

مجلس منظمات حقوق الإنسان الفلسطينية  
Palestinian Human Rights Organizations Council



## **Joint Urgent Appeal to the United Nations Special Procedures on Israel's Continued Demolitions Amidst a Global Pandemic**

**Date: 25 January 2021**

### **Submitted by:**

The Palestinian Human Rights Organizations Council, comprising of:

- Al Haq Organization - Law in the Service of Mankind
- Al Mezan Center for Human Rights
- Addameer Prisoner Support and Human Rights Association
- Palestinian Centre for Human Rights
- DCI - Defense for Children International – Palestine
- Jerusalem Legal Aid and Human Rights Center
- Aldameer Association for Human Rights
- Ramallah Center for Human Rights Studies
- Hurryyat - Center for Defense of Liberties and Civil Rights
- The Independent Commission for Human Rights (Ombudsman Office) - Observer Member
- Muwatin Institute for Democracy and Human Rights - Observer Member

### **For the attention of:**

- The United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr. S. Michael Lynk;
- The United Nations Special Rapporteur on the right to adequate housing, Mr. Balakrishnan Rajagopal;
- The United Nations Special Rapporteur on the right to physical and mental health, Ms. Tlaleng Mofokeng;
- The United Nations Special Rapporteur on the independence of judges and lawyer, Mr. Diego García-Sayán; and
- The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume.

## **1. Introduction and Overview**

In the thick of the COVID-19 pandemic, adequate housing is considered to be “the front line in the fight against the coronavirus disease (COVID-19) pandemic, as demonstrated by stay-at-home and lockdown orders,” as highlighted by Mr. Balakrishnan Rajagopal, the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.<sup>1</sup> While the world is collectively dealing with the rampant spread of the novel coronavirus, the COVID-19 pandemic has seen Israel, the Occupying Power, continuing its systemic and widespread campaign of house demolitions in the Occupied Palestinian Territory (OPT).<sup>2</sup> Israel’s house demolition policies and practices target the protected Palestinian civilian population and are intended to foster a coercive environment to force their transfer.<sup>3</sup>

Since 5 March 2020, following the confirmation of the first cases of COVID-19 in the OPT, the Palestinian President, Mahmoud Abbas, declared a state of emergency.<sup>4</sup> Since then, the Palestinian Authority (PA) has adopted emergency measures aimed at containing the spread of COVID-19, including by imposing night lockdowns and full lockdowns. While Israel has been in an official ‘state of emergency’ since 1948, the Israeli Prime Minister, Benjamin Netanyahu, announced a state of emergency in Israel on 19 March 2020, and the Israeli government further signed existing restrictions into legally enforceable orders to help combat the spread of COVID-19, including partial and full lockdowns.<sup>5</sup>

Following the announcement of the state of emergency in Israel, and continuous efforts of civil society organisations, a two-month moratorium on demolishing essential structures, mostly residential inhabited structures, was implemented. While this policy officially covered Israel and occupied East Jerusalem, the Jerusalem Legal Aid and Human Rights Center (JLAC) was further informed, by the Israeli Civil Administration, that demolition orders against inhabited residential structures in other parts of the occupied West Bank would also be frozen. This policy, however, explicitly excludes newly constructed structures. On 15 April 2020, JLAC sent a letter to the Israeli Civil Administration, demanding “the freezing of demolition orders against essential old structures in Area C... [and] all demolition and confiscation orders against structures and equipment used by the Palestinian population for protection from the pandemic, for social isolation, quarantine, and treatment... and the expansion of the new policy’s scope to include other essential structures that serve as water supplies such as wells and facilities

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<sup>1</sup> OHCHR, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,” UN Doc A/75/148, 27 July 2020.

<sup>2</sup> Al-Haq, “Israel’s Gross Violations of Human Rights in the Face of COVID-19 (Reporting Period 8 - 29 March 2020),” 3 April 2020, available at: <https://www.alhaq.org/advocacy/16676.html>.

<sup>3</sup> Al-Haq, “On World Habitat Day, COVID-19 Accentuates Threats to the Palestinian Environment,” 5 October 2020, available at: <https://www.alhaq.org/advocacy/17393.html>.

<sup>4</sup> Wafa, “Breaking: President Abbas declares state of emergency for one month,” 5 March 2020, available at: <http://english.wafa.ps/page.aspx?id=ddRJDxa115308682962addRJDx>.

<sup>5</sup> Maayan Jaffe-Hoffman and Anna Ahronheim, “Coronavirus: Infected Israelis hit 707 as emergency orders roll out,” The Jerusalem Post, 21 March 2020, available at: <https://www.jpost.com/Breaking-News/529-Israelis-have-been-diagnosed-with-coronavirus-Health-Ministry-621536>.

serving the humanitarian needs of the Palestinian population.”<sup>6</sup> The Israeli Civil Administration, however, rejected requests made by JLAC to expand its scope or to extend its duration.

On 1 October 2020, the Israeli Ministry of Justice reinstated a moratorium on demolitions.<sup>7</sup> The moratorium provides that demolition orders for residential buildings will not be enforced, the issuance of administrative demolition orders will be reduced, and orders will be issued only in relation to new ‘illegal construction,’ particularly that which has taken advantage of the state of emergency; therefore, supposedly ensuring the protection of inhabited, residential structures that were built before the outbreak of the pandemic. It further stipulated that warning notices regarding demolition orders will also be kept to a minimum.<sup>8</sup>

Mr. Jamie McGoldrick, Deputy Special Coordinator for the Middle East Peace Process, and United Nations Resident Coordinator and Humanitarian Coordinator for the OPT warned that “the demolition of essential structures during the time of the COVID-19 pandemic is particularly worrying as it further compounds the overall situation in the West Bank.”<sup>9</sup> Calling on Israel to halt its demolition policies and practices, Mr. McGoldrick further stressed that “[t]he global pandemic has increased the needs and vulnerabilities of Palestinians, who are already trapped in the abnormality of prolonged military occupation. Unlawful demolitions exacerbate these vulnerabilities and must stop immediately.”<sup>10</sup>

Despite these moratoriums on demolitions, Palestinian structures have seen large-scale demolitions. From 5 March to 1 January 2021, the Israeli occupying authorities demolished 470 structures, including 211 residential structures, 166 of which are inhabited.<sup>11</sup> Israel’s demolitions have led to the displacement of 811 Palestinians, including 382 children.<sup>12</sup> Beyond homes, other structures, including water, hygiene or sanitation assets, humanitarian infrastructure and other facilities essential for livelihood, hygiene and sanitation were demolished by the Israeli occupying authorities, undermining the access of many to livelihoods and services.

On 3 November 2020, the wholesale demolition and forcible transfer of the Khirbet Humsa al-Fawqa, a Palestinian Bedouin community in the Jordan Valley, was carried out, leaving 72

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<sup>6</sup> Jerusalem Legal Aid and Human Rights Center, “JLAC requests to stop demolitions of water facilities and to freeze confiscation orders against equipment,” available at:

<https://www.jlac.ps/details.php?id=o50lbza2022ydfjfs4zi6>

<sup>7</sup> OCHA, “COVID-19 Emergency Situation Report 20 (5 – 19 October 2020),” 20 October 2020, available at: <https://www.ochaopt.org/content/covid-19-emergency-situation-report-20>.

<sup>8</sup> Adalah, “Adalah demands Israel freeze rampant demolitions of Palestinian homes in West Bank; 100s now facing COVID-19 without homes,” 5 October 2020, available at:

<https://www.adalah.org/en/content/view/10143>.

<sup>9</sup> OCHA, “Unlawful Demolitions in the West Bank Spike During COVID-19 – Statement by Humanitarian Coordinator Jamie McGoldrick,” 10 September 2020, available at: <https://www.ochaopt.org/content/unlawful-demolitions-west-bank-spike-during-covid-19>.

<sup>10</sup> *Ibid.*

<sup>11</sup> Figures provided by Al-Haq’s Monitoring and Documentation Department covering the period from 5 March 2020 until 1 January 2021.

<sup>12</sup> Figures provided by Al-Haq’s Monitoring and Documentation Department covering the period from 5 March 2020 until 1 January 2021.

protected Palestinians, 38 of which are children, homeless.<sup>13</sup> While the demolition of Khirbet Humsa al-Fawqa is “the largest forced displacement incident in over four years,”<sup>14</sup> and the largest single demolition operation conducted by the Israeli Civil Administration since 2010,<sup>15</sup> in terms of the number of people left homeless, it is yet another example of Israel’s long-standing policy of forcible transfer of Palestinians.<sup>16</sup> Highlighting the gravity of the conducted raid and demolition, especially during a global pandemic, the United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, and the United Nations Special Rapporteur on the right to adequate housing underlined that “[s]ecure housing is one of the ultimate protections that individuals possess to protect themselves against COVID-19,” further stressing that “[d]eliberately creating a homeless population in the midst of an international health catastrophe is a serious human rights blemish on any State authority responsible for such acts.”<sup>17</sup>

Acknowledging that “[t]he Israeli planning regime in the occupied territory is discriminatory and restrictive, and rarely grants Palestinian applications for building permits,” therefore resulting in the forcible transfer of Palestinians, the human rights experts further called on Israel “to immediately halt its property demolitions in the occupied territory, to ensure that its actions are strictly compliant with its international humanitarian and human rights obligations and to provide protection for, rather than displacement of, the protected population.”<sup>18</sup>

As our organisations welcome the United Nations Special Procedures’ previous urgent calls and efforts to remind Israel, as Occupying Power, of its legal obligations, we are further distressed and alarmed by the increase of Israel’s utilisation of Military Order 1797, which authorises the Israeli Civil Administration to demolish newly-constructed Palestinian structures within 96 hours of issuing the demolition, effectively denying the residents of the right to due process, during the COVID-19 pandemic.

As such, and in light of the continued denial of the rights and inherent dignity of Palestinians, who are systematically subjected to Israel’s discriminatory policies and practices of racial discrimination and apartheid,<sup>19</sup> the Palestinian Human Rights Organizations Council (PHROC)

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<sup>13</sup> Al-Haq, “Will the International Community Take Concrete Actions to End Israel’s Long-Standing Policy of Forcible Transfer of Palestinians?” 23 November 2020, available at:

<https://www.alhaq.org/advocacy/17579.html>.

<sup>14</sup> OCHA, “West Bank witnesses largest demolition in years - Statement by Yvonne Helle, the Humanitarian Coordinator *ad interim* for the occupied Palestinian territory,” 4 November 2020, available at:

<https://www.ochaopt.org/content/west-bank-witnesses-largest-demolition-years>.

<sup>15</sup> OHCHR, “UN experts condemn Israel’s demolition of houses in Palestinian Bedouin community,” 19 November 2020, available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26522&LangID=E>.

<sup>16</sup> Al-Haq, “Will the International Community Take Concrete Actions to End Israel’s Long-Standing Policy of Forcible Transfer of Palestinians?” 23 November 2020, available at:

<https://www.alhaq.org/advocacy/17579.html>.

<sup>17</sup> OHCHR, “UN experts condemn Israel’s demolition of houses in Palestinian Bedouin community,” 19 November 2020, available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26522&LangID=E>.

<sup>18</sup> *Ibid.*

<sup>19</sup> Al-Haq, “Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Report,” 10 November 2019, available at:

and its member organisations address this urgent appeal to your mandates, urgently requesting your immediate intervention to uphold the rights of the protected Palestinian population, including their fundamental rights to self-determination, health, and adequate standard of living, including adequate housing.

## **2. Military Order 1797**

Through its policies and practices, such as the strategic fragmentation of the Palestinian people, population transfer, and demographic manipulation, Israel ensures the maintenance of its institutionalised apartheid regime over the Palestinian people. To drive Palestinian forcible transfer, Israel has deigned, created, and maintained a coercive environment, which has been facilitated through Israel's legislation and military orders, including Military Order 1797.

Since the start of the COVID-19 pandemic, human rights organisations have noticed a significant increase in demolitions carried out under the auspices of Military Order 1797, which allows the demolition of unlicensed structures in Area C deemed as “new”, within 96 hours after the issuance of a removal notice. Issued by the Israeli Military Commander in the West Bank on 17 April 2018, Military Order 1797 has been on hold since June 2018, pending a decision by Israel's High Court on a petition filed by civil society organisations. In late April 2019, the petition was rejected, paving the way for its enforcement in the upcoming months, and severely limiting the possibility of challenging demolitions and seizures in Israeli courts.<sup>20</sup>

According to Military Order 1797, newly constructed structures may be demolished if the Palestinian owners of the structures do not appeal a demolition order, with an approved master building plan and building permit, within 96 hours from the time that the notice is issued. Palestinians must also prove that the structure had been built for six months and that it had been inhabited for a minimum of 30 days. As it is nearly impossible to have building permits approved in the West Bank, providing the Israeli occupying authorities with an approved master building plan and permit within 96 hours is nearly impossible.<sup>21</sup>

Consequently, Military Order 1797, in requiring such a quick turnaround time, strips Palestinians of their right to due process, in violation of international law, as it further strips the capacity to challenge the demolition orders through legal avenues, considering that the Military Order 1797 requires that objections to the demolition order be accompanied with a valid building permit, despite the fact that it is nearly impossible to obtain. Notably, even if Palestinians manage to fulfil the appeal requirements, the Israeli occupying authorities maintain the complete authority to proceed with demolition.<sup>22</sup>

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[https://www.alhaq.org/cached\\_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf](https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf).

<sup>20</sup> Office of the European Union Representative, “Six-Month Report on Demolitions and Seizures in the West Bank, including East Jerusalem Reporting Period: 1 January – 30 June 2019,” 14 October 2019, available at: [https://www.un.org/unispal/wp-content/uploads/2019/10/EUDEMRTa\\_141019.pdf](https://www.un.org/unispal/wp-content/uploads/2019/10/EUDEMRTa_141019.pdf).

<sup>21</sup> Corey Sherman, “Israeli (Military) Destruction Order 1797,” Habitat International Coalition, 16 June 2018, available at: <https://www.hic-mena.org/news.php?id=p2xrbA==>.

<sup>22</sup> *Ibid.*

While human rights organisations have previously condemned Military Order 1797 for its violation of international law, and warned about its aftermath on the Palestinian protected population, this issue is of an even more pressing concern during the period of closure, since residents cannot obtain the documents necessary to legally challenge the demolition orders and to file appeals or objections. According to JLAC, 34 out of 36 demolition cases received based on Military Order 1797 were demolished within few days of adopting the case.

### **3. Legal Analysis**

One way to recognise Israel's apartheid regime is by examining its discriminatory urban planning and licensing permit system, which made obtaining building permits for residential and commercial structures in the OPT, including East Jerusalem, virtually impossible. These policies and practises lead to substandard living conditions and the creation of coercive environments designed to drive Palestinian displacement. While Palestinians are subjected to Israel's restrictive planning process, Israeli settlers, illegally present in the occupied West Bank, are granted favourable treatment, including by benefitting from building opportunities enhanced through financial incentives and subsidies, full consultation and participation in planning decision-making, and a wide range of infrastructure and services.<sup>23</sup>

While settlements are illegal under international law, as reaffirmed by the international community in numerous UN Security Council and General Assembly resolutions,<sup>24</sup> as well as by the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT,<sup>25</sup> Israel continues to actively and persistently advance the transfer of its civilian population into occupied territories. By doing so, Israel violates Article 49 of the Fourth Geneva Convention, which states that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”<sup>26</sup> Rather than adhering to its legal obligations, as Occupying Power, Israel continues to extensively and unlawfully appropriate Palestinian land and allow for settlement expansion, including by Military Order 1797.

These policies and practices further result in the displacement and forcible transfer of the protected Palestinian population. The implementation of Military Order 1797, and similar policies and practices, which result in destruction of property and the forcible transfer of the protected Palestinian population, may amount to a crime against humanity and a war crime, as

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<sup>23</sup> UN Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 24 December 2012, UN Doc A/HRC/22/46/Add.1, para.74, available at: <https://undocs.org/A/HRC/22/46/Add.1>.

<sup>24</sup> United Nations Security Council (UNSC) Resolution 237, 14 June 1967, UN Doc S/RES/237; UNSC Res 271, 15 September 1969, UN Doc S/RES/271; UNSC Res 446, 22 March 1979, UN Doc S/RES/446; UNSC Res 465, 1 March 1980, UN Doc S/RES/465; UN General Assembly (UNGA) Res 56/60, 10 December 2001, UN Doc A/RES/56/60; UNGA Res 58/97, 17 December 2003, UN Doc A/RES/58/97; UNSC Res 2334, 23 December 2016, UN Doc S/RES/2334; and UNGA Res 70/89, 15 December 2015, UN Doc A/RES/70/89.

<sup>25</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, [115]-[122]. In particular, the Court declared that Article 49 of the Fourth Geneva Convention prohibits not only forcible transfers, “but also any measures taken by an Occupying Power in order to organise or encourage transfers of parts of its own population into the occupied territory.”

<sup>26</sup> Article 49 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (hereinafter ‘Fourth Geneva Convention’).

provided by Articles 7 and 8 of the Rome Statute of the International Criminal Court (ICC), respectively.<sup>27</sup> Military Order 1797 further violates Article 43 of the Hague Regulations, which provides that an Occupying Power should “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”<sup>28</sup> In the case of the occupied West Bank, this means that Jordanian Planning and Construction Law must be upheld.<sup>29</sup>

The Israeli-conducted demolitions of Palestinian property, whether they were carried out under the aegis of Military Order 1797 or other similar policies, are in violation of international law, as it is forbidden, generally under Article 23(g) of the Hague Regulations to “destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.”<sup>30</sup> Similarly, Article 53 of the Fourth Geneva Convention provides that “[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 co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”<sup>31</sup> The razing of Palestinian structures, including Palestinian homes, is not necessary for military purposes but rather is facilitate its unlawful settlement expansion and transfer in of its citizens to colonise the occupied territory, orchestrated by the maintenance of Israel’s apartheid regime of systematic racial domination and oppression over all Palestinians.<sup>32</sup>

Israeli demolitions further encroach upon the right to adequate housing, protected by Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that States Parties shall “recognize the right of 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.”<sup>33</sup> At a time of a global pandemic, Israel’s continuous demolition of houses undermines the Palestinian ability to mitigate the impacts of COVID-19, further violating Article 12 of the ICESCR.<sup>34</sup>

Constituting one of the mechanisms that fosters the forcible transfer of the Palestinian people, inflicting pressure on adequate housing, both through its targeting and destruction and by creating and maintaining a coercive environment, is in clear violation of international law. Israel continues to blatantly ignore its legal obligations, as Occupying Power, to maintain its

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<sup>27</sup> Articles 7(1)(d) and 8(2)(a)(iv) of the Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter ‘Rome Statute’).

<sup>28</sup> Article 43 of the 1907 Hague Regulations annexed to the Hague Convention IV Respecting the Law and Customs in War on Land (hereinafter ‘Hague Regulations’).

<sup>29</sup> Corey Sherman, Israeli (Military) Destruction Order 1797 (Habitat International Coalition), 16 June 2018, available at: <https://www.hic-mena.org/news.php?id=p2xrbA==>.

<sup>30</sup> Article 23(g) of the Hague Regulations.

<sup>31</sup> Article 53 of the Fourth Geneva Convention.

<sup>32</sup> Al-Haq, “Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Report,” 10 November 2019, available at: [https://www.alhaq.org/cached\\_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf](https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf).

<sup>33</sup> Article 11 of International Covenant on Economic, Social and Cultural Rights (adoption 16 December 1966, entry into force 3 January 1976) (hereinafter ‘ICESCR’).

<sup>34</sup> Article 12 of the ICESCR.

settler-colonial and apartheid regime, which ultimately aims to erase the Palestinian presence and forcing demographic manipulation in the OPT, while oppressing and dominating the Palestinian people as a whole.

#### **4. Conclusion and Recommendations**

Noting that the Chairpersons of the ten UN Human Rights Treaty Bodies issued a joint statement calling on States Parties “to adopt measures to protect the rights to life and health, and to ensure access to health care to all who need it, without discrimination,”<sup>35</sup> the impact of these rampant, systematic and unlawful house demolitions is compounded by the spread of a pandemic, complicating and hindering Palestinian individual and community-based efforts to take precautionary measures to slow down the spread of COVID-19.

In light of the above, PHROC and its member organisations request the immediate intervention of the UN Special Procedures to uphold the rights of the Palestinian protected population during COVID-19 and, in particular, to:

- i. Publicly call on Israel, as Occupying Power, to adhere to its legal obligations, and to immediately cease its systematic implementation of policies that are aimed and designed to forcibly transfer Palestinians, including by freeze all demolition orders, including those issued under Military Order 1797;
- ii. Call on Third States to comply with their obligations to respect and ensure respect for the Geneva Conventions, by immediately adopting effective measures to pressure Israel to abide by its obligations under international humanitarian law;
- iii. Call on the European Union to adopt restrictive measure on the import of products, goods, and services originating from illegal Israeli settlements in the OPT, namely by to supporting the proposal for a wide ban of trade with and support for illegal settlements;<sup>36</sup> and
- iv. Publicly call for international justice and accountability for Israel’s widespread, long-established, and systematic human rights violations committed against the Palestinian people, including war crimes and crimes against humanity, by urging the immediate opening, without any further delay, of a full, thorough, and comprehensive ICC investigation into the Situation in the State of Palestine.

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<sup>35</sup> OHCHR, “UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19,” 24 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742>.

<sup>36</sup> Al-Haq, “Al-Haq Calls on the EU to Support the Proposal for a Wide Ban of Trade with and Support for Illegal Settlements,” 28 December 2020, available at: <https://www.alhaq.org/advocacy/17724.html>.