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## **Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports**

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## 1. Overview

1. Since 1948, the State of Israel has instituted a series of discriminatory laws, policies, and practices that form the foundation of its institutionalised regime of racial domination and oppression over the indigenous Palestinian people as a whole, including Palestinian citizens of Israel, Palestinians in the occupied Palestinian territory (oPt), and Palestinian refugees and exiles abroad. These discriminatory features arise from Israel's *raison d'État* and seek to maintain a racialized regime of dispossession, domination, and systematic fragmentation of the Palestinian people, by persistently denying the right of reparation, including consensual return to their homes, lands, and property, to Palestinian refugees and other persons displaced in the waves of ethnic cleansing carried out since the State's establishment.
2. These measures have not abated since Israel, the State party, ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or 'the Convention')<sup>1</sup> on 3 January 1979. Rather, Israel maintains a widespread State-driven effort to deprive the Palestinian people of its means of subsistence, in violation of the collective right of the Palestinian people to self-determination, including permanent sovereignty over natural wealth and resources, which underlies Israel's widespread and systematic violations of the individual human rights of Palestinian persons within its jurisdiction or territory of effective control, and as refugees elsewhere. Each periodic review by the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD or 'the Committee'), as well as by other UN treaty bodies, renews these observations. However, it is necessary to include the latest developments in the application of Israel's discriminatory laws, policies, and practices, thereby contextualising them within the institutionalised nature of the violations that breach the Convention.
3. In this joint parallel report to the Committee ahead of its 100<sup>th</sup> session, our organisations, including Al-Haq, BADIL Resource Center for Palestinian Residency and Refugee Rights, the Palestinian Center for Human Rights (PCHR), Al Mezan Centre for Human Rights, Addameer Prisoner Support and Human Rights Association, the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), the Cairo Institute for Human Rights Studies (CIHRS), and Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN), address the seventeenth to nineteenth periodic reports submitted by Israel (hereinafter 'State report').<sup>2</sup> Our organisations substantiate that Israel has created and maintained an apartheid regime over the Palestinian people as a whole, in violation of its obligations under international law, including Article 3 of ICERD,<sup>3</sup> which enshrines the obligation that "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."<sup>4</sup>

<sup>1</sup> *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (hereinafter ICERD).

<sup>2</sup> CERD, *Seventeenth to nineteenth periodic reports submitted by Israel*, 2 March 2017, CERD/C/ISR/17-19.

<sup>3</sup> *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (hereinafter ICERD).

<sup>4</sup> Article 3, ICERD.

4. Our joint report is submitted parallel to Israel's State report in order to complement the information available to the Committee. While making reference to the State report, this submission covers critical issues regarding the rights of Palestinians, on which the State party remains ominously silent, which is consistent with Israel's general and persistent failure to report on the rights of Palestinians, particularly in the oPt and as refugees elsewhere, as previously submitted to the Committee.<sup>5</sup> Indeed, the State report only includes one paragraph on Israel's implementation of Article 3 of the Convention, indicating that "[a]partheid has always been regarded as abhorrent by the [Government of Israel] and society, and continues to be so regarded. Apartheid has never been practiced in Israel. There exists in Israel no restrictions of any kind as to place of residence nor is there any segregation of any kind."<sup>6</sup>
5. In this joint parallel report, our organisations examine Israel's discriminatory laws, policies, and practices, as rooted in Israel's settler-colonial enterprise in Palestine through the definition of the crime of apartheid in international criminal law. In particular, our report examines the manner in which Israel has maintained its apartheid regime, embedded in a system of impunity and the inability to meaningfully challenge Israel's suspected crimes, which underpin Israel's continued domination over the Palestinian people as a whole, through erasure and fragmentation, including the denial of Palestinian refugee return, restrictions on freedom of movement and residence, and the closure of Jerusalem and the Gaza Strip, coupled with ongoing policies and practices of demographic manipulation and population transfer.
6. In addition, our organisations outline herein Israel's creation of institutions, "legal" pretexts, coercive environments, and violent means designed to drive population transfer and undermine the Palestinian people's will and capacity to challenge the apartheid regime. This has been carried out through discriminatory planning and zoning, illegal house demolitions, forced evictions, excessive use of force, foreclosing access to and control over Palestinians' natural wealth and resources, and denying their access to basic services such as healthcare. Finally, the report highlights Israel's continued efforts to silence opposition to its apartheid regime through intimidation and institutionalised harassment, which includes mass arbitrary detention of Palestinian civilians, torture and other ill-treatment, widespread measures of collective punishment, intense surveillance and intervention in communications, and Government-led smear campaigns intended to delegitimise the work of human rights defenders and organisations fuelled by racist hate speech and incitement to racial hatred and violence.
7. Overall, our organisations urge the Committee to recognise and to declare that Israel's policies have created, and continue to maintain, an institutionalised regime of racial domination and oppression over the Palestinian people as a whole, amounting to the crime of apartheid under Article 3 of ICERD. We further urge the Committee to consider the policies and practices presented in this joint parallel report, committed with the intention of maintaining Israel's apartheid regime over the Palestinian people, as constitutive of Israel's *raison d'État* to erase and replace the indigenous Palestinian people. Our organisations stress that only by examining

<sup>5</sup> Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission to the Committee on the Elimination of Racial Discrimination for the List of Themes on Israel's Seventeenth to Nineteenth Periodic Reports, 100<sup>th</sup> Session, 5 September 2019*, pp. 6–7, at: <http://www.alhaq.org/advocacy/15010.html>.

<sup>6</sup> State report, para. 54.

Israeli policy toward the Palestinian people as a whole can we begin to undo the political, legal, and geographic fragmentation imposed on the Palestinian people that underpins Israel's apartheid regime.

## 2. Cumulative recognition of Israeli apartheid

8. Notably, in 2007<sup>7</sup> and 2012,<sup>8</sup> the Committee found that Israel, as State party to ICERD, is in violation of Article 3 of the Convention and urged Israel to take immediate measures to prohibit and eradicate any policies or practices of racial segregation and apartheid, which disproportionately affect the rights of the Palestinian people in the oPt, comprising the Gaza Strip and the West Bank, including East Jerusalem.<sup>9</sup>
9. However, since the Committee's last Concluding Observations, there have been significant developments in the legal analysis of Israel's fragmentation policies and practices as the main tool through which it exercises its apartheid regime over the indigenous Palestinian people as a whole. This observation is compellingly argued in the 2017 report commissioned by the UN Economic and Social Commission for Western Asia (ESCWA), titled "Israeli Practices towards the Palestinian People and the Question of Apartheid" (hereinafter 'ESCWA report').<sup>10</sup> Notably, in examining Israel's apartheid regime over the Palestinian people as a whole, the authors of the ESCWA report found that the international community has played a role in normalizing Israel's fragmentation of the Palestinian population more broadly, and has:

“unwittingly collaborated with this manoeuvre by drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the occupied Palestinian territory, and treating Palestinians outside the country as ‘the refugee problem’.”  
The Israeli apartheid regime is built on this geographic fragmentation, which has come to be accepted as normative. The method of fragmentation serves also to obscure this regime's very existence.”<sup>11</sup>

10. Inside the Green Line (1948–1949 Armistice Lines), in addition to constructing a superior status of “Jewish nationality” (as discussed below in section 3.2.2), Israel has, for its own purposes, formalized sub-national divisions of the Palestinian people into sometimes overlapping categories such as Arabs, Christians, Muslims, Druze, and Bedouin, as if each were distinct from the Palestinian people. In some sections, Israel's State report also includes Circassians erroneously as a subset of Arabs, whereas Circassians are a Turkic community. Each of these constructed fragments of the indigenous people – while also citizens of Israel – are referred to only as distinct “minorities” throughout Israel's current report.<sup>12</sup> Added to these are further sub-groups of Palestinians variously categorized for special status and treatment, including “absentees,” “present absentees,” Arameans, Jerusalem residents (annexed, but rendered stateless) and “unrecognized village” residents. All these Israeli-constructed

<sup>7</sup> *Ibid.*, p. 37.

<sup>8</sup> *Ibid.*, p. 37.

<sup>9</sup> *Ibid.*, p. 37.

<sup>10</sup> *Ibid.*, p. 37.

<sup>11</sup> *Ibid.*, para. 24.

<sup>12</sup> CERD/C/ISR/17-19, *op. cit.*, paras. 15, 19, 28, 39, 42, 44, 47, 77, 115, 118, 131, 183, 251, 261, 262, 268, 295 and 342.

categories of the Palestinian people remain perpetually inferior in status and rights to “Jewish nationals” as a matter of law in Israel, and are effectively accorded second-class citizenship.

11. The ESCWA report observes how Israel has further divided the Palestinian people administratively into four separate fragments or legal ‘domains,’ in which the Palestinian people are “ostensibly treated differently but share in common the racial oppression that results from the apartheid regime.”<sup>13</sup> The four legal ‘domains,’ as identified in the ESCWA report, are as follows: (1) Israeli civil law governing Palestinian citizens of Israel; (2) Israeli permanent residency law governing Palestinians in the city of Jerusalem; (3) Israeli military law governing Palestinians, including Palestinians in refugee camps, under Israeli military occupation in the West Bank and Gaza Strip, since 1967; and (4) Israel’s policy to deny the return of Palestinian refugees or exiles, living outside territory under Israel’s control.<sup>14</sup> This fragmentation serves to weaken the will of the Palestinian people, their national identity, and their capacity to exercise their inalienable rights as a people and as individuals. It is, therefore, the key method through which Israel has established and continues to maintain its apartheid regime over the Palestinian people.<sup>15</sup>
12. Since the Committee’s last Concluding Observations in 2012, Israel has continued to entrench its apartheid regime over the Palestinian people. The Annexation Wall, which gravely hampers the right of the Palestinian people in the oPt to freedom of movement and residence, serves as a cruder and more-obvious reminder of Israeli apartheid in material form. Notably, this year marks the 15<sup>th</sup> anniversary of the 2004 Advisory Opinion by the International Court of Justice (ICJ) on the illegality of the Wall, which remains standing despite impeding the exercise by the Palestinian people of their right to self-determination.<sup>16</sup> In 2018, the Palestinian people marked 70 years of ongoing displacement and dispossession since the Nakba, when Israel executed the serious crime of population transfer resulting in the first major wave of Palestinian refugees in 1948. That same year, Israel further codified its apartheid regime through legislation, including the adoption of the Basic Law: Israel as the Nation-State of the Jewish People (2018) (hereinafter ‘Jewish Nation-State Law’) (as discussed in section 4.1.5).
13. This latest addition to Israel’s Basic Laws, supplanting a constitution, guarantees the State party’s ethnic-religious character as exclusively Jewish by entrenching the privileges granted to “Jewish nationals” – whether Israeli or not – and anchoring institutionalised material racial discrimination against the Palestinian people through constitutional exclusion and inequality.<sup>17</sup> However, the Jewish-Nation State Law only reveals more clearly Israel’s exclusionary *raison d’État* to erase and replace the indigenous Palestinian people, as enshrined in the institutional foundations of the State.<sup>18</sup>

<sup>13</sup> ESCWA report, *op. cit.*, p. 4.

<sup>14</sup> *Ibid.*, p. 4.

<sup>15</sup> *Ibid.*

<sup>16</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136, para. 122. See also Al-Haq, “15 Years Since the ICJ Wall Opinion: Israel’s Impunity Prevails Due to Third States’ Failure to Act,” (9 July 2019), at: <http://www.alhaq.org/advocacy/14616.html>.

<sup>17</sup> See Adalah, “Israel’s Jewish Nation-State Law,” (2 August 2018), at: <https://www.adalah.org/en/content/view/9569>.

<sup>18</sup> See also Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, *op. cit.*, para. 6, p. 3.

### 3. Creating an apartheid regime

#### 3.1. Definition of the crime of apartheid

14. References and engagements with apartheid may be found across public international law, international human rights law, international humanitarian law, and international criminal law. This section will provide a brief overview of the various provisions made in both codified and customary international law, all of which prohibit regimes of widespread, entrenched, and systematic racial discrimination.

##### 3.1.1. *Applicable international law framework*

15. In addition to the prohibition contained in Article 3 of ICERD, foundations of the modern international legal framework prohibiting the crime of apartheid may be found in general non-discrimination clauses in numerous instruments fundamental to the international legal order. These include Article 55 of the Charter of the United Nations ('UN Charter'),<sup>19</sup> Article 2 of the Universal Declaration of Human Rights (UDHR),<sup>20</sup> Article 26 of the International Covenant on Civil and Political Rights (ICCPR),<sup>21</sup> and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>22</sup> all of which are applicable to Israel.
16. The first classification of apartheid as a crime against humanity in a binding multinational treaty can be found in the Preamble of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.<sup>23</sup> Further, in 1971, the ICJ identified the practice in South West Africa of enforcing "distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin" as a denial of fundamental human rights and a flagrant violation of the [UN] Charter."<sup>24</sup> The consequent "Namibia Doctrine" has affirmed the *erga omnes* obligation of all states – whether Members of the UN or not – to oppose and rectify such an illegal situation.<sup>25</sup> This ruling roughly coincides with the entry into force of ICERD (1965) and the adoption of the Apartheid Convention (1973).

##### 3.1.2. *ICERD (1965) and the adoption of the Apartheid Convention (1973)*

17. The classification of apartheid as a crime against humanity under international criminal law was further propounded in the 1973 International Convention on the Suppression and

<sup>19</sup> *Charter of the United Nations* (adopted 24 October 1945) 1 UNTS XVI

<sup>20</sup> UN General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) 217 A (III).

<sup>21</sup> *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 16 December 1966, 999 UNTS 171.

<sup>22</sup> *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 16 December 1966, 993 UNTS 3.

<sup>23</sup> *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* (adopted 26 November 1968, entry into force 11 November 1970) A/RES/2391(XXIII).

<sup>24</sup> ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia [South West Africa] Notwithstanding Security Council Resolution 276* (Advisory Decision) [1970] ICJ Reports 71 at 131.

<sup>25</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, at: <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf>.

Punishment of the Crime of Apartheid (Apartheid Convention),<sup>26</sup> and the 1998 Rome Statute of the International Criminal Court (Rome Statute).<sup>27</sup>

18. ICERD was adopted on 21 December 1965 by the UN General Assembly,<sup>28</sup> its Preamble voicing alarm at “manifestations of racial discrimination still in evidence in the areas of the world and by governmental policies based on racial superiority or hatred, *such as policies of apartheid, segregation or separation*” (emphasis added). Article 3 of ICERD requires Parties to the Convention to “undertake to prevent, prohibit and eradicate” apartheid regimes. As highlighted by CERD in its first review of South Africa in 2006, following the dismantling of the apartheid regime there, “[the Convention’s] genesis was strongly influenced by the cruel, inhuman and degrading effects of apartheid in that country.”<sup>29</sup>
19. For a definition of apartheid, it is necessary to look at other conventions and statutes. The Apartheid Convention supplements the brief reference found in ICERD,<sup>30</sup> with the most detailed definition of the crime of apartheid.<sup>31</sup> The Apartheid Convention envisages the crime as “inhuman acts,” similar – but not exclusive – to those practiced under the apartheid regime in South Africa, committed for the purpose of establishing and maintaining a system of racial domination and oppression by one racial group over another.<sup>32</sup> The Apartheid Convention further requires all organisations, institutions, and individuals involved in the commission of the crime of apartheid<sup>33</sup> to be declared as criminal, while also allowing for individual criminal responsibility for members and agents of such entities that have taken part in the commission, incitement, or abetting of the crime of apartheid “irrespective of the motive involved.”<sup>34</sup> The definition also emphasizes necessity of intent on the part of the State or organisation concerned. Once this intention has been established on the systemic level, no further interrogation is necessary for the specific, individual intention of those involved.<sup>35</sup>

### 3.1.3. *The Rome Statute (1998)*

20. Similar to the Apartheid Convention, the articulation of the crime of apartheid under the Rome Statute focuses on the institutionalised systematic and oppressive character of the regime. Apartheid is included as a crime against humanity entailing individual criminal responsibility under Article 7(1)(j) of the Rome Statute, which the Statute defines as “inhumane acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime” in Article 7(2)(h).

<sup>26</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) A/RES/34/27.

<sup>27</sup> *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3.

<sup>28</sup> UN General Assembly, A/RES/2106(XX) (21 December 1965).

<sup>29</sup> CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination on the initial to third periodic reports of South Africa, 19 October 2006, CERD/C/ZAF/CO/319, para. 2.

<sup>30</sup> UN General Assembly, A/RES/2106(XX) (21 December 1965).

<sup>31</sup> ESCWA report, *op. cit.*, p. 12.

<sup>32</sup> Article II, Apartheid Convention.

<sup>33</sup> Article I(2), Apartheid Convention.

<sup>34</sup> Article III, Apartheid Convention.

<sup>35</sup> Article III, Apartheid Convention.



21. The Rome Statute complements the definition contained in the Apartheid Convention and supplements the interpretation of Article 3 of ICERD. The “inhumane acts” envisaged by the Rome Statute, found under Article 7(1)(a)-(k), closely resemble the listed “inhuman acts” found in Article II of the Apartheid Convention. Thus, the Rome Statute largely reiterates the prohibition found in the Apartheid Convention and brings the crime of apartheid under the jurisdiction of the International Criminal Court (ICC). This is of particular relevance to Israel’s apartheid regime over the Palestinian people, given the ongoing preliminary examination currently conducted by the ICC’s Office of the Prosecutor into suspected war crimes and crimes against humanity committed in the oPt since 13 June 2014.<sup>36</sup> Accordingly, the ICC has jurisdiction over perpetrators suspected of carrying out or ordering, soliciting, or inducing the commission of the crime of apartheid against the Palestinian people.<sup>37</sup>

### 3.2. Elements of the crime of apartheid

22. The crime of apartheid is defined as: (1) an institutionalised regime of systematic oppression and domination, (2) by one racial group over any other racial group or groups, (3) with the intention of maintaining that regime. This section examines the three parts of the definition of the crime of apartheid as it relates to Israeli policy and practice toward the Palestinian people.

#### 3.2.1. Institutionalised regime of systematic oppression and domination

23. Acts illustrative of apartheid must take place within the context of a wider policy<sup>38</sup> of an institutionalised regime of systematic oppression and domination. The term “regime” refers to an institutional structure or system of governance<sup>39</sup> and is distinct from the State itself.<sup>40</sup> Moreover, apartheid is distinct from individual discriminatory acts, which result in racial segregation. Such acts may be condemned as reprehensible acts of racism, but this alone does not meet the threshold for apartheid.<sup>41</sup> Therefore, the finding of apartheid requires the existence of an institutionalised structure or system constitutive of a “regime.”

#### 3.2.2. By one racial group over any other racial group or groups

24. Race is best understood as being a social construct<sup>42</sup> and emerges from the particular local ideological context.<sup>43</sup> As observed by the authors of the ESCWA report, “[t]he question is therefore not whether Jewish and Palestinian identities are innately racial in character but whether those identities function as racial groups in the local environment of Israel-

<sup>36</sup> The State of Palestine acceded to the Rome Statute on 2 January 2015, thereby activating the ICC’s jurisdiction over suspected crimes, including the crime of apartheid, committed in the occupied Palestinian territory.

<sup>37</sup> Article 25, Rome Statute.

<sup>38</sup> ICC, *Elements of Crimes* 5

<sup>39</sup> Carola Lingaas, ‘The Crime against Humanity of Apartheid in a Post-Apartheid World’ (2015) 2 Oslo Law Review 98.

<sup>40</sup> ESCWA report, *op. cit.*, p. 18.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid* 21. See also UNESCO Declaration on Race and Racial Prejudice, 27 November 1978, at: [http://portal.unesco.org/en/ev.php-URL\\_ID=13161&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13161&URL_DO=DO_TOPIC&URL_SECTION=201.html). *Ibid* 21.

<sup>43</sup> See Michael Banton, *The Idea of Race* (London: Tavistock Publications, 1977); see also John Dugard and John Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” *European Journal of International Law*, Vol. 24, No. 3, p. 889, at: <http://www.ejil.org/pdfs/24/3/2421.pdf>.

Palestine.”<sup>44</sup> In Article 3, ICERD includes a wide definition of groups, which may be the subject of racial discrimination, based on skin colour, descent, or national or ethnic origin.

25. The Law of Return of 1950 defines “Jew” as “a person who was born of a Jewish mother.” Further, parastatal entities such as the Jewish National Fund (JNF) recognize a Jewish racial identity in their foundational documents. The JNF established its goal to “benefit, directly or indirectly, *those of Jewish race or descendancy*” (emphasis added).<sup>45</sup> Israeli legislation deferring to principles of the Jewish Agency, for example, triggers the condition of benefitting Jews only, as natural persons holding a superior “nationality” status, distinct from Israeli citizenship and applicable also to persons of Jewish faith who are citizens of States other than Israel. Thus, this interpretation of Jewishness as constituting a superior “nationality” is the premise underlying the gamut of policies and decisions of Israeli courts determining who benefits in and from the State. In turn, Israel has no single law of “nationality” (*le’um*, in Hebrew).
26. The Palestinian people historically frame their national identity in terms of descendancy and a shared national origin.<sup>46</sup> Like Israeli-Jews, Palestinian identity is “understood to be acquired at birth, in which membership is seen as continuous, immutable and not usually challengeable.”<sup>47</sup> Further, Palestinians are viewed by the State of Israel as a racial group in their distinct status only as a “non-Jewish” populace.<sup>48</sup> Thus, in the context of the crime of apartheid, both Israeli Jews and Palestinians may be considered to be “racial groups.”

### 3.2.3. *With the intention of maintaining the regime*

27. The crime of apartheid requires the presence of intention to maintain the regime. Thus, it is important that any inhumane acts committed are carried out as part of an institutionalised regime by one racial group, in order to systemically dominate and oppress another, and it must be done with the intention of ensuring that this regime remains in place.

## 4. **Establishing apartheid**

### 4.1. **Israel’s discriminatory legal foundation**

28. Israel has put in place a number of laws constituting the foundation of the State, and which institutionalise Israel’s regime of racial discrimination against the Palestinian people. These laws provide the legal basis upon which Israel carries out its apartheid policies and practices and entrenches its erasure and fragmentation of the Palestinian people to ensure Israeli-Jewish domination over the indigenous Palestinian people. Yet, Israel does not outline the inherent discrimination embodied in these laws in its State report.<sup>49</sup> In fact, Israel instead attempts to further justify discriminatory practices of fragmentation through the baseless claim that basic rights, such as family unification, are “misused in order to engage in and facilitate terrorist

<sup>44</sup> ESCWA report, *op. cit.*, p. 21.

<sup>45</sup> Dugard and Reynolds, *op. cit.*, p. 890.

<sup>46</sup> See Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (Columbia University Press, 1997).

<sup>47</sup> HSBC, *Occupation, Colonialism, Apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law*, May 2009, p. 163, at: [https://www.voltairenet.org/IMG/pdf/Occupation\\_Colonialism\\_Apartheid.pdf](https://www.voltairenet.org/IMG/pdf/Occupation_Colonialism_Apartheid.pdf).

<sup>48</sup> Dugard and Reynolds, *op. cit.*, 890.

<sup>49</sup> See its comments on the discriminatory Law of Return, CERD/C/ISR/CO/13, *op. cit.*, paras. 18.

activity.”<sup>50</sup> This section will briefly examine the key laws, a number of which predate Israel's ratification of ICERD, which establish Israel's apartheid regime and dictate its policy and practice with regard to the indigenous Palestinian people.

#### 4.1.1. *Basic Law: The Law of Return (1950) and The Citizenship Law (1952)*

29. Israeli law pertaining to immigration and citizenship matters is clearly divided into two categories for Jews and non-Jews, in which Jews are clearly prioritized and privileged based on their ethnic-religious identity. The 1950 Law of Return<sup>51</sup> grants every Jew the exclusive right to enter Israel as an “oleh” or Jewish immigrant. In contrast, Palestinian refugees, in the oPt or abroad, are not afforded the same status and are categorically denied the right of return by the State of Israel (as detailed in Section 5.1.1. below). Moreover, the Law of Return has been used by Israel to extend the same benefits and privileges to Israeli-Jewish settlers illegally residing in the oPt, who are considered residents of Israel or are “entitled to immigrate under the Law of Return.”<sup>52</sup> In its 2007 Concluding Observations on Israel, the Committee expressed its concern about “the denial of the right of many Palestinians to return and repossess their land,” in violation of Articles 5(d)(ii) and 5(d)(v) of ICERD and urged Israel “to assure equality in the right to return to one's country and in the possession of property.”<sup>53</sup> In its numerous reviews of Israel since 1998, the UN Committee on Economic, Social and Cultural Rights (CESCR) has equally underlined the discriminatory nature of the Law of Return and recognised the right of Palestinian refugees to return to their homes and property.<sup>54</sup>
30. The 1950 Law of Return law is supplemented by the Citizenship Law of 1952,<sup>55</sup> which confers automatic Israeli citizenship to any Jew who enters Israel under the Law of Return. The Citizenship Law precludes Palestinians who were residing outside of Israel between 1948 and 1952 (i.e., “absentees”) from obtaining Israeli citizenship, thereby denying the right of return to millions of Palestinian refugees and exiles in the oPt and elsewhere.<sup>56</sup> These and similar laws empower the State of Israel to manage and manipulate the demographics in the territory under its effective control in favour of Jewish immigration, while denying the realisation of the right of return for indigenous Palestinian refugees and their descendants.

#### 4.1.2. *The Absentee Property Law (1950)*

31. In the immediate aftermath of the Nakba, Israel sealed the dispossession of Palestinian refugees, displaced persons, and other Palestinians who were abroad at the time of the 1948

<sup>50</sup> State report, para 149.

<sup>51</sup> State of Israel (SoI), The Law of Return (5710/1950), at: <https://knesset.gov.il/laws/special/eng/return.htm>.

<sup>52</sup> Adalah, *NGO Report, op. cit.*, p. 4.

<sup>53</sup> CERD/C/ISR/CO/13, *op. cit.*, para. 15.

<sup>54</sup> “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel,” E/C.12/1/Add.27, 4 December 1998, paras. 13, 25, and 36; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001; “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel,” E/C.12/1/Add.90, 23 May 2003, para. 18.

<sup>55</sup> SoI, Citizenship Law (5712/1952), at: [http://www.knesset.gov.il/review/data/eng/law/kns2\\_nationality\\_eng.pdf](http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf)

<sup>56</sup> Virginia Tilley, ed., *Occupation, Colonialism, Apartheid? A re-assessment of Israel's Practices in the Occupied Palestinian Territories Under International Law* (Cape Town: Human Sciences Research Council, May 2009), p. 212–14, at: <http://www.hsrc.ac.za/en/media-briefs/democracy-governance-and-service-delivery/report-israel-practicing-apartheid-in-palestinian-territories>.

War, by barring their inalienable right of return and through the mass appropriation of their property by the State. In 1950, Israel adopted the Absentee Property Law,<sup>57</sup> which defines as “absentee” any person who was expelled, fled, or left the country after 19 November 1947, further designating their movable and immovable property as “absentee property.” Through this law, Palestinians’ property, which was deemed “absentee property,” was confiscated by the State and the control thereof was transferred to the Custodianship Council for Absentees’ Property, thereby stripping Palestinians of their rights to their property.

32. The Absentee Property Law is the main law regulating the property of Palestinians who were abroad, forced to flee, or deported during the Nakba of 1948.<sup>58</sup> It has also since been used to appropriate Palestinian property in occupied East Jerusalem, since the territory’s occupation and unlawful annexation by Israel in 1967. As such, the Absentee Property Law has created significant obstacles for Palestinians to successfully establish their rights to property or land in Israel and occupied East Jerusalem. It has also resulted in significant difficulties for Palestinians when seeking to obtain Israeli-issued licenses to build and complete property transactions.<sup>59</sup> Moreover, Israeli settler groups, whose aim is to expropriate Palestinian-owned property in occupied East Jerusalem, have used the Absentee Property Law to cement Palestinian dispossession.<sup>60</sup>

#### 4.1.3. *The Entry into Israel Law (1952) and its amendments*

33. The Entry into Israel Law of 1952 pertains to the entry of non-citizens into Israel and grants preferential treatment to “*olehs*,” Jewish immigrants under the Law of Return, allowing them to enter as if they were Israeli citizens.<sup>61</sup> It is also under this Law that Israel gave the precarious “permanent resident” status to Palestinians present in occupied East Jerusalem following its occupation and unlawful annexation in 1967, treating Palestinians like foreign visitors in their own capital and the land of their birth, with the ultimate goal of population transfer and demographic manipulation, including the implantation of Israeli-Jewish settlers and settlements in their place, in violation of the status of the city of Jerusalem under international law and the inalienable rights of the Palestinian people to self-determination and permanent sovereignty.<sup>62</sup>
34. The subsequent amendments to the 1952 Entry into Israel Law have further codified Israel’s racial discrimination against Palestinians. On 7 March 2018, the Israeli Parliament (the Knesset) passed Amendment No. 30 to the Citizenship and Entry into Israel Law, as a temporary provision, which codified into law Israel’s punitive residency revocation practice, amounting to unlawful collective punishment, based on the vague and illegal ground of “breach of allegiance” to the State of Israel, thereby granting the Israeli Minister of Interior

<sup>57</sup> SoI, Absentee’s Property Law (5710/1950), at: [https://knesset.gov.il/review/data/eng/law/kns1\\_property\\_eng.pdf](https://knesset.gov.il/review/data/eng/law/kns1_property_eng.pdf)

<sup>58</sup> Norwegian Refugee Council, *Legal Memo: The Absentee Property Law and its Application to East Jerusalem*, February 2017, p. 1, at: [https://www.nrc.no/globalassets/pdf/legal-opinions/absentee\\_law\\_memo.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf).

<sup>59</sup> *Ibid.* p. 1.

<sup>60</sup> *Ibid.* p. 2.

<sup>61</sup> SoI, Entry into Israel Law (5712/1952), at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/40-Entry-into-Israel-Law-1952.pdf>.

<sup>62</sup> Article 1, ICCPR and ICESCR.

the broad discretion to revoke Palestinians' residency status and threatening additional transfer of indigenous Palestinians from Jerusalem (see section 5.3.3.1).<sup>63</sup>

#### 4.1.4. *The Citizenship and Entry into Israel Law (Temporary Order) (2003)*

35. The Citizenship and Entry into Israel Law, enacted in 2003 as a Temporary Order, has been renewed on an annual basis ever since.<sup>64</sup> This Law prohibits residency or citizenship status to Palestinian spouses from the oPt who are married to Palestinians with Israeli citizenship, thus banning family unification and undermining the rights of Palestinian citizens of Israel and of Palestinians from the oPt,<sup>65</sup> including the right to family life,<sup>66</sup> and the right to equality in marriage and choice of spouse, in violation of Article 5(d)(iv) of ICERD. Over the years, CERD has repeatedly called on Israel to revoke the Citizenship and Entry into Israel Law and “to facilitate family reunification of all citizens irrespective of their ethnicity or national or other origin.”<sup>67</sup> Yet, Israel has consistently failed to abide by its obligations, in line with the Committee's recommendations, and has instead repeatedly approved the discriminatory Citizenship and Entry into Israel Law (Temporary Order) on an annual basis.

#### 4.1.5. *The Basic Law: The Nation-State of the Jewish People (2018)*

36. The Jewish Nation-State Law,<sup>68</sup> passed in 2018, as Palestinians marked 70 years since the Nakba, codifies the Jewish character of the State of Israel and further elevates the privileged status of Jews in Israel, whether or not they are citizens of the State. This law “articulates the ethnic-religious identity of the state as exclusively Jewish” and “weakens the constitutional status of the Palestinian minority in Israel.”<sup>69</sup> As a basic law, the Jewish Nation-State Law modifies the constitutional framework of the State as serving one ethnic group and explicitly provides that “[t]he exercise of the right to national self-determination in the State of Israel is unique to the Jewish people.”<sup>70</sup> The basic law further entrenches Israel's regime of institutionalised racial discrimination against the indigenous Palestinian people by denying them their inalienable right to self-determination, including permanent sovereignty over natural wealth and resources.
37. Moreover, the Jewish Nation-State Law expressly states that Israel “views the development of Jewish settlement as a national value and shall act to encourage and promote its establishment and strengthening,”<sup>71</sup> giving constitutional force to Israel's expansion of its illegal settlement enterprise in the oPt, for the sole benefit of Israeli Jews. This effectively

<sup>63</sup> See Al-Haq, “Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for ‘Breach of Allegiance’,” (8 March 2018), at: <http://www.alhaq.org/advocacy/6262.html>. See also Al-Haq, “Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer,” (17 March 2018), at: <http://www.alhaq.org/advocacy/6257.html>.

<sup>64</sup> SoI, Nationality [*sic*] and Entry into Israel Law (Temporary Order), 2003, at: [https://www.adalah.org/uploads/oldfiles/features/famuni/20030731fam\\_uni\\_law\\_eng.pdf](https://www.adalah.org/uploads/oldfiles/features/famuni/20030731fam_uni_law_eng.pdf).

<sup>65</sup> Adalah – The Legal Center for Arab Minority Rights in Israel, “The Nationality and Entry into Israel Law,” at: <https://www.adalah.org/en/content/view/7371>.

<sup>66</sup> Article 23, ICCPR.

<sup>67</sup> CERD/C/ISR/CO/14-16, *op. cit.*, para. 18. See also CERD/C/ISR/CO/13, *op. cit.*, para. 20.

<sup>68</sup> SoI, Basic Law: Israel – The Nation State of the Jewish People, 2018, at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

<sup>69</sup> Adalah, *NGO Report*, *op. cit.*, p. 1.

<sup>70</sup> See *supra* note 17.

<sup>71</sup> See *supra* note 17.



extends Israel's racist policies and objectives to its administration of the oPt, in contradiction of Israel's obligations, as occupying Power, not to extend its own domestic legislation to the territory it occupies, while it further pursues the displacement of the Palestinian people on both sides of the Green Line and the continued expropriation of Palestinian land.<sup>72</sup> As such, the Jewish Nation-State Law represents the most significant escalation in the overt legalization of Israel's discriminatory measures against the Palestinian people since 1948 and fortifies its apartheid regime of racial oppression and domination.

#### 4.2. The role of Israel's Zionist parastatal institutions

38. As clarified in the 1933 Montevideo Convention,<sup>73</sup> the modern State is understood to be comprised of: (1) a particular land/territory; (2) population, or people(s); and (3) institutions, including a government recognized by other States. Israel's case is unique, however. Since its proclamation as a State in 1948 (before ratifying ICERD), its formation as a State had rested on first establishing proto-state institutions, before acquiring a population (people) or territory. Those so-called "national" institutions evolved predominantly in the forms of the World Zionist Organization (WZO), in 1897, the Jewish National Fund (JNF), in 1901, and the Jewish Agency (JA) in 1921. The last of these three is a mirror reflection of the first, also dedicated to colonizing Palestine, but having later adopted a title more attractive to the non-Zionist and anti-Zionist majority of Jewish persons. The WZO and JA then conjoined in 1929 as the Zionist Executive.
39. Since their founding, these parastatal institutions have built upon an ideological foundation, expressed in their respective charters, that persons of Jewish faith constitute a separate "Jewish nationality."<sup>74</sup> That constructed status serves as the basis for the enjoyment of acquired land, other natural resources, and property by the institutions, discriminating against all others, in particular, the indigenous Palestinian people. The State of Israel, its laws, and organs,<sup>75</sup> formally defer to these institutions of material discrimination in all matters of legislation and policy affecting development, commerce, agriculture, access to and control over natural resources, urban planning and civil matters. Shortly after anti-Zionist rabbis in the United States successfully challenged the WZO's claim to nongovernmental charity status,<sup>76</sup> the 1970 Zionist Congress resolved to create a territorial division of labour between the two personalities, with the JA determining development inside Israel's 1948 borders,

<sup>72</sup> See Al-Haq, "Factsheet: Israel's "Jewish Nation-State Law" and the Occupied Palestinian Territory," (23 January 2019), at: <http://www.alhaq.org/advocacy/6115.html>.

<sup>73</sup> *Montevideo Convention on the Rights and Duties of States* (adopted 26 December 1933, entry into force 26 December 1934) 165 *League of Nations Treaty Series* 20.

<sup>74</sup> W. T. Mallison, Jr., "The Zionist-Israeli Juridical Claims to Constitute "the Jewish People" Nationality and to Confer Membership in It: Appraisal in Public International Law," *The George Washington Law Review*, Vol. 32 (1963–64), at: <http://www.hlrn.org/img/documents/Mallison%20GWLR%201964.pdf>.

<sup>75</sup> Adopting the terminology of the International Law Commission. See its Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: <http://www.un.org/documents/ga/docs/56/a5610.pdf>; and Commentaries, at: [http://www.eydner.org/dokumente/darsiwa\\_comm\\_e.pdf](http://www.eydner.org/dokumente/darsiwa_comm_e.pdf).

<sup>76</sup> *American Council for Judaism v. United States Department of Justice*, Superior Court, 9<sup>th</sup> District, Washington DC, 1968. See also W. Thomas Mallison, "The Legal Problems Concerning the Juridical Status and Political Activities of the World Zionist Organization / Jewish Agency: A Study in International and United States Law," *William and Mary Law Review*, Vol. 9, Issue 3 (1867–1968), at: <https://core.ac.uk/download/pdf/73966303.pdf>.

whereas the WZO's operations have specialized in colonizing the oPt. The JNF supports both operations.<sup>77</sup>

40. In 1952, Israel adopted the World Zionist Organization-Jewish Agency (Status) Law,<sup>78</sup> which authorizes the WZO, JA, and affiliates to function in Israel as quasi-governmental entities. The law states for its purposes that the WZO, operating also as the JA, continues to manage Jewish settlement projects in the State and authorizes it to develop and settle Jews in the country and to coordinate with Jewish institutions and organisations active in those fields. The Law establishes that “[t]he mission of gathering in the exiles... is the central task of the State of Israel...” In the same sense, the 1950 Law of Return legalizes in Israel the ahistorical premise that Jewish persons entering Israeli-controlled territory can claim adherence to the State, as if s/he were only temporarily away from her/his origins in Palestine. This law confers a superior “nationality” right on its subject vis-à-vis persons of other status inside Israel's jurisdiction or territory of effective control.
41. In 1952, the Knesset adopted Israel's Law of Citizenship (*ezrahut*, in Hebrew), which is often deceptively mistranslated in official versions as a “law of nationality,” creating confusion and deflecting attention from the important distinction between those two kinds of status in Zionism. Israel's Citizenship Law recognizes “return” as one pathway to Israeli citizenship, but that is unique to Jews, defined as persons born to a Jewish mother or, in rare cases, having converted to Judaism. This Law sets out three other ways to become an Israeli citizen: by birth, marriage or residency. However, because of the superior status of “Jewish nationality,” citizenship is not a basis for equal rights in Israel.<sup>79</sup> Accordingly, the 1952 Citizenship Law cements Israel's institutionalised racism in law.

### 4.3. Material consequences of discriminatory laws

42. Israel's parastatal institutions such as the WZO, JA, and the JNF, are chartered to carry out material discrimination against non-Jewish persons and have historically prevented the indigenous Palestinian people on both side of the Green Line from accessing or exercising control over their means of subsistence, including their natural wealth and resources, by exploiting and diverting Palestinian natural resources for the benefit of Israeli-Jewish settlers. It is therefore deeply concerning that their relevance and activities were not once mentioned by Israel in its State report. These institutions play a key role in Israel's apartheid regime over the Palestinian people, its demographic manipulation designs, and the colonisation of Palestinian land through Israeli-Jewish immigration and settlement construction and expansion, as their principle task is “to work actively to build and maintain Israel as a Jewish State, particularly through immigration policy.”<sup>80</sup> In 1998, CESCR found that “the large-scale systematic confiscation of Palestinian land and property by the State and the transfer of that

<sup>77</sup> Walter Lehn, in association with Uri Davis, *The Jewish National Fund* (1988); David Blougrund, “The Jewish National Fund,” *Policy Studies*, No. 49, Institute for Advanced Strategic and Policy Studies, Division for Economic Policy Research (September 2001).

<sup>78</sup> Knesset, World Zionist Organization-Jewish Agency (Status) Law, 1952, at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf>

<sup>79</sup> Roselle Tekiner, “Race and the Issue of National Identity in Israel,” *International Journal of Middle Eastern Studies*, Volume 23, Issue 1 (February 1991), pp. 39–55.

<sup>80</sup> ESCWA report, *op. cit.*, p. 35.

property to these [Zionist] agencies constitute an institutionalized form of discrimination, because these agencies by definition would deny the use of these properties to non-Jews.”<sup>81</sup>

43. In January 1949, shortly after Zionist forces ethnically cleansed much of Palestine during the Nakba, the Government of Israel (GoI) conferred one million dunums of land and other properties to the JNF and, in October 1950, the GoI transferred another 1.2 million dunums to the JNF. The tactical meaning of these land transfers is important, because, as explained by a JNF spokesperson in 1951, the transfer of title to the JNF “will redeem the lands and will turn them over to the Jewish people – to the people and not the state, which in the current composition of population cannot be an adequate guarantor of Jewish ownership.”<sup>82</sup>
44. In September 1953, the Israeli Custodian of Absentee Properties executed a contract with the Israeli Department of Construction and Development, whereby the Custodian transferred the ownership of all the Palestinian lands under his control to the latter. The price for these properties was to be retained by the Israeli Department of Construction and Development as a loan. At the same time, the Custodian conveyed the ownership of the houses and commercial buildings in the cities to Amidar, a quasi-public Israeli company founded to place settlers,<sup>83</sup> and thus began a practice that forms an unbroken pattern to this day.
45. Three months before that 1953 transaction, the JNF also executed a contract with the Israeli Department of Construction and Development, acquiring 2,373,677 dunums of land. By this time, the JNF had become statutorily fused to the State of Israel by the Status Law (1952). The deal was completed after the Department concluded its transaction with the Custodian. As a result, Palestinian property changed hands and its consolidation under the JNF, whose “ownership” totalled over 90 per cent of the total territories that fell under the control of the State of Israel in 1948. The landed properties are referred to as “national land,” a subtle but important distinction, understood to mean that it is limited to exclusive use by Jews (“Jewish nationals”), whoever and wherever they may be, and foreclosed to the indigenous Palestinian people, including its private and collective owners.<sup>84</sup>
46. The consequences of these laws and their implementation have had the purpose and effect of displacing and dispossessing the Palestinian people of their land, homes, and property, denying Palestinians the exercise of their inalienable and collective right of self-determination, including permanent sovereignty over natural wealth and resources, including land, and thereby denying them their means of subsistence as a people. The extended Israeli parastatal apparatus exists to thinly conceal the practices of the State of Israel with the aim of ensuring the maintenance of its apartheid regime of institutionalised racial oppression and domination. The demographic manipulation and land seizure carried out under the aegis of the WZO/JA and JNF were foundational to fragmenting the Palestinian people and remain

<sup>81</sup> CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights on Israel's initial report, 4 December 1998, E/C.12/1/Add.27, para. 11.

<sup>82</sup> Jewish National Fund, Report to the 23<sup>rd</sup> Congress, pp. 32–33 (emphasis in original), cited in Walter Lehn with Uri Davis, *The Jewish National Fund* (London and New York: Kegan Paul, 1988), p. 108.

<sup>83</sup> Sabri Jiryis, *The Arabs in Israel* (New York: Monthly Review Press, 1976), 77–101; Usama Halabi, “Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy,” *Adalah's Review*, Vol. 2 (fall 2000), pp. 7–13, at: [https://www.adalah.org/uploads/Adalah\\_review\\_2\\_Land.pdf](https://www.adalah.org/uploads/Adalah_review_2_Land.pdf).

<sup>84</sup> *Ibid* (Jiryis).



instrumental in the regime's ongoing maintenance through, *inter alia*, the restriction of Palestinian land to the exclusive use of "Jewish nationals" and their funding and support of the illegal settlement enterprise in the occupied West Bank, including East Jerusalem, on behalf of the State of Israel.<sup>85</sup>

## 5. Maintenance of Israel's apartheid regime

47. Israel's discriminatory legal foundation establishes the basis for its creation of an apartheid regime over the Palestinian people. 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 regime of racial domination and oppression over the indigenous Palestinian people. This section examines how Israel has consolidated its apartheid regime by entrenching fragmentation, through the persistent denial of Palestinian refugee return, the imposition of freedom of movement, residency, and access restrictions, and the denial of family life, coupled with the creation of a coercive environment designed to drive Palestinian transfer and weaken the will of the Palestinian people to challenge Israel's apartheid regime, including through denial of access to healthcare, arbitrary detention, torture and other ill-treatment, widespread collective punishment, and a Government-led effort to silence opposition to Israel's apartheid regime.
48. It should be noted that facilitating the continued perpetuation of the policies and practices to be discussed in this section is a legal framework that is designed to produce impunity and prevent Palestinians from effectively challenging the many facets of the apartheid regime. Israel's legislation and military orders, which codify the apartheid regime and its pursuant inhumane acts in domestic law, render courts enablers of the system which confer legitimacy on the regime's legal foundations. Instead of upholding its obligation as a State Party to "condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature,"<sup>86</sup> the Israeli Government has instituted a system that secures impunity for the very same practices, in line with the ultimate goal of securing its exclusionary *raison d'État*.

### 5.1. Entrenching fragmentation

49. Strategic fragmentation is the primary method through which Israel imposes apartheid and exerts its control over the Palestinian people, a key finding outlined in the 2017 ESCWA report.<sup>87</sup> It is through this systematic and widespread fragmentation that Israel obfuscates the reality of its apartheid regime and thoroughly represses the ability of Palestinians to oppose and challenge it. As outlined by the ESCWA report, Israel's apartheid regime has administratively divided the Palestinian people into four legal 'domains,' including: Palestinians with Israeli citizenship, who are subject to Israeli civil law; Palestinians with permanent residency status in occupied East Jerusalem; Palestinians in the occupied West

<sup>85</sup> Amy Teibel, "Lawsuit brings murky West Bank land deals to light," Associated Press (20 June 2009), at: <https://www.sandiegouniontribune.com/sdut-ml-israel-disputed-deal-062009-2009jun20-story.html>. In 2014, the Settlement Division received 130m NIS (US\$34.7m) from Israel, see Nimrod Bousso, "Israel to Allocate \$35m to World Zionist Organization's Settlement Division," *Haaretz* (23 October 2014), at: Israel to Allocate \$35m to World Zionist Organization's Settlement Division.

<sup>86</sup> Article 3, ICERD.

<sup>87</sup> ESCWA report, *op. cit.*, p. 37.

Bank and Gaza Strip, subject to Israeli military law; and Palestinian refugees and exiles living outside territory under Israel's control and whose right to return to their homes and property Israel has systematically denied.<sup>88</sup>

50. Approximately 1.9 million Palestinians are citizens of Israel; they are accorded second-class legal status, receive inferior services, suffer from discriminatory and restrictive zoning laws and limited budget allocations, and face restrictions in access to jobs and professional opportunities, due to their designation as non-Jewish citizens. Israel, in its State report, observes that Palestinians are represented in the Israeli Parliament through the constitutive parties of the “Joint List;”<sup>89</sup> however, this is, at best, a superficial representation, as these parties are restricted by Israel's Basic Laws from challenging or introducing legislation that would compromise the racial character of the State.<sup>90</sup> As such, when the “Joint List” attempted to challenge the bill for the Jewish Nation-State Law by submitting a bill titled “Israel as the Nation-State of all its Citizens,” the Knesset Presidium refused to allow discussion of such a proposal.<sup>91</sup> These oppressive measures are consolidated in the non-extension of “national rights” to Palestinian citizens, due to the distinction between Israeli “citizenship,” enjoyed by all Israeli citizens, and “Jewish nationality,” enjoyed only by Jewish citizens; “national rights” apply only to the latter. In the Israeli system of dual-tiered civil status,<sup>92</sup> no “Israeli nationality” status exists.<sup>93</sup>
51. In East Jerusalem, there were some 323,700 Palestinian so-called “permanent residents” in 2017.<sup>94</sup> Israel's State report falsely asserts that the holders of this status enjoy the same rights as Israeli citizens,<sup>95</sup> whereas in reality they carry a revocable “permanent residency” status, which Israel granted Palestinians in East Jerusalem following its invasion, occupation, and illegal annexation of the eastern part of the city in 1967. In 1980, Israel formalized its annexation of occupied East Jerusalem with the adoption of its Basic Law: Jerusalem, Capital of Israel. This move was censured in the strongest terms by the UN Security Council, which determined the Basic Law to be “null and void” and called on Israel to rescind it forthwith in Resolution 478 of 20 August 1980.<sup>96</sup> Since then, Israel has failed to reverse its unlawful annexation of occupied East Jerusalem, in the same way that it continues to illegally annex West Jerusalem since 1948, in violation of the prohibition on the acquisition of territory through the threat or use of force and the right of the indigenous Palestinian people to self-

<sup>88</sup> *Ibid.* p. 37–38.

<sup>89</sup> State report at para 115.

<sup>90</sup> *Ibid.* 4.

<sup>91</sup> See Adalah, “Israeli Supreme Court refuses to allow discussion of full equal rights & ‘state of all its citizens’ bill in Knesset,” (30 December 2018), at: <https://www.adalah.org/en/content/view/9660>.

<sup>92</sup> *Ibid.*, p. 4.

<sup>93</sup> As the Israeli Supreme Court twice affirmed in the landmark cases of *George Raphael Tamarin v. The State of Israel* (CA 630 70), 1971, at: <https://nakbafiles.org/nakba-casebook/tamarin-v-state-of-israel-ca-63070/>; and *Udi Ornan et al v. Ministry of Interior* (CA 8573 08, 2013, at: <https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior>.

<sup>94</sup> The Association for Civil Rights in Israel (ACRI), “East Jerusalem: Facts and Figures 2017,” (21 May 2017), at: <https://law.acri.org.il/en/wp-content/uploads/2017/05/Facts-and-Figures-2017.pdf>.

<sup>95</sup> State report at para 139.

<sup>96</sup> United Nations, *The Status of Jerusalem* (New York: United Nations, 1997), at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/533B4714451B48BF0525651B00488D02>. See also UN Security Council, Resolution 478 (1980), 20 August 1980, S/RES/478 (1980) paras. 1 and 3.

determination and permanent sovereignty in their capital.<sup>97</sup> As residents, they are treated “as foreigners for whom residency in the land of their birth is a privilege rather than a right, subject to revocation.”<sup>98</sup> Palestinian residents in Jerusalem face onerous requirements to constantly prove that their so-called “centre of life” is in Jerusalem, and face the constant threat of forced evictions, house demolitions, and other policies and practices such as residency revocation, aimed at guaranteeing and maintaining an Israeli-Jewish demographic majority in the city at the expense of the rights of the indigenous Palestinian people, as clearly outlined in Israel’s racist master plans for Jerusalem.<sup>99</sup>

52. In the rest of the oPt, excluding East Jerusalem, which is not mentioned at all in Israel’s State report, there are some 4.7 million Palestinians in the West Bank, including some 775,000 Palestinian refugees registered with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and some two million Palestinians in the Gaza Strip, including 1.4 million Palestinian refugees registered with UNRWA. The ESCWA report identifies the Palestinian people in the West Bank and Gaza Strip as the ‘domain,’ which most clearly lives under the definition of apartheid as outlined in the Apartheid Convention. However, it is through the establishment of all four ‘domains’ that Israel strategically fragments the Palestinian population and imposes its apartheid regime over the Palestinian people as a whole. Palestinians in the oPt are governed by Israeli military law, while Israeli-Jewish settlers, whose mere presence in the oPt is illegal under international law, are subject to Israeli civil law. Israel has established two separate legal regimes for each racial group in the same territory, which is consistent with the definition of apartheid.<sup>100</sup>
53. Finally, as highlighted by the ESCWA report, Palestinian refugees and involuntary exiles make up the fourth ‘domain’ through which Israel has fragmented the Palestinian people. Tellingly, this fragment of the Palestinian people is not mentioned in the State report, consistent with Israel’s persistent denial of Palestinian refugee rights. While Palestinian refugees and exiles find themselves outside the territory under Israel’s jurisdiction or effective control, it is Israel’s systematic refusal to uphold their inalienable right of return to their homes and property which forms part of Israel’s institutionalised regime of racial domination and oppression. By denying Palestinians their right of return, Israel seeks to defend itself against what it has referred to as the so-called “demographic threat,” of an increase in the Palestinian demographic makeup, which would inherently challenge Israel’s ability to maintain and manage its apartheid regime over the Palestinian people.<sup>101</sup>
54. In light of Israel’s fragmentation of the Palestinian people as a main method through which it enforces its apartheid regime, we urge the Committee to examine Israel’s discriminatory laws, policies, and practices, as they relate to the Palestinian people as a whole. In particular, we recall the negative role the international community has played in the normalization of Israel’s fragmentation, by drawing a strict distinction between Palestinian citizens of Israel and

<sup>97</sup> See Al-Haq, “Al-Haq Issues Briefing Paper on Palestinian Sovereignty over East and West Jerusalem,” (23 October 2018), at: <http://www.alhaq.org/advocacy/6145.html>.

<sup>98</sup> ESCWA report, *op. cit.*, p. 42.

<sup>99</sup> ESCWA report, *op. cit.*, p. 5. See also Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, *op. cit.*, pp. 13–16at: .

<sup>100</sup> *Ibid.* See also Article 49, *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287.

<sup>101</sup> *Ibid.*, pp. 5–6.

Palestinians in the oPt, and disregarding the rights of Palestinian refugees and exiles to return.<sup>102</sup> This section shows how Israel has continued to entrench its fragmentation of the Palestinian people in order to maintain and prevent Palestinians from effectively challenging its apartheid regime.

### 5.1.1. Denying the Palestinian people their right of return to their homes and property

55. During the 1948 War, 85 per cent of the Palestinian people were forcibly expelled from 531 Palestinian towns, cities, and villages across Palestine.<sup>103</sup> In the aftermath of the Nakba, or ‘catastrophe,’ the GoI enacted legislation to prevent Palestinian refugees and displaced persons from returning to their homes, confiscated their assets and property, and razed the majority of their villages and towns. Since the Nakba, Palestinian refugees and displaced persons, in addition to involuntary exiles who found themselves outside Palestine during the war, have been denied their right of return to their homes and property, despite customary international law, as it stood at the time,<sup>104</sup> guaranteeing this inalienable right.
56. Notably, the International Military Tribunal at Nuremberg had already recognised the laws and customs of war, as enshrined in the 1907 Hague Regulations,<sup>105</sup> as constitutive of customary international humanitarian law at the time.<sup>106</sup> The Hague Regulations, which were applicable to the conflict in Palestine between 1947 and 1949,<sup>107</sup> and are domesticated in Israeli law,<sup>108</sup> required parties to the conflict to respect “[f]amily honour and rights, the lives of persons, and private property.”<sup>109</sup> The Hague Regulations also already prohibited the confiscation of private property or its destruction in the absence of military necessity.<sup>110</sup>
57. At the same time, the 1945 London Charter of the International Military Tribunal at Nuremberg<sup>111</sup> prohibited as war crimes or violations of the laws and customs of war the “deportation to slave labour or for any other purpose of civilian population of or in occupied territory” and “wanton destruction of cities, towns, or villages, or devastation not justified by military necessity,”<sup>112</sup> while it prohibited as crimes against humanity “deportation, and other inhumane acts committed against any civilian population.”<sup>113</sup> Accordingly, the transfer of the

<sup>102</sup> ESCWA report, *op. cit.*, p. 37.

<sup>103</sup> Salman Abu-Sitta, “The Right of Return: Sacred, Legal and Possible” in Naseer Aruri, ed., *Palestinian Refugees: The Right of Return* (London: Pluto Press 2001), p. 195.

<sup>104</sup> Francesca Albanese, “Ending seventy years of exile for Palestinian refugees,” *Mondoweiss* (10 May 2018), at: <https://mondoweiss.net/2018/05/seventy-palestinian-refugees/>.

<sup>105</sup> *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907 (hereinafter ‘Hague Regulations’).

<sup>106</sup> International Military Tribunal, “Trial of the Major War Criminals before the International Military Tribunal” (1947) 1, at 253–54.

<sup>107</sup> Terry Rempel, ed., *Rights in Principle – Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees* (Bethlehem: BADIL, 2009), p. 399.

<sup>108</sup> Since the Beit El case, the Israeli High Court of Justice has ruled that The Hague Regulations (1907) are customary law, therefore, automatically part of municipal law and judiciable in Israel. High Court of Justice 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al*, *Piskei Din* 33(2), at: <http://www.hamoked.org/Document.aspx?dID=3860>.

<sup>109</sup> The Hague Regulations, Article 46.

<sup>110</sup> *Ibid.*, Articles 23(g), 46, and 56.

<sup>111</sup> *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal* (entered into force 08 August 1945) 82 UNTS 280 (hereinafter ‘London Charter’).

<sup>112</sup> London Charter, Article 6(b).

<sup>113</sup> *Ibid.*, Article 6(c).

Palestinian people was illegal under international law at the time of the Nakba,<sup>114</sup> and Israel, following the establishment of the State, was under an obligation to repatriate and compensate those displaced under the laws of war, which had become customary by 1945.<sup>115</sup> Instead, Israel sealed the dispossession of displaced Palestinians in law and in practice through the enactment of the Absentee Property Law in 1950 in order to strip Palestinian refugees and displaced persons of their property, which was confiscated by the State.

58. The right of return was specifically recognised for Palestinian refugees and displaced persons in UN General Assembly Resolution 194 of 11 December 1948, which resolved that “the refugees wishing to return to their homes... should be permitted to do so at the earliest practicable date.”<sup>116</sup> Resolution 194, which has now been reaffirmed over a hundred times, reflects “repeated, overwhelming, decades-long international consensus” like no other resolution in UN history and has become binding under customary international law.<sup>117</sup> Since then, numerous UN resolutions have reiterated “the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted,” with the right of return of Palestinian refugees having gained strength over time.<sup>118</sup> In the same vein, the UDHR, adopted by the General Assembly on 10 December 1948, enshrined the right of everyone “to leave any country, including his own, and to return to his country” in Article 13(2).<sup>119</sup> In 1965, the same language was adopted by ICERD under Article 5(d)(ii), requiring States to prohibit and to eliminate racial discrimination in the enjoyment of “[t]he right to leave any country, including one’s own, and to return to one’s country.” As recognised by CERD, States have an obligation under Article 5 to ensure that “[all] refugees and displaced persons have the right to freely return to their homes of origin under conditions of safety”<sup>120</sup> and that “[a]ll such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them.”<sup>121</sup> This is relevant in the Palestinian context in view of the Israeli Law of Return, which grants “[e]very Jew... the right to come to this country as an *oleh*,” and to settle therein, whereas it excludes Palestinians, notably Palestinian refugees and exiles, from its scope.<sup>122</sup>

<sup>114</sup> Rempel, *op. cit.*, p. 399.

<sup>115</sup> Albanese, *op. cit.*

<sup>116</sup> UN General Assembly, Resolution 194 (III), 11 December 1948, UN Doc A/RES/194 (III), para. 11.

<sup>117</sup> Salman Abu-Sitta, *op. cit.*, p. 197; Susan M Akram, ‘Myths and Realities of the Palestinian Refugee Problem: Reframing the right of return’ in Susan M Akram, Michael Dumper, Michael Lynk and Iain Scobbie, eds., *International Law and the Israeli-Palestinian Conflict: A rights-based approach to Middle East peace* (Routledge 2011), at 30.

<sup>118</sup> See, e.g., UN General Assembly, Resolution 3236 (XXIX), Question of Palestine, UN Doc A/RES/3236 (XXIX), 22 November 1974, para. 2; John Quigley, “Displaced Palestinians and a Right of Return” 39 *Harvard International Law Journal* 171 (1998), at 187. In particular, see Gail J Boling, “The Question of ‘Timing’ in Evaluating Israel’s Duty Under International Law to Repatriate the 1948 Palestinian Refugees,” in Eyal Benvenisti, Chaim Gans and Sari Hanafi, eds., *Israel and the Palestinian Refugees* (New York: Springer, 2007), p. 250.

<sup>119</sup> UDHR, Article 13(2). See also Rania Muhareb, “The Universal Declaration of Human Rights and the Ongoing Nakba: 70 Years of Exile, Rights Abuses, and Israeli Impunity” (Ramallah: Al-Haq, 10 December 2018), at: <http://www.alhaq.org/advocacy/6124.html>.

<sup>120</sup> CERD, General Recommendation 22, Article 5 and refugees and displaced persons, 49th session (1996), UN Doc A/51/18, annex VIII, p. 126, para. 2(a).

<sup>121</sup> *Ibid.*, p. 126, para. 2(c).

<sup>122</sup> Law of Return 5710/1950, 05 July 1950, para. 1.

59. When Israel ratified ICERD on 3 January 1979, it undertook, in line with Article 5(d)(ii) of the Convention, to ensure the right of Palestinian refugees and displaced persons to return to their homes and property, as mandated by international law since the time of the Nakba. Yet, Israel's violation of that right of Palestinian refugees did not cease with the entry into force of the Convention, with the crime continuing until this day as a matter of State policy. This means that Israel's denial of the rights of Palestinian refugees, contrary to the object and purpose of ICERD, has continued after the Convention was ratified by Israel.
60. According to Article 28 of the Vienna Convention on the Law of Treaties (VCLT), “[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to... *any situation which ceased to exist* before the date of the entry into force of the treaty with respect to that party” (emphasis added).<sup>123</sup> Since the violation did not cease to exist before the entry into force of ICERD, Article 5(d)(ii) requires Israel to grant Palestinian refugees their right of return, as rooted in international law at the time of the Nakba, and in light of the ongoing denial of the right of return as a continuing violation.<sup>124</sup> This analysis is supported by the jurisprudence of the UN Human Rights Committee, which considered, in the case of *Lovelace v. Canada*, that “it is empowered to consider a communication when the measures complained of, although they occurred before the entry into force of the [ICCPR], continued to have effects which themselves constitute a violation of the Covenant after that date.”<sup>125</sup>
61. The right of return of Palestinian refugees and displaced persons to their homes and property enjoys widespread recognition and has been reaffirmed repeatedly in Concluding Observations by UN treaty bodies, including CERD, which affirmed in 1998 that “[t]he right of many Palestinians to return and possess their homes in Israel is currently denied” and called on Israel to “give high priority to remedying this situation.”<sup>126</sup> Similarly, in its Concluding Observations on Israel's initial report in 1998, CESCR expressed “its concern over the plight of an estimated 200,000 uprooted “present absentees”, Palestinian Arab citizens of Israel most of whom were forced to leave their villages during the 1948 war on the understanding that they would be allowed by the [GoI] to return after the war. Although a few have had their property returned, the vast majority continue to be displaced and dispossessed within the State because their lands were confiscated and not returned to them.”<sup>127</sup> Accordingly, CESCR had called on Israel to ensure equality and non-discrimination and strongly recommended “a review of re-entry policies for Palestinians who wish to re-establish their domicile in their homeland.”<sup>128</sup> In 2001, CESCR further expressed its continued concern that Israel's “Law of Return denies indigenous Palestinian refugees the right to return to their homes and

<sup>123</sup> *Vienna Convention on the Law of Treaties* (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Article 28.

<sup>124</sup> See, notably, Rempel, *op. cit.*, p. 400; Boling, *op. cit.*, p. 231; Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab–Israeli Conflict, 1891–1949* (London: Pluto Press 2009), p. 217.

<sup>125</sup> UN Human Rights Committee, *Lovelace v Canada*, Communication No 24/1977, UN Doc CCPR/C/13/D/24/1977, 30 July 1981, para. 7.3.

<sup>126</sup> CERD/C/304/Add.45, *op. cit.*, para. 18.

<sup>127</sup> E/C.12/1/Add.27, *op. cit.*, para. 25.

<sup>128</sup> *Ibid.*, para. 36.



properties.”<sup>129</sup> In the same vein, CERD also expressed its concern in 2007 “about the denial of the right of many Palestinians to return and repossess their land in Israel,” urging Israel “to assure equality in the right to return to one’s country and in the possession of property.”<sup>130</sup>

62. Despite the repeated calls by UN treaty bodies, Israel has systematically failed to respect, protect, or fulfil the right of Palestinian refugees and displaced persons to return to their homes, land, and property, allowing the violation to continue for over seven decades, while the majority of the Palestinian people have been forced into a situation of prolonged refugeehood, displacement, and dispossession. Since 1948, the Palestinian people have endured an ongoing Nakba (‘catastrophe’), despite widespread international recognition of their right of return to their homes and property, as mandated by international law.
63. Our organisations argue that Israel’s persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their right of return amounts to a core element in its establishment and maintenance of an institutionalised regime of racial domination and oppression over the Palestinian people, constitutive of the crime of apartheid. In particular, we recall the finding by the 2017 ESCWA report that Israel’s:

“refusal to allow refugees and involuntary exiles to return ensures that the Palestinian population never gains the demographic weight that would either threaten Israeli military control of the [oPt], or provide the demographic leverage within Israel to allow them to insist on full democratic rights, which would supersede the Jewish character of the State of Israel. In short, [it] ensures that Palestinians will never be able to change the system.”<sup>131</sup>

64. Within this context, Israel has actively sought, with the endorsement of other States, in particular the United States, to undermine the functioning of the UN Palestine Refugee Agency (UNRWA) which faced its biggest funding crisis yet in 2018. The increased attacks on UNRWA and attempts to undermine the rights of Palestinian refugees and their descendants have stoked deep worry and fears among Palestinian refugees that “that the international community is abandoning them,” thereby denying the exercise of their inalienable rights.<sup>132</sup> At this critical juncture in the history of the Palestinian refugee question, 71 years on, it is imperative for UN human rights mechanisms, including CERD, to reaffirm the inalienable rights of Palestinian refugees and displaced persons to return to their homes and property. In particular, our organisations urge CERD to consider Israel’s persistent refusal to fulfil the right of Palestinians to return as not only amounting to continuing violations of Articles 5(d)(ii) and 5(d)(v) of ICERD but also as constituting a core method through which Israel has prevented the Palestinian people from exercising their collective right of self-determination and from being able to challenge Israel’s apartheid regime, in violation of Article 3 of the Convention.

<sup>129</sup> CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 31 August 2001, UN Doc E/C.12/1/Add.69, para. 14.

<sup>130</sup> CERD/C/ISR/CO/13, *op. cit.*, para. 18.

<sup>131</sup> ESCWA report, *op. cit.*, p. 48.

<sup>132</sup> “UNRWA Faces Greatest Financial Crisis in Its History Following 2018 Funding Cuts, Commissioner-General Tells Fourth Committee,” UN Press Release, 9 November 2018, at: <https://www.un.org/unispal/document/unrwa-faces-greatest-financial-crisis-in-its-history-following-2018-funding-cuts-commissioner%E2%80%91general-tells-fourth-committee-press-release/>.

### 5.1.2. Restrictions on freedom of movement, residence, and the right to family life

65. Despite claims to the contrary,<sup>133</sup> Israel has imposed draconian restrictions on freedom of movement and residence within the oPt and across the Green Line, severely impacting the rights of indigenous Palestinians to family life, choice of residence and spouse, adequate housing, and an adequate standard of living for oneself and one's family. These policies and practices have played an important role in the fragmentation of the Palestinian people and territory, ensuring that Palestinians from different geographical areas of their native country are unable to meet, group, live together, share in the practice of their culture, and exercise any collective rights, including to self-determination and permanent sovereignty over their natural wealth and resources. These measures severely deny the Palestinian people the right to freedom of movement and residence within the borders of the State, in violation of Article 5(d)(i) of ICERD, including the right to leave their country and to return. In stark contrast, Israel has enabled Jewish colonial settlers to appropriate Palestinian land, water, and other means of subsistence, while in Gaza, the movement restrictions consume 35 per cent of agricultural land and the majority of productive fishing grounds, affecting the exercise of the right to food. Moreover, it has abetted the appropriation of Palestinians' culinary heritage,<sup>134</sup> potentially violating Article 5(e)(vi) of ICERD and contravening numerous principles of the UN Declaration on the Rights of Indigenous Peoples.<sup>135</sup>
66. Some of Israel's measures of dispossession and fragmentation are more visible than others, including the separation of Palestinians in the oPt from Palestinian citizens of Israel through the closure of Gaza and the West Bank, the Annexation Wall running along the West Bank, including in and around East Jerusalem, and Israel's permit regime consisting of checkpoints and other physical barriers, which severely impact the freedom of movement of Palestinians in the oPt, denying them access to essential services, including healthcare, in Jerusalem, Israel, and abroad, and denying them access to places of worship in Jerusalem, Nazareth, and elsewhere. In 2004, the ICJ determined that the Annexation Wall was in breach of Israel's obligation to uphold the right of the Palestinian people to self-determination, and called on Israel to dismantle the sections already built.<sup>136</sup> Despite its claims that it does not generally restrict freedom of movement internally,<sup>137</sup> Israel has not halted its construction of the Annexation Wall, which remains standing and under further construction 15 years since the ICJ advisory opinion, and continues to result in material discrimination against Palestinians,

<sup>133</sup> State report at paras 54, 127.

<sup>134</sup> Tamara Tamimi, "Israeli Appropriation of Palestinian Cultural Heritage in Jerusalem," *MIFTAH* (1 July 2019), at: [https://www.un.org/unispal/wp-content/uploads/2019/06/MIFTAH\\_Submission\\_1July2019.pdf](https://www.un.org/unispal/wp-content/uploads/2019/06/MIFTAH_Submission_1July2019.pdf); Ronald Ranta, "Re-Arabizing Israeli Food Culture," *Food Culture and Society: An International Journal of Multidisciplinary Research*, Vol. 18, No. 4 (December 2015), pp. 611–27, at: [https://www.researchgate.net/publication/298820262\\_Re-Arabizing\\_Israeli\\_Food\\_Culture](https://www.researchgate.net/publication/298820262_Re-Arabizing_Israeli_Food_Culture); Roger Sheety, "Stealing Palestine: A study of historical and cultural theft," *Middle East Eye* (29 January 2019), <https://www.middleeasteye.net/big-story/stealing-palestine-study-historical-and-cultural-theft>.

<sup>135</sup> Article 8.2 commits states to provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities..." Articles 8, 10, 25–31 deal with rights to the integrity of indigenous peoples' land and natural resources. UN Declaration on the Rights of Indigenous Peoples (UNDRIP), A/RES/61/295, 13 September 2007, at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

Notably, the Israeli delegation absented itself from the General Assembly at the time of the vote on UNDRIP.

<sup>136</sup> *Legal Consequences of the Construction of a Wall*, *op. cit.*, p. 136, paras. 122 and 151.

<sup>137</sup> State report at para 127.



including the appropriation of Palestinian land for illegal Israeli settlement construction and expansion.<sup>138</sup>

67. At the same time, Israel has also imposed less visible measures designed to fragment the Palestinian people and to undermine the exercise of their inalienable rights, through its control of the Population Registry on both sides of the Green Line, its implementation of a tiered and racially discriminatory ID system, and its control over who enters and exists the oPt.<sup>139</sup> Israel makes an indirect reference to this in its State report, indicating that “[a]ll residents of Israel (i.e., citizens, permanent residents who are not citizens, and temporary residents) are required to register their address, or any change thereof, with the Population Registry.”<sup>140</sup> These restrictions have also resulted in extreme hardships for foreign national spouses, including Palestinians with foreign citizenship status, who are married to Palestinians with West Bank, Gaza Strip, or Jerusalem IDs, including those who live without permits in constant fear of arrest and expulsion.<sup>141</sup>
68. As recognised by the former UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard in 2007, “Israeli law and practice shows little respect for family life,” by denying Palestinians with different residency or citizenship status the right to live with their spouses.<sup>142</sup> At the time, Dugard reported to the UN Human Rights Council:

“Can it seriously be denied that the purpose of such action is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them? Israel denies that this is its intention or purpose. But such an intention or purpose may be inferred...”<sup>143</sup>

69. Over a decade has passed, and Israel continues to deny its imposition of an apartheid regime over the Palestinian people, including its restrictions on freedom of movement and residence. In its 2017 State report to CERD, Israel argued that “[a]partheid has never been practiced in Israel” and that “[t]here exists in Israel no restrictions of any kind as to place of residence nor is there any segregation of any kind.”<sup>144</sup> Yet, Israel’s severe restrictions on the right of the Palestinian people to freedom of movement and residence, including to leave and to return to their country, a staple of Israeli State policy since the Nakba, suggest otherwise. As highlighted in the ESCWA report, with respect to Palestinian citizens, Israel’s “policy of domination is manifest by the provision of inferior social services, restrictive zoning laws, and limited budget allocations benefitting their communities, in formal and informal restrictions on jobs and professional opportunities, and in the segregated landscapes of their

<sup>138</sup> Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, *op. cit.*, p. 4.

<sup>139</sup> Al-Haq, *Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians* (February 2019), p. 4, at: <http://www.alhaq.org/advocacy/6106.html>.

<sup>140</sup> CERD/C/ISR/17–19, *op. cit.*, para. 127.

<sup>141</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, 29 January 2007, UN Doc A/HRC/4/17, para. 48, at: <http://www.alhaq.org/advocacy/6106.html>.

<sup>142</sup> *Ibid.*, para. 48. See also Al-Haq, *Engineering Community*, *op. cit.*, p. 8.

<sup>143</sup> Dugard (2007), para. 50.

<sup>144</sup> CERD/C/ISR/17-19, *op. cit.*, para. 54. See also Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, *op. cit.*, pp. 7–10.

places of residence: Jewish and Palestinian citizens overwhelmingly live separately in their own respective cities and towns.”<sup>145</sup>

70. When it comes to Palestinians in Jerusalem, Israel's racially discriminatory residency policies are evident: Israel's permanent residency regime is designed to maintain a highly insecure legal status for Palestinians in East Jerusalem as part of a policy of demographic engineering in favour of an Israeli-Jewish demographic majority in the city. Israel's demographic goals remain an integral part of its master plans for Jerusalem, consistent with a decades-long effort to alter the character, legal status, and demographic composition of the city, in violation of international law.<sup>146</sup> While the Committee has already called on Israel to eliminate its “demographic balance” goals from its Jerusalem “master plan” in 2012,<sup>147</sup> it is evident that Israel has shown no progress in this regard and appears to have no intention to do so. Instead, Israel has systematically failed to uphold its obligations under the Convention by fulfilling the Committee's Concluding Observations, aiming instead at maintaining its apartheid regime over the Palestinian people.
71. Two decades ago, CESCR observed that Israel's freedom of movement restrictions “apply only to Palestinians and not to Jewish Israeli citizens,” noting that “closures have cut off Palestinians from their own land and resources, resulting in widespread violations of their economic, social and cultural rights,” in particular the right to self-determination, and the obligation not to deprive a people of their means of subsistence.<sup>148</sup> Similarly, the UN Human Rights Committee expressed concern in 1998 that:

“the authorities appear to be placing obstacles in the way of family reunion in the case of marriages between an Israeli citizen and a non-citizen who is not Jewish (and therefore not entitled to enter under the Law of Return).”<sup>149</sup>

The Human Rights Committee had noted that restrictions on freedom of movement affect “nearly all areas of Palestinian life.”<sup>150</sup>

72. Since then, Israel has continued to entrench its fragmentation of the Palestinian people and of the oPt. Article II(c) of the Apartheid Convention defines the crime of apartheid as involving “inhuman acts” comprising “measures calculated to prevent a racial group... from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group... by denying to members of a racial group or groups basic human rights and freedoms, including... the right to leave and to return to their country” and “the right to freedom of movement and residence.” Our organisations submit that Israel's fragmentation, including denial of Palestinian refugee return, and freedom of movement and residence violations, constitute core

<sup>145</sup> ESCWA report, *op. cit.*, p. 39.

<sup>146</sup> See, for example, UN Security Council, Resolution 478 (1980), 20 August 1980, S/RES/478 (1980), para. 3. See also, Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, *op. cit.*, pp. 13–16.

<sup>147</sup> CERD/C/ISR/CO/14–16, *op. cit.*, para. 25.

<sup>148</sup> E/C.12/1/Add.27, *op. cit.*, paras. 17 and 39.

<sup>149</sup> Human Rights Committee, Concluding observations of the Human Rights Committee on the initial report of Israel, 18 August 1998, UN Doc CCPR/C/79/Add. 93, para. 26, at: <https://undocs.org/CCPR/C/79/Add.93>.

<sup>150</sup> *Ibid.*, para. 22.

methods through which Israel has implemented its apartheid regime over the Palestinian people.<sup>151</sup>

### 5.1.3. The closure of Jerusalem and the targeting of Palestinian presence in the city

73. Israel's closure regime and denial of access to Palestinians from the West Bank and Gaza Strip has significantly impacted Palestinian political, social, economic, and cultural life in the city of Jerusalem. In particular, Israel's closure of Jerusalem has resulted in the isolation and severe marginalization of Palestinian life in the city, separating Palestinians in Jerusalem from the rest of the oPt. The Annexation Wall and its associated closure and permit regime have radically transformed the city since Israel began its construction in 2002, cutting East Jerusalem off from the West Bank.<sup>152</sup> Today, roughly a third of East Jerusalem's Palestinian residents live in neighbourhoods behind the Annexation Wall, in Kufr 'Aqab, 'Anata, and Shu'fat refugee camp, with the Wall separating families in a highly visible extension of Israel's fragmentation and apartheid regime.<sup>153</sup> Entirely sealing off the city from the rest of the West Bank, the route of the Annexation Wall in and around East Jerusalem serves Israel's long-term demographic goals in the city, to annex as much land as possible with minimal Palestinian presence.<sup>154</sup>
74. Through its fragmentation of the oPt and closure of Jerusalem, Israel has pursued the social and economic suffocation of Palestinians in Jerusalem, attempting to redirect Palestinian presence away from the city to serve Israel's demographic goals and unilateral control over Jerusalem.<sup>155</sup> Israel has isolated and marginalised Jerusalem in order to gradually eliminate the city's central role for all aspects of Palestinian life, including access to the holy places for worship and access to East Jerusalem hospitals for treatment. For nearly two decades, Israel has denied Palestinians any collective rights in the city and prevented Palestinian institutions in Jerusalem from operating, including the Orient House, as the national headquarters of the Palestinian people in Jerusalem.<sup>156</sup> At the same time, Israel's policies and practices have resulted in dire economic conditions for the Palestinian people in occupied East Jerusalem, including gaps in access to education and a lack of basic services. As of 2019, it is estimated that 72 per cent of all Palestinian families in Jerusalem live below the poverty line, compared to 26 per cent of Israeli-Jewish families. At the same time, 81 per cent of Palestinian children in Jerusalem live below the poverty line, compared to 36 per cent of Israeli-Jewish children. Moreover, roughly a third of Palestinian adolescents in Jerusalem do not complete 12 years of schooling. In turn, the drop-out rate for Israeli-Jewish students in Jerusalem is estimated at 1.5 per cent. Lastly, fewer than half of Palestinians in East Jerusalem are formally connected to the water network.<sup>157</sup>

<sup>151</sup> This is also the analysis adopted in ESCWA report, *op. cit.*

<sup>152</sup> UNCTAD, *The Palestinian economy in East Jerusalem: Enduring annexation, isolation and disintegration* (2013), at: [https://unctad.org/en/PublicationsLibrary/gdsapp2012d1\\_en.pdf](https://unctad.org/en/PublicationsLibrary/gdsapp2012d1_en.pdf).

<sup>153</sup> Al-Haq, "15 Years Since the ICJ Wall Opinion: Israel's Impunity Prevails Due to Third States' Failure to Act," (9 July 2019), at: <http://www.alhaq.org/advocacy/14616.html>.

<sup>154</sup> B'Tselem, "The Separation Barrier," 11 November 2017, at: [https://www.btselem.org/separation\\_barrier](https://www.btselem.org/separation_barrier).

<sup>155</sup> Marya Farah, *Occupying Jerusalem's Old City: Israeli Policies of Isolation, Intimidation and Transformation* (Ramallah: Al-Haq, 2019), at: <http://www.alhaq.org/publications/15212.html>.

<sup>156</sup> See Orient House, "About the Orient House," at: <http://www.orienthouse.org/about/index.html>.

<sup>157</sup> ACRI, "East Jerusalem – Facts & Figures," (May 2019), at: <https://www.english.acri.org.il/east-jerusalem-2019>.

75. According to the UN Conference on Trade and Development (UNCTAD), “[a] matrix of policies implemented by the Israeli Government has effectively impeded the natural growth of the Palestinian population in East Jerusalem, most recently the [Annexation Wall], revocation of residency rights, discriminatory family unification policies and disadvantageous allocation of the municipal budget and services between East and West Jerusalem.”<sup>158</sup> At the same time, Israel’s occupation of East Jerusalem has been transformative, with Israel not only isolating the city but transferring the indigenous Palestinian people from Jerusalem, and radically altering the character of the city through the judaization of street names and settlement construction. These policies have been especially apparent in the Old City of Jerusalem, which remains a central target of Israel’s goal to erase Palestinian presence, culture, heritage, and identity.<sup>159</sup>

#### 5.1.4. *The closure and blockade of the Gaza Strip*

76. Israel has imposed a land, sea and air blockade and comprehensive closure of the Gaza Strip for 12 consecutive years, impacting the entire population of approximately two million Palestinians. The Israeli blockade and closure regime amounts to a prohibited form of collective punishment,<sup>160</sup> as recognised by, among others, the former UN Secretary-General Ban Ki Moon<sup>161</sup> and the International Committee of the Red Cross (ICRC).<sup>162</sup>
77. The term ‘closure’ denotes the list of Israeli policies and practices beyond the blockade measures that collectively amount to effective control and therefore occupation of the Gaza Strip by the Israeli occupying authorities. These restrictions and enforcements include Israeli administrative control over the Population Registry, telecommunications, water, sanitation, and fuel. The frequent presence of Israeli occupying forces inside the Gaza Strip, conducting incursions and military operations, also attests to Israel’s ability to enter the territory at will.<sup>163</sup>
78. The blockade and closure regime over the Gaza Strip forms part of the Israeli Government’s campaign to separate and fragment Palestinian communities within the oPt, and elsewhere, and to deny the Palestinian people their inalienable right of self-determination, including permanent sovereignty over natural wealth and resources. Initially claiming to the media and in court that the closure policy was instituted for security reasons, in 2012, the GoI confirmed that the closure policy is in fact not a security measure; the policy instead constitutes a political measure serving Israeli strategic and geopolitical aims.
79. In the course of hearing arguments before the Israeli High Court of Justice in 2012 for a petition lodged by Al Mezan and Gisha on behalf of five students from Gaza enrolled in Birzeit University, in the West Bank, the Israeli State Attorney clarified that it had no security claim against any of the petitioners, but rather, rejected their requests to travel as part of a

<sup>158</sup> UNCTAD, *op. cit.*

<sup>159</sup> Marya Farah, *op. cit.*, p. 57.

<sup>160</sup> ICRC, Customary IHL, Rule 103: Collective Punishments: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule103](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule103)

<sup>161</sup> UNOCHA OPT, The Humanitarian Impact of the Closure, July 2015:

[http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_blockade\\_factsheet\\_july\\_2015\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2015_english.pdf).

<sup>162</sup> See for example: ICRC, News Release 14-06-2010 Geneva/Jerusalem (ICRC) – The hardship faced by Gaza’s 1.5 million people cannot be addressed by providing humanitarian aid. The only sustainable solution is to lift the closure:

<https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm>.

<sup>163</sup> According to Al Mezan’s monitoring and documentation, since 2012 the Israeli military has entered the Gaza Strip 403 times.

comprehensive ban.<sup>164</sup> At least one of the banned students had previously received the requisite security clearance to travel from the Israeli occupying authorities. By acknowledging that the denial of movement between Gaza and the West Bank was part of a systematic policy rather than a security measure, the State Attorney pronounced the Government's explicit intent of separation and isolation of the Gaza Strip.

80. The policy of deliberate separation and fragmentation of the oPt and of the Palestinian people plays firmly into the political interests of the State of Israel: if the Palestinian Government remains divided, the Palestinian people are without effective representation and the Israeli Government has more leeway in implementing its broader plans for the oPt, including forestalling the establishment of a sovereign Palestinian State. During Benjamin Netanyahu's recent election campaign, the Israeli Prime Minister defended his Gaza closure policy as a means to continued division.<sup>165</sup> Both physical and political separation are key to enforcing a scheme that prevents the exercise by the Palestinian people of their right to self-determination.
81. The Gaza blockade and closure policy, which is unprecedented in its duration and severity, has resulted in Gaza effectively becoming an open-air prison, completely disconnected from the rest of the oPt and outside world.<sup>166</sup> This reality is left unaddressed in Israel's State report. Palestinian families are forcibly divided between the Gaza Strip, the West Bank, including East Jerusalem, across the Green Line, and abroad, with parents, children, spouses, brothers, and sisters unable to visit each other for decades, even within the oPt. Students from Gaza are unable to attend universities in the West Bank, including East Jerusalem, where they previously made up to 35 per cent of the mixed student body and are frequently denied or delayed the requisite travel permits to exit for study abroad. Business people and traders are impeded in conducting their professional activities, even within the oPt, as exports are virtually banned<sup>167</sup> and imports are severely restricted or included in the banned "dual-use" goods or commodities list.<sup>168</sup> Palestinian familial, cultural, and economic linkages are ruptured both within the oPt, across the Green Line, and abroad.
82. While preventing Palestinian residents of the Gaza Strip from accessing the rest of the oPt and Israel, the Israeli Government is also simultaneously promoting the emigration of Palestinians from Gaza to other countries, both explicitly, according to recent reports,<sup>169</sup> and in the implicit practice of making Gaza unliveable. The 2017 UN report, "Gaza – 10 Years

<sup>164</sup> Al Mezan and Gisha, "For the first time in 12 years: Israeli Supreme Court orders military to reconsider application of Gaza-West Bank student ban". 23 May 2012, available at: <http://mezan.org/en/post/14216>

<sup>165</sup> The Jerusalem Post, "Netanyahu: Money to Hamas Part of Strategy to Keep Palestinians Divided". 12 March 2019, available at: <https://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-Money-to-Hamas-part-of-strategy-to-keep-Palestinians-divided-583082>.

<sup>166</sup> Palestinian Center for Human Rights, (PCHR), "Gaza Strip: Actual Strangulation and Deceptive Facilitation," 11 March 2016, at: <https://pchr.org/en/wp-content/uploads/2016/03/Gaza-Strip-Actual-Strangulation.pdf>.

<sup>167</sup> Al Mezan, "Report on Israel's Decision to Suspend Gaza Customs Code". 2007, available at: <http://www.mezan.org/en/uploads/files/2559.pdf>.

<sup>168</sup> Gisha – The legal Center for Freedom of Movement, List of dual use items: <https://gisha.org/en-blog/2017/04/20/the-dual-use-list-finally-gets-published-but-its-the-opposite-of-useful/>.

<sup>169</sup> Times of Israel, "Israel actively pushing Palestinian emigration from Gaza, official says". 19 August 2019, available at: <https://www.timesofisrael.com/israel-actively-pushing-palestinian-emigration-from-gaza-official-says/#comments>. See also: Ynet News, "Israel will help Palestinians leave Gaza, if they have new country to go to". 20 August 2019, available at: <https://www.ynetnews.com/articles/0,7340,L-5571947,00.html>.



Later,” calculated that Gaza would be unable to support proper human life by 2020.<sup>170</sup> In practice, Gaza is already uninhabitable due to the Israeli-imposed blockade and closure, which have resulted in extreme economic decline, de-development, profound and unparalleled levels of poverty, aid-dependency, food insecurity, a projected unemployment rate of 44.4 per cent for 2020, and collapsing public services.<sup>171</sup>

83. Israel's blockade and closure policy impedes the ability of Palestinians in Gaza to access safe drinking water, with 95 per cent of residents not having access to clean water.<sup>172</sup> The Palestinian people endures routine power outages, which serve to exacerbate the effects of the water and sanitation crisis in Gaza. The lack of potable water, reduced ability to filter water, and water pollution-spread diseases, worsen existing illnesses, and prevent effective address of medical conditions. Of particular concern is the lack of equipment and resources to properly treat sewage, wastewater, and solid waste. The result is increased air and sea pollution that puts Gaza's population of two million at risk of water and air-borne disease, and further weighs down the collapsing health sector.
84. Israel enforces a maritime and land 'buffer zone,' also referred to as an 'access-restricted area,' where the Israeli military enforces its unilaterally-imposed movement restrictions within the Palestinian coastal waters and the Gaza side of Israel's perimeter fence. The limits of the 'buffer zone' are constantly shifting, in particular regarding where Palestinian fishermen may operate. This has devastated the economic and social conditions of approximately 4,080 fishermen registered with the Fishermen's Syndicate and approximately 1,000 workers in fishing-related professions.<sup>173</sup> Further, the Israeli occupying forces regularly attack Gaza fishermen within the law enforcement context. Al Mezan's monitoring and documentation shows that since the start of 2012, the Committee's last review of Israel, the Israeli Navy has attacked Palestinian fishermen with live fire 1,483 times. Six fishermen have been killed and 132 injured, including six children. In the same time period, the Israeli Navy arrested 547 fishermen, 40 of them children, confiscated 177 boats and damaged and destroyed 101 boats. These policies and practices by Israel have led to the collapse of the sector and resulted in approximately 95 per cent of the fishermen living below the poverty line.<sup>174</sup> Such attacks clearly indicate Israel's intentions to preserve and reinforce the physical containment of Palestinian residents of Gaza and the fragmentation of the Palestinian people as a whole, in order to maintain their subjugation within its apartheid regime.
85. Gaza's agricultural sector has been equally undermined by the closure policy, where some 27,000 dunums, 35 per cent of the Gaza Strip's agricultural land, fall within the 300-meter-wide Israel-enforced buffer zone inside the territory of Gaza, putting farmers at risk of injury or death from unlawful live fire. Al Mezan's documentation shows that since 2012, 11 farmers

<sup>170</sup> United Nations Country Team in the occupied Palestinian territory, "Gaza Ten Years Later". July 2017, available at: [https://unsco.unmissions.org/sites/default/files/gaza\\_10\\_years\\_later\\_-\\_11\\_july\\_2017.pdf](https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf).

<sup>171</sup> *Ibid*, p. 13.

<sup>172</sup> UNRWA, Where We Work. January 2018, available at: <https://www.unrwa.org/where-we-work/gaza-strip>.

<sup>173</sup> PCHR, "Report Israeli Attacks against Palestinian Fishermen (1 November 2017 – 30 April 2019)," 19 June 2019, at: <https://pchr.org/en/?p=12902>. See also Al Mezan's "Fact Sheet: The Human and Financial Losses of Fishing Under Occupation," 15 October 2019, at: <http://mezan.org/en/uploads/files/15712153571134.pdf>.

<sup>174</sup> B'Tselem, "2018: Plight of Gaza fishermen after Israel's gradual destruction of their sector," 11 February 2019, at: [https://www.btselem.org/gaza\\_strip/20190211\\_gaza\\_fishermen\\_plight\\_due\\_to\\_israeli\\_restrictions..](https://www.btselem.org/gaza_strip/20190211_gaza_fishermen_plight_due_to_israeli_restrictions..)

have been killed while at work. Moreover, the Israeli occupying forces have been conducting aerial spraying of herbicides periodically, impacting farmland on the Gaza side of the fence. According to information received in a Freedom of Information Act request and Al Mezan's monitoring and documentation, Israel conducted the spraying at least 30 times since the organisation began documenting the practice in 2014. The spraying is reported to be creating a lasting change to the chemical composition of entire swaths of arable land reaching up to 700 metres beyond the perimeter fence, causing serious financial losses to local farmers.<sup>175</sup> A spraying operation in January 2018 affected some 550 acres of agricultural lands belonging to 212 farmers, with an estimated loss of US\$1.3 million.<sup>176</sup> In its October 2019 Concluding Observations, CESCR was "concerned at the long-lasting hazardous impact of the aerial herbicide spraying... adjacent to the fence between Israel and Gaza on the crops productivity and soil in nearby areas in Gaza."<sup>177</sup>

86. Israel's blockade and closure policy has also strained the ability of Palestinian authorities to respond to the increasing health needs of Palestinians in Gaza. When access to specialist and/or lifesaving medical care is unavailable inside Gaza, doctors must refer their patients to hospitals in the West Bank and Israel, or abroad. However, the movement restrictions forming the basis of the blockade and closure regime ban all of Gaza's residents from leaving Gaza, except for patients that meet the exceptional 'humanitarian criteria' put in place by the Israeli authorities. Patients needing lifesaving can apply through an onerous, opaque and complex process for a permit on 'humanitarian' grounds. Many are rejected or do not receive a response to their application.<sup>178</sup> According to the Palestinian General Authority of Civil Affairs, Israeli authorities rejected 937 patient requests to travel for medical care in the first half of 2019, delayed 3,230 requests and approved 8,190 requests in the same period.
87. Due to the uninhabitable situation created in the Gaza Strip, Palestinians have launched a wave of weekly civilian demonstrations beginning on 30 March 2018 that call on Israel to end its suffocating closure and blockade regime, and stresses the right of Palestinian refugees to return to their homes that were lost in 1967.<sup>179</sup> As noted by the UN Commission of Inquiry, these protests fall within the law enforcement context, governed by international human rights law.<sup>180</sup> Nonetheless, in blatant violation of human rights law, Israel is responding to these demonstrations with lethal and other excessive force, including live fire. Since 30 March 2018, Palestinian human rights organisations documented the killing of 214 protesters, including 46 children, nine persons with disabilities, four paramedics, and two journalists,

<sup>175</sup> Al Mezan, "Briefing Paper Effects of Aerial Spraying on farmlands in the Gaza Strip". Feb 2018, available at: <http://www.mezan.org/en/uploads/files/15186958401955.pdf>.

<sup>176</sup> OCHA, "The Humanitarian Impact of Restrictions on Access to Land Near the Perimeter Fence in the Gaza Strip," August 2018, at: <https://www.ochaopt.org/content/humanitarian-impact-restrictions-access-land-near-perimeter-fence-gaza-strip>.

<sup>177</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 18 October 2019, UN Doc. E/C.12/ISR/CO/4, para. 44.

<sup>178</sup> Al Mezan position paper, "Medical Care Under Siege: Gaza Israel's Systematic Violation of Gaza's Patient Rights", February 2018, at: <http://mezan.org/en/uploads/files/15174966411875.pdf>.

<sup>179</sup> Palestinian Center for Human Rights, "1<sup>st</sup> Year Anniversary of the March of Return Demonstrations" 28 March 2019, at: [https://pchr.org/en/?p=12225#\\_ftn5](https://pchr.org/en/?p=12225#_ftn5).

Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 25 February 2019, UN Doc. A/HRC/40/74, para 32.

while thousands of others have been injured.<sup>181</sup> The UN Commission of Inquiry into the Gaza protests found that Israel committed serious violations of human rights and international humanitarian law, which may constitute war crimes and crimes against humanity. It noted that “the Israeli security forces killed and maimed Palestinians demonstrators who did not pose an imminent threat of death or serious injury to others when they were shot, nor were they directly participating in hostilities” when less lethal alternatives were available and substantial defences were in place.<sup>182</sup> Moreover, the shooting of demonstrators resulted in long-term, life-changing injuries. As of June 2019, 137 protesters had their lower or upper limbs amputated, including 25 children.<sup>183</sup>

88. In the only case regarding the Israeli occupying forces’ attacks on unarmed protesters to result in prosecution, an Israeli military court has handed down a 30-day prison sentence to an Israeli soldier who killed a 14-year-old Palestinian child named Othman Hillis. A suspended 60-day sentence and a demotion in rank were added by the court, which indicted the Israeli soldier on the charge of “disobeying an order leading to a threat to life or health,” per article 72 of the Israeli Martial Law (1955). The evidence collected by Al Mezan shows Hillis’s shooting to be an act of wilful killing, requiring a sentence commensurate with the gravity of the crime. The sentence handed down by the court for failure to follow orders and show discipline is woefully derisory and is reflective of the rampant impunity in Israel and lack of effective means of redress for Palestinian victims and/or their families. The Israeli media reports that only 11 criminal investigations have been opened into the more than two-hundred cases of killing of unarmed protesters, paramedics, and journalists.<sup>184</sup> Al Mezan was informed of the decision in its case on 29 October 2019.<sup>185</sup>
89. In light of the above, our organisations submit that Israel’s discriminatory policies and practices in Gaza are committed with the intention of maintaining its institutionalised regime of systematic racial domination, oppression, and persecution of the Palestinian people.<sup>186</sup> Israel has committed inhumane acts within the meaning of the Rome Statute, doing so with the intention of maintaining its apartheid regime over the Palestinian people. In particular, our organisations recall that the denial of the right to life and liberty of person to members of a racial group through acts of murder forms part of the definition of the crime of apartheid under Article II(a)(i) of the Apartheid Convention. Israel’s response to attempts to challenge its

<sup>181</sup> Palestinian Center for Human Rights, “95 Civilians Shot and Injured, Including 43 Children, a Woman, 2 Paramedics and a Journalist by IOF at 80<sup>th</sup> GMR,” 25 October 2019, at: <https://pchr.org/en/?p=13088>; Al Mezan Centre for Human Rights, “80<sup>th</sup> Friday of Demonstrations in Gaza: 87 Palestinians Wounded, including 34 Children, Two Women and One Paramedic”, 25 October 2019, available at: <http://mezan.org/en/post/23595>.

<sup>182</sup> Report of the Commission of Inquiry, UN Doc. A/HRC/40/74, *op. cit.*, para 96.

<sup>183</sup> Palestinian Center for Human rights, “On 63<sup>rd</sup> Friday of Great March of Return and Breaking Siege, Israeli Forces Wound 116 Palestinian Civilians, Including 34 Children, 5 Women and a Paramedic,” 21 June 2019, at: <https://pchr.org/en/?p=12556>.

<sup>184</sup> Haaretz, “Israel to Investigate Deaths of 11 Palestinians at Gaza Border Protests”, 13 March 2019, at: <https://www.haaretz.com/israel-news/premium-israel-to-open-investigations-into-the-killing-of-11-palestinians-in-gaza-protests-1.7020222>.

<sup>185</sup> Al Mezan, “Israeli Soldier Sentenced for Failure to Follow Orders, instead of Killing of Child Al Mezan: Leniency Attests to Entrenched Impunity”, 31 October 2019, at: <http://mezan.org/en/post/23599>.

<sup>186</sup> Al Mezan, PCHR, Al-Haq and Al Dameer, “Palestinian Human Rights Organizations & Victims’ Communication to the International Criminal Court - The Illegal Closure of the Gaza Strip: Persecution and Other Inhumane Acts Perpetrated against the Civilian Population as Crimes against Humanity”, November 2016, at: [http://mezan.org/uploads/files/22\\_Nov\\_GAZA\\_CLOSURE\\_FOR\\_UPLOAD\\_Full\\_submission.pdf](http://mezan.org/uploads/files/22_Nov_GAZA_CLOSURE_FOR_UPLOAD_Full_submission.pdf).



closure and blockade of Gaza, including through the Great March of Return since 30 March 2018, have been met with excessive and lethal force, because in essence, such challenges threaten the maintenance of Israel's apartheid regime and persecution that is implemented through the separation and fragmentation of the Palestinian people.

## 5.2. The creation of a coercive environment

90. A second method through which Israel enforces its apartheid regime over the Palestinian people is through the creation of coercive environments designed to drive Palestinian displacement, as part of Israel's ongoing policy to erase and replace the indigenous Palestinian people on both sides of the Green Line. The creation of coercive environments also serves to suppress the will of the Palestinian people and to undermine the exercise of their inalienable rights.

### 5.2.1. Population transfer and demographic manipulation

91. Israel continues to aggressively expand its illegal settler-colony enterprise, expropriate Palestinian land, and exploit natural resources for the benefit of its settler population. In February 2017, the Israeli Parliament (the Knesset) passed the so-called 'Regularization Law,' legalising 4,000 Israeli settlement housing units in 55 colonial outposts illegally built on private Palestinian land. In December 2018, the Knesset's Ministerial Committee for Legislation approved the advancement of a bill that would legalise an additional 60 Israeli settler outposts in the occupied West Bank.<sup>187</sup> The construction of illegal Israeli settler colonies in the oPt amounts to a grave breach of the Fourth Geneva Convention of 1949 and constitutes the serious crime of population transfer, for which the ICC is mandated to determine individual criminal responsibility. Moreover, Israel's settler-colony enterprise also unlawfully exploits the natural resources of the occupied territory, which under international humanitarian law is protected by the rule of *usufruct*. The integrated system operates on the basis of severe institutionalised segregation, dispossession, and material discrimination against the indigenous Palestinian people, in violation of Article 3 of the Convention.

92. In addition to its discriminatory planning and zoning regime (discussed below), the Committee has further called on Israel in 2012 to eliminate the goal of "demographic balance" from its Jerusalem master plans, urging Israel "to revoke the *Citizenship and Entry into Israel Law (Temporary provision)* and to facilitate family reunification of all citizens irrespective of their ethnicity or national or other origin."<sup>188</sup> Israel has not only failed to implement the Committee's recommendations in this regard, but continues to carry out population transfer across its international border and demographic manipulation within its jurisdiction to achieve and maintain an Israeli-Jewish demographic majority in Jerusalem to consistently reduce the number and proportion of indigenous Palestinians as part of a wider master plan for the city. Corresponding measures include the revocation of Palestinians' residency rights, the persistent denial of family unification and attempts to alter the city's municipal boundaries, in violation of Jerusalem's status under international law. In particular, our organisations

<sup>187</sup> Jonathan Lis and Yotam Berger, "Israeli Ministers Approve Bill That Would Legalize 66 West Bank Outposts," Haaretz, 16 December 2018, at: <https://www.haaretz.com/israel-news/premium-israeli-ministers-approve-bill-that-would-legalize-66-west-bank-outposts-1.6747792>.

<sup>188</sup> Articles 7(1)(d) and 8(2)(a)(vii), Rome Statute.

recall UN Security Council resolution 478 of 1980, recognizing that “all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem... are null and void and must be rescinded forthwith.”

93. Since 1948, Israel has instituted demographic manipulation, incrementally altered the boundaries of the city of Jerusalem and forced the administrative transfer of Palestinians from the city by incorporating the maximum amount of land with the minimum number of Palestinians through gerrymandering, colonisation, forced displacement, dispossession of homes and real property, expulsion by military means, and demolitions of Palestinian homes and habitat. Despite the Committee's foregoing Concluding Observations, the Israeli Government, both the executive and legislative branches, have adopted and further proposed a series of bills seeking to establish a so-called 'Greater Jerusalem,' which remain tabled before the Israeli Parliament. These bills seek to illegally annex Israeli settlements in the eastern Jerusalem periphery to increase the Israeli-Jewish demographic composition of the city of Jerusalem. At the same time, some 130,000 Palestinian residents of Jerusalem live in Palestinian Jerusalem neighbourhoods separated behind the Annexation Wall, including in Shu'fat refugee camp, 'Anata, and Kufr 'Aqab, making up about a third of the city's Palestinian population. The so-called 'Greater Jerusalem' bills seek the removal of these densely populated Palestinian neighbourhoods from Jerusalem to ensure the demographic manipulation of the city in favour of an Israeli-Jewish majority.
94. While Israel's State report maintains that “[t]here exists in Israel no restrictions of any kind as to place of residence nor is there any segregation of any kind,” since 1967, the Israeli occupying authorities have revoked some 14,500 permanent residencies of Palestinians in Jerusalem, resulting in the forcible transfer of Palestinians and their families from the city.<sup>189</sup> Over time, Israel has continued to expand its onerous criteria in order to revoke the residency status of more indigenous Palestinians from Jerusalem. Between 1967 and 1995, 3,150 residencies were revoked for “settling outside Israel” for seven years or receiving the status of resident or citizen in another country.<sup>190</sup> Beginning in 1995, the criteria was expanded to revoke residency of East Jerusalemite Palestinians if they are unable to prove their so-called ‘centre of life’ is in Jerusalem even if the duration of the stay outside the city, including in the rest of the oPt, was less than seven years or if foreign residency or citizenship was not obtained. Under this expanded criterion, more than 11,300 residency rights of Palestinians from Jerusalem have been revoked to date.<sup>191</sup> When Israel designed the precarious “permanent residency” status for Palestinians in Jerusalem in 1967, it did so with the ultimate goal of forced population transfer and demographic manipulation of the city of Jerusalem, in violation of its status under international law and the inalienable rights of Palestinians.
95. In addition to the revocation of permanent residency rights of Palestinians in Jerusalem, Israel has further prevented family unification for Palestinians throughout the oPt, as previously

<sup>189</sup> Al-Haq, “Punitive Residency Revocation: The Most Recent Tool of Forcible Transfer,” 17 March 2018, available at: <https://www.alhaq.org/advocacy/6257.html>.

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

highlighted by the Committee.<sup>192</sup> Palestinians from the West Bank and Gaza Strip face significant challenges in receiving family unification permits when they marry a Palestinian resident of Jerusalem or a Palestinian citizen of Israel.<sup>193</sup> This is the result of Israel's unlawful annexation and the implementation of its domestic legislation in occupied East Jerusalem, in violation of international law. These measures are, in addition to the physical isolation of Jerusalem (as highlighted in section 5.1.3) through a system of road closures, checkpoints, the Annexation Wall and its associated regime, and the imposition of a precarious 'permanent residency' status on Palestinians in the city, subject to revocation at any time by the Israeli occupying authorities.<sup>194</sup> Over one-third of family unification applications coming from East Jerusalem residents were denied between 2000 and 2013.<sup>195</sup> This year, the Israeli Ministry's Population and Immigration Authority has begun rejecting family unification requests based on "intolerable workload" rather than the merits of the request itself.<sup>196</sup> This creates a coercive environment of instability and fear for Palestinians in Jerusalem and serves Israel's demographic manipulation goals for the city.

### 5.2.2. Discriminatory planning and zoning and denial of access to natural resources

96. As noted in the Vancouver Declaration and Action Plan (Habitat I, 1976), "[t]he ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their land or entrench privilege and exploitation."<sup>197</sup> However, the State party's report and responses minimize the importance of planning and zoning functions of the State as they relate to its obligations under ICERD.<sup>198</sup>
97. In addition to the racially discriminatory charters of the Zionist parastatal institutions, which dominate land use, planning and physical development, the Basic Law: Israel Lands (1960) stipulates that the ownership of "Israel lands" – namely "land, houses, buildings and anything permanently fixed to land" under the control of the State, the JNF, and the Development Authority – cannot be transferred in any manner. However, the law allows for the transfer of ownership among those three entities and remains fully consistent with the JNF charter's cardinal rule: to manage and lease land on behalf of Jews only (*see* paras. 42–46 above).
98. The National Planning and Building Law (1965) established the National Council for Planning and Construction and the Regional Councils for Planning and Construction without including indigenous Palestinian representatives. However, it does require that other groups

<sup>192</sup> CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination on the fourteenth to sixteenth periodic reports of Israel, 3 April 2012, UN Doc. CERD/C/ISR/CO/14-16, para. 18.

<sup>193</sup> Al-Haq, "Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians," 13 February 2019, p. 6-7, available at: <https://www.alhaq.org/advocacy/6106.html>.

<sup>194</sup> *Ibid.* p. 8.

<sup>195</sup> Al-Haq, "Living Under Israeli Policies of Colonization in Jerusalem," 4 February 2017, available at <https://www.alhaq.org/advocacy/6359.html>; Official Israeli papers specifically relate to the "demographic balance" in Jerusalem (*see* for instance: Jerusalem Local Outline Plan 2000, Report No. 4 – The Suggested Plan and the Planning Policy, August 2004, p. 202).

<sup>196</sup> Nir Hasson, "Israel Seeks to Block All East Jerusalem Family Reunification Hearings Over 'Workload'," Haaretz, 1 May 2019, available at: <https://www.haaretz.com/israel-news/.premium-israel-seeks-to-block-all-e-jerusalem-family-reunification-hearings-over-workload-1.7188984>.

<sup>197</sup> The Vancouver Action Plan, Preamble, para. 3, at: [http://www.hlm.org/img/documents/The\\_Vancouver\\_Declaration\\_19761.pdf](http://www.hlm.org/img/documents/The_Vancouver_Declaration_19761.pdf).

<sup>198</sup> Reducing the subject to "Enhancing Infrastructure within Israel's Arab Localities," paras. 32–36. *See also* CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination on the fourteenth to sixteenth periodic reports of Israel, 3 April 2012, UN Doc. CERD/C/ISR/CO/14-16, para. 18.

such as women and the Yishuv institutions be included, following the recommendation of the JA, which also is chartered to exclude non-Jews. JA representatives also maintain a constant voting majority in the Regional Councils.

99. It must be understood that, within the founding principles of WZO/JA and JNF, the designation as public and State land renders said land exclusively for Jewish use. Hence, Israel's Public Lands Law (Eviction of Squatters) of 1981 enables the State to remove from public and State lands persons from "land, houses, buildings and anything permanently fixed to land" who fall outside that privileged category. A 2005 amendment to this law has expanded the powers of the Israel Lands Authority (ILA) and its agencies to operate through administrative orders to evict and dispossess. Although Israeli State agencies have applied it to alter the demographic composition of Jerusalem<sup>199</sup> and elsewhere, the 2005 amendment was aimed primarily against the Arab Bedouin population of the southern Naqab.
100. Israel has instituted increasingly aggressive planning and zoning policies targeting Palestinians in the Naqab and across the Green Line in the occupied West Bank, including East Jerusalem, that deprive them of their rights to freedom of movement and residence, adequate housing, and their land and natural resources.<sup>200</sup> Through its discriminatory planning, zoning, and house demolition policies, Israel has created an increasingly uninhabitable and coercive environment for the indigenous Palestinian people. These policies have dramatically reduced the amount of land available for Palestinian use as a result of unlawful appropriation of Palestinian land, illegal expansion of Israeli settlements in the oPt, and designation of lands as 'State land' and closed military zones. Israel has, in its State report, attempted to whitewash these policies as being based on inclusivity and outreach.<sup>201</sup>
101. In its previous Concluding Observations, the Committee urged Israel to "step up its efforts to ensure equal access to education, work, housing and public health in all territories under the State party's effective control," highlighting the "ongoing policy of home demolitions and forced displacement of the indigenous Bedouin communities."<sup>202</sup> The Committee also expressed concerns regarding "the adverse tendency of preferential treatment for the expansion of Israeli settlements, through the use of 'state land' allocated for settlements, the provision of infrastructure such as roads and water systems, [and] high approval rates for planning permits," concluding that "the current Israeli planning and zoning policy in the West Bank, including East Jerusalem, seriously breaches a range of fundamental rights under the Convention."<sup>203</sup> Accordingly, the Committee urged Israel to reconsider its entire planning and zoning policy in order to guarantee Palestinians their rights to property, adequate housing,

<sup>199</sup> Gil Stern Stern Zohar, "Private landowners, urban planners and political activists grapple with territorial disputes in east Jerusalem," *The Jerusalem Post* (26 July 2007), at: <https://www.jpost.com/Local-Israel/In-Jerusalem/The-land-is-whose-land>; Adam Eliyahu Berkowitz, "Arab Squatters Evicted From Jerusalem House Owned by Jews for 140 Years," *Breaking Israel News* (5 September 2017), at: <https://www.breakingisraelnews.com/94394/arab-squatters-evicted-jerusalem-house-owned-jews-140-years/>.

<sup>200</sup> Articles 5(d)(i) and 5(e)(iii), ICERD; Article 1(2), ICESCR and ICCPR.

<sup>201</sup> State report at paras 32, 36-37.

<sup>202</sup> CERD/C/ISR/CO/14-16, *op. cit.*, para. 20.

<sup>203</sup> *Ibid.*, para. 25.

and access to land and natural resources, also recommending that the State do so “in consultation with the populations directly affected by those measures.”<sup>204</sup>

102. Notwithstanding, Israel has continued its discriminatory planning and zoning policies. As of 30 September 2019, Al-Haq documented 123 residential house demolitions carried out by the Israeli occupying authorities across the oPt since the start of 2019. Overall, 58 demolitions were carried out in Area C of the West Bank and 49 in occupied East Jerusalem. Of the total, 110 structures demolished (nearly 90 per cent of all demolitions) were located in proximity to illegal Israeli settlements, the Annexation Wall, or in areas otherwise threatened by Israeli settlement expansion, indicative of Israel's colonisation policy. During the same period, Al-Haq also documented the demolition of 132 other structures, constituting private Palestinian property, most of which took place in Area C of the West Bank, in addition to the demolition of 12 structures constituting public property, among them nine water wells demolished in Area C. Overall, Al-Haq documented the demolition of 2,451 Palestinian structures in the West Bank, including East Jerusalem, between 2012 and 2018, resulting in the displacement of 6,473 Palestinians, including 3,348 children.<sup>205</sup> In the Naqab, the Palestinian Bedouin village of Al-Araqib was demolished for the 166<sup>th</sup> time in October 2019. The Israeli courts have played a role in imposing fines on affected Palestinian citizens of Israel for the cost of demolishing and evacuating their village, under the pretext that the indigenous Palestinian people of the Naqab are trespassing on State-owned land.<sup>206</sup>

103. In addition, the Annexation Wall has displaced an untold number of households since its construction. The most recent mass house demolitions in the Wadi Al-Hummus neighbourhood of Jerusalem on 22 July 2019, claiming the proximity of Palestinian structures to the Wall as a pretext,<sup>207</sup> coincide with the 15<sup>th</sup> anniversary of the ICJ Advisory Opinion on the Wall's illegal nature,<sup>208</sup> for which Israel owes reparation to the affected Palestinian people, in line with the criteria clarified by the UN General Assembly.<sup>209</sup>

104. The UN Guiding Principles on Internal Displacement prohibit arbitrary displacement “[w]hen it is based on policies of apartheid, ethnic cleansing or similar practices aimed at or resulting in altering the ethnic, religious or racial composition of the affected population” and when used as a measure of collective punishment.<sup>210</sup> In May 2019, in response to Israeli Government plans to forcibly displace 36,000 Palestinian Bedouin citizens of Israel from the Naqab, several UN special procedures mandate holders argued that Israel's “massive population transfers suggest that not all viable alternative solutions to avoid forced evictions, a gross violation of human rights that also constitutes internal displacement, have been

<sup>204</sup> *Ibid.*

<sup>205</sup> Al-Haq's Monitoring and Documentation Department. See also Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, *op. cit.*, p. 11.

<sup>206</sup> Wafa, “Israel demolishes Naqab Bedouin village for 157<sup>th</sup> time,” (2 September 2019), at: <http://english.wafa.ps/page.aspx?id=q665bba111421723710aq665bb>.

<sup>207</sup> Al-Haq, “Al-Haq Sends Urgent Appeal to UN Special Procedures and Calls for Immediate Halt to Demolitions in Wadi Al-Hummus,” (22 July 2019), available at: <http://www.alhaq.org/advocacy/14686.html>.

<sup>208</sup> ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall, *op. cit.*

<sup>209</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 16 December 2005, at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

<sup>210</sup> UN Commission on Human Rights (UNCHR), *Guiding Principles on Internal Displacement*, 22 July 1998, Principle 6.



considered, as required under international human rights law.”<sup>211</sup> Critically, indigenous peoples have a right not to be forcibly removed and dispossessed from their ancestral lands, territories, and resources.<sup>212</sup> Our organisations provide that the ongoing efforts to erase and replace the indigenous Palestinian people on both sides of the Green Line, through the creation of both “legal” pretexts and coercive environments designed to drive their displacement, form part of Israel’s institutionalised regime of apartheid.

105. In addition to land, other natural resources are essential to a life with dignity, whereas water is the most critical. Israel has instituted a system for distributing this vital resource that mirrors the administration of land. Two “national” institutions dominate the field: Mekerot, established in 1937 and Tahal, in 1952. Mekerot was founded by the JA, JNF, and Histadrut. Histadrut operates under a similarly discriminatory charter, like its JNF counterpart in the land sector, and was founded upon a radical Jewish-nationalist basis to organize labour resources.<sup>213</sup> Mekerot (Hebrew: מקורות, lit. “sources”), is the national water company of Israel and the country’s top agency for water management, and it supplies Israel with 90 per cent of its drinking water, operating a cross-country water supply network known as the National Water Carrier. In 1952, the GoI established Tahal (named from the Hebrew initials for Water Planning for Israel, *Tikhnun ha-Mayim le-Yisrael*) by merging the Water Resources Department of the Ministry of Agriculture with the engineering division of Mekerot. Founded under Israel’s company law, the GoI holds the major share (52 per cent) in Tahal; the rest of the shares are divided equally between the JA and JNF.<sup>214</sup>

106. Palestinians in the West Bank are denied access to the waters of the Jordan River, as the Israeli occupying forces destroyed at least 120 Palestinian wells along the Jordan Valley in 1967,<sup>215</sup> and control both the shoreline and the flow of the water, which is diverted, along with the Jordan headwaters in the occupied Syrian Golan, via the National Water Carrier (designed by Tahal and constructed by Mekerot) from Lake Tiberias to Jewish settlements inside the Green Line. Israeli parastatal institutions – primarily Mekerot – also retain control over the waters

<sup>211</sup> Adalah, “Six UN Special Rapporteurs issued a joint letter to Israel, recently made public, raising serious concerns about Israeli government plans to forcibly displace 36,000 Bedouin citizens of Israel,” (11 July 2019), at: <https://www.adalah.org/en/content/view/9772>.

<sup>212</sup> UN *Declaration on the Rights of Indigenous Peoples*, 2 October 2007, A/RES/61/295, Articles 8(2)(b) and 10. See also Suha Jarrar, *Adaptation Under Occupation: Climate Change Vulnerability in the Occupied Palestinian Territory* (Al-Haq 2019), pp. 54-55, at: <http://www.alhaq.org/publications/15261.html>.

<sup>213</sup> Gershon Shafir, *Land, Labor and the Origins of the Israeli-Palestinian Conflict, 1882–1914* (Berkeley CA: University of California Press, 1996), pp. 194–95.

<sup>214</sup> “Tahal,” *Jewish Virtual Library* (2019), at: <https://www.jewishvirtuallibrary.org/tahal>.

<sup>215</sup> Palestinian Authority Ministry of Agriculture and Palestinian Water Authority, *Development of the Palestinian Valley: Plan for Development of Water Sources in Valley Governates* (May 2010) [Arabic], pp. 3, 8, cited in Eyal Hareuveni, *Dispossession & Exploitation Israel's policy in the Jordan Valley & northern Dead Sea* (Jerusalem: B’Tselem, May 2011), p. 32, at: [http://ecopeaceme.org/uploads/Btselem\\_Dispossession\\_and\\_Exploitation\\_Eng\\_201105.pdf](http://ecopeaceme.org/uploads/Btselem_Dispossession_and_Exploitation_Eng_201105.pdf). Other source report that Israeli forces either confiscated or destroyed 140 pumping units in the Jordan Valley in 1967. See Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Giorgio Giacomelli, Special Rapporteur, E/CN.4/2000/25, 15 March 2000, para. 24, at: [https://spinternet.ohchr.org/\\_Layouts/15/SpecialProceduresInternet/Download.aspx?SymbolNo=E%2fCN.4%2f2000%2f25&Language=en](https://spinternet.ohchr.org/_Layouts/15/SpecialProceduresInternet/Download.aspx?SymbolNo=E%2fCN.4%2f2000%2f25&Language=en); Fadia Daibes-Murad, *A New Legal Framework for Managing the World's Shared Groundwaters* (London and Seattle: IWA Publishing, 2005), p. 338.

of the Mountain Aquifer, diverting 89 per cent of this resource to Israelis, despite the fact that 80 per cent of the water recharging the Aquifer originates in the Palestinian West Bank.<sup>216</sup>

107. Israel currently desalinates so much seawater that its municipalities are turning it away. Israel has so much manufactured water that some Israeli water engineers claim that “today, no one in Israel experiences water scarcity.”<sup>217</sup> The excess desalinated water is being used to irrigate crops, and the country’s water authority is planning to use it to refill Lake Tiberias<sup>218</sup> with Mekorot pumping the lake water into the arid Naqab to service Jewish colonies there.

108. The consequences of these water policies result in a disparity in water consumption between Israelis and Palestinians by a factor estimated between 3.5 and 5 in favour of Israeli consumers.<sup>219</sup> The Gaza Strip has long experienced a severe water crisis as result of four root causes (in chronological order):<sup>220</sup>

- i. The concentration of inhabitants created by the waves of population transfer during the 1948 Nakba and the 1951–53 ethnic cleansing of the Naqab, resulting in high extraction rates;
- ii. The proliferation of Israeli wells diverting the natural flow of the Mountain Aquifer from the Hebron Hills toward the Gaza Strip;<sup>221</sup>
- iii. Israeli agricultural settlers’ depletion of a deep pocket of fresh water before leaving Gaza in 2005;<sup>222</sup> and
- iv. Israeli bombing attacks targeting water and sewage infrastructure in each of its wars on Gaza.<sup>223</sup>

<sup>216</sup> Al-Haq, “Geography and Hydrology of Water Resources in the OPT,” 22 March 2013, at:

[http://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20\\_no\\_1\\_Geography%20and%20Hydrology\\_66.2013.pdf](http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20_no_1_Geography%20and%20Hydrology_66.2013.pdf)

<sup>217</sup> Kirk d'Souza, “How Israel’s desalination technology is helping the world fight water shortage,” (5 July 2017), citing Tomer Efrat, process engineering manager at Israel Desalination Enterprises, at:

<https://thenextweb.com/syndication/2017/07/05/desalination-nation-israel-helping-world-fight-water-shortage/>.

<sup>218</sup> Jewish Telegraph Agency, “Sinking Kinneret to get infusion of desalinated water,” *The Jerusalem Post* (28 January 2018), at: <http://www.jpost.com/Israel-News/Sinking-Kinneret-to-get-infusion-of-desalinated-water-518501>.

<sup>219</sup> Eleni Lazarou, “Water in the Israeli-Palestinian conflict,” *European Parliamentary Research Service* (13 January 2016), at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573916/EPRS\\_BRI\(2016\)573916\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573916/EPRS_BRI(2016)573916_EN.pdf); B’Tselem, “The Gap in Water Consumption between Palestinians and Israelis, 1 January 2011, at: <https://www.btselem.org/gap-water-consumption-between-palestinians-and-israelis>, with statistics as of 4 July 2018, at: <https://www.btselem.org/water/statistics>; Amnesty International, *Troubled Waters – Palestinians Denied Fair Access to Water* (2009), at: <https://www.amnestyusa.org/pdf/mde150272009en.pdf>.

<sup>220</sup> Sandy Tolan, “Gaza’s water crisis is ‘a ticking time bomb,’” *Public Radio International* (13 November 2018), at: <https://www.pri.org/stories/2018-11-13/gazas-water-crisis-ticking-time-bomb>.

<sup>221</sup> UNDP, *Human Development Report 2006: Beyond Scarcity: Power, poverty and the global water crisis* (New York: UNDP, 2006), Chapter 6 “Managing transboundary waters,” p. 217, at: <http://hdr.undp.org/sites/default/files/reports/267/hdr06-complete.pdf>.

<sup>222</sup> The land was allocated in such a way that each Israeli settler disposed of 400 times the land available to the Palestinian refugees, and 20 times the volume of water allowed to the peasant farmers of the Strip. Jean-Pierre Filiu, *Gaza: A History* (Oxford: Oxford University Press, 2014), p. 196.

<sup>223</sup> Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009*. See also Submission to the Mission by Housing and Land Rights Network -- Habitat International Coalition, “Targeting shelters and shelter seekers during operation Cast Lead in the context of Israeli military practice,” 29 July 2010, at: <http://www.hic-mena.org/documents/Submission.pdf>. During the 2014

The damage and depletion of water resources has had numerous negative health and environmental consequences,<sup>224</sup> qualifying as toxic ecology or “biosphere of war,”<sup>225</sup> and has made the Gaza Strip uninhabitable, as repeatedly warned by the UN.

### 5.2.3. Excessive use of force and disregard for Palestinian life

109. Israel's resort to excessive use of force, including lethal force against Palestinians, constitutes another pillar of its creation and maintenance of an apartheid regime over the Palestinian people, by creating a coercive environment designed to intimidate Palestinians and feeding a climate of repression designed to undermine the exercise of their inalienable rights. The Apartheid Convention includes, as part of its definition, the “[d]enial to a member or members of a racial group or groups the right to life and liberty of person,” in addition to “denying to members of a racial group or groups basic human rights and freedoms, including... the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.”<sup>226</sup>
110. Over the years, Palestinian human rights organisations have documented the Israeli occupying forces' systematic use of a shoot-to-kill policy in the oPt, amounting to excessive and lethal force in violation of international human rights law. Between 1 October 2015 and as of 30 September 2019, Al-Haq has documented Israel's killing of 704 Palestinians, including 184 children in various contexts, including military raids and arrest or detention operations in Palestinian villages, towns, and refugee camps in the West Bank, including East Jerusalem, the targeting of peaceful assemblies across the oPt, in particular in the Gaza Strip since 30 March 2018, and in various other incidents involving Israeli attacks against the Palestinian people. As mentioned in the context of Israel's Gaza closure policy (section 5.1.4), 214 Palestinians have been killed in the context of the Great March of Return demonstrations since 30 March 2018, including 46 children, nine persons with disabilities, four paramedics, and two journalists, demonstrating Israel's widespread attacks on Palestinian civilians and systematic disregard for Palestinian life.
111. On 18 March 2019, the UN Commission of Inquiry on the 2018 protests in the oPt found reasonable grounds to believe that during the Great March of Return in Gaza, the Israeli occupying forces “killed and gravely injured civilians who were neither participating directly in hostilities nor posing an imminent threat to life.” By the end of 2018, the Commission found that Israeli forces had killed 183 Palestinians and injured another 6,106 with live

Gaza War, Israeli military doctrine has made water a prime casualty, when military attacks caused US\$6m of damage through the destruction of four water reservoirs, eleven wells, sewage networks and pumping stations. “Gaza: Water in the line of fire, ICRC News Release, 15 July 2014, at:

<https://www.icrc.org/en/doc/resources/documents/news-release/2014/14-07-israel-palestine-gaza-water.htm>; Report of the International Commission, A/HRC/40/74, *op. cit.*; “Gaza: Ten Years Later,” United Nations Country Team in the occupied Palestinian Territory, July 2017, at: [https://unsco.unmissions.org/sites/default/files/gaza\\_10\\_years\\_later\\_-\\_11\\_july\\_2017.pdf](https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf).

<sup>224</sup> R.R. El Kishawi, K.L. Soo, Y.A. Abed and W.A.M.W. Muda, “Prevalence and associated factors influencing stunting in children aged 2-5 years in the Gaza Strip-Palestine: a cross-sectional study,” *BMC Pediatrics*, Vol. 17, No. 1 (BioMed Central, Springer Nature, 21 December 2017), at: <https://www.ncbi.nlm.nih.gov/pubmed/29268788>; Sandy Tolan, “Gaza's water crisis is 'a ticking time bomb',” *Public Radio International* (13 November 2018), at: <https://www.pri.org/stories/2018-11-13/gazas-water-crisis-ticking-time-bomb>.

<sup>225</sup> Andre Vltchek, “Middle Eastern Surgeon Speaks About ‘Ecology of War,’” *Counterpunch* (28 April 2017), at: <https://www.counterpunch.org/2017/04/28/middle-eastern-surgeon-speaks-about-ecology-of-war/>.

<sup>226</sup> Articles II(a) and II(c), Apartheid Convention.



ammunition during the protests, in a clear demonstration of excessive use of force in violation of international law.<sup>227</sup> The Commission called on Israel to revise its rules of engagement for the use of live fire, which it found to be in apparent violation of international human rights law, and called on the Israeli occupying authorities to “[r]efrain from using lethal force against civilians, including children, journalists, health workers and persons with disabilities, who pose no imminent threat to life.”<sup>228</sup> Yet, Israel’s systematic use of excessive and lethal force against Palestinians has continued. Eighteen Palestinians have been killed by Israeli occupying forces during the Great March of Return since the adoption of the Commission’s recommendations on 22 March 2019,<sup>229</sup> demonstrating Israel’s pervasive impunity for widespread and systematic human rights violations committed against the Palestinian people, with this impunity embedded in Israel’s apartheid regime.

112. In the West Bank, including East Jerusalem, Israel’s excessive use of force has also continued as part of its wider policy of oppression and domination over the Palestinian people. On 12 July 2019, the Israeli occupying forces shot and critically injured a nine-year-old Palestinian child, Abdul Rahman Shteivi, in the northern West Bank village of Kufr Qaddum. During weekly protests in the village against Israeli settlement expansion, the Israeli occupying forces resorted to excessive use of force, including live fire to suppress the peaceful calls of the residents for the opening of the main road leading to the village, which has been closed down since 2003, following the expansion of the Israeli settlement of Kedumim. According to Al-Haq’s documentation, Israeli soldiers resorted to live ammunition in an unnecessary and disproportionate manner, shooting into the air and towards the crowd of unarmed Palestinian protesters. Nine-year-old Abdul Rahman Shteivi was standing outside his friend’s house on the street leading off the road where the protests were taking place. At around 2:00 pm, one of the soldiers bent down in a sniper position, ready to fire towards the area where Abdul Rahman stood, some 120 to 150 metres away. He remained in a sniper position for some 15–20 minutes when shots were fired and Abdul Rahman fell to the ground with injuries on his forehead from live ammunition. A CT scan showed a multitude of bullet fragments lodged inside the child’s brain.
113. Moreover, less than a week following the adoption by the Human Rights Council of the recommendations of the UN Commission of Inquiry, the Israeli occupying forces killed 17-year-old, Sajed Mizher, a volunteer with the Palestinian Medical Relief Society (PMRS), as he was attempting to provide first aid to an injured Palestinian during confrontations in Dheisheh refugee camp in the West Bank on 27 March 2019. As a result of a detailed investigation into the incident, Al-Haq concluded that the targeting of Sajed Mizher, who was shot with live ammunition in the lower-right side of the abdomen, had been intentional and amounted to an extrajudicial killing, in violation of his right to life. Al-Haq further considered

<sup>227</sup> Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2, *Summary*.

<sup>228</sup> Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 25 February 2019, A/HRC/40/74, paras. 119(a) and 119(b).

<sup>229</sup> Al-Haq’s Monitoring and Documentation Department, as of 5 October 2019. *See also* Al-Haq, “Al-Haq Welcomes Adoption of UN Commission of Inquiry Recommendations on the Great Return March,” (23 March 2019), at: <http://www.alhaq.org/advocacy/6085.html>. *See also* Al-Haq, “Update from the 51<sup>st</sup> Great Return March Protests: Israel Kills Two Palestinians as UN Calls for Accountability,” (23 March 2019), at: <http://www.alhaq.org/advocacy/6083.html>.

that the targeting of Sajed Mizher must be seen “must be seen within the wider context of a pattern of attacks against health workers and facilities across the oPt by Israel, the Occupying Power.”<sup>230</sup> Indeed, the Israeli occupying forces have killed four Palestinians, clearly marked as health workers during the Great March of Return in Gaza since 30 March 2018, while they were providing first aid to injured Palestinians.<sup>231</sup> The UN Commission of Inquiry found that none of the health workers were found to have posed an imminent threat of death or serious injury to the lives of Israeli soldiers at the time they were shot.<sup>232</sup>

114. According to UNRWA, the Israeli occupying forces carried out an average of 19 military operations every day in the West Bank in 2018, totalling approximately 7,000 raids over the year.<sup>233</sup> One in ten occurred in Palestinian refugee camps across the West Bank, and involved search and arrest campaigns in response to Palestinian civilian demonstrations. As reported by UNRWA, “[t]ear gas and at times sound bombs were used throughout most of these operations, and often live ammunition was fired (mostly by snipers deployed on the roofs of refugee shelters). In 2018, live fire in and around the camps resulted in at least 78 refugee injuries and four fatalities, including one child.”<sup>234</sup> These military incursions have further caused psychological trauma to Palestinian refugees, while the excessive use of tear gas, although non-lethal, has also resulted in detrimental health impacts among Palestinian children.<sup>235</sup>

115. Overall, Israel's excessive use of force against the Palestinian people, in particular in the oPt, must be seen as part of a widespread and systematic attack directed against the Palestinian people, constitutive of a State policy. Notably, Israel's persistent disregard for Palestinian life and use of excessive and lethal force to suppress peaceful demonstrations and other demands challenging Israel's systematic oppression and domination, constitute a measure through which Israel has maintained its apartheid regime over the Palestinian people.

#### 5.2.4. Denial of access to and fragmentation of healthcare

116. In addition to excessive use of force and repeated attacks on health workers and facilities in the oPt, a myriad of movement restrictions, including checkpoints, the Annexation Wall, and closures have led to a denial of access to healthcare and the fragmentation of healthcare provision for the Palestinian people. Palestinians in Gaza have been significantly affected as a result of Israel's 12-year closure. In 2017, 645 Palestinian patients died unable to leave the Gaza Strip for treatment in the rest of the oPt, in Israel, or abroad.<sup>236</sup> In 2019, a survival analysis conducted by the World Health Organization (WHO) for Gaza cancer patients found that “cancer patients initially denied or delayed permits to access chemotherapy and/or

<sup>230</sup> See Al-Haq, “Al-Haq Refutes Israeli Army and Media Claims on the Killing of Volunteer First Responder Sajed Mizher in Dheisheh Refugee Camp,” (8 April 2019), p. 10, at: <http://www.alhaq.org/advocacy/6070.html>.

<sup>231</sup> Al-Haq, “Israeli Occupying Forces (IOF) Target and Kill Palestinian Civilians, including a Paramedic Reporting Period: 27 May – 10 June 2019,” (19 June 2019), at: <http://www.alhaq.org/monitoring-documentation/6037.html>.

<sup>232</sup> Report of the Commission of Inquiry, A/HRC/40/CRP.2, paras. 523–524.

<sup>233</sup> UNRWA, “‘We Thought We Lost Him’,” *op. cit.*, at: <https://www.unrwa.org/newsroom/features/%E2%80%9Cwe-thought-we-lost-him%E2%80%9D-tear-gas-use-dheisheh-camp>.

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*

<sup>236</sup> Ali Abunimah, “54 patients died waiting for Israel to let them out of Gaza,” *The Electronic Intifada* (14 February 2018), at: <https://electronicintifada.net/blogs/ali-abunimah/54-patients-died-waiting-israel-let-them-out-gaza>.

radiotherapy outside Gaza from 2015 to 2017 were 1.5 times less likely to survive in the following six months or more, compared to those initially approved permits,” indicating that there is an urgent need to remove access barriers to protect patients from harm.<sup>237</sup>

117. Our organisations are deeply concerned regarding Israel's discriminatory permit-application regime for the treatment of Palestinian patients in hospitals in East Jerusalem, Israel, or abroad. Critically, Israel continues to deny Palestinian patients the right to travel to access healthcare under the guise of “security,” detrimentally affecting the right of Palestinians to health and life, particularly in the Gaza Strip. Palestinian human rights organisations have documented countless cases where Palestinian patients or their companions were called in for interrogation by the Israeli occupying authorities and coerced into collaborating in exchange for treatment. According to WHO, “[i]n November 2015, Israel put new directives in place for Gaza requiring male patient companions aged 16 to 55 years and female patient companions aged 16 to 45 years to undergo more intensive security investigations in order to receive permits. Previously this requirement had only been applied to those under the age of 35 years. All patients may be called for security interrogation as a prerequisite to permit processing.”<sup>238</sup> According to the Gaza Coordination and Liaison Office, only 61 per cent of the applications submitted were approved in 2018.<sup>239</sup>
118. Israel's discriminatory restrictions on access to healthcare illustrate Israel's intention to punish the Palestinian civilian population of the Gaza Strip. In recent years, the steep decline of Gaza's healthcare sector and the unavailability of specialized medical services have increased the need for patients to be referred for more advanced facilities in the West Bank and Israel.<sup>240</sup> As a general rule, Israel prevents patients from travelling to receive medical treatment with the exception of life-saving cases whose medical treatment is unavailable in the Gaza Strip. This policy denies other patients suffering from serious and intractable diseases from obtaining exit permits on grounds that the treatment needed affects “quality of life.”<sup>241</sup>
119. In 2018, WHO recorded 133 patients and 52 patient companions who were called for security interrogation. In addition, one patient and four patient companions were arrested by the Israeli occupying forces at Beit Hanoun (Erez) checkpoint in 2018.<sup>242</sup> On 14 January 2017, 17-year-old Ahmed Shubeir, who was born with congenital heart disease, died because he was unable to access lifesaving treatment outside Gaza. Prior to his death, Israeli authorities attempted to coerce both Ahmed and his mother into collaborating in exchange for his treatment. In

<sup>237</sup> WHO occupied Palestinian territory, “WHO launches report on the Right to Health 2018,” (October 2019), at: <http://www.emro.who.int/pse/palestine-news/who-launches-report-on-the-right-to-health-2018-october-2019.html>.

<sup>238</sup> WHO occupied Palestinian territory, *Right to Health 2018* (WHO, 2019), p. 37, at:

[http://www.emro.who.int/images/stories/palestine/documents/WHO\\_Right\\_to\\_health\\_2018\\_Web-final.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/WHO_Right_to_health_2018_Web-final.pdf?ua=1).

<sup>239</sup> For more information, see: PCHR, “PCHR sends a submission to UN Committee on Economic, Social and Cultural Rights ahead of Israel's fourth periodic review during its 66<sup>th</sup> session highlighting Israel's restrictions on Palestinian's right to access healthcare in hospitals in West Bank, including East Jerusalem, Israel or abroad,” 15 September 2019, at: <https://pchrgaza.org/en/?p=12919>

<sup>240</sup> UNOCHA, “Recent trends in Palestinian access from Gaza: Erez and Rafah Crossings,” 8 October 2019, at: <https://www.ochaopt.org/content/recent-trends-palestinian-access-gaza-erez-and-rafah-crossings>

<sup>241</sup> PCHR, “Treatment Denied,” 16 October 2019, at: <https://pchrgaza.org/en/?p=13061>

<sup>242</sup> WHO occupied Palestinian territory, *Right to Health 2018*, *op. cit.*, p. 67, at:

[http://www.emro.who.int/images/stories/palestine/documents/WHO\\_Right\\_to\\_health\\_2018\\_Web-final.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/WHO_Right_to_health_2018_Web-final.pdf?ua=1).

October 2016, Ahmed was strip-searched and all of his medicines were confiscated during a seven-hour-long interrogation. An Israeli intelligence official said to him: “we know that your health condition is very difficult and we are ready to... give you the best doctors in exchange for your cooperation with us.” Ahmed refused, telling the official that he preferred to die rather than to become a collaborator. This coercive environment is emblematic of Israel's systematic disregard for Palestinian life and institutionalised regime of oppression and domination over the Palestinian people.<sup>243</sup>

120. In March 2019, the UN Commission of Inquiry called on Israel to lift the Gaza closure and to ensure all those injured during the Great Return March are granted prompt access to hospitals outside of Gaza.<sup>244</sup> The Israeli occupying authorities, however, have not implemented these recommendations. As of 30 September 2019, Gaza's Coordination and Liaison Office has recorded 591 applications for permits to exit Gaza for treatment by Palestinians injured during the protests. According to WHO, the permit approval rate for injured Palestinians in need of treatment outside Gaza remains significantly lower than the overall approval rate for patient permit applications, with 18 per cent approved, 27 per cent denied, and 55 per cent of applications delayed.<sup>245</sup> On 18 October 2019, CESCR expressed concern regarding Israel's “lengthy and complicated exit-permit system,” in addition to “the very limited availability of healthcare services and the deteriorating quality of health-care services in the Gaza Strip due to restrictions on dual use items, including essential medical equipment.”<sup>246</sup> CESCR called on Israel to “[i]mmediately lift the blockade and closures on the Gaza Strip,” also recommending that Israel “[f]acilitate the entry of essential medical equipment and supplies and the movement of medical professionals from and to Gaza,” and “[r]eview the medical exit permit system with a view to facilitating timely access to all medically recommended health care services by residents of Gaza.”<sup>247</sup>

121. Over the years, Israel has shown systematic disregard for Palestinian life, bodily integrity, health, and dignity, as reflected in its policy of excessive use of force against Palestinians, the obstruction of access to and delivery of healthcare, in particular for Palestinians injured by the Israeli occupying forces, and the violence inherent in Israel's institutionalised regime of systematic racial oppression and domination over the Palestinian people. As highlighted by WHO, “[t]he underlying conditions of life needed for enjoyment of good health and wellbeing by Palestinians are... detrimentally affected by the situation of ongoing military occupation of the West Bank and Gaza Strip... In addition to death and injury, exposure to violence has longer-term implications for physical and mental health, with Palestinian adolescents having one of the highest burdens of mental disorders in the Eastern Mediterranean Region.”<sup>248</sup> In particular, Israel's fragmentation of the Palestinian people and oPt has detrimentally impacted the enjoyment by Palestinians of their right to the highest attainable standard of physical and

<sup>243</sup> Al-Haq, “Al-Haq Statement on World Health Day,” 7 April 2017, at: <http://www.alhaq.org/advocacy/6342.html>.

<sup>244</sup> Report of the Commission of Inquiry, A/HRC/40/74, *op. cit.*, para. 122.

<sup>245</sup> WHO occupied Palestinian territory, Health Access: Barriers for patients in the occupied Palestinian territory, Monthly report, September 2019, p. 3, at: [http://www.emro.who.int/images/stories/palestine/documents/september\\_monthly\\_report\\_2019.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/september_monthly_report_2019.pdf?ua=1).

<sup>246</sup> CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Israel, 18 October 2019, E/C.12/ISR/CO/4, para. 58.

<sup>247</sup> CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Israel, 18 October 2019, E/C.12/ISR/CO/4, para. 59.

<sup>248</sup> WHO occupied Palestinian territory, *Right to Health 2018* (WHO, 2019), *op. cit.*, p. 9.

mental health,<sup>249</sup> including the underlying determinants necessary for the enjoyment of good health and well-being,<sup>250</sup> in an effort to maintain its apartheid regime.

### **5.3. Silencing of opposition**

122. A core element of the crime of apartheid is the intention of maintaining the regime.<sup>251</sup> Israel's third method of achieving this is by silencing opposition to its widespread and systematic human rights violations committed against the Palestinian people. In order to create a climate of fear and intimidation, Israel has systematically resorted to arbitrary detention, torture and other ill-treatment, and collective punishment, in violation of international humanitarian law, as well as smear and delegitimation campaigns against individuals or groups, including human rights defenders, seeking to challenge its prolonged occupation, human rights abuses, and apartheid regime over the Palestinian people. In particular, these policies and practices fall under Article II(f) of the Apartheid Convention, which considers the "[p]ersecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid" as an element of the crime of apartheid.

#### *5.3.1. Arbitrary detention*

123. Israel's State report gives little indication of its historic and ongoing mass incarceration of the Palestinian civilian population as a means to oppress and dominate the Palestinian people in the oPt.<sup>252</sup> Since 1967, 800,000 Palestinians have been detained under Israeli military orders, making up approximately 20 per cent of the total Palestinian population in the oPt and as much as 40 per cent of the total male Palestinian population. Of this total, some 10,000 Palestinian women have been imprisoned by the Israeli occupying forces since 1967, and about 8,000 Palestinian children have been arrested since 2000. As of October 2019, Israel continues to detain some 5,000 Palestinian political prisoners and detainees in 17 prisons, four interrogation centres, and four detention centres. Among the Palestinian political prisoners detained in Israel, 425 are administrative detainees, including five members of the Palestinian Legislative Council (PLC), three women, and three children. Children as young as 14 have been given administrative detention orders and serve out their detention in the same facilities as adults.

124. The frequency of the use of administrative detention as a method of subjugation, intimidation, and control has fluctuated over the years, steadily rising since the outbreak of the Second Intifada in September 2000, following the 2014 Israeli military escalation on Gaza, and after the recent escalation of October 2015. Whenever the conflict enters a new stage, the Israeli authorities rely on administrative detention to arrest a large number of Palestinians, as a means of punishment for Palestinians who oppose the occupation and Israel's widespread and systematic human rights violations against the Palestinian people. As such, administrative detention without charge or trial, one of the many aspects of Israel's discriminatory judicial system, has become a widespread tool of oppression and domination, forming part and parcel

<sup>249</sup> Article 12(1), ICESCR.

<sup>250</sup> See CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), 11 August 2000, E/C.12/2000/4.

<sup>251</sup> Rome Statute, Article 7(2)(h), Apartheid Convention, Article II.

<sup>252</sup> For all mentions of the Israeli prison system in its State report, see State report, paras 86–87, 315, 338–339.



of Israel's institutionalised effort to silence Palestinians and to undermine any efforts seeking to challenge Israel's apartheid regime.

125. In practice, Israel has divided detainees in Israeli prisons into three different groupings, with each grouping treated according to varying standards. These include: Israeli-Jewish criminal prisoners; Palestinian criminal prisoners with Israeli citizenship; and Palestinian political prisoners from the oPt, in addition to Palestinian political prisoners who hold Israeli citizenship. Israel makes legal, political, and procedural distinctions when dealing with each of the three groups of prisoners. Palestinian political prisoners with Israel citizenship do not enjoy the same rights as Israeli-Jewish prisoners, including the right to use a telephone, home visits, early releases after serving two-thirds of a sentence, and family visits without being separated by barriers. This discriminatory treatment is consistent with Israel's overall fragmentation of the Palestinian people and its maintenance of an institutionalised regime of racial domination and oppression.
126. In 2012, CERD expressed serious concern as to “the existence of two sets of laws” in the oPt for Palestinians and for Israeli-Jewish settlers unlawfully present in the territory under international law.<sup>253</sup> The Committee further expressed “great concern at the State party's maintenance of administrative detention for both Palestinian children and adults based on evidence that is kept secret for security reasons,”<sup>254</sup> and urged Israel “to end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law.”<sup>255</sup> However, Israel has consistently failed to comply with the Committee's recommendations, continuing to resort to widespread arbitrary detention of Palestinians both as collective punishment and as part of Israel's creation of a coercive environment designed to silence and intimidate Palestinians. Today, 425 Palestinian administrative detainees continue to be detained in Israeli prisons without charge or trial.<sup>256</sup> As such, Israeli administrative detention has become a key tool to silence Palestinians and to undermine any efforts seeking to challenge Israel's apartheid regime.

### *5.3.2. Torture and other ill-treatment*

127. Israel has also resorted to widespread and systematic torture and ill-treatment against Palestinian detainees, in violation of the absolute and non-derogable prohibition of torture.<sup>257</sup> Affidavits and documented cases gathered by various human rights organisations, including Addameer Prisoner Support and Human Rights Association, have shown that the Israeli occupying authorities use torture as the main technique to extract statements from Palestinian

<sup>253</sup> Article 49, Fourth Geneva Convention.

<sup>254</sup> *Ibid.*

<sup>255</sup> *Ibid.*

<sup>256</sup> Addameer, “Statistics,” at: <http://www.addameer.org/statistics>.

<sup>257</sup> See, notably, International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 90, Torture and Cruel, Inhuman or Degrading Treatment, at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_nil\\_rule90](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_nil_rule90) [accessed 7 October 2019]. See also Article 32, Fourth Geneva Convention; Article 7, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (hereinafter ‘ICCPR’); and Article 2(1), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85.



detainees, in violation of their rights to bodily integrity, physical safety, and basic dignity, doing so as a matter of State policy, with the legal cover provided by the Israeli courts.

128. Torture techniques, including physical pressure and methods of psychological torture, have been used since the beginning of Israel's occupation and have become standard operating procedure. Examples of such techniques include physical beatings, stress positions, sleep deprivation, isolation, and solitary confinement during interrogation, subjection to sounds of torture from neighbouring cells, deliberate medical neglect, screaming and cursing, threats of sexual harassment, particularly against women and children detainees, and threats of harming family members. Moreover, Addameer's documentation shows that the Israeli occupying forces continue to develop new methods of psychological torture that are used in conjunction with physical torture. These practices are also used against Palestinian children, as Israel prosecutes somewhere between 500 and 700 children in military courts every year, some as young as 12 years old. Israel's military courts lack basic and fundamental fair trial standards. According to Defence for Children International Palestine (DCI-Palestine), the majority of detained Palestinian children report being subjected to harsh interrogation techniques, amounting to torture and other cruel and inhuman treatment to coerce them into self-incrimination through the extraction of confessions. Another Israeli technique is the use of informants to extract information from the detainees, by misleading, luring, or threatening them. The informants use a strategy of exerting psychological pressure, by threatening detainees and their family members with physical violence or harm.
129. Over the years, Israeli High Court of Justice rulings have sanctioned torture, creating a dangerous situation for the life, safety, and bodily integrity of Palestinian detainees. In particular, the Israeli Supreme Court ruled, in Decision No. 94/5100 of 1999,<sup>258</sup> that the Israeli Security Agency, commonly known as the 'Shin Bet' or 'Shabak,' could no longer use "moderate physical pressure" against suspects under interrogation. Instead, it granted the use of torture and physical pressure in the case of a so-called "ticking bomb" scenario, whereby Israeli intelligence officials believe that a suspect is withholding information that could prevent an impending threat to life. This exception constitutes a grave legal loophole that legitimises the continued use of torture and other ill-treatment by interrogators of the Israeli Security Agency against Palestinian detainees, providing Israeli interrogators legal immunity for their actions. About 1,200 complaints alleging torture during Israeli interrogations have been filed since 2001. All these complaints have been closed without a single indictment.<sup>259</sup>
130. In February 2018, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, expressed his utmost concern after a December 2017 ruling by the Israeli Supreme Court exempting security agents from criminal investigation despite their undisputed use of coercive 'pressure techniques,' stating "[b]y exempting alleged perpetrators from criminal investigation and prosecution, the Supreme

<sup>258</sup> Israeli Supreme Court Decision No. 94/5100, *Public Committee Against Torture in Israel et al. v. Government of Israel et al.*, Judgment. An English translation of the Court decision is at: [http://www.hamoked.org/files/2012/264\\_eng.pdf](http://www.hamoked.org/files/2012/264_eng.pdf) [accessed 7 October 2019].

<sup>259</sup> Public Committee Against Torture in Israel, "Torture in Israel 2019: Situation Report," 26 June 2019, at: <http://stoptorture.org.il/2927/?lang=en>.

Court has essentially provided them with a judicially sanctioned 'license to torture'.”<sup>260</sup> On 26 November 2018, the Israeli Supreme Court issued a ruling in the case of Firas Tubayesh, 40, who was arrested by Israeli forces in 2012 and subjected to harsh torture during interrogation by Israel's General Security Service at the Shikma Interrogation Center in Asqalan. In the <sup>261</sup> decision, the Court expanded the definition of the so-called “ticking bomb” scenario, thereby activating and legalising the “necessity” defence. In doing so, the Israeli Supreme Court had returned to its 1999 Decision No. 94/5100, which had considered that the applicability of the “necessity” defence, in accordance with section 34(11) of the Penal Law, was linked to the immediacy of the act, meaning the occurrence of impending operations or attacks, rather than the gravity of this act. With this recent ruling, however, Israeli Supreme Court judges have considered that the “ticking bomb” scenario should be further broadened. Accordingly, the “necessity” defence was enacted to ensure the protection of Shabak interrogators and their immunity against criminal liability for the use of “special means of pressure,” as Supreme Court judges put it, despite such acts amounting to prohibited torture and other ill-treatment.

131. On 25 September 2019, the Israeli occupying forces arrested Samer Arbeed, 44, in Ramallah. During the arrest, Israeli soldiers beat Samer all over his body with their guns and took him to Al-Maskoubiyeh Interrogation Center in Jerusalem. There, he was subjected to harsh physical torture and other forms of ill-treatment at the hands of the Israeli occupying forces, which left him unconscious with fractures to his ribs, trauma, and bruises in his neck, chest, and legs, and unable to eat. On 28 September 2019, Addameer's lawyer was informed that Samer had been transferred to Hadassah Hospital in critical condition after being tortured almost to the point of death.

132. Our organisations recall that an element of the crime of apartheid, under Article II(a)(ii) of the Apartheid Convention is the infliction of “serious bodily or mental harm... by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment.” The Israeli court system has repeatedly sanctioned the use of physical and psychological torture and other ill-treatment as interrogation techniques that are systematically used against Palestinians, in violation of international law, and as part of an institutionalised regime of oppression and domination.

### 5.3.3. *Collective punishment*

133. In line with Article 33 of the Fourth Geneva Convention, “[c]ollective penalties and likewise all measures of intimidation... are prohibited.”<sup>262</sup> Yet, collective punishment has been a staple of Israel's prolonged 52-year occupation of the oPt, ranging from the 12-year closure of Gaza imposed on two million Palestinians there, to freedom of movement and access restrictions through the West Bank, including East Jerusalem, and other punitive measures including the

<sup>260</sup> OHCHR, “UN expert alarmed at Israeli Supreme Court's 'license to torture' ruling,” (20 February 2018), available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22675&LangID=E>.

<sup>261</sup> See High Court of Justice, *Fares Tbeish et al. v the Attorney-General et al.*, Decision No. 17/9018, 26 November 2018. Also OMCT, “It's now (even more) official: torture is legal in Israel, 21 March 2019, at: [http://blog.omct.org/its-now-even-more-official-torture-is-legal-in-israel/#\\_ftn1](http://blog.omct.org/its-now-even-more-official-torture-is-legal-in-israel/#_ftn1); Yotam Berger, “Israeli High Court Ruling May Make It Easier for Interrogators to Use Violence,” *Haaretz* (30 November 2018),. <https://www.haaretz.com/israel-news/premium-israeli-high-court-ruling-may-make-it-easier-for-interrogators-to-use-violence-1.6701416>.

<sup>262</sup> Article 33, Fourth Geneva Convention.

punitive revocation of residency rights, punitive house demolitions, and the withholding of bodies of Palestinians killed by the Israeli occupying forces. Another form of collective punishment imposed by the Israeli occupying authorities is the denial of work permits in the occupied West Bank, denying Palestinians the right to work and travel between the confines of the oPt and Israel. The permit regime has had a chilling effect on the lives of Palestinians, who are restricted from advocating for labour rights, improved working conditions, or other rights, for fear of being deemed a “security threat” and having their permits revoked by Israel.<sup>263</sup> Policies and practices of collective punishment have become an integral element of Israel's apartheid regime over the Palestinian people. They have damaging effects on Palestinian families and communities, and are designed to create a climate of fear, repression, and intimidation sought to weaken the capacity of the Palestinian people to effectively challenge the regime.

#### 5.3.3.1. Punitive residency revocation

134. By creating the precarious status of “permanent residents” for Palestinians in occupied East Jerusalem, Israel has created a situation whereby entry into and residency in Jerusalem is a revocable privilege as opposed to a right. Residency revocation is the most common and direct tool used to transfer protected Palestinians from occupied East Jerusalem.<sup>264</sup> Over the years, Israel has gradually expanded the criteria for the revocation of residency rights, including more recently on punitive grounds.
135. On 7 March 2018, the Israeli Parliament passed Amendment No. 30 to the Citizenship and Entry into Israel Law (Temporary provision) 5763 – 2003, codifying into law its punitive residency revocation practice, which amounts to unlawful collective punishment,<sup>265</sup> based on the vague and illegal ground of ‘breach of allegiance’ to the State of Israel. Based on such vague criteria, the Israeli Minister of Interior has been granted broad discretion to revoke Palestinians’ residencies, thereby further threatening Palestinian transfer from Jerusalem. The Israeli Ministry of Interior has already revoked permanent residency rights and family unification permits from family members of alleged Palestinian attackers. According to the Ministry of Interior, there have been 13 cases of residency revocation due ‘breach of allegiance’ since 1967.<sup>266</sup> In accordance with Article 45 of the Hague Regulations of 1907,<sup>267</sup> international humanitarian law prohibits Israel, as occupying Power, from compelling the civilian population in the oPt to swear allegiance to the occupying authorities.
136. The 2018 amendment was introduced following the Supreme Court's 13 September 2017 judgement on petition HCJ 7803/06. In this decision, the Court recognised that the Israeli

<sup>263</sup> “How Israel's permit regime costs Palestinians,” *Electronic Intifada* (28 December 2017), at: <https://electronicintifada.net/content/how-israels-permit-regime-costs-palestinians/22816>.

<sup>264</sup> Al-Haq, *Residency Revocation: Israel's Forcible Transfer of Palestinians from Jerusalem* (3 July 2017), at: <https://al-shabaka.org/releases/residency-revocation-israels-forcible-transfer-palestinians-jerusalem/>.

<sup>265</sup> Article 33, Fourth Geneva Convention.

<sup>266</sup> See Al-Haq, “The Occupation and Annexation of Jerusalem through Israeli Bills and Laws,” 5 March 2018, available at: <https://www.alhaq.org/advocacy/6263.html>. Al-Haq, “Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for ‘Breach of Allegiance,’” 8 March 2018, available at: <https://www.alhaq.org/advocacy/6262.html>.

<sup>267</sup> *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land* (adopted 18 October 1907, entry into force 26 January 1910).

occupying authorities had no justifiable legal grounds permitting the residency revocation of three Palestinian parliamentarians and the former Palestinian Minister of Jerusalem based on the vague and illegal criterion of “breach of allegiance.” Rather than strike the revocations down as unlawful, the Court upheld the order for a period of six months, allowing the Knesset time to provide an *ex post facto* justification. As such, it is clear that the Israeli Supreme Court is also a collaborator in the discriminatory practice of punitive residency revocation practice. According to the Law, as amended, ‘breach of allegiance’ is defined as committing, or participating in, or incitement to commit a terrorist act, or belonging to a terrorist organization, as well as committing acts of treason or aggravated espionage. By using this overbroad and vague definition of ‘breach of allegiance,’ the Israeli Parliament has made it possible for current and future Israeli Interior Ministers to revoke the residency rights of any Palestinian, based solely on their own interpretation that the resident “has committed an act which is considered a breach of loyalty to the State of Israel.”<sup>268</sup>

137. Israel’s residency revocation practice has already been used to silence politically active Palestinians, notably Palestinian parliamentarians, and is now being used to threaten the residency status of Palestinians challenging Israel’s widespread and systematic human rights violations and calling for justice and accountability in line with international law. Notably, on 6 October 2019, Israeli Interior Minister Arye Deri announced that he is working towards revoking the residency status of Palestinian resident and human rights defender Omar Barghouti based on the illegal ground of ‘breach of allegiance’ to the State of Israel.<sup>269</sup> As discussed in section 5.3.4., Israel has increasingly targeted human rights defenders, activists, and civil society organisations promoting the rights of the Palestinian people, seeking to silence and intimidate anyone advocating for the realisation of the rights of the Palestinian people and attempting to challenge Israel’s apartheid regime.<sup>270</sup>

#### 5.3.3.2. Punitive house demolitions and sealing

138. Israel’s practice of punitive house demolitions and sealing is well documented. In the period of 2012-2018, Al-Haq documented the punitive demolition of a total of 84 structures, including 79 houses and five stores, as part of a collective punishment campaign. Over the same period, the Israeli authorities sealed 11 houses, with a further five being partially sealed. As of 30 September 2019, Al-Haq documented six punitive house demolitions across the occupied West Bank since the start of the year, including two punitive demolitions in Hebron, two in Kobar, and one in Yatta, which led to the displacement of 15 Palestinians overall, including three children.<sup>271</sup>
139. The authority to demolish and seal homes is derived from the sweeping permissions provided for under Regulation 119 of the Defense Regulations (1945), which Israel “inherited” from the British Mandate system. Under this regulation, the military commander may forfeit, seal

<sup>268</sup> Al-Haq, “Palestinian and regional groups send joint urgent appeal to UN special procedures warning against the imminent deportation of Omar Barghouti,” (8 November 2019), available at: <http://www.alhaq.org/advocacy/16181.html>.

<sup>269</sup> Al-Haq, “Palestinian and regional groups send joint urgent appeal to UN special procedures warning against the imminent deportation of Omar Barghouti,” (8 November 2019), available at: <http://www.alhaq.org/advocacy/16181.html>.

<sup>270</sup> Al-Haq, “Palestinian and regional groups send joint urgent appeal to UN special procedures warning against the imminent deportation of Omar Barghouti,” (8 November 2019), available at: <http://www.alhaq.org/advocacy/16181.html>.

<sup>271</sup> Al-Haq’s Monitoring and Documentation Department.

off, or destroy the property of those whom he suspects of having committed acts of violence against the State, however in practice this has also been directed against the family members of those accused of carrying out alleged attacks, as well as their immediate neighbours in the case of apartment blocks.<sup>272</sup> This is done with complete impunity by the Israeli occupying forces, and is no longer subject to judicial review, as of 2005 following a decision by the Israeli High Court of Justice.<sup>273</sup>

140. As with the revocation of permanent resident rights, the punitive demolition of homes and the threat thereof serves to punish entire Palestinian families and communities based on allegations from the Israeli occupying forces. These practices amount to unlawful collective punishment and are manifestly unlawful under international law, including international humanitarian law and international human rights law.

#### 5.3.3.3. Withholding of bodies

141. A particularly disturbing form of collective punishment used by the Israeli occupying authorities is that of the withholding of bodies of Palestinians killed by the Israeli occupying forces. A common trend in Israeli military operations throughout the oPt is the use of excessive, disproportionate, and unnecessary use of lethal force, executed through a shoot-to-kill policy amounting to a practice of unlawful and extrajudicial killing (as described in section 5.2.3). Following such operations, the Israeli occupying forces may withhold the bodies of the deceased Palestinians and obstruct the collection of information and evidence, which would serve to illustrate such violations. This practice has been used for a considerable period of time, with many bodies being buried in so-called “cemetaries of numbers,” or mass graves, in undisclosed locations without identification markers. The total number of such cases is unknown; however according to B’Tselem, as of October 2019, at least 52 bodies of deceased Palestinians were being withheld by the Israeli occupying forces.<sup>274</sup>

142. The practice of punitively withholding the bodies of deceased Palestinians has been recently upheld by the Israeli High Court of Justice, in flagrant disregard for the respect international law demands for the dead.<sup>275</sup> Overturning a landmark 2017 decision, the Court held that the State of Israel “did not indicate a source of [legal] authority that allows it to hold bodies until consent to certain funeral arrangements is given” by the families of the deceased.<sup>276</sup> The Israeli authorities condition the return of remains upon specific funeral arrangements, frustrating the ability of Palestinians to bury their kin according to traditional practice. The Court further recognised that “there are a number of fundamental rights at stake, first and foremost human dignity”<sup>277</sup> and ordered the return of all bodies in the Israeli authorities’ possession.<sup>278</sup>

<sup>272</sup> Al-Haq, *Punitive House Demolitions* (31 October 2015).

<sup>273</sup> Al-Haq, *Collective Punishment Policy Resumes: Israeli Punitive House Demolitions in the oPt* (6 December 2014).

<sup>274</sup> B’Tselem, “Israeli High Court greenlights holding Palestinian bodies as bargaining chips,” 22 October 2019, at: [https://www.btselem.org/routine\\_founded\\_on\\_violence/20191022\\_hcj\\_greenlights\\_holding\\_palestinian\\_bodies\\_as\\_bargaining\\_chips](https://www.btselem.org/routine_founded_on_violence/20191022_hcj_greenlights_holding_palestinian_bodies_as_bargaining_chips)

<sup>275</sup> Customary IHL, Rule 115; Article 16, *First Geneva Convention*; Article 19, *Second Geneva Convention*; Article 122, *Third Geneva Convention*; Article 33(1), 139, *Fourth Geneva Convention*

<sup>276</sup> High Court of Justice, HCJ, *Jabareen v Israeli Police* 5887/17, para. 4 (English translation by Adalah), at: [https://www.adalah.org/uploads/uploads/English\\_SCT\\_decision\\_release\\_bodies\\_Umm\\_al-Fahem\\_July\\_2017\\_FINAL.pdf](https://www.adalah.org/uploads/uploads/English_SCT_decision_release_bodies_Umm_al-Fahem_July_2017_FINAL.pdf).

<sup>277</sup> *Ibid.*, para. 9.

<sup>278</sup> *Ibid.*, para. 15.



143. Following the Court's decision, the Knesset legislated an *ex post facto* justification for the retention of bodies in the form of the Counterterrorism Law (Amendment No. 3, 2018). Thus, the Court affirmed the illegal practice in its final decision in September 2019.<sup>279</sup> The withholding of bodies constitutes unlawful collective punishment for Palestinian families and may further amount to prohibited torture and other ill-treatment. In 2016, the UN Committee against Torture called on Israel to “take the measures necessary to return the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible so they can be buried in accordance with their traditions and religious customs, and to avoid that similar situations are repeated in the future.”<sup>280</sup> The withholding of deceased Palestinians' bodies is a post-mortem extension of Israel's institutionalised regime of systematic oppression and domination over the Palestinian people.

#### 5.3.4. Intimidation, harassment, and smear campaigns against human rights defenders

144. Under Article II(f) of the Apartheid Convention, the “[p]ersecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid” is an element of the crime of apartheid. The Rome Statute covers such acts under “the intention of maintaining that regime.”<sup>281</sup> The Israeli authorities have also pursued a campaign of intimidation, harassment, and delegitimisation of human rights defenders and human rights organisations calling for justice and accountability for Israel's widespread and systematic human rights violations. The Israeli Government, through Israel's Ministry of Strategic Affairs and affiliated groups, has carried out ongoing, systemic, and organised attacks amounting to a concerted smear campaign against human rights defenders and organisations advocating for the rights of the Palestinian people through incitement to racial hatred and violence, character assassinations, defamation, seeking to brand Palestinian human rights defenders as “terrorists,” and exerting direct attacks on human rights organisations' and directly attacking the organisation's funding in order to undermine their human rights and accountability work.<sup>282</sup>

145. The offices of Palestinian human rights organisations have experienced raids and equipment confiscation at the hands of the IOF, as part of what Amnesty International has referred to as “the Israeli authorities' clear determination to crush peaceful activism and silence NGOs” and to curtail vital human rights work.<sup>283</sup> Notably, on 19 September 2019, the IOF carried out a raid on the offices of Addameer Prisoner Support and Human Rights Association in Ramallah, seizing computers, hard drives, files, and equipment. This Israeli military raid exemplifies the

<sup>279</sup> Al-Haq, “Israeli High Court of Justice Upholds Israel's Policy of Withholding the Bodies of Palestinians Killed” (16 September 2019).

<sup>280</sup> See UN Committee against Torture, Concluding Observations on the fifth periodic report of Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5, para. 43. See also UN General Assembly, Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, 30 August 2016, para. 4, 25, 72(g).

<sup>281</sup> Article 7(2)(h), Rome Statute; Article II(f), Apartheid Convention.

<sup>282</sup> See, for example, Al-Haq, “Al-Haq submits a joint urgent appeal to the United Nations Special Procedures on the ongoing Israeli smear campaign against Al-Haq,” (24 August 2019), at: <http://www.alhaq.org/advocacy/14857.html>. See also Al-Haq, “Israeli Ministry of Strategic Affairs Campaign of Institutionalised Harassment Continues with the Alleged Closure of Palestinian NGOs' Financial Accounts,” 19 June 2019, at: <http://www.alhaq.org/advocacy/6039.html>.

<sup>283</sup> Amnesty International, “Israel ramps up assault on civil society with chilling raid on Palestinian NGO Addameer,” (19 September 2019), at: <https://www.amnesty.org/en/latest/news/2019/09/israel-ramps-up-assault-on-civil-society-with-chilling-raid-on-palestinian-ngo-addameer/>.

ongoing and systematic attacks against Palestinian civil society organisations challenging Israel's occupation and calling for accountability.<sup>284</sup> The message is clear that “anyone who dares to speak out about Israeli human rights violations in Israel and the Occupied Palestinian Territories risks coming under attack.”<sup>285</sup>

146. Palestinian human rights organisations seeking accountability for Israel's suspected crimes, including the crime of apartheid, through the ICC, have particularly been targeted by Israeli Government-led smear campaigns. They have experienced attacks against staff members, including death threats against themselves and their families as a direct result of their work at the ICC. Over the years, Palestinian human rights groups have been targeted by Israeli Government officials, Israeli newspapers, and Israeli organisations and institutions both at the local and international levels in an attempt to derail their work.<sup>286</sup> In March 2019, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr. S. Michael Lynk, noted with particular concern the harmful practices employed by the Israeli political leadership and State authorities to silence human rights defenders' criticism of certain Government policies through verbal attacks, disinformation campaigns and delegitimisation efforts, as well as the targeting civil society funding sources, which has affected respected Palestinian organisations such as Al-Haq, the Palestinian Center for Human Rights (PCHR), and Al Mezan.<sup>287</sup> Accordingly, the Special Rapporteur called on the GoI to “[e]nsure the protection of individuals seeking to exercise their rights to freedom of peaceful assembly and association, and freedom of expression, including human rights defenders.”<sup>288</sup>

### 5.3.5. Racist hate speech and incitement to racial hatred

147. Article 4 of ICERD contains an explicit obligation to “adopt immediate and positive measures designed to eradicate all incitement to, or acts of... discrimination,”<sup>289</sup> and in particular to “not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”<sup>290</sup> This provision, as observed by the Committee in its General Recommendation XV, is “central to the struggle against racial discrimination,”<sup>291</sup> due to hate speech's primary aim to “degrade the standing of individuals and groups in the estimation of society.”<sup>292</sup> As such, Israel has a positive obligation under ICERD not only to refrain from partaking in, and allowing its representatives and officials from disseminating, hate speech and incitement to racial hatred, but to ensure that private individuals are not empowered to engage in such acts with impunity. This is of particular concern for the Palestinian people due to the continued and protracted trends of racial violence directed towards Palestinian persons,

<sup>284</sup> Addameer, “Israeli Occupation Forces Raid Addameer's Office and Steal its Belongings,” 19 September 2019, at: <http://www.addameer.org/news/israeli-occupation-forces-raid-addameers-office-and-steal-its-belongings>.

<sup>285</sup> Amnesty International, (19 September 2019), *op. cit.*

<sup>286</sup> *See*, for example, Al-Haq, “Al-Haq Under Attack – Staff Member's Life Threatened,” (3 March 2016), at: <http://www.alhaq.org/advocacy/6432.html>.

<sup>287</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 15 March 2019, A/HRC/40/73, para. 24.

<sup>288</sup> *Ibid.*, para. 65(c).

<sup>289</sup> ICERD, Article 4.

<sup>290</sup> ICERD, Article 4(c).

<sup>291</sup> CERD, General Recommendation XV on article 4 of the Convention, 15 September 1993, A/48/18, para 1.

<sup>292</sup> CERD, General Recommendation 35, 26 September 2013, CERD/C/GC/35 at para 10.

due to the prevalence of racial hatred in public discourse. As noted by the Committee, “[i]ncitement characteristically seeks to influence others to engage in certain forms of conduct, including the commission of crime, through advocacy or threats,”<sup>293</sup> thus the issue of hate speech and racial hatred must be viewed in the context of the resulting acts of physical violence directed toward Palestinians.

148. Israel has failed to intervene to prevent the proliferation of hate speech targeting Palestinians, despite claims of having made a substantial increase in the number of relevant investigations and indictments conducted and carried out.<sup>294</sup> As documented by 7amleh – The Arab Center for the Advancement of Social Media, a total of 474,250 posts on social media amounting to hate speech and incitement against Palestinians were recorded in 2018, averaging at one every 66 seconds.<sup>295</sup> This figure marks an increase from 2017, from a total of 445,000, or one every 71 seconds.<sup>296</sup> A direct link may be observed between this increase and the state of Israeli political discourse: of the posts documented in 2018, a startling 115,000 were made in May 2018 alone, following the introduction a few months prior of the Jewish Nation-State Law.<sup>297</sup> This failure to act creates a pervasive fear of retaliation for engagement with political issues online from public and private actors among Palestinians, particularly the youth. 7amleh reports that of all Palestinian youth active on social media, 35 per cent fear government surveillance of their activities and 20 per cent feel constantly unsafe expressing opinions online.<sup>298</sup> The arrest of Palestinians for political participation has been a hallmark of Israel's regime of oppression and domination for decades, with the arrest of 350 Palestinians in the West Bank in 2018, including East Jerusalem, on charges of “incitement.” Roughly a total of 500 to 700 children have been arrested and prosecuted in the Israeli military court system annually, in many cases for similar charges (see also sections 5.3.1 and 5.3.2).<sup>299</sup> Moreover, a reported 25 per cent of Palestinian youth have reportedly been interrogated by the Israeli authorities in the West Bank, with a further 15 per cent of Palestinian youth with Israeli citizenship having suffered similar treatment.<sup>300</sup>

149. There have been numerous instances of hate speech and incitement to racial hatred disseminated by Israeli officials and public representatives. In a particularly disturbing example, Ayelet Shaked, Israel's Minister of Justice from 2015 until 2019, openly called for violence against all Palestinians in a Facebook post, immediately prior to the kidnapping and burning alive of Palestinian teenager, Muhammad Abu Khdeir, by Israeli-Jewish settlers in 2014.<sup>301</sup> She posted:

<sup>293</sup> *Ibid* at para 16.

<sup>294</sup> State report at paras 60-62.

<sup>295</sup> “The Index of Racism and Incitement in Israeli Social Media 2018: An inciting post against Palestinians every 66 seconds,” 7amleh (11 March 2019), <https://7amleh.org/2019/03/11/the-index-of-racism-and-incitement-in-israeli-social-media-2018-an-inciting-post-against-palestinians-every-66-seconds/>.

<sup>296</sup> *Ibid*.

<sup>297</sup> *Ibid*.

<sup>298</sup> “Silencing Networks: The Chilling Effect among Palestinian Youth in Social Media” 7amleh (October 2019), at: <https://7amleh.org/2019/10/20/silenced-net-the-chilling-effect-among-palestinian-youth-in-social-media/>.

<sup>299</sup> *Ibid* 20.

<sup>300</sup> *Ibid*.

<sup>301</sup> See, e.g., Al-Haq, “Arson Attack Emblematic of Israel's Settlement Enterprise,” (2 August 2015), available at: <http://www.alhaq.org/advocacy/6511.html>.

“They [Palestinians] are all enemy combatants, and their blood shall be on all their heads. Now this also includes the mothers of the martyrs, who send them to hell with flowers and kisses. They should follow their sons, nothing would be more just. They should go, as should the physical homes in which they raised the snakes. Otherwise, more little snakes will be raised there.”<sup>302</sup>

Shaked further announced: “[e]very suicide attacker should know that he takes with him also his parents and his house and some of his neighbours. Every brave Um-Jihad who sends her son to hell should know she’s going with him, along with the house and everything inside it.”<sup>303</sup> These comments are but one example in an extended tradition of Israeli officials issuing dehumanising and inciting statements against Palestinians.<sup>304</sup>

150. Rather than address the threat posed by hate speech and incitement to racial hatred against Palestinians, Israeli lawmakers have taken legislative steps to repress Palestinian speech. The so-called “Facebook Bill” (2018), currently tabled at the Knesset, would empower Israeli police to petition a court to remove any content posted online, without the ability for intervention on the part of the person who originally posted the material. The bill would also grant Israeli administrative courts the power to order corporations such as Facebook, Google, and Twitter, to block content that “incites violence” based on the request of the Government. Further, the proposed “Prohibition Against Photographing and Documenting [Israeli] Soldiers Bill” would criminalise the filming and photographing of Israeli military personnel while they are on duty, as well as the sharing of such content on social media. This measure, which is purportedly intended to defend “soldiers’ morale,” would mandate a five-year prison term for violating its provisions.<sup>305</sup> Such measures have the purpose and effect of further denying Palestinians their freedom of speech and disabling Palestinians, individually and collectively, from challenging Israel’s apartheid regime.

## 6. Conclusions and recommendations

151. Israel has created an institutionalised regime of racial domination and oppression over the Palestinian people as a whole, using the strategic fragmentation of the indigenous Palestinian people and of the oPt as a main tool for the maintenance of its apartheid regime, which predates its ratification of ICERD and is rooted in the foundational laws of the State of Israel, its discriminatory policies and practices. In addition to entrenching fragmentation, Israel has maintained its apartheid regime through the creation of coercive environments designed to drive the ongoing transfer of Palestinians from their homes, lands, and property and to weaken the capacity of the Palestinian people to effectively challenge its institutionalised domination and oppression. Finally, Israel has systematically silenced any attempts at challenging its apartheid regime through widespread arbitrary detention, systematic torture and other ill-

<sup>302</sup> Ali Abunimah, “Israeli lawmaker’s call for genocide of Palestinians gets thousands of Facebook likes,” *Electronic Intifada* (7 July 2014, updated 8 May 2015), available at: <https://electronicintifada.net/blogs/ali-abunimah/israeli-lawmakers-call-genocide-palestinians-gets-thousands-facebook-likes>.

<sup>303</sup> *Ibid.*

<sup>304</sup> See listed statements at “Israeli Official Incitement: September 2019,” State of Palestine, Palestine Liberation Organization, Negotiations Affairs Department, at: <https://www.nad.ps/en/media-room/israeli-incitement-reports/israeli-official-incitement-september-2019>.

<sup>305</sup> “Will a new wave of Israeli legislation diminish internet freedoms?” *7amleh?* (14 August 2018), at: <https://7amleh.org/2018/08/14/will-a-new-wave-of-israeli-legislation-diminish-internet-freedoms/>.

treatment, and various forms of collective punishment designed to create a climate of fear and intimidation and to undermine the exercise by the Palestinian people of their inalienable rights, in particular the right to self-determination, including permanent sovereignty over natural resources, and the right of Palestinian refugees to return to their homes and property. Accordingly, our organisations submit the following conclusions and recommendations.

## **6.1. Conclusions**

152. Our organisations offer the following conclusions:

- i. Israel has created an institutionalised regime of systematic racial domination and oppression over the Palestinian people as a whole, amounting to the crime of apartheid within the meaning of the Rome Statute and in violation of Article 3 of ICERD, giving rise to State responsibility and individual criminal responsibility of the perpetrator.
- ii. Israel's fragmentation of the Palestinian people is a main tool through which it maintains its apartheid regime, including the persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their inalienable right of return to their homes and property, and the continued fragmentation of the oPt, in particular through the closure of the Gaza Strip and of the city of Jerusalem and the imposition of severe movement and access restrictions throughout the oPt.
- iii. Israeli legislation and institutions deferring to principles of the WZO/JA, JNF, and affiliates trigger the condition of benefitting Jews only, as natural persons holding a superior "nationality" status, distinct from Israeli citizenship, which is also applicable to Jewish persons who are citizens of States other than Israel.
- iv. Israel's apartheid regime seeks to construct such a category for Jewish persons, both in theory and in practice, by discriminating materially against other national groups on that constructed basis, and the Palestinian people is the most immediate object of that institutionalised racial discrimination.
- v. Israel has created both "legal" pretexts and coercive environments designed to drive the displacement of the indigenous Palestinian people. These form part of Israel's institutionalised material discrimination against non-Jews.
- vi. Israel has not only failed to implement the Committee's previous Concluding Observations, but continues to carry out population transfer across its international border and demographic manipulation within its jurisdiction to achieve and maintain an Israeli-Jewish demographic majority in all territories, notably in the city of Jerusalem, where Israel has sought to consistently reduce the presence and proportion of Palestinians as part of a wider master plan for the city.
- vii. Israel has created a coercive environment designed to drive Palestinian transfer through discriminatory planning and zoning, illegal house demolitions, forced evictions, which violate the full spectrum of Palestinians' rights, and denial of access to land and other natural resources, which deprive the indigenous Palestinian people on both sides of the Green Line of their means of subsistence.



- viii. Israel has resorted to coercive measures, notably arbitrary detention, torture and other ill-treatment, and collective punishment, including punitive residency revocation, punitive house demolitions and sealing, and the withholding of bodies, amongst other punitive practices designed to suppress the will of the Palestinian people and to weaken their capacity to challenge Israel's apartheid regime.
- ix. Israel has resorted to institutionalised intimidation, harassment, and smear campaigns against human rights defenders and organisations with the intention of silencing opposition to its apartheid regime and widespread and systematic human rights violations committed against the Palestinian people.
- x. All States share *erga omnes* obligations to oppose, bring to an end, and rectify this illegal situation created and maintained by Israel.

## 6.2. Recommendations

153. Our organisations offer the following recommendations:

- i. We urge the Committee to recognise and declare that Israel's discriminatory laws, policies, and practices have established, and continue to maintain, an apartheid regime of systematic racial domination and oppression over the Palestinian people as a whole, using fragmentation as a main tool to maintain its apartheid regime, in violation of Article 3 of ICERD, and giving rise to individual criminal responsibility at the ICC in addition to giving rise to Israel's State responsibility and obligations of third States to bring the illegal situation to an end, in line with the findings of the 2017 ESCWA report.
- ii. We recommend that the Committee demand that Israel repeal all legislation enshrining racial discrimination, domination, and oppression, including repealing the Basic Laws and other statutes that directly or indirectly effect the enjoyment of human rights through racial and/or racialized distinctions, including on the basis of religion. In particular, we urge the Committee to call on Israel to repeal the following laws, as foundational to Israel's creation of an apartheid regime, including but not limited to:
  - (a) The Basic Law: The Law of Return (1950);
  - (b) The Citizenship Law (1952);
  - (c) The Absentee Property Law (1950);
  - (d) The Entry into Israel Law (1952) and its amendments; and
  - (e) The Basic Law: Israel as the Nation-State of the Jewish People (2018).
- iii. We urge the Committee to recognise and to declare that the Jewish Nation-State Law (2018) is antithetical to the object and purpose of the Convention as it has the purpose of nullifying the recognition, enjoyment, and exercise, on an equal footing, of all human rights and fundamental freedoms in the State Party.
- iv. We recommend that the Committee call on Israel to revoke the 2003 Citizenship and Entry into Israel Law (Temporary provision) and ensure family unification of all persons

within its territory or subject to its effective control, irrespective of their ethnicity or national or other origin.

- v. We urge the Committee to call on Israel to cease all measures and policies, which contribute to the fragmentation of the Palestinian people, including the denial of Palestinian refugee return, the closure of Jerusalem and of the Gaza Strip, the construction of the Annexation Wall, and the imposition of severe movement and access restrictions, as core elements in Israel's creation of an apartheid regime over the Palestinian people on both sides of the Green Line and further afield. We also urge the Committee to demand that Israel make suitable and sufficient reparation to all fragments of the affected Palestinian people, including Palestinian refugees and displaced persons, as mandated by international law.
- vi. We urge the Committee to consider Israel's persistent refusal to grant Palestinian refugees and displaced persons their right of return to their homes and property in their villages, towns, and cities of origin, as a core element in its creation and maintenance of its apartheid regime over the Palestinian people, and urge the Committee to reaffirm the right of return of all Palestinian refugees and internally displaced persons to their homes, property, and land which they were forced to flee in 1948 and thereafter, and to call on Israel to comply with Articles 5(d)(ii) and 5(d)(v) of ICERD.
- vii. We urge the reversal of Israel's policies and practices with regards to demographic manipulation as a manifestation of the crimes of population transfer and apartheid, in violation of Article 3 of the Convention, through the fragmentation of the Palestinian people as a whole, the prolonged and illegal closure of Gaza, the closure of Jerusalem and the precarious "permanent residency" status of Palestinians in East Jerusalem, the imposition of two separate legal systems in the occupied West Bank, and the denial of the internationally recognised right of return of Palestinians living as refugees and in exile.
- viii. We urge the Committee to demand Israel cease forthwith the ongoing closure and lift the blockade of Gaza with immediate effect, to lift restrictions on dual use items, and to recognise that Israel's discriminatory policies and practices, amounting to the crime of apartheid, have already made the Gaza Strip uninhabitable and violate the full spectrum of rights owed to the Palestinian people, including Palestinian refugees, in the Gaza Strip by denying them the enjoyment on an equal footing of fundamental rights and freedoms, in violation of Articles 3 and 5 of the Convention.
- ix. We urge the Committee to request information from Israel, the occupying Power, on measures taken to implement the recommendations of the UN Commission of Inquiry on the 2018 protests in the oPt, and in particular in relation to the Commission's calls on Israel to lift the blockade on Gaza with immediate effect, to fulfil the right to health of all Palestinians, and to bring Israel's rules of engagement for the use of live fire in line with international human rights law and refrain from resort to excessive and lethal force in violation of international standards.

- x. We urge the Committee to call on Israel to uphold the right of the Palestinian people to the highest attainable standard of physical and mental health, including to ensure Palestinians in the Gaza Strip, including those injured during the Great March of Return, are guaranteed their right to access necessary treatment in the rest of the oPt, in Israel, or abroad, to ensure the safety of health workers from attacks by the Israeli occupying forces, to refrain from obstructing healthcare provision in the oPt, and to remove all barriers to the enjoyment of the right to health of Palestinians, including barriers to the enjoyment of the underlying determinants of health in the oPt.
- xi. We recommend that the Committee reaffirm the findings of the 2004 ICJ Advisory Opinion on the illegality of the Annexation Wall built in the occupied West Bank, including in and around East Jerusalem, and call on Israel to uphold its obligation to cease forthwith the works of construction of the Annexation Wall, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with international law.
- xii. We call on the Committee to urge Israel to cease conferring public functions of the State to the WZO/JA and JNF, which are chartered to carry out material discrimination against non-Jewish persons and have historically prevented the indigenous Palestinian people on both side of the Green Line from accessing or exercising control over their means of subsistence, including their natural wealth and resources, by exploiting and diverting Palestinian natural resources for the benefit of Israeli-Jewish settlers.
- xiii. We urge the Committee to call on Israel to reconsider its entire planning and zoning policy in consultation with the indigenous Palestinian people directly affected by Israel's discriminatory measures, which include illegal house demolitions and destruction of property, denial of access to land and natural resources, and the creation of coercive environments designed to drive Palestinian transfer. We further recommend that the Committee consider Israel's discriminatory planning and zoning regime as a manifestation of the crimes of population transfer and apartheid, in violation of Article 3 of the Convention.
- xiv. In light of the ongoing targeting of human rights defenders, organisations, and members of civil society, as well as individual Palestinians in their private capacity online, we urge the Committee to demand that Israel immediately cease any and all practices of intimidation and silencing of these groups, in violation of their right to freedom of expression, including through arbitrary detention, torture and other ill-treatment, institutionalised hate speech and incitement, residency revocation, deportations, and other coercive or punitive measures.
- xv. We urge the Committee to demand that Israel immediately cease the construction of all illegal settlements in the occupied West Bank, including occupied East Jerusalem, and dismantle those already in existence, in accordance with its obligations, as occupying Power, under international humanitarian law and as mandated by international criminal law, in particular the Rome Statute applicable in the oPt, and to call for an end to Israel's prolonged occupation of the Palestinian territory, in line with Israel's obligation to

uphold the right of the Palestinian people to self-determination, including permanent sovereignty over natural wealth and resources.

- xvi. We urge the Committee to call for accountability and access to justice for apparent and serious violations of international law as a means of bringing to an end and rectifying the illegal situation created and maintained by Israel, including by calling for the opening of an investigation by the Office of the Prosecutor of the ICC into the situation in Palestine, as a viable independent judicial body capable of ending impunity for crimes committed against the Palestinian people and effectively deterring the commission of future crimes.