make a conscious and informed choice about the produce purchased.
- Take appropriate measures to ensure that business enterprises domiciled in their territory or under their jurisdiction do not participate



in violations of international law relating to settlements in the Jordan Valley;

- Create and abide by Business and Human Rights National Action Plans to implement the United Nations Guiding Principles on Business and Human Rights, and ensure corporations registered in their jurisdictions are compliant with IHL and IHRL;
- Cooperate with the Office of the Prosecutor of the International Criminal Court during the preliminary examination into the situation in Palestine and any future phases.

The European Union must:

- Reiterate its firm position on the illegality of Israeli settlements and further call on Israel to halt and reverse its settlement policy. Member States of the EU must immediately take actions to end Israel's violations of international law in the OPT, in particular the Jordan Valley, including by actively pressuring Israel to immediately and unconditionally cease the construction and expansion of settlements, the demolition of Palestinian civilian structures, as well as the forcible transfer of the occupied Palestinian population from their land and the transfer of settlers into the OPT;
- Implement the European Commission's 2015 Interpretive Notice on indication of origin of goods from the territories occupied by Israel since 1967, which aims to ensure that EU Member States correctly implement already existing EU legislation on labelling the origin of products, as a first step toward banning the entry of settlement products into European markets, consistent with the EU and its member states' legal obligations. This is in line with Security Council Resolution 2334, adopted on 23 December 2016, which called on states to "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967";
- Ensure the full implementation of the EU-PLO Association Agreement, which represents the appropriate framework for promoting social and economic development of the Palestinian people in the OPT.

The United Nations must:

- Ensure that the Secretary-General follow-up with the Security Council on the implementation of the provisions of Security Council Resolution 2334 (2016), which included a demand that “Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem,” and take any necessary actions regarding Israel’s non-compliance;
- In line with the resolution adopted by the Human Rights Council (HRC) on 22 March 2013 on the report of the Fact-Finding Mission on Israeli Settlements, and reiterated in the 22 March 2016 HRC resolution, the UN must:
 - Recommend to the *“relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure the full respect for and compliance with Human Rights Council resolution 17/4 on the Guiding Principles on Business and Human Rights, and other relevant international laws and standards.”*²⁴² UN bodies must ensure the *“implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the OPT, including East Jerusalem”*²⁴³;
 - Recommend the establishment of an independent expert panel, within the framework of the UN Working Group on Business and Human Rights, to investigate and report on the relationship between trade in settlement produce, the entrenchment of the settlements and their contribution to the maintenance of the situation of occupation;
- The HRC must ensure that the database listing all corporations that have “enabled, facilitated and profited, directly and indirectly, from the construction and growth” of Israeli settlements in follow-up to the report of the independent Fact-Finding Mission on Israeli Settlements

²⁴² Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory*, 6 June 2014, (hereinafter *Statement on the implications of the Guiding Principles*), available at: <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

²⁴³ *Statement on the implications of the Guiding Principles*, 1.



as set out in the 22 March 2016 resolution²⁴⁴ is updated annually, as stated in the resolution, in order for it to serve as an effective accountability tool. The creation and maintenance of the database is in line with Security Council Resolution 2334 (2016) which called on States to “*distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967*”;

- The UN Security Council and UN General Assembly must take action and promote mechanisms to reverse Israel’s policies of forcible population transfer of the Palestinian population, conducted under a racial and segregationist enterprise, as violating the right of the Palestinian people to self-determination;
- Urge the UN Security Council to be seized of the matter of Israel’s discriminatory practices in the Jordan Valley.

The State of Palestine must:

- Play an active role in supporting the continued presence of Palestinians in the occupied territory, in particular in the Jordan Valley, including by enhancing their standard of living. Thereto, the State of Palestine should:
 - Actively enforce the Presidential law decree No.4 of 2010²⁴⁵ outlawing the sale of goods made in illegal Israeli settlements in the OPT, according to which selling and importing settlement-made goods constitute illegal actions and violators can be subject to fines and imprisonment;
 - Promote Palestinian products among buyers in order to boost their quota in local markets and increase export sales;
- Refrain from negotiating any type of agreement on the status of the occupied territory, in particular the Jordan Valley, which could undermine the rights conferred upon the occupied Palestinian population by the law of belligerent occupation. In this regard, the State of Palestine must consider that any agreement resulting in any

²⁴⁴ Human Rights Council, A/HRC/31/L.39.

²⁴⁵ Palestine Gazette No. 85, Presidential Law Decree No. 4 concerning the ban and control of settlements products in the Occupied Palestinian Territory, signed on 26 April 2010, entered into force on 6 May 2010.

derogation from the protection bestowed on Palestinians under IHL is illegal and, as such, is null and void. Any negotiations must be based on international law, which should not just inform and facilitate the process of negotiating outstanding key issues, but must constitute the foundations upon which this process is based.

This image shows a single page of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Stay Connected and Updated



Al-Haq's Website: www.alhaq.org



Al-Haq on Facebook: www.facebook.com/alhaqorganization



Al-Haq on Twitter: www.twitter.com/AlHaq_org



Al-Haq Multimedia Channel on Vimeo: www.vimeo.com/alhaq



Al-Haq Multimedia Channel on YouTube: www.youtube.com/Alhaqhr

SMART PHONES



AL-Haq - 54 Main Street 2nd & 3rd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: + 972 (0) 2 2954646/7/9
Fax: + 972 (0) 2 2954903



A L - H A Q

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 violations of the individual and collective rights of Palestinians in the OPT, irrespective 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 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 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), The Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO).



ISBN 978-9950-327-52-8



9 789950 327528