

**Report by the Internal Displacement Monitoring Centre to the Committee on the Elimination of Racial Discrimination on the occasion of Israel’s 14th, 15th and 16th Periodic Reports**

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# Executive Summary

Racial discrimination is manifest in Israeli policies and practices relating to housing, settlements and planning in the occupied Palestinian territory (oPt), including but not limited to demolitions of civilian property, forced evictions, land expropriation, settlement establishment and expansion, construction of the Wall, restricted access to services, and settler violence. These policies effectively promote Jewish settlement over the rights of Palestinians in the oPt, in clear disregard of their status as protected persons under international humanitarian and human rights law.

Of particular concern is that Israel’s discriminatory policies, both individually and in combination, are causing the forced displacement of Palestinians in the oPt. The effects of these policies are especially evident in the occupied West Bank, including East Jerusalem and Area C, where the forced displacement of Palestinians from these areas is impacting on a range of fundamental human rights and humanitarian needs.

Over the last decade, thousands of Palestinians within the oPt have been forcibly evicted, have had their homes demolished for non-adherence to discriminatory planning regulations and have been forced to seek alternative housing or to construct makeshift shelters for fear of losing their rights over their land.[[1]](#footnote-1) Thousands of others live in unsafe, uncertain and unsanitary conditions with poor infrastructure. Others, such as the indigenous Bedouin communities, have been forcibly displaced multiple times, whilst Israel denies their traditional rights over land and enacts policies to severely restrict traditional livelihoods and agricultural practices. Significant numbers of Palestinians in the West Bank are also forcibly displaced as a result of chronic lack of access to essential services, in particular to education, water, and sanitation.

It is not permissible for Israel to justify its discriminatory treatment of Palestinians on the basis that they have a different status in international law as ‘protected persons’ and that Israel is under no obligation to treat them as favourably as Israeli citizens (either Jewish or Arab). Discrimination against persons under the control of the State party on the basis of nationality or ethnicity is prohibited by the International Convention on the Elimination of all forms of Racial Discrimination.

The information contained in this report demonstrates a clear practice of deliberate discrimination against the Palestinian community on the basis of nationality or ethnicity. The discrimination is manifested directly through discriminatory law and policies as well as indirectly through the disproportionate impact of generally applicable laws on the Palestinian community. As the transfer of nationals of State parties into occupied territory is prohibited by international humanitarian law, there is no legitimate basis for a permanent Israeli civilian presence within the oPt, let alone laws and policies which actively prefer and promote such a presence.

As an international non-governmental organisation with a developed expertise in working on issues of displacement and durable solutions, IDMC submits this report to the Committee on the Elimination of Racial Discrimination (CERD) for its consideration of Israel’s compliance with its obligations under the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), obligations that IDMC considers are not presently being met by the State party. The report focuses in particular on violations of housing, land and property-related issues and addresses alleged violations of Articles 2 and 5 of the Convention.

# Article 2(1)(a)

***Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation***

The overall approach of Israeli authorities to issues of land, housing, settlements and planning in the oPt demonstrates clear discriminative intent, encouraging Jewish settlement over the rights of Palestinians as ‘protected persons’ under principles of international humanitarian and human rights law. The issue of discrimination must be framed against the position that Israeli settlements in the oPt are unlawful under international law and therefore, settlement activities are not permitted.[[2]](#footnote-2) This Committee has previously expressed concern at Israel’s assertion that it could legitimately distinguish between Israelis and Palestinians in the oPt on the basis of citizenship and reiterated the illegality of Israeli settlements under international law.[[3]](#footnote-3)

Since the State party’s last review, settlement construction and expansion in the oPt has continued, and it is now estimated that there are nearly 507,000 settlers in the oPt, with 196,000 of those living in East Jerusalem.[[4]](#footnote-4) Compounding the violation of an increasing number of settlements in the oPt, settlers receive preferential treatment through the use of ‘state land’ allocated for settlements, provision of infrastructure such as roads and water systems, high approval rates for planning permits and the establishment of Special Planning Committees comprised of settlers for consultative decision-making processes. In contrast, Palestinian communities have no access to planning decisions that directly affect them, are rarely consulted in the drafting or preparation of plans and face prohibitively expensive and bureaucratic procedures to object to plans already established. The actions and decisions of Israeli public authorities are playing a key role in facilitating Israeli settlements in the oPt and perpetuating discrimination.

## The Civil Administration

The practices of Israel’s Civil Administration in the oPt reflect the failure of Israeli authorities to act in conformity with the obligation to eliminate discrimination. The Civil Administration, the Israeli military body that governs the occupied West Bank, is responsible for the approval of all planning and zoning in the 60 percent of the West Bank classified as Area C under the Oslo Agreements.

In purely statistical terms the discrimination is manifest, as 70 percent of land in Area C of the West Bank has been allocated for either Israeli military or civilian purposes or for settlements. Of the remaining 30 percent, only one percent of Area C is, in practice, available for Palestinian development and much of that land is already built up.[[5]](#footnote-5) Over 94 percent of applications for building permits to construct homes, livelihood structures and other buildings, submitted to the Israeli authorities by Palestinians between January 2000 and September 2007 were denied.[[6]](#footnote-6) Failure to receive an Israeli-issued building permit can lead to forced evictions and demolitions, which results in the forced displacement of Palestinians from these areas.

## The Jerusalem Municipality

In occupied East Jerusalem, an area that was illegally annexed by Israel in 1967, the Jerusalem Municipality is directly implicated in implementing discriminatory policies relating to zoning and planning. These policies are linked to a policy of “demographic balance” that has been a stated aim of official municipal planning documents.[[7]](#footnote-7) Under this policy, which can be traced back to the 1970s and is openly discussed by Municipality officials, the Municipality aims to maintain a demographic balance of approximately 70 percent Jews to 30 percent Palestinians within the city of Jerusalem.[[8]](#footnote-8) The most recently proposed city master plan, “Jerusalem 2000” calls for a 60/40 percent demographic balance and stresses the importance of maintaining an overwhelming Jewish majority in the city.[[9]](#footnote-9)

As a result of this policy, the Municipality implements a planning and zoning regime that has made it extremely difficult for Palestinians to construct or renovate homes in occupied East Jerusalem – it is estimated that only 13 percent of the available land area of occupied East Jerusalem is available for Palestinian construction.

Palestinian areas of East Jerusalem also suffer from discriminatory neglect in the provision of public infrastructure, facilities and services. Despite the fact that all residents of Jerusalem are required to pay municipal taxes, the services provided to Palestinian residents in East Jerusalem differ significantly. East Jerusalem residents, who make up 36 percent of the population of Jerusalem, receive 12 percent of the municipal budget, while the 64 per cent of the population who reside in West Jerusalem receive the remaining 88 percent of the budget.[[10]](#footnote-10) This discriminatory allocation of budgetary resources has resulted in substantial inequalities between Palestinian and Israeli sections of Jerusalem, including a lack of over 50 kilometres of sewage lines in East Jerusalem, forcing multiple Palestinian areas to rely on open drains for sewage disposal.[[11]](#footnote-11) Only eight post office stations exist in East Jerusalem to serve the approximate 300,000 residents, while the 500,000 residents of West Jerusalem have 42 stations for their use.[[12]](#footnote-12) For the small percentage of Palestinian residents who are able to build ‘legally’, this lack of infrastructure only serves to increase the difficulty and costs of construction.

# Article 2(1)(c)

***Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists***

The application of certain laws impermissibly discriminates between Jewish Israelis and Palestinians in the oPt in the realm of property and access to land. In illegally-annexed East Jerusalem, Israel has extended its national legal jurisdiction over the land area and the majority of the Palestinian population living therein, in contravention of international law. In the rest of the oPt, Israel illegally applies national laws extra-territorially to settlements in the oPt, while the Palestinian population is subject to an extensive regime of Israeli military orders issued by a military commander.

## The Absentee Property Law 1950

This law severely discriminates against Palestinians, as it is being used as a method by which to deprive Palestinians of use, access to and ownership of their housing, land and property in East Jerusalem.[[13]](#footnote-13) Its essence is to transfer the property left behind by Palestinians after they fled or were deported during the 1948 War to the exclusive control of the state of Israel. Although the Law is applicable to a wide sector of Israel’s citizens and residents, it has been applied almost exclusively to Arab citizens and residents of Israel and Palestinians living in the occupied territory.[[14]](#footnote-14) Under the auspices of this Law, properties have been expropriated from the hands of Palestinians who, under international law, are protected persons in occupied territory, and in an area (East Jerusalem) on which the application of Israeli sovereignty is contrary to international law. Under this Law, the definition of an ‘absentee’ is broadly interpreted and includes Palestinians who are deemed by law to have been absent, even though they are currently present in Israel.[[15]](#footnote-15) Such persons are paradoxically termed ‘present absentees’.

In the most absurd application of this Law, the illegal annexation of occupied East Jerusalem to Israel has meant that East Jerusalem properties belonging to West Bank-resident Palestinians who do hold the requisite identity documents to reside in East Jerusalem became absentee property, since the property became located in ‘Israel’ while the owner was located in ‘any part of Palestine outside the area of Israel’. The Absentee Property law is not being applied to settlers who own property, who should technically be considered ‘absentees’ in relation to properties they own in occupied East Jerusalem, Jerusalem or in Israel , since they live in the occupied West Bank.

## Law and Administration Procedures Law (Consolidated Version) 1970

Under this law, the Israeli Custodian General[[16]](#footnote-16) is obligated to return to Jewish owners or their heirs/assignees properties in occupied East Jerusalem that had been under Jordanian control from 1948-1967. Conversely, Palestinians who have been internally displaced are prevented from reclaiming their pre-1948 owned property in West Jerusalem or other parts of what is now Israel and are therefore blocked from reasserting their property rights and have little access to restitution as a result of the Absentees Property Law 1950.[[17]](#footnote-17)

One prominent example of the discriminatory effects of these property laws concerns the case of the residents of part of the Sheikh Jarrah[[18]](#footnote-18) area in East Jerusalem. This case concerns ongoing legal proceedings for the eviction of nine Palestinian families who are refugees from the 1948 War. Following the war, 28 Palestinian refugee families were resettled in the East Jerusalem area of Sheikh Jarrah in a cooperative project of the government of Jordan and the United Nations Reliefs and Works Agency for Palestine Refugees in the Near East (UNRWA). In the 1970s Israeli settler groups began proceedings to claim ownership of these properties. In 2008 and 2009, three of the Palestinian families were forcibly evicted from these homes, and one family was evicted from an extension built onto their home, all of which were then taken over by Israeli settlers who continue to occupy the premises. Israeli courts have, to date, found in favour of the Jewish claimants citing the ‘primary’ registration of the land in 1972, which was based on their pre-1948 ownership claims. 25 of the 28 remaining families who continue to live on this property face a real threat of forced displacement.

Whilst land settlement procedures in East Jerusalem have effectively been frozen since 1967, these Jewish claimants have succeeded in obtaining land in East Jerusalem, while there is no equivalent legal provision for Palestinians to do the same. Palestinian families who owned property in what is now Israel prior to 1948 are unable to initiate similar legal proceedings to reclaim their land. The lack of reciprocal entitlements indicates that such proceedings are based on a discriminatory and arbitrary legal foundation. Ultimately, these laws, which fail to protect the occupied population and limit the property rights of Palestinians, are used in combination to strengthen Israel’s illegal annexation of East Jerusalem by facilitating the forcible displacement of Palestinians from the area.

## Order concerning Land and Water Settlement (Judea and Samaria) (No. 291) 1968

Under this order Israel initiated a freeze prohibiting any new land registration procedures in the West Bank and preventing the finalisation of all land registration procedures that were in process at the time of Israel’s occupation in 1967. As a result, nearly 70 percent of land in the West Bank remains unregistered in the Land Registry,[[19]](#footnote-19) leaving the traditional owners and residents of the land vulnerable to confiscation or expropriation of their land and thus at risk of forced displacement; a situation which has been fully utilised by Israeli authorities.

The official reason provided by Israeli authorities for stopping the land settlement process in the West Bank following its occupation in 1967 was its duty to protect the rights of absentees; those Palestinians who fled the West Bank in 1967 and left much property behind them, including hundreds of thousands of *dunams* (tens of thousands of hectares) of land. Israel claimed that carrying out land settlement investigations under such circumstances would lead to much of the land belonging to absentees being registered in the Land Registry in the names of local residents who had not fled the area, thus seriously harming the absentees’ property rights.[[20]](#footnote-20)

However, this has not prevented Israeli authorities from allocating ‘absentee’-owned land – fully registered in the Land Registry before 1967 – for the construction of Israeli settlements. Israel’s own State Comptroller found that in the 1960s and 1970s, thousands of *dunams* (hundreds of hectares) of absentee land in the Jordan Valley were allocated for the construction of Israeli settlements.[[21]](#footnote-21)

## The Permit Regime

The permit regime instituted by Israeli authorities obligates Palestinians to obtain special and provisional permits from the Israeli army to enter certain areas of the oPt that have been declared off-limits to Palestinians. These areas include almost 95 percent of the Jordan Valley, the ‘Seam Zone’ area between the Wall and the 1949 Armistice ‘Green Line’, and all of the settlement areas and land reserved for settlement construction. Only Palestinians who are able to prove permanent residency in these areas are able to obtain permits that allow them to continue to access their own homes and land. The permit regime is particularly problematic for Palestinian farmers and workers who must apply for permits to access agricultural lands located in these areas.

Conversely, the Israeli permit regime allows Israeli citizens and foreigners access to the land by specifically exempting them. The regime is non-transparent, arbitrary and highly bureaucratised, requiring multiple applications for continued access, while applications are not always successful. Moreover, while Israel has increased the land subject to the regime in the Seam Zone by 30 percent since the initial declaration, since 2007 there has been an 87 percent decrease in the number of permits issued.[[22]](#footnote-22) A legal challenge against the permit regime was rejected by the Israeli High Court in April 2011, which failed to address the legal arguments that challenged the legality of this discriminatory system. This regime has effectively resulted in an increasing number of Palestinians being unable to access their homes, land, property and livelihoods, effectively displacing them from these areas.

# Article 5(a)

***The right to equal treatment before the tribunals and all other organs administering justice***

Israeli settlers in Area C of the oPt are governed by Israeli domestic law, while Palestinians in neighbouring communities are governed by a combination of Ottoman, British and Jordanian law amended by more than 1600 military orders, resulting in serious inequalities in the application and effects of the law. The dual system of laws results in two main issues. First, the Israeli civil laws are not directly comparable with Israeli military orders, and Israeli civil law is subject to civilian not military oversight. Second, there are significant differences in the frequency and severity of the application and enforcement of the different sets of laws, with the Palestinian population subject to increased surveillance in this regard.

In 2007, this Committee expressed the view that Israel should ensure that, in the oPt, the same crime is judged equally, not taking into consideration the citizenship of the perpetrator.[[23]](#footnote-23) Yet, since Israel’s last review, the discrepancies between the effects of the two different legal regimes in place for Jewish settlers and Palestinian protected persons in the oPt have become more pronounced. This is particularly relevant with respect to challenging decisions regarding housing, land and property.

## Security of Tenure

Security of tenure, an essential element of the right to adequate housing, requires that processes for ensuring legal tenure be affordable and accessible. This is not the case for members of Palestinian communities in Area C of the West Bank wishing to challenge the Israeli declaration of their land as ‘state land’. The costs involved with these procedures are prohibitive, including fees for lawyers, architects and surveyors, and a great many owner/occupants are consequently unable to protect their property interests. For those with sufficient funds to challenge the declaration, the prospects of success are remote on account of the onerous procedural and legal requirements imposed by the Israeli Civil Administration and Israeli Military Committees.

Court proceedings in these cases are typically in Hebrew, with no interpretation or translation provided, and access to the courts in Jerusalem or Israel is often impossible for Palestinians with Gaza or West Bank IDs who are not allowed entry from the West Bank into Israel. Procedures at the Israeli Civil Administration proceedings at its headquarters in Bet El, near a settlement of the same name outside of Ramallah, are particularly problematic with committees made up of military personnel and settlers adjudicating on Palestinian matters in Hebrew with no requirement to publish decisions or have independent appeals processes.

## Challenging Demolition Orders

Related to the issue of security of tenure are Israel’s discriminatory planning and zoning regimes. Without being able to prove ownership of the land to secure approval for a planning scheme, Palestinians in East Jerusalem and Area C are left with little choice but to build without the requisite permits. The resulting issuance of demolition orders by Israeli authorities in occupied East Jerusalem and Area C of the West Bank disproportionately affects the Palestinian population, and the judicial procedures required to challenge these demolition orders are costly and especially burdensome for Palestinian residents.

Moreover, many of the demolition orders and proceedings in East Jerusalem are criminal offenses and result in large fines payable by the residents and, in some cases, other related criminal indictments and jail time. The judicial proceedings are of little ultimate value. Demolitions are highly likely on account of the underlying discriminatory laws. Palestinians are thus deprived of an effective remedy.

Whilst demolitions of Palestinian homes and other structures can sometimes be stayed through legal petitions to obtain temporary court-ordered injunctions, recent developments have indicated that even such limited and temporary legal protection is in jeopardy. In Fasayil Al-Wusta, a West Bank village north of Jericho, the High Court of Justice decided to revoke nine injunctions that had been previously granted by the same Court in relation to 11 demolition and eviction orders, one of which was for a school providing education for about 95 students. The Court then issued final demolition orders that were then implemented against 20 structures in June 2011. Two other interim injunctions were also revoked in July 2011. This is a dangerous development that could result in a further lack of legal recourse and accelerated forced displacement.

# Article 5(d)(i)(ii)

***The right to freedom of movement and residence within the border of the State***

***The right to leave any country, including one's own, and to return to one's country***

## The Population Registry

Israel uses the Palestinian Population Registry as a means to control Palestinian presence and movement in the oPt. Israel regulates who is considered ‘legally resident’ as well as who may receive official Palestinian identification cards and Palestinian passports, leaving Palestinians unable to move freely both within and outside the oPt.

Following the war in 1967, Israel conducted a census of the West Bank, including East Jerusalem and the Gaza Strip and included in the Registry only those Palestinians who were present there. It is estimated that approximately 250,000 Palestinians who had fled the region or had been abroad during that time were excluded from the Registry. Since 1967, the only ways in which Palestinians may be added to the Population Registry are through child registration and the lengthy and arbitrary family unification process – the latter having been effectively frozen by Israel since 2000. While Israel approved an estimated 32,000 applications in 2008 as a political gesture, it is estimated that tens of thousands of Palestinians are still waiting for decisions on their family unification applications.

An overriding problem is that all changes or concessions with regard to family unification applications are done in the context of political agreements. Israeli officials have made statements that directly politicise the issue by connecting family unification and residency with “right of return” negotiations. This indicates that the motivation behind the freeze on family unification is discriminatory as Israel aims to limit Palestinian presence in the oPt.

In 1995, under the terms of the Interim Agreement on the West Bank and Gaza Strip, Israel transferred responsibility for issuing Palestinian identity cards to the newly-created Palestinian Authority (PA).[[24]](#footnote-24) However, in practice, Israel continues to exercise sole discretion in assigning identification numbers to Palestinians. The PA does not issue identity cards that do not match the Israeli copy of the Population Registry because Israel ultimately retains control over all internal checkpoints within the West Bank and over all external crossings from the West Bank and the Gaza Strip, with the partial exception of the Rafah crossing into Egypt. Those not listed on Israel’s copy of the Palestinian Population Registry frequently lack any valid travel or identification documents at all, preventing their movement both within the oPt and abroad.

For Palestinians who are listed on the Registry, movement is nonetheless controlled by varying degrees based on whether they hold East Jerusalem, West Bank, or Gaza IDs. This differential status is based on their registered address with the Israeli authorities, which has been almost impossible to change since 2000. This was less of an issue before 2007, when Palestinians were able to move between the West Bank and Gaza with fewer restrictions.

In the aftermath of the Hamas takeover of the Gaza Strip in June 2007, Israel and Egypt ‘imposed an unprecedented blockade on all border crossing in and out of the Gaza Strip’, which remains in place at present.[[25]](#footnote-25) This resulted in the near-complete closure of all commercial crossings into the Gaza Strip as well as the closure of the passenger crossings via Erez/Beit Hanoun and Rafah, except for a limited number of “humanitarian cases”.[[26]](#footnote-26) While such measures of collective punishment[[27]](#footnote-27) constitute clear and impermissible discrimination against Palestinians resident in Gaza, Israel’s control over the Population Registry has compounded the effects of the closure, resulting in even more onerous restrictions on Palestinian movement within the oPt depending on the type of ID they hold:

* Palestinians holding East Jerusalem IDs may freely travel to the rest of the West Bank, but are required to have a permit to access the Gaza Strip through Israeli crossings.

* Palestinians holding West Bank IDs require an Israeli permit to enter East Jerusalem, and to access the Israeli crossings into the Gaza Strip. While they may enter the Gaza Strip through Egypt, they risk not being able to leave because of the closure.
* Palestinians holding Gaza IDs require an Israeli permit to leave Gaza through the Israeli crossings. These are only issued for a limited number of humanitarian cases. Under Military Order 1650,[[28]](#footnote-28) Palestinians holding Gaza IDs, but residing in the West Bank, risk deportation from the West Bank to Gaza if they are discovered by Israeli authorities. For these Palestinians, being stopped at any checkpoint within the West Bank could result in deportation.

For Palestinian families split between the West Bank and Gaza, separated by the closure and unable to see each other for over a decade, the arbitrary control exercised by Israel over their freedom of movement is burdensome and often unbearable. Israel’s non-transparent management of the Palestinian Population Registry has a discriminatory impact on freedom of movement for Palestinians. Limitations on travel, both inside the oPt and abroad, as well as the inability to choose one’s place of residence, result in serious violations of human rights that intentionally and exclusively target the Palestinian population.

# Article 5(d)(v)

***The right to own property alone as well as in association with others***

Rather than facilitating ownership of and access to land for Palestinian communities, policies and practices of Israeli authorities have limited this through a web of measures that are effectively forcing Palestinian communities to leave their land and property. As the Palestinian population increases within the oPt, their access to land is shrinking, placing extreme pressure on communities and severely impacting basic rights.

A key guarantee of the right to land and housing, and thus to an adequate standard of living, is through legal security of tenure.[[29]](#footnote-29) Israel’s freeze in place on land registration procedures in the West Bank, introduced in 1968 through an Israeli military order No. 291,[[30]](#footnote-30) has prohibited future Palestinian land settlement procedures and prevented the finalisation of land registration procedures that were in process at the time of the occupation. As a result, nearly 70 percent of land in the West Bank remains unregistered in the Land Registry,[[31]](#footnote-31) leaving the traditional owners/residents of the land vulnerable to confiscation or expropriation of their land by Israeli authorities and thus at risk of forced displacement.

Israel uses a variety of measures to deny Palestinian access to and/or ownership of property in Area C. These include declarations of ‘state land’ and ‘closed military zones’, requisition/land seizure orders, construction of the Wall, expropriation of property and expansion of settlements. The package of measures should be viewed in their cumulative impact on communities. The approximately 70 percent of Area C that is not designated for use by Palestinians has instead been allocated for Israeli settlements, military zones, nature reserves, and ‘state land’. Of the remaining 30 percent of Area C, only one percent is available, in practical terms, for Palestinian development.[[32]](#footnote-32)

Between 1967 and 2011, the percentage of land in the oPt declared as ‘state land’ by Israel has doubled from 700,000 *dunums* (70,000 hectares) to over 1.4 million *dunums* (170,000 hectares.) Not only has this resulted in a decrease of land available to Palestinian communities, but the vast majority of the 121 Israeli settlements in the oPt[[33]](#footnote-33) are located on this declared ‘state land’, mainly on mountain ridges not far from the built-up areas of Palestinian villages. Further, the declaration of closed military zones on the boundaries of settlements has reduced the ability of local communities to use land outside their villages for herding and agriculture.

Many of the Bedouin communities in Area C of the West Bank at risk of forced displacement live on ‘state land’. These Bedouin are not only at constant risk of having their homes and livelihood structures demolished, but also of becoming subject to forcible ‘relocation’ by the Israeli authorities through a non-consultative process, a measure that is incompatible with their cultural identity and traditional lifestyle. The Bedouins’ status as an indigenous group is not recognised by the Israeli authorities, and these communities are at risk of multiple displacements and loss of their traditional way of life. Most of the Bedouin are refugees from 1948 and have already suffered displacement.

# Article 5(e)(iii)

***The right to housing***

Access to land is a critical aspect of the right to an adequate standard of living, under which the right to housing also falls.[[34]](#footnote-34) Israel’s denial of access to land occurs through a variety of measures including declarations of ‘state land’ and ‘closed military zones’; requisition/land seizure orders; use of the Absentee Property Law; the Seam Zone permit regime;[[35]](#footnote-35) expansion of settlements; and expropriation of property. Breaches of the right to housing occur through restrictive planning and zoning regimes, demolitions of civilian property and forced evictions.

## The Planning and Zoning Regime

As an Occupying Power, Israel is obligated to put in place the necessary regulatory and administrative measures to ensure the rights to adequate housing, to water, and to an adequate standard of living for protected persons under its control. In this context, planning regimes, including issuance of building permits, should be in accordance with human rights principles and standards. Planning must address the needs of the local population and be applied in a non-discriminatory manner.

Whilst Area C of the West Bank, under full Israeli military and civil control, comprises at least 60 percent of the entire West Bank, the majority of Area C (70 percent) is not designated for the use of the Palestinian population.[[36]](#footnote-36) Instead, this land is allocated for Israeli settlements, military zones, nature reserves, ‘state land’ and the Seam Zone around the Wall. Of the remaining 30 percent, only one percent is available, in practical terms, for Palestinian development.[[37]](#footnote-37) Between January 2000 and September 2007, over 94 percent of building permit applications in Area C were rejected,[[38]](#footnote-38) forcing many Palestinians to build without permits.

In East Jerusalem, only 13 percent of the available area is designated for Palestinian construction. In most of the neighbourhoods, the building possibilities in areas designated for building have already been exhausted. This has precipitated a housing crisis for Palestinians living in East Jerusalem with at least 32 percent of Palestinian homes in East Jerusalem built in contravention of the Israeli zoning regime, placing about 86,500 Palestinians in East Jerusalem at risk of demolition orders and forced displacement.[[39]](#footnote-39) Given their inability to obtain Israeli building permits, many Palestinians no longer apply and instead build without permits in order to meet their needs, despite the ever-present risk of demolition.

The lack of reasonable and meaningful consultation with Palestinian communities by Israeli authorities in relation to planning decisions affecting the communities is another example of the discriminatory nature of the regimes put in place by the Jerusalem Municipality and the Israeli Civil Administration.

In 2009, for example, the Jerusalem Municipality rejected a community master plan prepared by the Palestinian residents of Al Bustan neighbourhood in East Jerusalem. Instead of adopting a plan that would have allowed the residents to ‘legitimise’ and maintain their residential and livelihood structures, the Municipality recommended its own plan for future consideration. The Municipality’s plan, which was created without any consultation with the Palestinians affected by it, designates the area as a historical and touristic site and would result in the forcible displacement of up to 500 Al Bustan residents. While the planning procedures are ongoing, the community still faces numerous demolition orders and uncertainty over what will happen to them.

## Demolitions of Civilian Property

Inflexible and onerous Israeli planning regimes in the oPt result in Palestinian construction without building permits, which consequently results in the demolition of the property by Israeli authorities. The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has concluded that house demolitions in the oPt take place in a discriminatory manner.[[40]](#footnote-40) Similarly, this Committee has previously expressed concern about the disproportionate targeting of Palestinians for house demolitions and the detrimental impact of the unequal distribution of water resources to the Palestinian population.[[41]](#footnote-41)

Since Israel’s last review by this Committee, demolitions of civilian property, including homes, schools and water cisterns, has markedly increased, having a devastating impact on families and communities, and has been a major trigger for the forcible displacement of Palestinians in the oPt. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) recorded 439 demolitions in 2010, including 82 in East Jerusalem, affecting 14,753 people. This is the highest number of demolitions OCHA has recorded in Area C since they began monitoring the situation in 2005, and represents an 88 percent increase in the number recorded in Area C for 2009. In 2011, 622 residential and community structures were demolished in East Jerusalem and Area C, impacting an estimated 5,300 people.[[42]](#footnote-42) In parallel to the increase in demolitions, an estimated 8,000 demolition orders are currently pending in East Jerusalem, potentially putting approximately 48,000 Palestinians at risk of forced displacement.[[43]](#footnote-43)

A marked increase in demolitions of community infrastructure, such as water sources, has had a particularly severe impact on Palestinian villages, whose viability as a community rapidly diminishes without access to such basic services. The demolition of four water wells in Jenin District in October 2010 affected 11,583 people alone, as the wells were used by the villages of Deir Abu Da’if, Beit Qad, Wad Ad Dabi’, Jalbun and Faqqu’a.[[44]](#footnote-44) These actions, which in no way benefit the protected population and are not justified for reasons of military necessity, are in direct contravention of the international humanitarian law prohibition on destroying civilian property. At the same time as Palestinian wells are destroyed, Israel continues to provide settlements with infrastructure to supply sufficient water to sustain industrial farming and swimming pools.

## Forced Evictions

Evictions in the context of the oPt are typically arbitrary and/or illegal as they disproportionately target Palestinian communities, are the consequence of the near impossibility of compliance with discriminatory planning regulations and are the result of the unlawful application of domestic Israeli law over occupied territory where international humanitarian law is applicable, such as in East Jerusalem.

In East Jerusalem, a number of the forced eviction cases are associated with violence related to ethnicity/nationality. The Sheikh Jarrah case is a prominent example. The residents involved in this case are Palestinian refugees from 1948 who were housed in a cooperative project of the government of Jordan and UNRWA. Israeli courts have, to date, found in favour of the Jewish claimants citing the ‘primary’ registration of the land in 1972, which was based on their pre-1948 ownership claims. In some cases the courts have authorized the forcible eviction of Palestinian families from their homes. Moreover, Israeli authorities failed to intervene when Jewish settlers took over parts of one of the properties in 2009 without any legal basis or authorisation.

Despite acts of settler violence that took place before and during eviction proceedings for the Sheikh Jarrah cases, the State party failed to provide adequate protection for the evicted Palestinian families during these proceedings or to ensure accountability for the incidents of settler violence. Sheikh Jarrah residents have also reported that settlers who have taken over buildings in their area have, on occasion, been accompanied by supporters who have, under the protection of the police, also verbally abused and harassed residents with impunity.

## The Gaza Strip

Since the Committee’s last review of the State party, the 1.5 million Palestinian residents of the Gaza Strip have been suffering collective punishment[[45]](#footnote-45) as a result of Israel’s complete closure of the area. Following the December 2008 – January 2009 Israeli military operation in the Gaza Strip, over 20,000 people were displaced, many of whom have subsequently been unable to re-build their damaged homes because of the Israeli and Egyptian blockade of the area. Israel retains effective control of Gaza through its control of land, air and sea access to Gaza and is thus responsible for those of its policies which discriminate against Palestinians resident in Gaza. In their arbitrary, widespread and disproportionate impact upon the civilian population in Gaza, Israel violates its non-discrimination obligations.

In June 2010, Israel announced an ‘ease’ on the Gaza closure, yet more than a year and half later, the humanitarian situation remains “extremely fragile” as imports remain at less than 40 percent of pre-2007 levels.[[46]](#footnote-46) Agencies providing humanitarian assistance continue having difficulties in obtaining approval from Israeli authorities for projects aimed at improving housing and vital services in the Gaza Strip, and the single official crossing available for goods has limited capacities for reconstruction materials.[[47]](#footnote-47)

As of the end of 2011 humanitarian agencies have only been able to rebuild 1,522 majorly or totally damaged homes of the 6,162 houses that were completely destroyed or were subject to major damage during Israel’s ‘Cast Lead’ operation. Humanitarian agencies have not been able to provide shelter assistance to the more than 2,900 families who were already suffering from pre-‘Cast Lead’ housing destruction, or the 5,611 refugee families who are still living in derelict and unsanitary shelters.[[48]](#footnote-48) In addition, in the three years since the end of ‘Cast Lead’, Israel has further destroyed or damaged 6, 927 homes in the Gaza Strip through ongoing military incursions and airstrikes. Population growth and the strain on the scarce housing stock means an estimated 75,334 additional housing units need to be built to meet current needs.[[49]](#footnote-49)

While the ‘ease’ in the closure has seen an increase in foodstuffs, consumer goods and even cars coming through official Israeli checkpoints, vital building materials like steel, aggregate and cement remain on the Israeli ‘Dual Use List’ which Israel categorises as materials liable to be used, side-by-side with their civilian purposes, for the development, production, installation or enhancement of military capabilities and terrorist capacities, and are therefore banned from import into the Gaza Strip.

Inflow of construction materials is still only at 11 percent of pre-closure levels. Only seven percent of the building plan for UNRWA projects in the Gaza Strip has been approved and, in practice, only a small fraction of the necessary construction material has been allowed to enter for those projects, including for schools and health centres, leaving the Palestinian residents of the Gaza Strip lacking essential services.

Because of the closure, families are unable to support themselves by accessing livelihoods outside of the Gaza Strip and are, in some cases, wholly dependent on aid. In the absence of the possibility for people to leave the Gaza Strip, the closure imposes severe stress on families who are hosting those who lost their homes. This presents a myriad of protection issues as well as the long term degradation of the housing stock and an overburdening of already weak infrastructure networks.

# Article 5(e)(v)

***The right to education and training***

## The West Bank

Palestinian children do not fully enjoy access to an adequate standard of education or a protected educational environment for various reasons, including the discrimination Palestinian communities face in obtaining building permits from the Israeli Civil Administration for the construction, expansion or rehabilitation of schools, resulting in sub-standard school infrastructure and a chronic shortage of classrooms. Restrictions on access and movement because of the Wall and other closures are also another major factor. Incidents of violence perpetrated by settlers and the Israeli military against children and educational staff are regular occurrences.

It is estimated that 5,000 students in East Jerusalem did not attend school in 2011 due to the shortage of over 1,000 classrooms.[[50]](#footnote-50) In Area C, 24 schools remain at risk of demolition by the Israeli authorities, including a school for the Jahalin Bedouin community, which has been the subject of repeated demolition orders and which provides a key educational access point for primary school-age Bedouin girls. Data from the Monitoring and Reporting Mechanism for Children Affected by Armed Conflict show that at least 19 schools in the West Bank, including East Jerusalem, currently have either demolition or stop work orders against them.

## The Gaza Strip

In the Gaza Strip, over 80 percent of the damage inflicted on 200 schools and 60 kindergartens affected during the 2008/2009 ‘Cast Lead’ military offensive has yet to be repaired owing to the closure. Additionally 525 schools in Gaza (approximately 80 percent of all schools) are currently double-shifted, leading to reduced hours in school, extreme pressure on students and teachers to cover curriculum and a reduction in overall quality of education. A minimum of 200 new schools will need to be built to cope with current needs, without taking into account projected needs for the next five years.

In addition to overcrowding, the lack of school time has a disproportionately negative effect on the most vulnerable children. Schools with high proportions of very poor students suffer from high rates of drop out. Declining attainment due to the overarching situation and pressures on schools has led to vulnerable girls and boys (those from poor families and those with special educational needs especially) leaving school before completion of their basic education. In boys’ schools in Rafah, many boys are absent or pushed to leave school to work in the tunnels. Children with learning difficulties and special needs are becoming increasingly excluded as teachers struggle to cope with reduced classroom time.

Negative impacts on academic achievements are felt in all areas, as a result of conflict, overcrowding, and lack of access to classroom space for children. There is also a close connection between lack of access to education and forced displacement, as many families are forced to either move or to send children away to larger towns to access educational services.

# Recommendations

The State party should cease its construction of Jewish settlements, national parks, and the Wall in the oPt and review all cases in which areas designated as ‘state land’ have been used for the construction of illegal Jewish settlements in the oPt. Planning decisions in Area C should be undertaken by a purely civilian body that ensures genuine consultation, participation and representation from the local Palestinian communities.

The State party should eliminate any policy of ‘demographic balance’ from its Jerusalem Master Plan to ensure that non-Jews and Jews are afforded equal treatment before the Municipality and to ensure non-discrimination in areas of zoning and planning, municipal services, and budget allocation..

The State party should ensure fair and equal access to Israeli civilian and military courts for Palestinians, including guaranteeing their right to participate in legal proceedings in Arabic and have decisions provided to them in Arabic.

The State party should abolish the two-tiered system of laws it has created in the oPt and ensure that laws affect all of the people under its effective control equally. The Absentee Property Law 1950 and the Law and Administration Procedures Law (Consolidated Version) 1970 should be repealed on account of their inherent and deliberately discriminatory impact on Palestinians with respect to ownership of and access to land. The State party should also abolish the permit regime and revisit the Order concerning Land and Water Settlement (Judea and Samaria) (No. 291) 1968 in order to facilitate Palestinian rights to own and access property and enable their free movement across the oPt.

The State party should grant building permits for Palestinians living in Area C and East Jerusalem in a manner that is consistent with the humanitarian needs of the communities and their status as protected persons under international humanitarian and human rights law. In the context of the expansion of town planning schemes, Israel should grant retroactive building permits for structures already built without a permit to reverse the impact of past discriminatory policies.

The State party should immediately cancel and cease issuance of all stop work, demolition and eviction orders pertaining to Palestinian homes and structures in the oPt as such orders are not only unlawful under principles of international human rights and humanitarian law but have a devastating disproportionate impact on Palestinian communities.

The State party should immediately cease its closure of the Gaza Strip and end the collective punishment of the 1.5 million Palestinians living therein. In addition to ensuring that raw reconstruction materials such as steel, cement and aggregate can enter the Gaza Strip, Israel must allow the free movement of civilians from the Gaza Strip to the West Bank and enact the necessary changes to the Population Registry to ensure their right to an identity is implemented in a non-discriminatory manner.

1. UN Office for the Coordination of Humanitarian Affairs (UN OCHA), “Lack of Permit: Demolitions and Resultant Displacement in Area C”, May 2008; Israeli Committee Against House Demolitions (ICAHD), “No Home, No Homeland: A New Normative Framework for Examining the Practice of Administrative Home Demolitions in East Jerusalem, December 2011. [↑](#footnote-ref-1)
2. International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 43 IL M 1009 (2004); Article 49 (6), Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949. [↑](#footnote-ref-2)
3. Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations, 14 June 2007, CERD/C/ISR/CO/13, paragraph 32. [↑](#footnote-ref-3)
4. European Union Heads of Mission Report on East Jerusalem, “Jerusalem 2011”, paragraph 10. [↑](#footnote-ref-4)
5. UN OCHA, “Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank,” Special Focus, December 2009; Human Rights Watch, “Separate and Unequal: Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories”, December 19, 2010. [↑](#footnote-ref-5)
6. *Supra*, note 1. [↑](#footnote-ref-6)
7. *Supra*, note 4, paragraph 10. [↑](#footnote-ref-7)
8. “No Home, No Homeland”, s*upra*, note 1, page 14. [↑](#footnote-ref-8)
9. *Ibid*, page 14 -15. [↑](#footnote-ref-9)
10. Meir Margalit, *Seizing Control of Space in East Jerusalem*, Jerusalem, June 2010, pages 27-28. [↑](#footnote-ref-10)
11. Also see: The Civic Coalition for Defending Palestinians' Rights in Jerusalem, [*Aggressive Urbanism: Urban Planning and the Displacement of Palestinians within and from Occupied East Jerusalem*](http://www.civiccoalition-jerusalem.org/ccdprj.ps/new/pdfs/Aggressive%20Urbanism%20Report.pdf), December 2009, pages 47-49. [↑](#footnote-ref-11)
12. The Association of Civil Rights in Israel (ACRI), “Human Rights in East Jerusalem: Facts and Figures”, May 2010, page 51. [↑](#footnote-ref-12)
13. The law is also being used to deprive Palestinian citizens of Israel of their property in what is now considered the State of Israel. This issue is outside the scope of this report. [↑](#footnote-ref-13)
14. In the West Bank, absentee property is confiscated using a number of Military Orders, rather than the Israeli Absentees Property Law 1950, but the effect is the same. [↑](#footnote-ref-14)
15. The definition of ‘absentee’ in the law is very broad, encompassing, among others, anyone visiting any of the countries listed in the Law commencing from 29 November 1947 (including Lebanon, Syria, Egypt, Saudi Arabia, Jordan, Iraq, Yemen, or parts of Palestine that are outside the 1948 borders of the State of Israel); any person who had or received a status in those countries during the relevant period; and those also even anyone who merely departed for a short time from his ordinary place of residence in Palestine to another place in Palestine that was held at that time by anyone fighting against Israel and returned to his home shortly afterwards. Even those people who returned after a short while to Israel and became Israeli citizens were considered ‘absentees’ in relation to their properties, which were vested in the Custodian. [↑](#footnote-ref-15)
16. The Custodian General, a body under the Israeli Ministry of Justice, acts as a trustee for land in East Jerusalem which is determined to be owned by Jewish individuals prior to 1948. [↑](#footnote-ref-16)
17. Properties have been returned to Palestinians in very rare cases. [↑](#footnote-ref-17)
18. At the time of writing, four extended households in that part of the Sheikh Jarrah have been forcibly evicted from their homes and 11 are currently facing civil eviction proceedings. [↑](#footnote-ref-18)
19. Talia Sasson, (Interim) Opinion concerning Unauthorised Outposts, Jerusalem, February 2005, page 61. [↑](#footnote-ref-19)
20. Eyal Zamir, *State Lands in Judea and Samaria*, Jerusalem Institute for Israel Studies, Jerusalem, 1985, page 27. [↑](#footnote-ref-20)
21. State Comptroller, Annual Report 56A, 2005, page 222 [Hebrew] as cited in B’Tselem, ‘Dispossession and Exploitation: Israel’s Policy in the Jordan Valley and Northern Dead Sea’, May 2011, page 11. [↑](#footnote-ref-21)
22. HCJ 9961/03 HaMoked: Center for the Defence of the Individual et al. v. Government of Israel et al. (published in “Nevo”, 5.4.2011).Figures cited by the Government of Israel in their response to the petition. [↑](#footnote-ref-22)
23. “Concluding Observations” *supra,* note 3, paragraph 35. [↑](#footnote-ref-23)
24. For Palestinian Jerusalemites, the PA is not permitted to issue any PA passports or identity cards “[s]ince the status of Jerusalem was postponed pending final status negotiations.” Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel”, *Social Text 107*, Vol. 29, No. 2, Duke University Press, Summer 2011, p. 71. [↑](#footnote-ref-24)
25. UN OCHA, “Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip”, August 2009, page. 2. [↑](#footnote-ref-25)
26. *Ibid.* [↑](#footnote-ref-26)
27. International Committee of the Red Cross (ICRC), ‘Gaza closure: not another year!’ News Release, 14 June 2010, at <http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> accessed 27 January 2012; UN OCHA, ‘Humanitarian Situation in the Gaza Strip’, Fact Sheet, October 2011, at <http://www.ochaopt.org/documents/ocha_opt_Gaza_FactSheet_October_2011_english.pdf> accessed 27 January 2012. [↑](#footnote-ref-27)
28. Order regarding Prevention of Infiltration (Amendment No. 2) (Judea and Samaria) (No. 1650) 5769-2009). [↑](#footnote-ref-28)
29. Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 4 (1991) ‘The Right to Adequate Housing’, paragraph 8(a). [↑](#footnote-ref-29)
30. Order concerning Land and Water Settlement (Judea and Samaria) (No.291),1968 [↑](#footnote-ref-30)
31. Talia Sasson, *supra* note 13, page 61. [↑](#footnote-ref-31)
32. “Restricting Space”, *supra*, note 5. [↑](#footnote-ref-32)
33. In addition to the 121 official settlements recognised by the Israeli Ministry of the Interior, there are currently some 100 additional unauthorised outposts which the Israeli government does not officially recognise as separate communities, even though various government agencies have been involved in the establishment of these outposts. See B’Tselem, By Hook and by Crook – Israeli Settlement Policy in the West Bank, July 2010, page 9. [↑](#footnote-ref-33)
34. CESCR, *supra,* note 28, paragraph 8(e). [↑](#footnote-ref-34)
35. The Seam Zone is the area between the Wall and the 1949 Armistice “Green” Line. [↑](#footnote-ref-35)
36. “Restricting Space”, *supra*, note 5. [↑](#footnote-ref-36)
37. *Ibid.* [↑](#footnote-ref-37)
38. “Lack of Permit”, *supra,* note 1. [↑](#footnote-ref-38)
39. UN OCHA, “East Jerusalem: Key Humanitarian Concerns”, March 2011. [↑](#footnote-ref-39)
40. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UNDoc.A/HRC/7/17, 21 January 2008, paragraph 41. [↑](#footnote-ref-40)
41. “Concluding Observations”, *supra*, note 3, paragraph 35. [↑](#footnote-ref-41)
42. UN OCHA, “Demolitions and Forced Displacement in the Occupied West Bank”, January 2012. [↑](#footnote-ref-42)
43. This estimates that there are, on average, six people per household. [↑](#footnote-ref-43)
44. Displacement Working Group Protection Cluster oPt, “Demolition Summary Table”, 31 December 2010. [↑](#footnote-ref-44)
45. International Committee of the Red Cross (ICRC), ‘Gaza closure: not another year!’ News Release, 14 June 2010, at <http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> accessed 27 January 2012; UN OCHA, ‘Humanitarian Situation in the Gaza Strip’, Fact Sheet, October 2011, at <http://www.ochaopt.org/documents/ocha_opt_Gaza_FactSheet_October_2011_english.pdf> accessed 27 January 2012. [↑](#footnote-ref-45)
46. “Humanitarian Situation in the Gaza Strip”, *supra*, note 44. [↑](#footnote-ref-46)
47. *Ibid.* [↑](#footnote-ref-47)
48. Shelter Sector Gaza, “Shelter Advovacy Fact Sheet 3”, January 2011. [↑](#footnote-ref-48)
49. Unified Shelter Sector Database (USSD) [www.sheltergaza.org](http://www.sheltergaza.org) October 2011. [↑](#footnote-ref-49)
50. State Comptroller, Annual Report 59b, May 2009 [Hebrew] as cited in ACRI and Ir Amim, “Failed Grade: Palestinian Education System in East Jerusalem”, August 2010, page 5. [↑](#footnote-ref-50)