



# Israeli Apartheid

Tool of Zionist Settler Colonialism





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## Table of Contents

<b>Endorsing Organisations .....</b>	<b>I</b>
<b>Table of Abbreviations .....</b>	<b>IV</b>
<b>Acknowledgements .....</b>	<b>VI</b>
<b>Dedication .....</b>	<b>VII</b>
<b>1. Overview .....</b>	<b>1</b>
1.1. An Ongoing Advocacy Campaign .....	5
1.2. Zionism and the Roots of Israeli Apartheid .....	11
1.3. Establishing Israeli Apartheid .....	13
1.4. Maintaining Israeli Apartheid .....	15
1.5. The Need for a Comprehensive Articulation of the Apartheid Framework .....	18
1.6. Individual Criminal, State, and Corporate Responsibility for Israeli Apartheid .....	24
1.7. Dismantling Israeli Apartheid .....	29
<b>2. Introduction .....</b>	<b>31</b>
2.1. Growing Recognition of Israeli Apartheid .....	33
2.2. Methodology .....	37
<b>3. Zionist Ideology and the Roots of Israeli Apartheid .....</b>	<b>39</b>
3.1. Origins of Israeli Apartheid .....	40
3.2. Zionist Settler Colonialism .....	41
3.3. Fragmentation and the Limits of International Humanitarian Law .....	52

<b>4. Constructing Apartheid .....</b>	<b>57</b>
4.1. The Prohibition of Apartheid .....	59
4.2. Elements of the Crime against Humanity of Apartheid .....	67
<b>5. Israel's Apartheid Legal Regime .....</b>	<b>77</b>
5.1. The Central Task of Zionist Parastatal Institutions .....	78
5.2. Nationality, Citizenship, and Residency Rights .....	84
5.3. (Denying) Land and Property Rights .....	99
5.4. Fragmenting the Palestinian People .....	111
<b>6. Israel's Policies to Maintain Apartheid .....</b>	<b>121</b>
6.1 Arbitrary Deprivation of Life .....	122
6.2 Denying Economic, Social, and Cultural Rights: The Example of the Right to Health .....	135
6.3 Arbitrary Detention and Illegal Imprisonment .....	154
6.4 Torture and Other Ill-Treatment .....	158
6.5 Collective Punishment .....	160
6.6 Persecution and Silencing of Opposition to Apartheid .....	163
<b>7. Responsibility and Accountability for Israel's Apartheid Regime .....</b>	<b>167</b>
7.1. Third State Duty to Cooperate .....	167
7.2. Universal Jurisdiction .....	171
7.3. The ICC .....	172
7.4. Corporate Complicity .....	173
7.5. The UN Database of Businesses Operating with Israeli Settlements .....	175
7.6. UN Anti-Apartheid Mechanisms .....	178
<b>8. Conclusion .....</b>	<b>181</b>

<b>9. Recommendations .....</b>	<b>183</b>
9.1. To all States .....	183
9.2. To the High Contracting Parties to the Geneva Conventions .....	188
9.3. On States' Duty to Ensure Corporate Accountability .....	190
9.4. To Palestinian Officials .....	191
9.5. To Member States of the Human Rights Council .....	192
9.6. To UN Special Procedures .....	192
9.7. To UN Treaty Bodies .....	193
9.8. To the Ongoing UN Commission of Inquiry .....	193
9.9. To the CEIRPP and Other UN Bodies .....	194
9.10. To the UN General Assembly .....	194
9.11. To the ICJ .....	194
9.12. To the UN Security Council .....	195
9.13. To Parliamentarians .....	195
9.14. To Local and Other Sub-national Spheres of Government .....	196
9.15. To the Office of the Prosecutor of the ICC .....	196
9.16. To Corporate Entities and Financial Institutions .....	197
9.17. To Civil Society Organisations .....	198



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## Endorsing Organisations

This report is published by Al-Haq and is endorsed by partner organisations from Palestinian civil society. The endorsing organisations (the ‘Coalition’) are: Al-Haq, Addameer Prisoner Support and Human Rights Association (Addameer), Al Mezan Centre for Human Rights (Al Mezan), the Palestinian Centre for Human Rights (PCHR), the Civic Coalition for Palestinian Rights in Jerusalem (CCPRI), the Jerusalem Legal Aid and Human Rights Center (JLAC), Community Action Center—Al-Quds University (CAC), and the Palestinian Initiative for the Promotion of Global Dialogue and Democracy—MIFTAH.

**Al-Haq** is an independent Palestinian non-governmental human rights organisation based in Ramallah in the occupied West Bank. Established in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory, Al-Haq has documented violations of Palestinians’ individual and collective rights for over 40 years. The organisation seeks to end such violations through advocacy before national and international mechanisms and by holding perpetrators accountable.

**Addameer** (Arabic for conscience) is a Palestinian non-governmental, civil institution that works to support Palestinian political prisoners held in Israeli and Palestinian prisons. Established in 1991 by a group of activists interested in human rights, the organisation offers free legal aid to political prisoners, advocates their rights at the national and international levels, and works to end torture and other violations of prisoners’ rights through monitoring, legal procedures, and solidarity campaigns.

**Al Mezan** is an independent, non-partisan, non-governmental human rights organisation based in the Gaza Strip. Since its establishment in 1999, Al Mezan has been dedicated to protecting and advancing the respect of human rights, especially economic, social, and cultural rights, supporting victims of violations of international human rights law and international humanitarian law, and enhancing democracy, community, and citizen participation, and respect for the rule of law in the Gaza Strip as part of the occupied Palestinian territory.

**The Palestinian Centre for Human Rights** is an independent Palestinian human rights organisation based in Gaza City. PCHR was established in 1995 by a group of Palestinian lawyers and human rights activists in order to protect human rights and promote the rule of law; create and develop democratic institutions and an active civil society, while promoting democratic culture within Palestinian society; and support all the efforts aimed at enabling the Palestinian people to exercise their inalienable rights to self-determination and independence in accordance with international law.



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**The Civic Coalition for Palestinian Rights in Jerusalem** was established in 2005 in order to contribute to effective mobilisation and cooperation of civil society vis-à-vis Israeli policies that undermine Palestinian rights, identity, and presence in the occupied eastern part of Jerusalem. CCPRJ's members are Palestinian non-governmental organisations and community-based organisations working in the fields of culture, development, urban planning, and human rights, including the rights of children, youth, women, and Palestinian political prisoners and detainees.

**The Jerusalem Legal Aid and Human Rights Center** was established in 1974 by the American Friends Service Committee, formerly known as the Quaker Service Information and Legal Aid Center. In 1995, a local Board of Directors was appointed as a preliminary step toward JLAC's independence, with JLAC officially becoming a Palestinian non-governmental and non-profit organisation in 1997. JLAC provides pro-bono legal aid, awareness, and advocacy efforts in tackling violations by the Israeli government and the Israeli occupying forces, as represented by the Israeli Civil Administration, as well as by the Palestinian Authority.

**Community Action Center - Al-Quds University** is a semi-autonomous association affiliated with Al-Quds University, which aims to empower the Palestinian community in the eastern part of Jerusalem. The CAC, located in the Old City of Jerusalem as well as in the Al-Abraj Buildings in Abu Dis, is a Palestinian non-profit community rights-based organisation. The CAC aims to empower the disadvantaged Palestinians of East Jerusalem to access their rights and entitlements and negotiate the complex bureaucratic procedures that control the flow of these rights. This mandate translates into empowering local residents to organize to solve collective problems with particular attention to social and economic inequality, and to mobilize their own volunteer capacity.

**The Palestinian Initiative for the Promotion of Global Dialogue and Democracy - MIFTAH** was established in 1998 as an independent Palestinian civil society institution committed to fostering the principles of democracy and effective dialogue. MIFTAH's main work during its beginning was on political concerns especially opening dialogue on 'final status' issues, disseminating the Palestinian narrative regionally and internationally, in addition to working on the local and national levels to support building the Palestinian state.



## Table of Abbreviations

<b>CAC</b>	Community Action Center—Al-Quds University
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CCPRJ</b>	The Civic Coalition for Palestinian Rights in Jerusalem
<b>CEIRPP</b>	United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People
<b>CERD</b>	United Nations Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	United Nations Committee on Economic, Social and Cultural Rights
<b>DBIO</b>	Don't Buy Into Occupation
<b>DCI-Palestine</b>	Defense for Children International—Palestine
<b>DIRCOZA</b>	Department of International Relations and Cooperation (South Africa)
<b>ESCWA</b>	United Nations Economic and Social Commission for Western Asia
<b>EU</b>	European Union
<b>FFM</b>	Fact-Finding Mission
<b>HSRC</b>	Human Sciences Research Council (South Africa)
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights

<b>ICJ</b>	International Court of Justice
<b>ICRC</b>	International Committee of the Red Cross
<b>ILC</b>	International Law Commission
<b>JA</b>	Jewish Agency (for the ‘Land of Israel’)
<b>JLAC</b>	Jerusalem Legal Aid and Human Rights Center
<b>JNF</b>	Jewish National Fund
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>PCBS</b>	Palestinian Central Bureau of Statistics
<b>PCHR</b>	Palestinian Centre for Human Rights
<b>UAWC</b>	Union of Agricultural Work Committees
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestine Refugees in the Near East
<b>UNSCOP</b>	United Nations Special Committee on Palestine
<b>UPWC</b>	Union of Palestinian Women’s Committees
<b>WGAD</b>	United Nations Working Group on Arbitrary Detention
<b>WHO</b>	World Health Organization
<b>WZO</b>	World Zionist Organization

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## Dedication

We dedicate this report to the Palestinian people across Palestine and in exile struggling for liberation in the face of Israel's settler colonial apartheid regime, including activists, organisers, human rights defenders, and practitioners who continue to expose, challenge, and resist Zionist settler colonialism and Israeli apartheid in the pursuit of justice, dignity, and liberation.



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Much has been written about apartheid and settler colonialism in Palestine in recent years, building on decades of scholarship, activism, and advocacy for Palestinian liberation. For over a century, Palestinians have opposed the ongoing Zionist settler colonial project in Palestine. Since 1948, Palestinians have endured an ongoing *Nakba* (catastrophe) of forced displacement, refugeehood, and exile; the denial of their right to return to Palestine; and an ongoing process of domination, foreign occupation, annexation, population transfer, and settler colonisation. Throughout historic Palestine, Palestinians have been systematically fragmented, dispossessed of their land and property, and discriminated against in nearly every area of life. Palestinians have been arbitrarily deprived of their life, liberty, human dignity, freedom of movement and residence; their right to family life and family unification; their human rights to adequate housing, health, and their collective right to freely dispose of their natural wealth and resources, denied their means of subsistence and the right to determine their political status and freely pursue their economic, social, and cultural development



as integral components of their inalienable right to self-determination.<sup>1</sup>

Palestinian scholars have long understood that Zionist settler colonialism, premised on the removal and replacement of the indigenous Palestinian people from the land, is an inherently racial project, which Palestinian scholar and diplomat Faye兹 Sayegh described, as early as 1965, as akin to apartheid.<sup>2</sup> Such critiques of Israeli apartheid, notably by Palestinian scholars, have since been rooted in a rejection of Zionism as a form of racism and racial discrimination and as a tool of settler colonial domination.<sup>3</sup> Building on these critical contributions, the last two decades have seen tireless activism, organising, and campaigning by Palestinians and allies around the world to challenge Israel's regime of occupation, colonialism, and apartheid. This ongoing mobilisation, at the grassroots level and in human rights advocacy, have led to mounting recognition by states, civil society, United Nations (UN) bodies and experts, scholars, and practitioners, that Israel has established an apartheid regime over the Palestinian people. Throughout two decades of advocacy in the national and international spheres, Palestinian human rights organisations have also conducted extensive legal research to determine the applicability under international law of the frameworks of apartheid and colonialism to the situation in Palestine.<sup>4</sup>

1 Articles 1(1), 6(1), 9(1), 12(1), 17(1), and 23(1), *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (hereinafter 'ICCPR'); Articles 1(1), 11(1), and 12(1), *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (hereinafter 'ICESCR').

2 Faye兹 Sayegh, *Zionist Colonialism in Palestine* (PLO Research Centre, 1965) 22 and 27 <[http://www.freedomarchives.org/Documents/Finder/DOC12\\_scans/12.zionist.colonialism.palestine.1965.pdf](http://www.freedomarchives.org/Documents/Finder/DOC12_scans/12.zionist.colonialism.palestine.1965.pdf)>.

3 Noura Erakat, 'Beyond Discrimination: Apartheid is a Colonial Project and Zionism is a Form of Racism' (*EJIL: Talk!*, 5 July 2021) <<https://www.ejiltalk.org/beyond-discrimination-apartheid-is-a-colonial-project-and-zionism-is-a-form-of-racism/>>. See also UN General Assembly, Resolution 3379 (XXX), UN Doc A/RES/3379 (XXX), 10 November 1975.

4 WCAR, NGO Forum Declaration (3 September 2001) <<https://www.hurights.or.jp/wcar/E/ngofinaldc.htm>>; Virginia Tilley (ed), *Occupation, colonialism, apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law* (Human Sciences Research Council, 2009) 22 (hereinafter 'HSRC Study 2009') <<http://www.hsrc.ac.za/en/research-data/view/4634>>. See also Al-Haq, South African study finds that Israel is practicing colonialism and apartheid in the Occupied Palestinian Territory (4 June 2009) <<https://www.alhaq.org/advocacy/7207.html>>.

In this report, we analyse Israeli apartheid as a tool of Zionist settler colonialism. We do so in order to bring forward the eliminatory and population transfer logic of Israel's apartheid system and its effort to displace and replace the indigenous Palestinian people on the land of Palestine.<sup>5</sup> Palestinians have advocated for applying established decolonisation praxis in countering Israeli apartheid, recognising apartheid as a form of settler colonialism rather than pursuing a notion of 'liberal equality' without decolonisation.<sup>6</sup> This view was endorsed in the first report of the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, who considered that a 'holistic examination of the experience of the Palestinian people as a whole' through the apartheid framework requires recognition of the illegality of the Israeli occupation and its settler colonial root causes.<sup>7</sup> A decolonisation approach is central to the present report, which situates apartheid within the broader context of Zionist settler colonialism.

While we are encouraged by the growing global recognition of Israeli apartheid, we note that Zionist settler colonialism and its eliminatory and population transfer logic remain missing from recent analyses and reports on apartheid by Israeli and international human rights organisations such

5 Patrick Wolfe, 'Settler colonialism and the elimination of the native' (2006) 8(4) *Journal of Genocide Research* 387; see also Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassell, 1999) 1.

6 Lana Tatour, 'Why calling Israel an apartheid state is not enough' (*Middle East Eye*, 18 January 2021) <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>; Soheir Asaad and Rania Muhareb, 'Dismantle What? Amnesty's Conflicted Messaging on Israeli Apartheid' (*Institute for Palestine Studies*, 15 February 2022) <<https://www.palestine-studies.org/en/node/1652565>>; see also Rania Muhareb and Pearce Clancy, 'Palestine and the Meaning of Domination in Settler Colonialism and Apartheid' (2021) 6(6) *República y Derecho* <<http://revistaryd.derecho.uncc.edu.ar/index.php/revista/article/view/217/112>>.

7 UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022, UN Doc A/77/356, paras 9-10, see also para 74.



as Yesh Din,<sup>8</sup> B'Tselem,<sup>9</sup> Human Rights Watch,<sup>10</sup> and Amnesty International.<sup>11</sup> It is this gap that the present report seeks to fill.

In May 2021, the Unity *Intifada* (uprising) sparked renewed hope for a future free from all forms of oppression and domination in Palestine: a new chapter written by the Palestinian people themselves, ‘reuniting Palestinian society in all of its different parts; reuniting our political will, and our means of struggle to confront Zionism throughout Palestine’.<sup>12</sup> The Unity *Intifada* showed that despite decades of forced exile and fragmentation by the Israeli regime, the Palestinian people remain united in our struggle for liberation ‘in the face of racist settler colonialism in all of Palestine’.<sup>13</sup> It is the ongoing *Nakba* of the Palestinian people that motivates this report and forms the basis of our understanding of Zionist settler colonialism and Israeli apartheid as structures of Palestinian dispersal, dispossession, discrimination, and domination. We remain convinced that without the complete and radical dismantling of Israeli apartheid and of Zionist settler colonialism, dignity, justice, liberation, and self-determination have no future in Palestine, or elsewhere on Earth.

8 Michael Sfard, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (Yesh Din, July 2020) 26 <<https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>>.

9 B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 January 2021) <[https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid)>.

10 Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021) <<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>>.

11 Amnesty International, *Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity* (1 February 2022) <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>>.

12 Open Letter, ‘The Manifesto of Dignity and Hope’ (Mondoweiss, 18 May 2021) <<https://mondoweiss.net/2021/05/the-manifesto-of-dignity-and-hope/>>.

13 *Ibid.*

## 1.1 An Ongoing Advocacy Campaign

For over two decades, Palestinian activists, organisers, and civil society have recognised and mobilised against Israel's settler colonial apartheid regime. Since its founding in 1998, Palestinian human rights organisation BADIL has widely published and produced work on Israeli apartheid within the context of Zionist colonisation, also conducting extensive advocacy within the UN human rights system.<sup>14</sup> In 2001, Palestinian organisations joined global civil society at the World Conference against Racism in Durban, where 'Israel's brand of apartheid and other racist crimes against humanity' were recognised in the NGO Forum Declaration.<sup>15</sup> In 2002, the Palestinian grassroots Stop the Wall campaign began to challenge Israeli apartheid and the construction of the Wall in the occupied Palestinian territory.<sup>16</sup> Critically, in 2005, a broad coalition of Palestinian civil society organisations issued the call for boycotts, divestment, and sanctions against Israel for its regime of settler colonialism, apartheid, and occupation against the Palestinian people.<sup>17</sup>

Building on this longstanding work, the present report, in particular, follows nearly four years of active research and advocacy by a coalition of Palestinian and regional human rights organisations. This report is published by Al-Haq and endorsed by partner organisations from Palestinian civil society. The endorsing organisations (the 'Coalition') are: Al-Haq, Addameer Prisoner Support and Human Rights Association (Addameer), Al Mezan Centre for Human Rights (Al Mezan), the Palestinian Centre for Human Rights (PCHR), the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), the Jerusalem Legal Aid and Human Rights Center (JLAC), Community Action Center—Al-Quds University (CAC), and the Palestinian Initiative for the Promotion of Global Dialogue and Democracy—MIFTAH. This group of Palestinian civil

<sup>14</sup> See various issues of BADIL's magazine, al-Majdal, including, notably Issue No 15, Autumn 2002, titled 'Racism, Refugees and Apartheid,' Issue No 33, Spring 2007, titled 'Occupation, Colonization, Apartheid... Defining the Conflict,' Issue No 38, Summer 2008, titled 'BDS and the Global Anti-Apartheid Movement,' Issue No 47, Autumn 2011, titled 'Israel and the Crime of Apartheid: Towards a Comprehensive Analysis,' Issue No 48, Winter 2012, titled 'Israel and the Crime of Apartheid: The Vision of the Anti-Apartheid Struggle,' for more see <<https://www.badil.org/publications/al-majdal>>.

<sup>15</sup> WCAR, NGO Forum Declaration (3 September 2001) 98 <<https://www.hurights.or.jp/wcar/E/ngofinaldc.htm>>.

<sup>16</sup> Stop the Wall, About us <<https://www.stopthewall.org/about-us/>>.

<sup>17</sup> BDS Movement, Palestinian Civil Society Call for BDS <<https://bdsmovement.net/call>>.



society organisations will be referred to as ‘the Coalition’ in this report. Over the past few years, many more organisations from Palestine and around the world have joined the global campaign against Israeli apartheid and various efforts by the Coalition to seek international recognition of this reality.<sup>18</sup>

Cumulative efforts of Palestinian human rights organisations and civil society have contributed to a mounting international law recognition of the applicability of the apartheid analysis to the experience of the Palestinian people as a whole. This has included advocacy before UN human rights treaty bodies and with various other mechanisms, such as the Russell Tribunal on Palestine, which concluded in 2011 that ‘Israel’s rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid’.<sup>19</sup> Previously, in 2009, a landmark study published by the Human Sciences Research Council (HSRC) of South Africa, with the contribution of Palestinian human rights organisations Al-Haq and Adalah, concluded that the international law frameworks of occupation, colonialism, and apartheid concurrently apply to Palestinians in the occupied Palestinian territory.<sup>20</sup>

At the UN, Al-Haq, BADIL, and other Palestinian and regional human rights organisations, engaged critically with the reviews of Israel by the UN Committee on the Elimination of Racial Discrimination (CERD) in 2007,

18 See, for example, Al-Haq, Global Response to Israeli apartheid: A call to the UNGA from Palestinian and international Civil Society Organizations (22 September 2020) <<https://www.alhaq.org/advocacy/17305.html>>; see also, Al-Haq, Palestinian Civil Society Calls on the UNGA to Take Immediate and Effective Action to End Israel’s Apartheid Against Palestinians (21 September 2022) <<https://www.alhaq.org/advocacy/20624.html>>.

19 Russell Tribunal on Palestine, *Executive summary of the findings of the third session of the RToP* (7 November 2011) <<http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%94-full-findings/cape-town-session-summary-of-findings>>.

20 HSRC Study 2009, 277-278; see also Al-Haq, South African study finds that Israel is practicing colonialism and apartheid in the Occupied Palestinian Territory (4 June 2009) <<https://www.alhaq.org/advocacy/7207.html>>.

2012, and 2019.<sup>21</sup> In its Concluding Observations following these reviews,<sup>22</sup> CERD found that Israeli policies and practices are inconsistent with Article 3 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>23</sup> of which Israel has been a state party since 1979,<sup>24</sup> and which stipulates 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>25</sup>

The Coalition's current campaign and research for this report began in 2019,<sup>26</sup> in the lead up to the review of Israel by CERD in December 2019. In November of that year, the Coalition and partners presented a comprehensive joint parallel report to CERD, detailing Israel's breach of its obligation to prohibit and eradicate apartheid within its jurisdiction and territory of effective control, as required by Article 3 of ICERD. The submission detailed Israel's establishment of an institutionalised regime of systematic racial oppression and domination over the Palestinian people as

21 See BADIL Staff, 'The UN Anti-Racism Committee Questions Israel's Policy of Apartheid in Israel and the OPT and Calls for Equality in the implementation of the Right of Return' (2007) al-Majdal 33, 48-52 <<https://www.badil.org/publications/al-majdal/issues/71.html>>; Noura Erakat and Rania Madi, 'UN Committee Concludes Israeli System Tantamount to Apartheid in 2012 Session' (2012) al-Majdal 49, 9-10, <<https://www.badil.org/publications/al-majdal/issues/89.html>>; Al-Haq *et al.*, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (10 November 2019) <<https://www.alhaq.org/advocacy/16183.html>> (hereinafter 'CERD Report').

22 UN CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C ISR/CO/13, 14 June 2007, paras 22-23, 33-35; UN CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel CERD/C ISR/CO/14-16, 3 April 2012, paras 10 (recalling CERD/C ISR/CO/13), 11, 15, 24-27; UN CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc CERD/C ISR/CO/17-19, paras 21-24 and 44.

23 *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').

24 UNTC, 'International Convention on the Elimination of All Forms of Racial Discrimination' <[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-2&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en)>.

25 Article 3, ICERD.

26 Al-Haq, Al-Haq and Partners Send Joint Submission to the UN Committee on the Elimination of Racial Discrimination Ahead of Israel's Review (6 September 2019) <<https://www.alhaq.org/advocacy/15010.html>>.



*a whole*, constituting the crime of apartheid.<sup>27</sup> The joint parallel report and the Coalition’s subsequent engagement with CERD Committee members in December 2019, together with partners from Palestinian civil society, including Adalah,<sup>28</sup> led to further recognition by the Committee that Israeli policies and practices, on either side of the Green Line,<sup>29</sup> are inconsistent with the prohibition of racial segregation and apartheid under the Convention. Accordingly, CERD called on Israel to:

Eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory.<sup>30</sup>

Drawing on the Coalition’s submission to CERD, the present report significantly expands on the analysis presented in 2019 and builds on Palestinian civil society organisations’ decades-long advocacy on the root causes of Palestinian oppression. For over three years, the Coalition’s joint advocacy efforts, particularly in the UN system, have allowed for important discussions on Israeli apartheid to take place with key actors, including civil society, states, policymakers, and practitioners, enabling a shift in the to date largely fragmented approach adopted with respect of the Palestinian people. The Coalition’s ongoing campaign has opened up a broader discussion on the need to address the *root causes* of Israel’s widespread and systematic human rights violations, including the crime of apartheid against the Palestinian people.

As a result, the UN Human Rights Council witnessed increasing discussions on Israeli apartheid between 2020 and 2022, including the recognition of Israeli apartheid by a growing number of states, such as South Africa

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27 CERD Report.

28 See, notably, Adalah, For first time, UN body criticizes Israel’s policies of racial segregation against Palestinians in Israel and OPT – as a single entity (19 December 2019) <<https://www.adalah.org/en/content/view/9873>>.

29 References to ‘inside the Green Line’ or ‘within the Green Line’ are used throughout this report to identify the remaining territory of historic Palestine, outside that of the occupied Palestinian territory.

30 UN CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc CERD/C ISR/CO/17-19, para 23.

and Namibia, and civil society organisations.<sup>31</sup> Our Coalition welcomes such recognition and wishes to pay tribute to the peoples of South Africa and Namibia in their struggle against apartheid. We recognise the deep meaning of anti-apartheid for the peoples of South Africa and Namibia in their struggle for liberation and independence.

On 27 May 2021, as campaigned for by the Coalition, the Human Rights Council established its first ever ongoing UN Commission of Inquiry to investigate the underlying root causes of systematic discrimination not only in the occupied Palestinian territory but also inside the Green Line, as well as with respect of Palestinian refugees and exiles abroad.<sup>32</sup> The Commission of Inquiry's first report, published in June 2022, drew attention to the State of Palestine's ratification of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (hereinafter 'Apartheid Convention')<sup>33</sup> and referred to Israel's 'longstanding discrimination' against Palestinians as a root cause of recurring human rights violations in this context.<sup>34</sup> Ninety civil society organisations have urged the ongoing Commission of Inquiry to address apartheid and settler colonialism as root causes in Palestine.<sup>35</sup>

31 Al-Haq, United Nations: In response to Unprecedented Recognition of Israel's Apartheid Regime, States Must Take Concrete Steps to End this "unjust reality" (18 June 2022) <<https://www.alhaq.org/advocacy/17012.html>>.

32 UN OHCHR, Human Rights Council Establishes International Commission of Inquiry to Investigate Violations in the Occupied Palestinian Territory, including East Jerusalem, and in Israel (27 May 2021) <<https://www.ohchr.org/en/press-releases/2021/05/human-rights-council-establishes-international-commission-inquiry>>; Al-Haq, Palestinian Civil Society Organisations Call for a Special Session on the Escalating Israeli Attacks against Palestinians on Both Sides of the Green Line (22 May 2021) <<https://www.alhaq.org/palestinian-human-rights-organizations-council/18389.html>>.

33 *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) 1015 UNTS 243 (hereinafter 'Apartheid Convention').

34 UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, UN Doc A/HRC/50/21, para 72; see also Rania Muhareb, 'Addressing the 'Full Context': The First Report of the Commission of Inquiry on Root Causes in Palestine' (*Irish Centre for Human Rights Blog*, 14 June 2022) <<https://ichrgalway.wordpress.com/2022/06/14/addressing-the-full-contextthe-first-report-of-the-commission-of-inquiry-on-root-causes-in-palestine/>>.

35 Al-Haq, 90 Organisations Urge the UN Independent International Commission of Inquiry on Palestine to Recognise and Address Zionist Settler Colonialism and Apartheid as the Root Causes of Israel's Ongoing Violations (28 June 2022) <<https://www.alhaq.org/advocacy/20219.html>>.



In addition, following Palestinian-led advocacy efforts, the former UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Michael Lynk, published a report in March 2022 detailing the Israeli authorities' commission of the crime of apartheid within the context of Israel's settler colonial project.<sup>36</sup> Lynk's report endorsed the findings of human rights organisations on apartheid and echoed the Coalition's call for the reconstitution of the UN's anti-apartheid mechanisms at the General Assembly level.<sup>37</sup> His successor, Francesca Albanese, has since drawn on the apartheid framework as part of Israel's settler colonialism 'driven by the logic of elimination' of Palestinians, in violation of the Palestinian people's right to self-determination.<sup>38</sup> These contributions followed two previous recognitions of Israeli apartheid by the former UN Special Rapporteurs on Palestine, Richard Falk and John Dugard.<sup>39</sup>

In light of ongoing advocacy efforts and in support of growing mobilisation against Israeli apartheid, this report and the campaign by the Coalition seek to contribute to a better understanding of Israel's apartheid regime as a *tool* of Zionist settler colonialism. This report highlights the responsibilities and obligations arising from the commission of the crime of apartheid by Israeli authorities and offers recommendations for dismantling this system of institutionalised oppression and domination over the Palestinian people.

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36 UN Human Rights Council, Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, Michael Lynk, 21 March 2022, UN Doc A/HRC/49/87, paras 42 and 59.

37 *Ibid.*, para 62.

38 UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022, UN Doc A/77/356, paras 10, 13, 40, 42, 66, 70, 73.

39 See, UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, 13 January 2014, UN Doc A/HRC/25/67, paras 51-77; UN 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, p 3.

## 1.2 Zionism and the Roots of Israeli Apartheid

An understanding of Zionist settler colonialism is necessary for a comprehensive articulation of Israel's apartheid regime and its root causes. The ideology that forms the basis of Israeli apartheid was expounded and institutionalised before the 'proclamation' of the State of Israel in 1948. Its roots lie in the preceding decades of Zionist settler colonisation of Palestine from the 19<sup>th</sup> century onward.

Zionism emerged within the context of European imperial expansion in the 19<sup>th</sup> century and was modelled on racial conceptions of human sciences and the nation-state. In its quest for territorial conquest, Zionism was founded as a settler colonial movement whose ideological commitments were inherently racial.<sup>40</sup> Despite the ethnic diversity of Judaism's adherents through the millennia, the dual factors of European Christian persecution of Jews<sup>41</sup> and the rise of racial theories in the 19<sup>th</sup> century<sup>42</sup> sought to attribute adherence to Judaism with a single, distinct racial group. In this historical context, the late 19<sup>th</sup> century Zionist movement embraced this view of persons of Jewish faith as a distinct 'race,' enshrining it in the charters of Zionist institutions, including those of the World Zionist Organization (WZO) in 1897, the Jewish National Fund (JNF) in 1901, and the Jewish Agency (JA) established in 1921. These institutions apply this racialised distinction as a matter of unique Jewish privilege and supremacy over all others, exercised through the exclusive entitlement to 'Jewish nationality,' which is superior to mere citizens in Israeli law and policy.

In 1947–1948, the start of the *Nakba* launched by Zionist militias became instrumental in the consolidation of Zionist settler colonial domination over the Palestinian people and since 1967 of the territory of historic Palestine in its entirety. In the immediate aftermath of the mass expulsion of indigenous

<sup>40</sup> Sayegh, *Zionist Colonialism in Palestine*; Abdul-Wahab Kayyali, 'Zionism and Imperialism: The Historical Origins' (1977) 6(3) *Journal of Palestine Studies* 98; Fayed Sayegh, 'Zionism: A Form of Racism and Racial Discrimination' in Abdul Wahhab Al Kayyali (ed), *Zionism, Imperialism and Racism* (Croom Helm Ltd, 1979) 51.

<sup>41</sup> Abel Mordechai Bibliowicz, *Jews and Gentiles in the Early Jesus Movement: An Unintended Journey* (Palgrave Macmillan, 2013) 180–82; Pamela Eisenbaum, 'Was Paul the Father of Mysogyny and Antisemitism?' (2000) 50(4) *CrossCurrents* 506–24.

<sup>42</sup> Talal Asad, (ed), *Anthropology & the Colonial Encounter* (Humanities Press, 1973).



Palestinians from and within historic Palestine, the foundations of Israeli apartheid, already enshrined in Zionist institutions, were operationalised through laws, policies, and practices, most notably those aimed at denying Palestinian refugees and displaced persons their right of return to their homes, lands, and properties, thereby entrenching their dispossession, fragmentation, and domination. Seventy-four years on, continued expulsions and dispossession of Palestinians from the Galilee in the north,<sup>43</sup> to Sheikh Jarrah in Jerusalem, the southern Naqab region, and every other part of historic Palestine mean that the *Nakba* is far from over. The ongoing *Nakba* is a continuous process of deprivation and exemplifies Zionism's settler colonial logic of elimination and transfer of indigenous Palestinians from their land.<sup>44</sup>

43 Khalil Nakleh, 'The Two Galilees' (Association of Arab-American University Graduates, Occasional Paper No. 7, 1982).

44 Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006) 8(4) Journal of Genocide Research 387.

### 1.3 Establishing Israeli Apartheid

In 1948, the Zionist leadership erected a regime in the newly established State of Israel to ‘legalise’ and, thereby, legitimise the crimes committed by Zionist militias against the Palestinian people before, during, and since the *Nakba*. These laws, policies, and related measures laid the foundations of Israel’s apartheid regime, particularly in the domains of land and property rights, nationality, citizenship, and residency, and nearly every other aspect of Palestinian life. This was done by instituting a legal and institutional framework to ‘obscure the issue of dispossession and refugees’,<sup>45</sup> while also establishing legal and structural inequalities between Zionist settlers and indigenous Palestinians.

Israeli laws, institutions, and policies dealing with nationality and land governance distinguish between the rights accorded to ‘Jewish’ and ‘non-Jewish’ persons, reflecting the Zionist movement’s racialist character. Within this logic, preferential treatment is granted to Jewish persons based on a constructed ‘Jewish nationality’ status, also referred to as ‘Jewish race or descent’ in Zionist doctrine and policy.<sup>46</sup> The resulting strategy has combined adopting laws to provide legal cover to the dispossession of indigenous Palestinians, while facilitating further annexationist land grabs to create a comprehensive system to appropriate Palestinian land and force Palestinian expulsion therefrom. This brand of Israeli apartheid enables and sustains the continued displacement, dispossession, discrimination, and domination of Palestinians.

A key policy in the establishment of Israeli apartheid is what Richard Falk and Virginia Tilley identified in their cornerstone 2017 report for the UN Economic and Social Commission for Western Asia (ESCWA), as the ‘strategic fragmentation’ of the Palestinian people. By fragmenting Palestinians legally, politically, and geographically, on either side of the Green Line and

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<sup>45</sup> BADIL, *Land Confiscation and Denial of Use—Working Paper No 21* (19 October 2017) 9.

<sup>46</sup> Joseph Schechla, ‘The Consequences of Conflating Religion, Race, Nationality and Citizenship’ (2010) 43 al-Majdal 10, 11.



in exile,<sup>47</sup> Israel uses strategic fragmentation as a primary method to impose apartheid and deny the Palestinian people the exercise of their inalienable rights.<sup>48</sup> Through fragmentation, as outlined in the Coalition's report to CERD in 2019, Israel ensures 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.<sup>49</sup>

Israel has administratively divided the Palestinian people into at least four legal 'domains,' comprising Palestinians with Israeli citizenship governed by Israeli civil law, Palestinians with permanent residency status in the eastern part of Jerusalem, Palestinians in the occupied West Bank and Gaza Strip subjected to Israeli military laws and orders, and Palestinian refugees and involuntary exiles living outside of historic Palestine, whose right of return to their homes, lands, and properties the Israeli regime has systematically denied and obstructed since 1948.<sup>50</sup>

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47 Richard Falk and Virginia Tilley, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation* (ESCWA 2017) 1 UN Doc E/ESCWA/ECRI/2017/1 (hereinafter 'ESCWA Report') 37.

48 ESCWA Report, 37.

49 CERD Report, para 65.

50 ESCWA Report, 37-38.

## 1.4 Maintaining Israeli Apartheid

The Israeli apartheid regime is sustained through institutionalised impunity and by weakening the capacity of the indigenous Palestinian people and institutions to challenge the myriad human rights violations and international crimes maintaining this regime. Through this manoeuvre, the Israeli regime employs policies of visible segregation and material discrimination against Palestinians in the exercise of their individual and collective rights. These underlying policies seek to dominate and oppress the Palestinian people. Spatial separation, isolation, suppression, and concentration of Palestinian communities, on either side of the Green Line, sustain the pattern of illegal population transfer and demographic manipulation inherent to the Zionist settler colonial project.

The Israeli regime's tactics to maintain apartheid over Palestinians include the policy of strategic fragmentation of the Palestinian people and the commission of a broad range of inhuman(e) acts of apartheid, within the meaning of the Apartheid Convention and the Rome Statute of the International Criminal Court (hereinafter 'Rome Statute').<sup>51</sup> Key among these, and integral to both Zionist settler colonialism and its implementation as Israeli apartheid, are the commission of the serious crime of population transfer, involving: the systematic denial of the right of return of Palestinian refugees and exiles; demographic manipulation; and illegal colonial settlement construction and expansion. Within this context, the Israeli regime commits a series of inhuman(e) acts of apartheid against the Palestinian people, including, among others, arbitrary deprivation of life;<sup>52</sup> arbitrary detention;<sup>53</sup> torture and other ill-treatment;<sup>54</sup> denial of freedom of peaceful assembly;<sup>55</sup> restrictions on the right to freedom of movement and residency,<sup>56</sup> particularly severe in the case of the 15-year illegal closure

<sup>51</sup> *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force, 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute').

<sup>52</sup> Article II(a)(i), Apartheid Convention; Article 7(1)(a) and 7(1)(b), Rome Statute.

<sup>53</sup> Article II(a)(iii), Apartheid Convention; Article 7(1)(e), Rome Statute.

<sup>54</sup> Article II(a)(ii), Apartheid Convention; Article 7(1)(f), Rome Statute.

<sup>55</sup> Article II(c), Apartheid Convention.

<sup>56</sup> Article II(c), Apartheid Convention.



and blockade of the Gaza Strip; denial of the right to the highest attainable standard of health;<sup>57</sup> the denial of the right to family life;<sup>58</sup> expropriation of landed property;<sup>59</sup> and various forms of collective punishment.<sup>60</sup>

Consistent with Article II(f) of the Apartheid Convention, the Israeli regime also persecutes individuals and organisations by depriving them of fundamental rights and freedoms because they oppose apartheid. This includes the arbitrary designation, in October 2021, of six leading Palestinian human rights and civil society organisations, including members of the Coalition, as ‘unlawful’ and so-called ‘terror organisations’ in order to undermine their work.<sup>61</sup> Such tactics of threatening, persecuting, and criminalising Palestinian civil society have a long history both within the Green Line<sup>62</sup> and in the occupied Palestinian territory.<sup>63</sup> These are intended to silence and intimidate anyone who seeks to challenge the Israeli settler colonial apartheid regime.

The institutionalised oppression of the Palestinian people, through the commission of inhuman(e) acts, entrenches and sustains the Zionist settler

57 Article II(a)(ii), Apartheid Convention; Article 7(1)(k), Rome Statute.

58 Articles II(c) and II(d), Apartheid Convention; Article 7(1)(k), Rome Statute.

59 Article II(d), Apartheid Convention.

60 Article II(c), Apartheid Convention; Article 7(1)(k), Rome Statute.

61 See discussion in Rania Muhareb, Elizabeth Rghebi, Susan Power, and Pearce Clancy, *Persecution of Palestinian Civil Society: Epistemic Violence, Silencing, and the Apartheid Framework* (Institute for Palestine Studies, Current Issues in Depth Series, 2022) <<https://www.palestine-studies.org/en/node/1653268>>.

62 Shany Payes, ‘Palestinian NGOs in Israel: A Campaign for Civic Equality in a Non-Civic State’ (2003) 8(1) *Israel Studies* 60-90; Shany Payes, *Palestinian NGOs in Israel: The Politics of Civil Society* (I.B. Taurus, 2005), <[https://www.academia.edu/6474025/Palestinian\\_NGOs\\_in\\_Israel\\_The\\_Politics\\_of\\_Civil\\_Society](https://www.academia.edu/6474025/Palestinian_NGOs_in_Israel_The_Politics_of_Civil_Society)>; Arik Rudnitzky, *Arab Citizens of Israel Early in the Twenty-First Century* (Institute for National Security Studies, 2015).

63 UN Committee on the Inalienable Rights of the Palestinian People, Outraged over Israel’s Designation of Six Civil Society Groups as Terrorists, Speakers Tell Palestinian Rights Committee Harassment against Human Rights Defenders Must End (7 December 2021) <<https://www.un.org/press/en/2021/gapal1443.doc.htm>>; Al-Marsad, Arab Human Rights Centre in Golan Heights, Al-Haq, Palestinian Human Rights Organizations Council, ESCR-Net, International Network for Economic, Social and Cultural Rights, Cornell Law School International Human Rights Clinic and Boston University Law School International Human Rights Clinic, Report on the Repression of Human Rights Defenders in Israel the Occupied Territories of Palestine and the Golan (January 2022) <[https://www.alhaq.org/cached\\_uploads/download/2022/02/14/repression-of-human-rights-defenders-by-israel-special-rapporteurs-1644827668.pdf](https://www.alhaq.org/cached_uploads/download/2022/02/14/repression-of-human-rights-defenders-by-israel-special-rapporteurs-1644827668.pdf)>.

colonisation of Palestine's natural and human resources. Key to this settler colonial enterprise are Zionist parastatal institutions, which have imposed both the 'race-based' notions of Jewish distinction and supremacy, as well as the correspondingly exclusive control of Palestine's natural resources.<sup>64</sup> Prior to 1948, the JNF assumed the task of acquiring and administering land resources essential to the formation of a Zionist state. Other similarly chartered institutions were established to capture and administer the other resources of the country. Among these was the Histadrut (General Federation of Hebrew Labor), founded in 1920. It was Histadrut that founded Haganah, the Zionist terrorist group, also in 1920, that later became the Israeli armed forces.<sup>65</sup> David Ben-Gurion, Histadrut's first Secretary-General, became chairman of the JA in 1935 and the first Israeli Prime Minister in 1948. Speaking of her role on the Histadrut Executive Committee, eventual Israeli Prime Minister Golda Meir recalled that 'this big labour union wasn't just a trade union organization. It was a great colonizing agency.'<sup>66</sup> Although Histadrut is less omnipresent today, it was the second-largest employer in Israel, owning 25 per cent of Israeli industry, before the serial privatisation of its enterprises in the 1980s and 1990s.<sup>67</sup> Histadrut operated as an arm of Israeli and United States foreign policy from 1958 onward<sup>68</sup> and actively collaborated with the South African apartheid regime.<sup>69</sup>

64 ESCWA Report, 5; see also CERD Report, para 40-42.

65 Zeev Sternhell, *Founding Myths of Zionism* (Princeton University Press, 1998) 180.

66 Quoted in Uri Davies, *Utopia Incorporated* (Zed Press, 1977) 142.

67 Sawt al-Amel, *Separate and Unequal: The History of Arab Labour in pre-1948 Palestine and Israel* (December 2006) 16 <<http://www.labournet.net/world/0702/labvoice1.html>>.

68 Benjamin Beit Hallahmi, *The Israeli Connection: Whom Israel Arms and Why* (I.B. Tauris & Co. Ltd., 1988) 39.

69 James Adams, *Israel and South Africa: The Unnatural Alliance* (Quartet Books, 1984).



## 1.5 The Need for a Comprehensive Articulation of the Apartheid Framework

For far too long, the international discourse on Palestine has fragmented the Palestinian people and obfuscated the root causes of the Israeli regime's prolonged, widespread, systematic human rights violations, and extreme material discrimination. The long-prevailing 'conflict' paradigm has entrenched the fragmentation of the Palestinian people and international complicity in perpetuating Palestinian oppression. Describing the situation reductively as a 'conflict' between two parties that needs to be resolved by the parties is a misleading approach. Rather, the belligerent occupation is taking place in the context of ongoing Zionist settler colonisation and apartheid, of which it operates as a tool.<sup>70</sup> Failure by third states to recognise this key distinction disregards applicable peremptory norms of general international law and the purposes and principles enshrined in the Charter of the United Nations, including the cardinal prohibition of the use of force.<sup>71</sup> It further disregards third-party responsibility to refrain from assisting in the maintenance of the unlawful situation and the positive duty of states to cooperate to bring it to an end.<sup>72</sup>

The dispossession, fragmentation, discrimination, persecution, and domination of the Palestinian people, which practitioners and civil society are increasingly understanding as apartheid, is also not the result of incremental Israeli measures and tactical responses to purported 'security' challenges,<sup>73</sup> nor merely a consequence of the rightward shift in Israeli politics. As this report chronicles, Israel's institutionalised discrimination against the indigenous Palestinian people is not accidental or new; it is not

<sup>70</sup> Amnesty International, *Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity* 105-108 (1 February 2022) <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>>.

<sup>71</sup> Article 2(4), *Charter of the United Nations* (adopted 26 June 1945, entry into force 24 October 1945).

<sup>72</sup> Article 41(1), International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (November 2001, Supplement No 10, UN Doc A/56/10) (hereinafter 'Draft Articles on State Responsibility').

<sup>73</sup> These have been rejected by the latest UN Commission of Inquiry on Palestine; see UN General Assembly, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/77/328, 14 September 2022, para 79.

a culmination or a by-product of the entrenchment of the Israeli occupation since 1967; it is instead inherent in the ideology operationalised in the founding institutions of the Zionist settler colonial project in Palestine. We concur with Noura Erakat and others who have insisted that ‘Israel did not *become* a discriminatory regime but is *defined* by such discrimination.’<sup>74</sup>

The apartheid framework allows us to shift the international discourse on Palestine from one focused on a misleading ‘conflict’ or ‘slippery-slope’ paradigm to one centred on implementing the right of the Palestinian people to self-determination. Applying the apartheid framework aims at overcoming Israel’s foundationally-racist and settler colonial regime, including the machinery perpetrating the ongoing *Nakba*, prolonged Israeli occupation, and the blockade of the Gaza Strip. In this, we further concur with the latest report of the UN Special Rapporteur on Palestine, Francesca Albanese, that a paradigm shift is needed to realise the inalienable rights of the Palestinian people.<sup>75</sup>

Building on the argument of Palestinian scholars such as Lana Tatour, we consider that a ‘liberal’ approach to Israeli apartheid that does not recognise settler colonialism, and thus the need for decolonisation, is wholly insufficient.<sup>76</sup> The approach recognising Israeli apartheid moves from a focus on the symptoms of Israeli oppression to the *root causes*, including its roots in long-discredited racial theory.<sup>77</sup> The apartheid framework defragments the Palestinian people and allows for connecting the Palestinian struggle for decolonisation with global struggles of other indigenous peoples against settler colonialism and associated forms of structural and institutionalised racism and discrimination.

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74 Erakat, ‘Beyond Discrimination’ (emphasis in the original).

75 UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN Doc A/77/356, 21 September 2022, para 70.

76 Lana Tatour, ‘Why calling Israel an apartheid state is not enough’ (*Middle East Eye*, 18 January 2021) <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>.

77 See Ernest Beaglehole, Juan Comas, Luiz de Aguilar Costa Pinto, Franklin Frazier, Morris Ginsberg, Humayun Kabir, Claude Lévi Strauss and Ashley Montagu, The Race Question (UNESCO: 1950 and revised versions in 1951 and 1967); UNESCO, Declaration on Race and Racial Prejudice (1978) and Declaration of Principles on Tolerance (1995).



Additionally, the apartheid framework exposes the inadequacy of the manner in which international law norms and UN mechanisms have been deployed in Palestine to date, in particular the failure to prevent, bring an end to, redress, and remedy institutionalised human rights violations and other breaches of international law committed against Palestinians. The present report advocates for adopting an integrated, comprehensive legal framework to end Israel's settler colonial apartheid regime, encompassing the protections of international human rights law, international humanitarian law, and international criminal law, as a necessary first step to providing legal protection to the entirety of the Palestinian people, regardless of their geographical location or legal status. This comprehensive approach seeks to overcome decades of Israel's strategic fragmentation of the Palestinian people and the UN's institutional shortcomings by examining the experience of the Palestinian people as a whole and challenging the racial domination and oppression at the heart of Israel's institutions, laws, policies, and practices since the Zionist movement began and at its apartheid core.

The comprehensive legal approach advocated for by this report seeks to overcome the inadequacy of the previous predominant focus on international humanitarian law in Palestine, often in isolation from other legal frameworks. International humanitarian law has only been applied to the situation in the territories occupied by Israel since 1967, comprising the occupied Palestinian territory (Gaza Strip and West Bank, including the eastern part of Jerusalem) and the occupied Syrian Golan. Thus, the same discriminatory Israeli practices on both sides of the Green Line have been addressed through different legal frameworks. This fragmentary approach has averted focus away from the commonalities, in policy and practice, of human rights violations across administratively constructed domains of Israeli control. By remedying fragmentation, the apartheid framework allows for a reconsideration of these violations within one overarching legal framework. As Falk and Tilley astutely observed in their 2017 ESCWA report:

The international community has unwittingly collaborated with [Israeli fragmentation] 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>78</sup>

At the international level, the apartheid framework allows for an interrogation of the fragmented treatment of the 'Question of Palestine' within the UN system. The UN system has played a role in fragmenting the Palestinian people through the creation of various mechanisms sought to consider segments of the Palestinian people rather than the root causes. In 1949, the UN established the Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),<sup>79</sup> which, for over seven decades, has offered vital service—but no protection—for Palestine refugees who have been forcibly expelled and exiled. UNRWA was not mandated to provide international assistance to Palestinians similarly displaced and dispossessed inside the Green Line at the hands of the Zionist movement. Moreover, the effective end of the UN Conciliation Commission for Palestine (UNCCP) in 1964<sup>80</sup> left all Palestinians without protection. In 1967 and thereafter, the UN political bodies focused on the territories occupied by Israel during the war and the segments of the Palestinian people in the West Bank, including the eastern part of Jerusalem, and the Gaza Strip. Eventually, the UN's legal bodies, in particular, the human rights treaty bodies began to review Israel's performance under international human rights treaties inside the Green Line, while considering the treaties' application in the occupied Palestinian territory since 1967 as an addendum. From 1993 onward, the UN Commission on Human Rights and, later, the Human Rights Council mandated Special Rapporteurs to investigate, report, and advise on human rights issues *only* in the occupied Palestinian territory since 1967.<sup>81</sup> Only the General Assembly's Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP), established in 1975,<sup>82</sup> is mandated to

78 ESCWA Report, 37.

79 UN General Assembly, Resolution 302, UN Doc A/RES/302 (IV), 8 December 1949, para 7.

80 Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (Columbia University Press, 2003).

81 See, recently, Richard Falk, 'New anti-colonial UN report gives Palestinians welcome boost in legitimacy wars' (*Middle East Eye*, 27 October 2022) <<https://www.middleeasteye.net/opinion/israel-palestine-new-un-report-anti-colonial>>.

82 UN General Assembly, Resolution 3376, UN Doc A/RES/3376 (XXX), 10 November 1975, para 3.



address the human rights of the Palestinian people as a whole. Yet, it has only nominally sought to do so. Instead, the CEIRPP has largely restricted its reporting to political events and developments in the occupied Palestinian territory since 1967.

In all their diversity, the Palestinian people have shared a unitary identity and culture over centuries. The Palestinian people possess global recognition as holders of the inalienable right to self-determination, reaffirmed in countless UN General Assembly resolutions.<sup>83</sup> Yet, the institutional arrangement within the UN system has acquiesced to and administratively solidified the Palestinian people's spatial segregation and fragmentation by the Israeli regime. While the UN bears permanent responsibility for the Question of Palestine until its resolution 'in all its aspects in a satisfactory manner in accordance with international legitimacy,'<sup>84</sup> the world organisation has yet to begin repairing its own disarticulated approach and structural flaws that have contributed to the denial of Palestinian self-determination, the right of return, and bringing an end to the unlawful situation created through Israel's settler colonial apartheid regime and its associated international crimes.

As such, employing the apartheid framework helps bring into sharper focus the illegality of the Israeli regime itself, not only of its constitutive elements. Meanwhile, the predominant focus on international humanitarian law to date has presented clear in-built limitations given that the laws of armed conflict do not outlaw occupation in and of itself. Nor does international humanitarian law, and the law of occupation, stipulate measures through which the Israeli occupation can be ended, despite offering important prohibitions of key features of the Israeli occupation, such as the construction of Israeli settlements, exploitation of Palestinian natural resources, destruction of civilian property in the absence of military necessity, and collective punishment.

<sup>83</sup> See Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN Doc A/77/356, 21 September 2022, para 25.

<sup>84</sup> A/RES/57/1067, 3 December 2002 and reaffirmed annually through Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/74/20, 8 December 2020.

Adopting the apartheid framework does not mean abandoning any standing instruments and principles of international humanitarian law, nor rejecting its applicability to Palestine, as Palestinians at official, academic, and civil society levels have reaffirmed since 1967. The former UN Special Rapporteur on Palestine, John Dugard, notably observed in his 2007 report to the Human Rights Council that ‘elements of the [Israeli] occupation constitute forms of colonialism and of apartheid, which are contrary to international law.’<sup>85</sup> The subsequent 2009 study published by the HSRC further confirmed that colonialism and apartheid apply to the occupied Palestinian territory and that these do not displace the occupation law framework.<sup>86</sup> Since then, the international articulation of the apartheid framework in Palestine has significantly developed to address the experience of the Palestinian people as a whole. In 2011, notably, the Russell Tribunal on Palestine confirmed the practice of apartheid by Israel over Palestinians wherever they reside, calling also on the UN General Assembly to re-establish the UN Special Committee against Apartheid and the UN Centre against Apartheid in response.<sup>87</sup>

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<sup>85</sup> UN 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, 3.

<sup>86</sup> HSRC Study, 277-278.

<sup>87</sup> The Russell Tribunal on Palestine, Summary of Findings (7 November 2011) 5  
<<http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%94-full-findings/cape-town-session-summary-of-findings>>.



## 1.6 Individual Criminal, State, and Corporate Responsibility for Israeli Apartheid

Apartheid is absolutely prohibited under international law. International criminal law criminalises apartheid as a crime against humanity, giving rise to individual criminal responsibility for perpetrators of this crime. According to Article III of the Apartheid Convention:

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

- (a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;
- (b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.

The Apartheid Convention provides in Article V that persons accused of committing the crime of apartheid may be tried in the courts of states parties to the Convention or before an international tribunal. The International Criminal Court (ICC) has jurisdiction over the crime of apartheid under Article 7(1)(j) of the Rome Statute. The Court has opened an ongoing investigation<sup>88</sup> into the Situation in Palestine, comprising the West Bank, including the eastern part of Jerusalem, and the Gaza Strip. The ICC's Office of the Prosecutor has previously acknowledged receiving allegations of apartheid in this context.<sup>89</sup> The ongoing investigation by the ICC therefore provides an important avenue for individual criminal accountability, notwithstanding the limitations of Court's personal,

<sup>88</sup> ICC Office of the Prosecutor, Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine (3 March 2021) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>>.

<sup>89</sup> ICC Office of the Prosecutor, *Report on Preliminary Examination Activities* (4 December 2017) para 63: 'in addition to allegations directly related to settlement activities, the Office has also received information regarding the purported establishment of an institutionalised regime of systematic discrimination that allegedly deprives Palestinians of a number of their fundamental human rights' <<https://www.icc-cpi.int/news/report-preliminary-examination-activities-2017>>.

temporal, and geographical jurisdiction in Palestine.<sup>90</sup>

In addition to international criminal law, apartheid is prohibited as a form of racial discrimination within general international law and international human rights law.<sup>91</sup> Under international humanitarian law, apartheid is further prohibited as a grave breach.<sup>92</sup> As a matter of customary international law binding on all states, apartheid and racial discrimination constitute a serious breach of *jus cogens* (peremptory) norms of international law.<sup>93</sup> The breach of the prohibition of apartheid therefore gives rise to an internationally wrongful act, triggering the responsibility of the state responsible, Israel. In addition, under the law of third state responsibility, all states have a responsibility to ensure they do not contribute to the unlawful situation created as a result of a serious breach of international law.<sup>94</sup> They must ensure that they do not recognise such a situation as lawful, do not aid or assist in its maintenance, and cooperate to bring it to an end.<sup>95</sup>

The denial of the Palestinian people's inalienable right to self-determination invokes the Namibia Doctrine in international law, by which all states bear the obligation of non-recognition and non-cooperation with the unlawful

<sup>90</sup> See, for example, Pearce Clancy and Rania Muhareb, 'Putting the International Criminal Court's Palestine Investigation into Context' (*Opinio Juris*, 2 April 2021) <<http://opiniojuris.org/2021/04/02/putting-the-international-criminal-courts-palestine-investigation-into-context/>>.

<sup>91</sup> Articles 1(3) and 55, UN Charter; Article 3, ICERD.

<sup>92</sup> Article 85(4)(c), *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)* (adopted 8 June 1977, entry into force 7 December 1978) 1125 UNTS 3 (hereinafter 'Additional Protocol I').

<sup>93</sup> ILC, Draft Articles on State Responsibility, p 112.

<sup>94</sup> Article 41(2), Draft Articles on State Responsibility.

<sup>95</sup> Articles 41(1) and 41(2), Draft Articles on State Responsibility.



situation,<sup>96</sup> in particular, arising from the occupying state's denial of the subject people's right to self-determination.<sup>97</sup> By virtue of this, third states have a responsibility to end Israel's apartheid regime, including through effective, coercive measures. These have been advocated for by a broad coalition of Palestinian civil society organisations since at least 2005, who have urged sanctions, divestments, and boycotts of Israel—inspired by the anti-apartheid movement in South Africa and occupied Namibia.<sup>98</sup> States should take effective measures to bring the unlawful situation arising from Israeli apartheid to an end, notably through economic and targeted sanctions, implementation of a comprehensive and mandatory arms embargo, and the downgrading of diplomatic relations. Moreover, states should pursue accountability through the activation of universal jurisdiction mechanisms to hold individual perpetrators to account, including on the basis of the Apartheid Convention.

96 International Court of Justice, International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, 21 June 1971, p 16, para 123: 'Member States, in compliance with the duty of non-recognition imposed by paragraphs 2 and 5 of [Security Council] resolution 276 (1970), are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia'; and para 133(2): 'that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration.'

97 *Ibid.*, para 52: '...the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed and expanded to all "territories whose peoples have not yet attained a full measure of self-government" (Art. 73). Thus, it clearly embraced territories under a colonial régime. Obviously, the sacred trust continued to apply to League of Nations mandated territories on which an international status had been conferred earlier. A further important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which "have not yet attained independence." Nor is it possible to leave out of account the political history of mandated territories in general. All those which did not acquire independence, excluding Namibia, were placed under trusteeship. Today, only two out of fifteen, excluding Namibia, remain under United Nations tutelage. This is but a manifestation of the general development which has led to the birth of so many new States.'

98 BDS, What is BDS? <<https://bdsmovement.net/what-is-bds>>.

Businesses and other corporate entities also have a responsibility to respect international law and human rights, must avoid violating human rights, and address ‘adverse human rights impacts’ associated with their operations.<sup>99</sup> This responsibility has been broadly recognised with respect of corporate entities operating in Palestine, particularly those involved with and complicit in Israel’s illegal settlement enterprise in the occupied Palestinian territory.<sup>100</sup> Recognition of Israeli apartheid must broaden the scope of discussion around corporate responsibility and accountability for gross human rights abuses and violations, namely the crime of apartheid and associated inhuman(e) acts, across historic Palestine, including within the Green Line. To this end, at a minimum, business enterprises must conduct ongoing enhanced human rights due diligence and responsibly cease all activities and relationships with and disengage from Israel’s apartheid and settler colonial enterprise.<sup>101</sup> Third states, namely home states of multinational corporations with activities or relationships in Palestine, must also ensure that corporate entities domiciled within their territory and/or jurisdiction respect international law and human rights in Palestine, including by taking the necessary effective measures relevant to states’ obligations under international law—at domestic and regional levels—toward corporate and other private actors.<sup>102</sup> In this regard, the Apartheid Convention requires that ‘States Parties... declare criminal those organizations, institutions and

<sup>99</sup> UN OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) Principle 11, p 13.

<sup>100</sup> See, notably, Marya Farah, *Business and Human Rights in Occupied Territory: Guidance for Upholding Human Rights* (Al-Haq and GLAN, 2020) <[https://www.alhaq.org/cached\\_uploads/download/2020/04/27/business-and-human-rights-in-the-opt-interactive-1587981596.pdf](https://www.alhaq.org/cached_uploads/download/2020/04/27/business-and-human-rights-in-the-opt-interactive-1587981596.pdf)>; see also, UN Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc A/HRC/43/71, 28 February 2020, para 31.

<sup>101</sup> See, for example, UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, 6 June 2014, pp 9-11 <<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/OPTStatement6June2014.pdf>>.

<sup>102</sup> Al-Haq, Al-Haq Submits Legal Position Paper to European Union on the Membership of Mr Haim Bibas, Mayor of Modi'in-Maccabim-Re'ut, in the Euro-Mediterranean Regional and Local Assembly (ARLEM) (2 March 2020) <<https://www.alhaq.org/advocacy/16547.html>>.



individuals committing the crime of apartheid.<sup>103</sup> It is incumbent upon all states to hold corporate entities, including Zionist institutions operating abroad as so-called ‘charities’,<sup>104</sup> to account for their role in contributing to the commission of the crime of apartheid in Palestine.

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103 Article I(2), Apartheid Convention.

104 See Karen Pennington and Joseph Schechla, ‘Israel’s Para-state Institutions Operating in the United States’ (2009) 41 *al-Majdal* 25; see also Joseph Schechla, ‘The Consequences of Conflating Religion, Race, Nationality and Citizenship’ (2010) 43 *al-Majdal* 10.

## 1.7 Dismantling Israeli Apartheid

Apartheid in South Africa and occupied Namibia was met with successive condemnations by UN bodies, including the General Assembly and Security Council,<sup>105</sup> and the International Court of Justice (ICJ). South Africa's apartheid regime prompted the establishment of specialised anti-apartheid mechanisms within the UN, the criminalisation of apartheid through the adoption of the Apartheid Convention, and the adoption of sanctions and arms embargoes against the South African apartheid regime.<sup>106</sup> International political will and effective measures played a central role in driving the process toward the suppression of the crime of apartheid in South Africa and occupied Namibia. Such effective, coercive measures are essential to support Palestinian resistance to Israel's settler colonial apartheid regime and ensure the realisation of Palestinians' inalienable rights to self-determination and return. Further recognition of the commission of the crime of apartheid in Palestine, including by the ongoing UN Commission of Inquiry,<sup>107</sup> an ICC investigation into the crime of apartheid in Palestine, the reconstitution of the UN's anti-apartheid mechanisms, and further measures recommended by this report would provide key institutional support to the Palestinian liberation struggle in the face of Israel's settler colonial apartheid regime. It was only through such concerted international action that the South African apartheid regime was formally brought to an end. Israel's apartheid regime over the Palestinian people requires a similar, urgent and proactive response.

<sup>105</sup> See, e.g., UN General Assembly, Resolution 2074 (XX), 17 December 1965, UN Doc A/RES/2074 (XX), para 4; UN Security Council, Resolution 392, 19 June 1976, UN Doc S/RES/392 (1976), para 3.

<sup>106</sup> UN General Assembly, Resolution 1761 (XVII), 6 November 1962, UN Doc A/RES/1761, para 4; UN Security Council, Resolution 418, 4 November 1977, UN Doc S/RES/418 (1977), para 2.

<sup>107</sup> Middle East Monitor, 'UN to investigate apartheid charges against Israel' (*Middle East Monitor*, 28 October 2022) <<https://www.middleeastmonitor.com/20221028-un-to-investigate-apartheid-charges-against-israel/>>.



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## 2 ➤ Introduction

In recent years, there has been mounting recognition of Israeli apartheid over the Palestinian people. A growing number of reports by civil society, scholarship, and statements by former and current state officials and policymakers have brought renewed focus to the discriminatory nature of the Zionist settler colonial project. For over two decades,<sup>108</sup> Palestinian activists, civil society, and organisers have been at the forefront of international advocacy for the recognition of Israel's apartheid regime against the Palestinian people. Central to this effort has been an understanding of apartheid as applying *alongside* the frameworks of occupation and (settler) colonialism, rather than in isolation from them,<sup>109</sup> and as targeting the

108 See, for example, WCAR, NGO Forum Declaration (3 September 2001) paras 98-99 <<https://www.hurights.or.jp/wcar/E/ngofinaldc.htm>>.

109 HSRC Study.



Palestinian people as a whole, within the context of the ongoing *Nakba*.<sup>110</sup>

Since 2019 in particular, this Palestinian-led Coalition of civil society organisations has led a joint international advocacy campaign for the recognition and adoption of effective measures against Israel's apartheid regime over the Palestinian people. This campaign, and the present report, build on decades of critical scholarship, activism, and advocacy by Palestinians and allies toward understanding the root causes of Palestinian oppression. This report is also a continuation of decades of work by Palestinian organisations to advance accountability and international justice for the Palestinian people.

While discussions on Israeli apartheid have become increasingly mainstream over the last three or more years, some aspects of Palestinians' decades-long mobilisation against Israeli apartheid remain absent or insufficiently addressed in the current discourse. For some, apartheid has materialised only recently due to what are perceived as increasingly repressive Israeli government practices<sup>111</sup> or the entrenchment of Israel's prolonged military occupation since 1967.<sup>112</sup> What this approach misses is a more structural understanding of Israeli apartheid as an inevitable outcome of settler colonialism in Palestine and the Zionist movement's policy to eliminate the indigenous Palestinian people through removal from the land. Our analysis, building on the work of Palestinian scholars such as Fayed Sayegh, considers Israeli apartheid as rooted in the domination of the Palestinian people through Zionist settler colonialism.<sup>113</sup> The starting point for this analysis is the *Nakba* of 1948 (and the context that led to it) and the Israeli regime's subsequent institutionalisation of discriminatory laws, policies, and practices, to oppress

110 See discussion in: Rafeef Ziadah and Adam Hanieh, 'Collective Approaches to Activist Knowledge: Experiences of the New Anti-Apartheid Movement in Toronto' in Aziz Choudry and Dip Kapoor (eds), *Learning from the Ground Up: Global Perspectives on Social Movements and Knowledge Production* (Palgrave Macmillan, 2010) 85.

111 See, for example, The Times of Israel, 'Israeli author David Grossman says Israel's West Bank control has become 'apartheid'' (9 December 2021) <[https://www.timesofisrael.com/liveblog\\_entry/israeli-author-david-grossman-suggests-israels-occupation-has-become-apartheid/](https://www.timesofisrael.com/liveblog_entry/israeli-author-david-grossman-suggests-israels-occupation-has-become-apartheid/)>.

112 Michael Sfard, 'Yes, It's Israeli Apartheid. Even Without Annexation' (*Ha'aretz*, 9 July 2020) <<https://www.haaretz.com/israel-news/.premium-yes-it-s-israeli-apartheid-even-without-annexation-1.8984029>>.

113 Sayegh, *Zionist Colonialism in Palestine*; see also the discussion in Patrick Wolfe, *Traces of History: Elementary Structures of Race* (Verso Books 2016) 203 et seq.

and dominate the Palestinian people wherever they reside. We understand the Israeli occupation since 1967 as an outcome of this regime, rather than the starting point for the apartheid analysis. This is supported by Sayegh's early scholarship on apartheid as a tool of colonialism.<sup>114</sup>

## 2.1 Growing Recognition of Israeli Apartheid

Over the last three years, Israeli and international human rights organisations have issued reports concluding that Israeli authorities impose apartheid over the Palestinian people. In July 2020, the Israeli organisation Yesh Din issued its report titled *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, which concluded that Israeli authorities commit the crime of apartheid in the West Bank through its military occupation.<sup>115</sup> In January 2021, the Israeli human rights organisation B'Tselem issued a policy paper titled *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid*. B'Tselem's paper argued that the Israeli regime imposes apartheid over Palestinians across historic Palestine, that is inside the Green Line and in the occupied Palestinian territory.<sup>116</sup> Both analyses by Yesh Din and B'Tselem avoided discussion of the Palestinian people as a whole, in particular Palestinian refugees, dismissed the question of racial ideology and the role of Zionist institutions in establishing and entrenching apartheid, and therefore constituted what Tatour has referred to as a 'liberal equality' approach to Israeli apartheid.<sup>117</sup> According to this approach, apartheid can be ended if the Israeli occupation comes to an end. Thus, the colonisation of Palestinian land by the Zionist movement from the late 19<sup>th</sup> century onward is legitimised, as is the dispossession of Palestinians and the denial of the right of return of Palestinian refugees since the start of the *Nakba*.

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<sup>114</sup> Sayegh, *Zionist Colonialism in Palestine*.

<sup>115</sup> Yesh Din, *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (June 2020) <<https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>>.

<sup>116</sup> B'Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid* (12 January 2021) <[https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid)>.

<sup>117</sup> Lana Tatour, 'Why calling Israel an apartheid state is not enough' (*Middle East Eye*, 18 January 2021) <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>.



Shortly thereafter, Human Rights Watch released its report *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* in April 2021. Human Rights Watch made an important contribution to the discourse on Israeli apartheid advanced by Israeli organisations. Its report concluded that Israeli authorities have pursued ‘the objective of maintaining Jewish Israeli control vis-à-vis Palestinians over demographics and land’ on both sides of the Green Line and with regards to Palestinian refugees denied their right of return.<sup>118</sup> This broader analysis of Israeli apartheid was further elaborated on by Amnesty International in February 2022, which issued its significant and comprehensive report titled *Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity*. By analysing Israel’s apartheid as a system of domination established since 1948, Amnesty International’s report came close to addressing the structural drivers of Israeli apartheid, further recognising that ‘[t]he totality of the regime of laws, policies, and practices described in the report demonstrates that Israel has established and maintained... a system of apartheid—wherever it has exercised control over Palestinians’ lives.’<sup>119</sup> Yet, none of the reports by Israeli and international human rights organisations went so far as to consider Israeli apartheid within the context of colonialism, in particular settler colonialism, as Palestinians have.<sup>120</sup>

These recent reports and analyses on Israeli apartheid published by Israeli and international human rights organisations were preceded by over five decades of scholarship, activism, advocacy, and grassroots mobilisation by Palestinians who have long understood Israeli apartheid within its Zionist settler colonial context.<sup>121</sup> Notably, in 2001, Palestinian civil society campaigned for the recognition of Israeli apartheid at the World Conference against Racism in Durban. Subsequently, the Stop the Wall campaign began to use the apartheid framework in 2002, followed in 2004 by the Palestinian

<sup>118</sup> Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021) <<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>>.

<sup>119</sup> Amnesty International, *Israel’s apartheid against Palestinians: Cruel System of domination and crime against humanity* (1 February 2022) 266 <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>>.

<sup>120</sup> See, for example, Muhareb, ‘A state of apartheid.’

<sup>121</sup> Sayegh, *Zionist Colonialism in Palestine*, 27.

Campaign for the Academic and Cultural Boycott of Israel (PACBI), which has since advocated for ‘Palestinian freedom, justice and equality.’<sup>122</sup> During this time, students around the world began to organise Israeli Apartheid Weeks on campuses to raise awareness and challenge Israel’s regime of settler colonialism, apartheid, and occupation.

In 2005, Palestinian civil society organisations issued a broad call for boycotts, divestment, and sanctions (BDS) against Israel until it complies with international law and realises the rights of the Palestinian people as a whole.<sup>123</sup> The BDS Movement has since been at the forefront of Palestinian-led advocacy in building and mainstreaming the comprehensive analysis of Israel’s regime of settler colonialism, apartheid, and occupation. The Movement has advanced and proposed effective forms of accountability for grassroots organisers, movements, civil society, and parliaments to end complicity with the Israeli regime. It is thanks to this longstanding advocacy and campaigning that the apartheid analysis in Palestine has now gained recognition among Israeli and international civil society. Notably, prior to the 2009 HSRC study, the BDS Movement published a position paper titled *United against Apartheid, Colonialism and Occupation: Dignity and Justice for the Palestinian People*.<sup>124</sup> Endorsed by over 90 civil society organisations from Palestine and around the world, this position paper aimed at building broad grassroots consensus around Israel’s regime of oppression against the indigenous Palestinian people as a whole, across historic Palestine and in exile. In doing so, the significant contributions of the BDS Movement helped move Palestinian human rights advocacy beyond the confines of the 1967 lines and toward a more comprehensive approach addressing the ongoing *Nakba*.

In this report, the Coalition sets out its analysis of Israeli apartheid and provides recommendations for effective measures to dismantle this regime. We adopt a comprehensive approach to understanding Israel’s apartheid as

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<sup>122</sup> See BDS Movement, Palestinian Campaign for the Academic and Cultural Boycott of Israel <<https://bdsmovement.net/paci>>.

<sup>123</sup> BDS Movement, Palestinian Civil Society Call for BDS <<https://bdsmovement.net/call>>.

<sup>124</sup> BDS Movement, United Against Apartheid, Colonialism and Occupation: Dignity & Justice for the Palestinian People (October 2008) <[https://bdsmovement.net/files/English-BNC\\_Position\\_Paper-Durban\\_Review.pdf](https://bdsmovement.net/files/English-BNC_Position_Paper-Durban_Review.pdf)>.



it targets the Palestinian people as a whole since 1948. This report comes at a critical juncture as the Israeli regime continues to escalate its oppression of Palestinians. In May 2021, the Israeli occupying authorities' targeting of Palestinian families in Sheikh Jarrah was the trigger for the Unity *Intifada*, which saw Palestinians on both sides of the Green Line and in exile rise up against over a century of Zionist settler colonisation. In response, the Israeli regime attacked Palestinian worshippers at Al-Aqsa mosque and protestors and journalists in Jerusalem, bombarded Palestinians in the besieged Gaza Strip, supported settler mob violence against Palestinians inside the Green Line, and undertook an ongoing mass arbitrary detention campaign against Palestinians.<sup>125</sup> Since then, the Israeli regime has further escalated extrajudicial executions, collective punishment, and an intensifying campaign to silence, intimidate, and persecute Palestinians, including the work of Palestinian civil society. In October 2021, the designation by the Israeli Defence Minister of six leading Palestinian civil society organisations as so-called 'terror organisations' represented a further dangerous escalation,<sup>126</sup> threatening the ability of the targeted organisations and of Palestinian civil society at large to continue their work in monitoring, documenting, and seeking international accountability for widespread and systematic human rights violations, including suspected war crimes and crimes against humanity. In this context, the Coalition considers it more urgent than ever to advocate for immediate, effective coercive measures aimed at dismantling Israel's settler colonial apartheid regime.

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125 Yara Hawari, 'Defying Fragmentation and the Significance of Unity: A New Palestinian Uprising' (*Al-Shabaka*, 29 June 2021 <<https://al-shabaka.org/commentaries/defying-fragmentation-and-the-significance-of-unity-a-new-palestinian-uprising/>>).

126 Al-Haq, Palestinian Organizations Declared as 'Unlawful Associations' by Israeli Military File Objection: Illegal Decision Devoid of Due Process (3 February 2022) <<https://www.alhaq.org/advocacy/19456.html>>.

## 2.2 Methodology

For the purposes of analysing Israel's widespread and systematic human rights violations against Palestinians through the lens of apartheid, this report relies on the definitions of the crime of apartheid within the meaning of Article II of the Apartheid Convention and Article 7(2)(h) of the Rome Statute. Both definitions have been viewed by civil society and the former UN Special Rapporteur on Palestine, Michael Lynk, as complementary with 'reconcilable' differences.<sup>127</sup> Applying the elements of the crime against humanity of apartheid to Israeli policies and practices against Palestinians, this report shows how the Israeli regime systematically privileges Jewish settlers, in accordance with Zionist doctrine, while oppressing the indigenous Palestinian people. This report is not intended to provide a comprehensive overview of the broad range of human rights violations committed against Palestinians, which have been documented by Palestinian human rights groups for several decades. Rather, the report lays out the applicability of the apartheid framework to the experience of the Palestinian people as a whole under Zionist settler colonialism and discusses the relationship between these two frameworks.

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<sup>127</sup> UN Human Rights Council, Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, Michael Lynk, 21 March 2022, UN Doc A/HRC/49/87, para 35.



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### 3

## Zionist Ideology and the Roots of Israeli Apartheid

Since its establishment in 1948, Israel has entrenched a system of domination over the Palestinian people with the goal of engineering a Jewish demographic majority through Zionist settlement, colonisation, and the transfer of indigenous Palestinians from their lands. As prerequisites for the creation of an exclusively Jewish state in Palestine, the Zionist movement theorised and planned the forcible transfer of the indigenous Palestinian people and their dispossession. Through Israeli laws and policies, particularly those pertaining to nationality, residency, land, and property rights, the Israeli regime has racialised and fragmented Palestinians as a tool of domination. These longstanding policies are rooted in Zionist ideology and doctrine, which constitute Israel's *raison d'état*.<sup>128</sup>

128 See CERD Report, paras 1, 7, 13, 48.



### 3.1 Origins of Israeli Apartheid

The roots of Israeli apartheid lie in the preceding decades of Zionist settler colonialisation. The late 19<sup>th</sup> century Zionist movement embraced the view of Jews as a distinct ‘race,’ enshrining it in the charters of Zionist institutions to create a national home for the Jews. The first and largest of these institutions include the twin WZO/JA established in 1897 and 1921 respectively and the JNF founded in 1901. These Zionist institutions have operated for over a century to serve exclusively persons of Jewish ‘race or descent,’ in pursuit of establishing a Zionist state that embodies and promotes a corresponding ‘Jewish nationality.’ This constructed civil status forms a pillar of the Israeli state ideology of racialised Jewish supremacy over all others and the requisite for their exclusionary enjoyment of human rights in Palestine.

The Zionist movement had sought recognition of its Zionist national institutions in public international law<sup>129</sup> as a priority for the purpose of meeting the criteria of eventual statehood within the law of nations.<sup>130</sup> In the absence of a distinct population/people and land/territory, also recognised as essential to any modern state, these institutions and their affiliates became the proxy of the intended government, each chartered to serve only persons of ‘Jewish race or [biological] descent’ (emphasis added). The JNF was—and remains—chartered with the purpose and primary objective to acquire lands in Palestine<sup>131</sup> exclusively for Jewish persons and to ‘promote the interests of Jews in the prescribed region.’<sup>132</sup> These proto-state institutions uphold the theory and ideology equating Jews with a distinct race and ‘legal’ notion of ‘Jewish nationality,’<sup>133</sup> a constructed civil status ‘racially’ superior to mere ‘citizens’ in Israel.

129 W Thomas Mallison and Sally V Mallison, *The Palestine Question in International Law and World Order* (Longman, 1986).

130 Article 1, *Montevideo Convention on the Rights and Duties of States* (adopted 26 December 1933, entry into force 26 December 1934) 165 LNTS 20 (hereinafter ‘Montevideo Convention’).

131 Article 3(a), JNF Memorandum of Association (1901), and Article 3(i), JNF Memorandum of Association (1953).

132 *Ibid.*, Article 3(g) and Article 3(vii), respectively.

133 *George Raphael Tamarin v. The State of Israel* (CA 630 70), 1971; *Udi Ornan et al v. Ministry of Interior* (CA 8573 08) 2013.

### 3.2 Zionist Settler Colonialism

Writing about Zionist colonisation in 1965, Faye Sayegh saw racism as integral to the project of establishing a Jewish state in Palestine.<sup>134</sup> He argued that Zionist doctrine demanded ‘racial purity and racial exclusiveness’.<sup>135</sup> Sayegh, who viewed Zionist colonisation as akin to apartheid already then, also understood the Zionist project as one of ‘racial elimination’ of the Palestinian people.<sup>136</sup> Similarly, the French sociologist Maxime Rodinson observed at the time that:

Wanting to create a purely Jewish, or predominantly Jewish, state in an Arab Palestine in the twentieth century could not help but lead to a colonial-type situation and to the development (completely normal, sociologically speaking) of a racist state of mind.<sup>137</sup>

Such analysis preceded the Israeli military occupation since 1967<sup>138</sup> and thus helps us understand occupation as a product and tool of Israeli apartheid. Tellingly, some of the scholarship on Zionism and racism even predates 1948. In 1945, anti-Zionist Rabbi Elmer Berger published his book titled *The Jewish Dilemma* in which he rejected Zionism’s plan to ‘segregate’ Jews in a country of their own and made the case for Jewish emancipation in the countries where they lived around the world. The 1943 Statement of Principles of the American Council for Judaism, of which Berger was the vice-president and director,<sup>139</sup> rejected Zionist racism and segregation, stating:

We oppose the effort to establish a national Jewish state in Palestine or anywhere else... We dissent from all these related doctrines that stress the racialism, the nationalism and the theoretical homelessness of the Jews. We oppose such doctrines

<sup>134</sup> Sayegh, *Zionist Colonialism in Palestine*, 21; see also Kayyali, ‘Zionism and Imperialism’ 98-99.

<sup>135</sup> Sayegh, *Zionist Colonialism in Palestine*, 22-23 (emphasis in the original).

<sup>136</sup> *Ibid*, 27.

<sup>137</sup> Maxime Rodinson, ‘Israël : fait colonial ?’ (1967) *Les Temps Modernes* 215-216; Maxime Rodinson, *Israel: A Colonial-Settler State?* (Monad Press 1973) 77 (translated into English by David Thorstad).

<sup>138</sup> Nimer Sultany, ‘Colonial Realities: From Sheikh Jarrah to Lydda’ (*Mondoweiss*, 12 May 2021) <<https://mondoweiss.net/2021/05/colonial-realities-from-sheikh-jarrah-to-lydda/>>.

<sup>139</sup> See Norton Mezvinsky, ‘In Memoriam: Rabbi Elmer Berger, 1908-1996’ (*Washington Report on Middle East Affairs*, 25 November 1996) <<https://www.wrmea.org/1996-november-december/in-memoriam-rabbi-elmer-berger-1908-1996.html>>.

as inimical to the welfare of Jews in Palestine, in America, or wherever Jews may dwell...<sup>140</sup>

Through critical ‘third world’ contributions, the UN General Assembly would in 1975 determine that ‘zionism is a form of racism and racial discrimination’ in Resolution 3379 (XXX). Adopted with 72 votes in favour, 35 against, and 32 abstentions, the determination was revoked in 1991 as a condition for Israel’s participation in the Madrid Conference.<sup>141</sup>

### 3.2.1 A Settler Colonial Logic

Settler colonialism is a distinct form of colonialism in which settlers seek primarily to displace and replace indigenous peoples on the land.<sup>142</sup> Settler colonialism involves a particular ‘mode of domination’ wherein the oppression and racialisation of indigenous peoples serves to entrench the colonisation of the land and the implantation of settlers therein.<sup>143</sup> Critically, Patrick Wolfe has understood settler colonialism as premised on the ‘logic of elimination’ of indigenous peoples, involving continued dispossession from the land and denial of indigenous sovereignty.<sup>144</sup> Settler colonialism is an ongoing process.<sup>145</sup>

In South Africa, the institutionalisation of apartheid as the official state policy in 1948 followed three centuries of European settler colonisation in southern Africa. During this time, ‘black South Africans were stripped

140 Elmer Berger, *The Jewish Dilemma* (Devin-Adair Company, 1945) 246-247.

141 UN General Assembly, Resolution 46/86, UN Doc A/RES/46/86, 16 December 1991. See also Noura Erakat and John Reynolds, ‘Understanding Apartheid’ (*Jewish Currents*, 1 November 2022) <<https://jewishcurrents.org/understanding-apartheid>>.

142 Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassell, 1999) 1 (emphasis in the original).

143 Lorenzo Veracini, ‘Introduction: Settler colonialism as a distinct mode of domination’ in Edward Cavanagh and Lorenzo Veracini (eds) *The Routledge Handbook of the History of Settler Colonialism* (Routledge, 2017) 1, 4; see also Muhareb and Clancy, ‘Palestine and the Meaning of Domination.’

144 Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8(4) *Journal of Genocide Research* 387, 387-388.

145 Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler Colonialism: Politics, Identity and Culture* (Palgrave Macmillan, 2011) 2.

of their land, liberties, and political rights.<sup>146</sup> Through apartheid, they endured further political repression and fragmentation of their country.<sup>147</sup> The establishment of the South African apartheid regime did not negate the settler colonial context. Instead, that context laid the necessary foundations for apartheid to be institutionalised. For example, the 1913 Natives Land Act, enacted prior to 1948, accelerated settler colonisation in South Africa and the dispossession of Black South Africans, who ‘could only purchase land in Scheduled Native Areas,’ which ‘represented seven percent of the territory of South Africa’ and allowed for the forcible removal of the indigenous people from their land.<sup>148</sup> In Palestine, the *Nakba* was instrumental in the institutionalisation of Zionist settler colonialism and apartheid, aimed at denying Palestinian refugees and displaced persons their right of return, thereby entrenching their dispossession, Palestinian fragmentation, and domination.

### 3.2.2 The Ongoing Nakba

In 1897, the First Zionist Congress held in Basel established the WZO and resolved to ‘create for the Jewish people a home in Palestine secured by public law.’<sup>149</sup> The British Mandate for Palestine (1922–1948) facilitated and provided fertile ground for the creation of a Zionist settler colonial state in Palestine. Crystallising the alliance between Zionist colonialism and the British empire,<sup>150</sup> the British Foreign Secretary at the time, Arthur Balfour, made his infamous 1917 Declaration supporting the ‘establishment in Palestine of a national home for the Jewish people.’ The Balfour Declaration added that the British government would ‘use their best endeavours to facilitate the achievement of this object.’<sup>151</sup> Thus, in 1920, the WZO’s public

<sup>146</sup> John Dugard and John Reynolds, ‘Apartheid, International Law, and the occupied Palestinian territory’ (2013) 24(3) European Journal of International Law 867, 872-873.

<sup>147</sup> *Ibid.*

<sup>148</sup> Tshepo Madlingozi, *Mayibuye iAfrika?: disjunctive inclusions and black strivings for constitution and belonging in ‘South Africa’* (2018) (Thesis, Unpublished) 29-30 <<https://eprints.bbk.ac.uk/id/eprint/40367/>>.

<sup>149</sup> Central Zionist Archives <<http://www.zionistarchives.org.il/en/datalist/Pages/Congress1.aspx>>.

<sup>150</sup> Sayegh, *Zionist Colonialism in Palestine*, 11-19.

<sup>151</sup> *The Balfour Declaration* (2 November 1917) <<https://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20balfour%20declaration.aspx>>.



law status was recognised in Article 4 of the British Mandate for Palestine, which provided:

An appropriate Jewish agency shall be recognised as a *public body* for the purpose of advising and co-operating with the [British] Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home... The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency...<sup>152</sup>

Throughout the British mandate period, the Zionist movement in Palestine grew stronger until it eventually became a ‘shadow government’ alongside the British mandate authorities.<sup>153</sup> In 1947, the British empire withdrew from Palestine and transferred the Question of Palestine to the UN. On 29 November 1947, the UN General Assembly adopted Resolution 181 (II) recommending the partition of Palestine into an ‘Arab’ and a ‘Jewish’ state.<sup>154</sup> As had been recognised by the UN Special Committee on Palestine (UNSCOP) in September 1947, the ‘Jewish national home’ project and the anomalous nature of the British Mandate for Palestine—which was to ‘facilitate Jewish immigration’ to Palestine<sup>155</sup>—violated the principle of self-determination adhered to with respect of other Arab states whose sovereignty and independence were attained.<sup>156</sup>

The UN partition resolution also disregarded the demographic reality on the ground. Toward the end of the British mandate in 1947, the indigenous Palestinian people constituted over two thirds of the total population of the country. Palestinian historian Walid Khalidi observed that despite over

<sup>152</sup> Article 4, League of Nations, *British Mandate for Palestine* (24 July 1922) (emphasis added) (hereinafter ‘British Mandate for Palestine’); see discussion in Mallison and Mallison, *The Palestine Problem*, 92-93.

<sup>153</sup> *Ibid.*, 98-101.

<sup>154</sup> UN General Assembly, Resolution 181 (II), 29 November 1947, UN Doc A/RES/181 (II).

<sup>155</sup> Article 6, British Mandate for Palestine.

<sup>156</sup> UN General Assembly, UNSCOP Report to the General Assembly, 3 September 1947, UN Doc A/364, para 176 <<https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>>; see also Muhareb and Clancy, ‘Palestine and the Meaning of Domination’ 13 <<http://revistarydderecho.uncu.edu.ar/index.php/revista/article/view/217>>.

seventy years of Zionist settler colonisation from the early 1880s onward, ‘Jewish-owned land on the eve of the partition resolution amounted to less than 7 percent of the total land area of the country.’<sup>157</sup> Yet, the partition resolution allotted 56 per cent of mandatory Palestine to a Jewish state. According to Khalidi:

what the UN was effectively saying to the Yishuv [the pre-state Zionist settler movement in Palestine] was: go seize those additional 13.3 million dunams that you *don’t* own from those who *do*—from the largely agricultural people who live in those areas and derive their livelihood from them.<sup>158</sup>

Highlighting the inconsistencies of the UN partition plan, which Palestinians rejected, Khalidi showed that:

In Palestine... there was no agreement on the principle of partition between Arabs and Jews. There was little correlation between the areas allotted to the Jewish state and the demographic or land ownership situation on the ground. There was no central authority to oversee the process, the British having abandoned ship by 15 May 1948. And, of course, there was no agreed mechanism for implementation. Thus, what the UN [General Assembly] partition resolution basically did was to give the fully mobilized military forces of the Yishuv... an alibi to establish the new Jewish state by force of arms under the guise of conforming to the international will.<sup>159</sup>

In this context, the Zionist leadership developed strategies to deal with the indigenous Palestinian presence as a ‘demographic problem.’ On 3 December 1947, Ben-Gurion warned of the need to deal with the unfavourable demographic reality in the country:

There are 40 [per cent] non-Jews in the area allocated to the Jewish state. This composition is not a solid basis for a Jewish

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<sup>157</sup> Walid Khalidi, ‘Revisiting the UNGA Partition Resolution’ (1997) 27(1) *Journal of Palestine Studies* 5, 13.

<sup>158</sup> Walid Khalidi, ‘The Hebrew Reconquista of Palestine: From the 1947 United Nations Partition Resolution to the First Zionist Congress of 1897’ (2009) 39(1) *Journal of Palestine Studies* 24, 26.

<sup>159</sup> *Ibid.*, 27.



state... Such a demographic balance questions our ability to maintain Jewish sovereignty... Only a state with at least 80 [per cent] Jews is a viable and stable state.<sup>160</sup>

In March 1948, Zionist efforts to transfer and dispossess the indigenous Palestinian people culminated with their adoption of Plan Dalet, which provided clear operational orders and called for Palestinians' 'systematic and total expulsion from their homeland.'<sup>161</sup> Under the directives of Plan Dalet, Zionist militias were to wipe out the armed forces in Palestinian villages and expel Palestinians 'outside the borders of the state' in the event of resistance.<sup>162</sup> During the *Nakba*, Zionist militias destroyed 531 Palestinian villages and 11 urban neighbourhoods in Palestinian cities and expelled 80 per cent of the indigenous Palestinian people from their homes, lands, and properties. Approximately 15,000 Palestinians were killed in over 70 massacres throughout the war that continued until 1949.<sup>163</sup>

On 14 May 1948, Ben-Gurion proclaimed the establishment of Israel on 77 per cent of the land of historic Palestine, where only about 150,000 indigenous Palestinians remained, a quarter of them internally displaced.<sup>164</sup> To prevent Palestinian refugees and displaced persons from returning to their homes and ensure the consolidation of Zionist settler colonial domination, Israeli forces imposed a military administration and extended martial law over Palestinians inside the 1949 Armistice Agreements Line (the Green Line) for 19 years, lasting from 1948 until 1966. This policy was extended, in June 1967, with the ongoing Israeli military occupation of the West Bank, including the eastern part of Jerusalem, the Gaza Strip, and the occupied Syrian Golan.

160 Cited in Ilan Pappe, *The Ethnic Cleansing of Palestine* (Oneworld, 2006) 48.

161 *Ibid.*, 28; Walid Khalidi, 'Plan Dalet: Master Plan for the Conquest of Palestine' (1988) 18(1) *Journal of Palestine Studies* 4, 24.

162 Khalidi, 'Plan Dalet,' 29.

163 PCBS, 'Dr. Ola Awad, reviews the conditions of the Palestinian people via statistical figures and findings, on the 72<sup>nd</sup> Annual Commemoration of the Palestinian Nakba' (13 May 2020) <<https://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3734>>.

164 See BADIL, 'From the 1948 Nakba to the 1967 Naksa' (BADIL Occasional Bulletin No 18, June 2004) <[https://www.badil.org/phocadownloadpap/Badil\\_docs/bulletins-and-briefs/Bulletin-18.pdf](https://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-18.pdf)>; see also Rania Muhareb, 'The Nakba 70 Years On: Israel's Failure to Erase Palestinian Collective Memory' (*Al-Haq*, 15 May 2018) <<https://www.alhaq.org/advocacy/6215.html>>.

During the *Nakba*, Zionist militias perpetrated mass atrocities against Palestinians, including the destruction and pillage of Palestinian villages and towns, the mass expulsion of the Palestinian civilian population from their homes, and the subsequent expropriation of Palestinian land and property for the implantation of Zionist colonial settlers. These acts amounted to violations of the laws and customs of war that had been recognised as constituting customary international law by 1945.<sup>165</sup> Notably, the 1907 Hague Regulations prohibited wanton destruction of property without military necessity<sup>166</sup> and pillage,<sup>167</sup> while deportation of civilian populations for any purpose and ‘persecutions on political, racial or religious grounds’ in connection with the armed conflict were recognised in the 1945 Charter of the International Military Tribunal at Nuremberg as crimes against humanity.<sup>168</sup> These norms were established prior to the *Nakba* and were applicable to the 1947–1949 war over Palestine. As Francesca Albanese and Lex Takkenberg write in relation to the rights of Palestinian refugees, ‘the legal framework in force in 1948, if enforced, would have been sufficient to either prevent or to address Palestinian displacement and dispossession.’<sup>169</sup>

Despite this, impunity for suspected international crimes committed against Palestinians has prevailed and Palestinian refugees have been denied their right to return to their homes, lands, and properties since 1948. As a result, the *Nakba* has been an ongoing process of displacement and dispossession for Palestinians, who continue to face house demolitions, forcible transfer, discriminatory planning and zoning, and other measures of demographic

165 See discussion in ICRC, Customary IHL Database, Rule 156: Definition of War Crimes <[https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1\\_rul\\_rule156#Fn\\_64761199\\_00023](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule156#Fn_64761199_00023)>: ‘The International Military Tribunal at Nuremberg determined that violations of the Hague Regulations amounted to war crimes because these treaty rules had crystallized into customary law by the time of the Second World War.’

166 Article 23(g), *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) (hereinafter ‘Hague Regulations’).

167 Article 47, Hague Regulations.

168 Article 6(c), *Charter of the International Military Tribunal*, annex to the *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis* (adopted 8 August 1945 at London) (hereinafter ‘IMT Charter’).

169 Francesca Albanese and Lex Takkenberg, *Palestinian Refugees in International Law* (OUP 2020) 135–136; Article 6(b), IMT Charter.



engineering by the Israeli regime to force their removal from the land. The ongoing *Nakba* thus conforms with settler colonialism's logic of elimination of the indigenous Palestinian people. Notwithstanding, the right of return of Palestinian refugees has only gained further recognition as a matter of international law since 1948 and must ultimately be upheld.<sup>170</sup>

### 3.2.3 The Prohibition of Colonialism and its Associated Practices

International law sets out the prohibition of colonialism and its associated practices through several principles, including: the prohibition of the use of force; the prohibition of population transfer; and the right of peoples to self-determination.

Under public international law, the prohibition of the use of force is codified in Article 2(4) of the UN Charter, which prohibits territorial conquests and the acquisition of territory by force.<sup>171</sup> Additionally, population transfer counts among the most serious crimes under international law, prohibited both in wartime and in times of peace.<sup>172</sup> International humanitarian law sets out the prohibition of forcible transfer in occupied territory in Article 49(1) of the Fourth Geneva Convention of 1949,<sup>173</sup> providing:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Article 49(6) of the Fourth Geneva Convention further prohibits the transfer by the Occupying Power of 'parts of its own civilian population into the territory it occupies.' In his 1958 Commentary on the Fourth Geneva Convention, Jean Pictet explained that Article 49(6) can be understood as intended:

<sup>170</sup> See notably, Albanese and Takkenberg, *Palestinian Refugees*, 179-180.

<sup>171</sup> See also OHCHR, Annexation is a flagrant violation of international law, says UN human rights expert (20 June 2019) <<https://www.ohchr.org/en/press-releases/2019/06/annexation-flagrant-violation-international-law-says-un-human-rights-expert>>.

<sup>172</sup> Schechla, 'Ideological Roots of Population Transfer' (1993) 14(2) *Third World Quarterly* 239.

<sup>173</sup> *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 (hereinafter 'Fourth Geneva Convention').

to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories.<sup>174</sup>

Unlawful transfer amounts to a grave breach of the Fourth Geneva Convention under Article 147. Accordingly, the High Contracting Parties to the Convention have an obligation, under Article 146, to ‘provide effective penal sanctions for persons committing, or ordering to be committed’ this grave breach. The Rome Statute further enshrines the grave breach of ‘[u]nlawful deportation or transfer’ as a war crime in Article 8(2)(a)(vii) for the purposes of the ICC. In addition, Article 7(1)(d) of the Rome Statute codifies ‘[d]eportation or forcible transfer of population’ as a crime against humanity ‘when committed as part of a widespread or systematic attack against any civilian population.’<sup>175</sup> The Rome Statute defines the crime against humanity of forcible transfer of population as:

forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.<sup>176</sup>

Another inherent component of settler colonialism is the denial of the right to self-determination and sovereignty of the indigenous people(s),<sup>177</sup> which right the UN established as a chartered principle in 1945.<sup>178</sup> The right of the Palestinian people to self-determination and the provisional independence of Palestine had already been recognised in the 1920s, but was violated by the League of Nations’ British Mandate for Palestine in order to facilitate Zionist settler colonisation.<sup>179</sup> Thus, the 1947 UN General

<sup>174</sup> Jean Pictet, *Commentary on the Geneva Conventions of 12 August 1949, Vol IV* (ICRC, 1958) 283.

<sup>175</sup> Article 7(1), Rome Statute.

<sup>176</sup> Article 7(2)(d), Rome Statute.

<sup>177</sup> This was recently affirmed by the UN Special Rapporteur on Palestine, Francesca Albanese; UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022, UN Doc A/77/356, para 13.

<sup>178</sup> Article 1(2), UN Charter.

<sup>179</sup> Article 22, *Covenant of the League of Nations* (adopted 28 April 1919); see also, UN General Assembly, UNSCOP Report to the General Assembly, 3 September 1947, UN Doc A/364, para 176.



Assembly recommendation for the partition of Palestine violated sacrosanct principles of international law. The right of peoples to self-determination was further codified in 1966 when it was enshrined in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), setting out the right of peoples to ‘freely determine their political status and freely pursue their economic, social and cultural development,’ and in doing so, to ‘freely dispose of their natural wealth and resources.’

By the 1960s, as highlighted by Albanese, ‘self-determination became the normative framework for advancing decolonization.’<sup>180</sup> In 1960, the UN General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, which determined that liberation necessitates ‘an end... to colonialism and all practices of segregation and discrimination associated therewith.’<sup>181</sup> The Declaration considered that:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.<sup>182</sup>

It further determined that:

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.<sup>183</sup>

The Colonialism Declaration expressly prohibited ‘alien subjugation, domination and exploitation’ and the violation of a country’s national unity and territorial integrity as elements of colonialism. Meanwhile, in 1971 the ICJ advisory opinion in Namibia considered the colonial regime and continued presence of South Africa in Namibia, following

<sup>180</sup> UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022, UN Doc A/77/356, para 20.

<sup>181</sup> UN General Assembly, Resolution 1514 (XV), 14 December 1960, UN Doc A/RES/1514 (XV), preamble.

<sup>182</sup> *Ibid.*, para 1.

<sup>183</sup> *Ibid.*, para 6.

the end of the League of Nations mandate, a violation of the right to self-determination and an illegal occupation.<sup>184</sup> More recently, in relation to the Chagos Islands, the ICJ considered that ‘the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power’<sup>185</sup>

In 2009, the HSRC study applied the law on colonialism as derived from the Colonialism Declaration to the situation in the occupied Palestinian territory and determined that ‘the implementation of a colonial policy by Israel has not been piecemeal but is systematic and comprehensive’<sup>186</sup> In particular, the study identified as colonial practices the Israeli occupying authorities’ illegal annexation of parts of the occupied Palestinian territory, the violation of Palestine’s territorial contiguity through illegal settlement construction, and critically, the denial to the Palestinian people of their collective right to self-determination.<sup>187</sup>

The law on colonialism, taken together with principles of international law establishing the right of peoples to self-determination and the prohibition of the acquisition of territory by force and of population transfer, makes it abundantly clear that cross-border transfer and internal demographic manipulation inside the Green Line constitute colonial practices in flagrant violation of international law. These practices breach a wide range of Palestinians’ individual and collective rights, including their right of return to their country and freedom of movement, residence, and the right to family life within.

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<sup>184</sup> International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, 21 June 1971, p 16, paras 52 and 117-119.

<sup>185</sup> International Court of Justice, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, ICJ Reports 2019, 25 February 2019, p 95, para 160.

<sup>186</sup> HSRC Study, 16.

<sup>187</sup> *Ibid.*, 15-16 and 40-48.



### 3.3 Fragmentation and the Limits of International Humanitarian Law

Since 1967, the dominant legal framework that has been used to address the situation in the occupied Palestinian territory has been that of belligerent occupation under international humanitarian law. The occupation framework has allowed Palestinians to draw attention to the illegality of Zionist settler colonial practices targeting the Palestinian people, comprising population transfer, wilful killing, torture and other inhuman treatment, collective punishment, arbitrary deprivation of liberty, and other measures.<sup>188</sup> These practices are also prohibited as a matter of international human rights law, as enshrined among others in the ICCPR,<sup>189</sup> ICESCR,<sup>190</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>191</sup> However, Israel, as the Occupying Power, did not ratify the majority of international human rights law treaties until 1991, with the exception of ICERD, which it ratified on 3 January 1979. Thus, for several decades, including through the early work of Palestinian human rights organisations such as Al-Haq, founded in 1979, the predominant legal framework used to analyse Israeli policies in the occupied Palestinian territory was that of international humanitarian law. This framework was supplemented in the 1990s with that of international human rights law, which has since been used by legal practitioners and scholars in tandem with international humanitarian law in an effort to maximise the legal protection of Palestinians under Israeli occupation.<sup>192</sup>

The concurrent applicability of international humanitarian law and international human rights law in the occupied Palestinian territory

<sup>188</sup> Articles 32, 33, 49, 78, and 147 Fourth Geneva Convention.

<sup>189</sup> Articles 6(1), 7, 9, 17(1), ICCPR (among other rights impacted by policies of collective punishment).

<sup>190</sup> Articles 10(1), 11(1), ICESCR (among other rights impacted by policies of collective punishment).

<sup>191</sup> Articles 1 and 2, *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 (hereinafter 'CAT').

<sup>192</sup> See discussion in Linda Bevis, *The Applicability of International Human Rights Law to Occupied Territories: The Case of the Occupied Palestinian Territories* (Al-Haq, 2003) <[https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/The%20Applicability%20of\\_Human%20Rights\\_Law\\_to\\_Occupied\\_Territories.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/The%20Applicability%20of_Human%20Rights_Law_to_Occupied_Territories.pdf)>.

was recognised early on by the UN human rights treaty bodies,<sup>193</sup> and subsequently by the ICJ in 2004.<sup>194</sup> Using both frameworks in a complementary fashion allows for certain gaps to be bridged in the occupation law framework. Notably, a structural challenge has been that international humanitarian law does not in itself outlaw situations of military occupation. As a result, experts such as the former UN Special Rapporteur on Palestine, Michael Lynk, have authoritatively analysed how, as a matter of international humanitarian law, the Israeli occupation has in fact ‘crossed the red line into illegality’ through its prolonged nature, its violation of the prohibition of annexation, and the Occupying Power’s failure to administer the occupied territory in ‘good faith’ and in the ‘best interests’ of the occupied Palestinian population.<sup>195</sup> More recently, the ongoing UN Commission of Inquiry on Palestine has also concluded that the Israeli occupation is illegal,<sup>196</sup> while the General Assembly has since referred the question of the (il)legality of the Israeli occupation to the ICJ for an advisory opinion.<sup>197</sup> This is relevant in light of the fact that Israeli military laws and administration have, first from 1948 onward and then since 1967, served as a tool for establishing and maintaining its apartheid regime over the Palestinian people.<sup>198</sup>

<sup>193</sup> See, notably, CERD, Concluding observations on the seventh, eighth and ninth periodic reports of Israel, UN Doc CERD/C/304/Add.45, 30 March 1998, paras 4 and 10-12; Human Rights Committee, Concluding observations on the initial report of Israel, UN Doc CCPR/C/79/Add.93, 18 August 1998, para 10; CESCR, Concluding observations on the initial report of Israel, UN Doc E/C.12/1/Add.27, 4 December 1998, para 6; CRC Committee, Concluding observations on the initial report of Israel, UN Doc CRC/C/15/Add.195, 9 October 2002, para 2; CAT Committee, Report of the Committee against Torture (2002), UN Doc A/57/44, para 215.

<sup>194</sup> International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p 136, paras 109-112 (hereinafter ‘Wall Opinion’).

<sup>195</sup> UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN Doc A/72/43106, 23 October 2017, paras 44-62.

<sup>196</sup> UN General Assembly, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/77/328, 14 September 2022, para 75.

<sup>197</sup> UN General Assembly, Fourth Committee, Draft Resolution, 10 November 2022, UN Doc A/C.4/77/L.12/Rev.1, para 18.

<sup>198</sup> See discussion in Al-Haq, *Entrenching and Maintaining an Apartheid Regime over the Palestinian People as a Whole: Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk* (January 2022) <[https://www.alhaq.org/cached\\_uploads/download/2022/01/20/final-draft-lynk-s-apartheid-submission-1-1642656045.pdf](https://www.alhaq.org/cached_uploads/download/2022/01/20/final-draft-lynk-s-apartheid-submission-1-1642656045.pdf)>. See also Amnesty International, *Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity* 105-108 (1 February 2022) <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>>.



While overdue developments in relation to outlining the illegality of the Israeli occupation are encouraging and should lead to effective measures to end Israel's prolonged occupation since 1967, the primary limitation of the occupation framework in Palestine has been the fragmented nature with which it has been applied to the experience of the Palestinian people as a whole. Thus, the international community only recognises the territories occupied by Israel since 1967, that is the West Bank, including the eastern part of Jerusalem, the Gaza Strip, and the occupied Syrian Golan, as occupied.<sup>199</sup> In turn, the international community neither recognises the territory of historic Palestine that lies inside the Green Line as occupied nor has it recognised Palestinian collective rights therein, including to self-determination. Although belligerent occupation applies on the facts, when the warring army has been subjugated and the occupying force establishes military presence and substitution of governing authority, there are other categories of occupation which do not need to meet these criteria and which may be applicable inside the Green Line, for example, armistice occupation, *post-debellatio* occupation, or forcible peacetime occupations.<sup>200</sup>

Part of the challenge in applying international humanitarian law as the dominant legal framework in Palestine is linked to the fragmentation of the Palestinian people and of historic Palestine since the *Nakba*. This is due to the recognition the international community lends to Israel, while disregarding the state's establishment through the inadmissible 'acquisition of territory by war,'<sup>201</sup> the ongoing mass forcible transfer of Palestinians, and the denial of the right of return of Palestinian refugees, displaced persons, and involuntary exiles, contrary to international law.<sup>202</sup> In this context, the occupation framework has proved insufficient on its own in addressing the totality of the Palestinian collective experience of dispossession, displacement, refugeehood, and settler colonial domination and persecution both inside the Green Line and in the occupied Palestinian territory.

199 See discussion in Muhareb and Clancy, 'Palestine and the Meaning of Domination.'

200 Adam Roberts, 'What is a Military Occupation' (1984) 55(1) British Yearbook of International Law 249-305.

201 UN Security Council, Resolution 242, 22 November 1967, UN Doc S/RES/242 (1967).

202 Albanese and Takkenberg, *Palestinian Refugees*, 135-136 and 179-180.

This fragmented approach has only exacerbated the legal, political, and geographical fragmentation that Palestinians face on the ground due to the nature of Zionist settler colonial domination. In fact, predominant reliance on international humanitarian law in the context of Palestine means that some of the same discriminatory Israeli policies and practices targeting Palestinians' indigenous presence on the land have been addressed through different legal regimes, with at times absurd consequences. For example, the international community has considered Israeli settlements in the occupied Palestinian territory illegal due to the unlawful displacement and dispossession of Palestinians from their lands and their replacement with Israeli settlers. Yet, exclusive Zionist settlement, involving the displacement and dispossession of Palestinians inside the Green Line, has in turn been normalised by the international community. Both are integral processes of Zionist settler colonialism and form part of the same policy of displacement and replacement of the indigenous Palestinian people on the land.

By defying the fragmentation of the Palestinian people, the apartheid framework has the potential to draw attention to the continuity of settler colonial domination across historic Palestine and vis-à-vis Palestinian refugees and exiles denied their right of return.<sup>203</sup> Yet, to date, the apartheid framework has also been used in ways that entrench Palestinian fragmentation rather than seek to overcome it, such as in Yesh Din's examination of apartheid in the West Bank only, or in the distinction the report by Human Rights Watch drew between the *same* Israeli policies targeting Palestinians based on which side of the Green Line they are committed on.<sup>204</sup>

Adopting a comprehensive apartheid framework, as this report advances, allows for a consideration of the experience of the Palestinian people as a whole under Zionist settler colonialism, regardless of their geographical location or the legal status imposed on them by the Israeli regime. The apartheid analysis, which incorporates settler colonialism as the overarching

<sup>203</sup> See for example: Rinad Abdulla, 'Colonialism and Apartheid against Fragmented Palestinians: Putting the Pieces Back Together' (2016) 5(1) State Crime Journal 51.

<sup>204</sup> Rania Muhabat, 'Apartheid, the Green Line, and the Need to Overcome Palestinian Fragmentation' (*EJIL: Talk!*, 7 July 2021) <<https://www.ejiltalk.org/apartheid-the-green-line-and-the-need-to-overcome-palestinian-fragmentation/>>.



framework, has therefore been advanced as a more comprehensive framework that takes into consideration the totality of the Palestinian collective experience.<sup>205</sup> This is not to say that adopting the apartheid framework means abandoning that of occupation law. On the contrary, Palestinian civil society has long advanced the apartheid framework *alongside* the frameworks of occupation and colonialism as a comprehensive articulation of the reality on the ground.<sup>206</sup> This report applies the apartheid framework as a vehicle to overcoming the fragmentation of the Palestinian people and that of international law as it has been predominantly applied to Palestine to date. It draws on international humanitarian law, international human rights law, and international criminal law to ensure comprehensive protection for the Palestinian people.

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205 Nadia Hijab and Ingrid Jaradat Gassner, 'Talking Palestine: What Frame of Analysis? Which Goals and Messages?' (*Al-Shabaka*, 12 April 2017) <<https://al-shabaka.org/commentaries/talking-palestine-frame-analysis-goals-messages/>>.

206 BDS, Palestinian Civil Society Call for BDS (9 July 2005) <<https://bdsmovement.net/call>>; see also HSRC Study (to which Palestinian human rights organisations Al-Haq and Adalah contributed); see Al-Haq, South African study finds that Israel is practicing colonialism and apartheid in the Occupied Palestinian Territory (4 June 2009) <<https://www.alhaq.org/advocacy/7207.html>>.

**4**

## Constructing Apartheid

The history of apartheid will remain intrinsically linked to the regime of systematic racial oppression and domination formally imposed in South Africa and through the occupation of Namibia between 1948 and 1994. Despite having its origins in South Africa, apartheid is internationally prohibited as a form of racial discrimination and a crime against humanity.

International human rights law, through Article 3 of ICERD, imposes an obligation on states parties to ‘prevent, prohibit and eradicate’ policies and practices of apartheid within their jurisdiction.<sup>207</sup> International criminal law offers avenues to punish perpetrators of the crime of apartheid, including individuals, organisations, and institutions,<sup>208</sup> and international humanitarian law designates practices of apartheid committed in situations of armed conflict and military occupation a grave breach of the 1977 Additional Protocol I to the Geneva Conventions of

<sup>207</sup> Article 3, ICERD.

<sup>208</sup> Article I(2), Apartheid Convention; Article 7(1)(j), Rome Statute.

12 August 1949 (Additional Protocol I).<sup>209</sup> Additionally, the law of state responsibility requires third states: (1) not to recognise the unlawful situation arising from the imposition of apartheid; (2) not to aid or assist in the maintenance of the unlawful situation; and (3) to cooperate to bring such a situation to an end.<sup>210</sup>

Starting in the 1960s, the UN adopted increasingly restrictive and punitive measures to counter the South African apartheid regime. The General Assembly adopted a series of resolutions designating apartheid as a crime against humanity<sup>211</sup> and, in 1973, adopted the Apartheid Convention toward the suppression and punishment of this crime.<sup>212</sup> In 1976, against the backdrop of the South African apartheid regime's violent suppression of the Soweto uprising,<sup>213</sup> the Security Council finally recognised apartheid as 'a crime against the conscience and dignity of mankind'.<sup>214</sup> In 1998, following the formal end of the apartheid regime in South Africa and Namibia, the crime against humanity of apartheid was codified within the jurisdiction of the ICC.<sup>215</sup>

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209 Article 85(4)(c), Additional Protocol I.

210 Articles 41(1) and 41(2), Draft Articles on State Responsibility.

211 UN General Assembly, Resolution 2074 (XX), 17 December 1965, UN Doc A/RES/2074 (XX), para 4; UN General Assembly, Resolution 2202A (XXI), 16 December 1966, UN Doc A/RES/2202A (XXI), para 1; see also Paul Eden, 'The Role of the Rome Statute in the Criminalization of Apartheid' (2014) 12 Journal of International Criminal Justice 171, 174.

212 UN General Assembly, Resolution 3068 (XXVIII), 30 November 1973, A/RES/3068(XXVIII).

213 See, for example, South African History Online, 'The June 16 Soweto Youth Uprising' <<https://www.sahistory.org.za/article/june-16-soweto-youth-uprising>>.

214 UN Security Council, Resolution 392, 19 June 1976, UN Doc S/RES/392 (1976), para 3.

215 Article 7(1)(j), Rome Statute.

## 4.1 The Prohibition of Apartheid

The prohibition of apartheid is rooted in the general prohibition of racial discrimination under public international law, notably enshrined in Articles 1(3) and 55 of the UN Charter.<sup>216</sup> The prohibition can similarly be located within core instruments of international human rights law, including Article 2 of the Universal Declaration of Human Rights,<sup>217</sup> Articles 2(1) and 26 of the ICCPR, Article 2(2) of the ICESCR, and in other international human rights treaties ratified by Israel, which are applicable within territories under its jurisdiction and subject to its effective control, including the occupied Palestinian territory and the occupied Syrian Golan.

### 4.1.1 ICERD

On 21 December 1965, the UN General Assembly adopted ICERD, which expressly prohibits apartheid as a matter of international human rights law. As held by the Convention's treaty body, CERD, in 2006, the prohibition 'was strongly influenced by the cruel, inhuman and degrading effects of apartheid' in South Africa.<sup>218</sup> In its Preamble, states parties to ICERD expressed that they were:

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation.<sup>219</sup>

Critically, Article 3 of ICERD enshrined that:

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all

<sup>216</sup> Articles 1(3) and 55, UN Charter; Max Du Plessis, 'International Criminal Law: The Crime of Apartheid Revisited Recent Cases' (2011) 24 South African Journal of Criminal Justice 417.

<sup>217</sup> Article 2, *Universal Declaration of Human Rights*, 10 December 1948, UN Doc 217A (III) (hereinafter 'UDHR').

<sup>218</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, UN Doc CERD/C/ZAF/CO/319, para 2.

<sup>219</sup> Preamble, ICERD.



practices of this nature in territories under their jurisdiction.<sup>220</sup>

While ICERD does not define apartheid, it prohibits this practice and imposes an obligation on all states parties to eradicate apartheid ‘in territories under their jurisdiction.’ Accordingly, the Convention is applicable with respect of Israeli laws, policies, and practices of racial discrimination, racial segregation, and apartheid on both sides of the Green Line. CERD has repeatedly affirmed that the territories under Israel’s jurisdiction and effective control, where the Convention applies, include not only the territory inside the Green Line but also the territories occupied since 1967.<sup>221</sup>

At the same time, the prohibition of apartheid under ICERD, and the obligation to eradicate this practice, is applicable with respect not only of Palestinians living in historic Palestine, but also to those Palestinians in exile denied their right of return. States have an obligation under Article 5 of ICERD to ensure that ‘[a]ll... refugees and displaced persons have the right to freely return to their homes of origin under conditions of safety’<sup>222</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>223</sup> This is relevant in the Palestinian context in view of the Israeli Law of Return (1950), which grants ‘Every Jew... the right to come to this country’<sup>224</sup> and to settle therein, while excluding Palestinians, notably Palestinian refugees and exiles, from exercising their right of return. This is why CERD has urged Israel to rescind racially discriminatory laws and to guarantee the right of return of Palestinian refugees and displaced persons in line with

220 Article 3, ICERD; note also Preamble, *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13.

221 CERD, Concluding observations on Israel 2019, paras 9-10.

222 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).

223 *Ibid*, para 2(c).

224 Article 1, Law of Return 5710-1950, 5 July 1950 (hereinafter ‘Law of Return 1950’).

Article 5(d)(ii) of ICERD.<sup>225</sup> The Coalition considers that the prohibition of apartheid under ICERD is binding on Israel with respect of its treatment of the Palestinian people as a whole.

#### 4.1.2 The Apartheid Convention

The first classification of apartheid as an international crime in a binding international treaty is found in the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, according to which no statutory limitations shall apply to ‘inhuman acts resulting from the policy of apartheid’.<sup>226</sup> On 30 November 1973, the General Assembly adopted the Apartheid Convention in Resolution 3068 (XXVIII).<sup>227</sup> Article II of the Convention, which enshrines the most detailed definition of the crime of apartheid to date,<sup>228</sup> reads:

The term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- a. Denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - (i) By murder of members of a racial group or groups;
  - (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

<sup>225</sup> CERD, Concluding observations on Israel 2019, paras 15-16; UN CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination, Israel, UN Doc CERD/C/304/Add.45, 30 March 1998, para 18; UN CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination, Israel, UN Doc CERD/C/ISR/CO/13, 14 June 2007, para 18.

<sup>226</sup> Article I, *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>227</sup> UN General Assembly, Resolution 3068 (XXVIII), 30 November 1973, A/RES/3068(XXVIII).

<sup>228</sup> ESCWA Report, 12.



- (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- b. Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- c. Any legislative measures and other measures calculated to prevent a racial group or groups 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 or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- d. Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- e. Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- f. Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.<sup>229</sup>

In addition to its detailed definition of the crime,<sup>230</sup> the Apartheid Convention establishes individual criminal responsibility for ‘individuals, members

<sup>229</sup> Article II, Apartheid Convention.

<sup>230</sup> ESCWA Report, 12.

of organizations and institutions and representatives of the State' who 'commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II' as well as those who '[d]irectly abet, encourage or co-operate in the commission of the crime.'<sup>231</sup> Under the Convention, individual criminal responsibility shall apply whether the perpetrator is 'residing in the territory of the State in which the acts are perpetrated or in some other State' and 'irrespective of the motive involved.'<sup>232</sup> The definition also emphasizes necessity of intent to establish or maintain domination by one racial group over another.<sup>233</sup> Once this intention has been established on the systemic level no further interrogation is necessary for the specific, individual intention of those involved.<sup>234</sup> The Apartheid Convention requires that all organisations, institutions, and individuals involved in the commission of the crime of apartheid be declared as criminal.<sup>235</sup> Finally, the Convention provides for universal jurisdiction as a means to prosecute perpetrators of the crime of apartheid, including non-nationals, in the courts of states parties.<sup>236</sup>

Because of its expansive scope and establishment of universal jurisdiction for the crime of apartheid, a majority of Western states have to date refused to ratify the Apartheid Convention due to the broad nature of the criminality it enshrines<sup>237</sup> as a result of which, Carola Lingaas writes, 'several states... feared indictment for aiding and abetting the

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<sup>231</sup> Articles III(a) and (b), Apartheid Convention.

<sup>232</sup> Article III, Apartheid Convention.

<sup>233</sup> Miles Jackson, 'The Definition of Apartheid in Customary International Law and the International Convention on the Elimination of All Forms of Racial Discrimination' (2022) 71(4) International & Comparative Law Quarterly 831, 847-849.

<sup>234</sup> Article III, Apartheid Convention.

<sup>235</sup> Article I(2), Apartheid Convention.

<sup>236</sup> Article V, Apartheid Convention.

<sup>237</sup> Adriaan Barnard, 'Slegs Suid Afrikaners – South Africans Only – A Review and Evaluation of the International Crime of Apartheid' (2009) 7 New Zealand Journal of Public and International Law 317, 352; Paul Eden, 'The Role of the Rome Statute in the Criminalization of Apartheid' (2014) 12 Journal of International Criminal Justice 171, 179; Max Du Plessis, 'International Criminal Law: The Crime of Apartheid Revisited Recent Cases' (2011) 24 South African Journal of Criminal Justice 417, 421-422.

South African regime.<sup>238</sup> While South Africa itself has not yet ratified the Apartheid Convention, it has in the past year begun the process of ratifying the Convention.<sup>239</sup> Such a step would lend important political recognition of the continued relevance of the Apartheid Convention today. As of November 2022, the Apartheid Convention counts 110 states parties.<sup>240</sup>

While the reference to policies of apartheid 'as practised in southern Africa' has led some to question the applicability of the Convention to other contexts, international treaties are not generally adopted with a specific context in mind.<sup>241</sup> Notwithstanding the reference to apartheid in southern Africa, the criminalisation of apartheid in the Apartheid Convention is intended to be universal in scope.<sup>242</sup> Such a view is supported by the practice of CERD, which observed in its General Recommendation XIX of 1995 on the prevention, prohibition, and eradication of racial segregation and apartheid that:

The reference to apartheid [in Article 3 of ICERD] may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries.<sup>243</sup>

Similarly, the International Law Commission (ILC) considers the prohibition of apartheid to constitute a *jus cogens* norm of customary international

238 Carola Lingaas, 'The Crime against Humanity of Apartheid in a Post-Apartheid World' (2015) 2 Oslo Law Review 86, 88-89.

239 SA News, 'Cabinet approves UN ICERD periodic report' (26 February 2021) <<https://www.sanews.gov.za/south-africa/cabinet-approves-un-icerd-periodic-report>>; SA News, 'National Assembly approves four Bills' (8 September 2022) <<https://www.sanews.gov.za/south-africa/national-assembly-approves-four-bills/>>.

240 UNTC, International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-7&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-7&chapter=4&clang=_en)>.

241 Adriaan Barnard, 'Slegs Suid Afrikaners,' 358.

242 On the evolution of the crime of apartheid see *ibid.*; Du Plessis, 'International Criminal Law: The Crime of Apartheid'; Alexander Zahar, 'Apartheid as an International Crime' in Antonio Cassese (ed), *The Oxford Companion to International Criminal Justice* (Oxford University Press 2009); Ronald C Slye, 'Apartheid as a Crime against Humanity: A Submission to the South African Truth and Reconciliation Commission' (1998) 20 Michigan Journal of International Law 267.

243 CERD, General Recommendation 19, The prevention, prohibition and eradication of racial segregation and apartheid (1995), UN Doc A/50/18, at 140, para 1.

law, giving rise to obligations *erga omnes*.<sup>244</sup> It can thus be concluded that the prohibition of apartheid in international law, inclusive of international human rights law and international criminal law, was not limited to the context in South Africa and Namibia.

#### **4.1.3 The Rome Statute**

The Rome Statute codifies apartheid as a crime against humanity entailing individual criminal responsibility in Article 7(1)(j) and provides a definition of the crime in Article 7(2)(h), as involving:

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.<sup>245</sup>

Like 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. However, some crucial distinctions can be observed. Firstly, the potential inhumane acts of apartheid enumerated in the Rome Statute are not as broad as the inhuman acts set out in the Apartheid Convention, although there is some overlap. An obvious omission in the Rome Statute is the silencing and targeting of those individuals and organisations seeking to oppose the apartheid system.<sup>246</sup>

Secondly, the apartheid definition in the Rome Statute is considerably more onerous in its contextual element. For inhumane acts to be prosecuted as apartheid by the ICC they must be ‘committed in the context of an institutionalized regime of systematic oppression and domination,’ with the added requirement that there be a specific intention to maintain that regime. This can be compared with the construction in the Apartheid Convention, which includes inhuman acts committed ‘for the purpose of establishing’ racial domination, not simply acts committed after domination

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<sup>244</sup> Dugard and Reynolds, ‘Apartheid’; Du Plessis, ‘International Criminal Law: The Crime of Apartheid’ 417; ILC, Draft Articles on State Responsibility; Slye, ‘Apartheid as a Crime against Humanity.’

<sup>245</sup> Article 7(2)(h), Rome Statute.

<sup>246</sup> Article II(f), Apartheid Convention.



has been established. For the Apartheid Convention, all that is required is that the intention behind the inhuman acts is to set about constructing a system of racial domination and oppression.

Although the Rome Statute definition is considerably narrower than that found in the Apartheid Convention,<sup>247</sup> it must be stressed that this does not result in a narrowing of the concept in general international law nor elsewhere in international criminal law.<sup>248</sup> Like 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. In any event, in the Palestinian context, as demonstrated below, it is clear that an institutionalised regime of racial domination and oppression has already existed for decades.

To date, no international or national court has ever prosecuted an individual for the crime of apartheid. However, the ICC's Office of the Prosecutor has previously acknowledged receipt of allegations of the commission of the crime of apartheid in Palestine.<sup>249</sup> The opening of the ICC's investigation into the Situation in Palestine on 3 March 2021 and growing international recognition of Israeli apartheid mean that the ongoing ICC investigation represents an important judicial avenue for the investigation and prosecution of the crime of apartheid in Palestine.<sup>250</sup> The Coalition thus urges the ICC Prosecutor to investigate suspected perpetrators of the crime of apartheid, among other international crimes committed in Palestine, as a first step toward challenging Israeli impunity.

<sup>247</sup> Noura Erakat and John Reynolds discuss this narrowing as part of '[t]he ascendance of the liberal understanding of apartheid' in Noura Erakat and John Reynolds, 'Understanding Apartheid' (*Jewish Currents*, 1 November 2022) <<https://jewishcurrents.org/understanding-apartheid>>.

<sup>248</sup> Jackson, 'The Definition of Apartheid,' 854-844.

<sup>249</sup> ICC's Office of The Prosecutor, *Report on Preliminary Examination Activities*, 4 December 2017, para 63<<https://www.icc-cpi.int/Pages/item.aspx?name=171204-rep-otp-PE>>.

<sup>250</sup> See discussion in Noura Erakat and John Reynolds, 'We Charge Apartheid? Palestine and the International Criminal Court' (*TWAIL Review*, 20 April 2021) <<https://twailr.com/we-charge-apartheid-palestine-and-the-international-criminal-court/>>.

## 4.2 Elements of the Crime against Humanity of Apartheid

This report applies both definitions of the crime of apartheid, as enshrined in the Apartheid Convention and the Rome Statute, to the plight of the Palestinian people. These two treaties have been ratified by the State of Palestine and are thus applicable in the occupied Palestinian territory. While Israel has not ratified either treaty, the internationally wrongful act of apartheid is prohibited as a principle of customary international law, and also exists as a *jus cogens* norm, and is thus applicable with respect to Israeli laws, policies, and practices.

The Apartheid Convention's definition includes 'inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them' thereby clarifying the necessity that the crime occurs with the specific intention of creating and maintaining racial domination.<sup>251</sup> Likewise, the Rome Statute defines the crime of apartheid as occurring 'in the context of an institutionalised 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,' presupposing that the regime in question is already in place.<sup>252</sup>

Therefore, to meet the common threshold of the crime of apartheid spanning the Apartheid Convention and the Rome Statute, the following elements must exist: (1) inhuman or inhumane acts; (2) committed as part of an institutionalised regime of systematic oppression and domination; (3) by one racial group over any other racial group or groups; (4) with the intention of maintaining that regime. This sub-section considers the four elements of the crime of apartheid as they relate to Israeli laws, policies, and practices committed against the Palestinian people.

### 4.2.1 Inhuman and Inhumane Acts

It is important to note that under both the Apartheid Convention and the Rome Statute, there is no requirement that all inhuman(e) acts must

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<sup>251</sup> Article II, Apartheid Convention.

<sup>252</sup> Article 7(2)(h), Rome Statute.

be committed for the elements of the crime of apartheid to be fulfilled. As the HSRC study found, the Apartheid Convention's list of inhuman acts 'is intended to be illustrative and inclusive, rather than exhaustive or exclusive.'<sup>253</sup> Accordingly, 'a determination that apartheid exists does not require that *all* the listed acts are practiced: for example, Article 2(b) regarding the intended "physical destruction" of a group did not apply generally to apartheid policy in South Africa.'<sup>254</sup> In the case of Palestine, the HSRC study concluded that numerous inhuman acts were satisfied, and that 'Israel appears clearly to be implementing and sustaining policies intended to maintain its domination over Palestinians in the [occupied Palestinian territory] and to suppress opposition of any form to those policies.'<sup>255</sup>

While this report builds on the HSRC study, it extends the analysis to encompass the Palestinian people as a whole. In doing so, this report also applies elements of the crime of apartheid as enshrined in the Rome Statute. Under the Rome Statute 'inhumane acts' of the crime of apartheid are listed under Articles 7(1)(a)-(k) of the Rome Statute as crimes against humanity. They closely resemble those found in Article II of the Apartheid Convention. The Rome Statute's inhumane acts include notably:

- \* 'Murder,'<sup>256</sup>
- \* 'Deportation or forcible transfer of population,'<sup>257</sup>
- \* 'Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,'<sup>258</sup>
- \* 'Torture,'<sup>259</sup>
- \* 'Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender... or other grounds that are universally recognized as impermissible under international law...,'<sup>260</sup>

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253 HSRC Study, 17.

254 *Ibid.*, 17.

255 *Ibid.*, 20 (emphasis in original).

256 Article 7(1)(a), Rome Statute.

257 Article 7(1)(d), Rome Statute.

258 Article 7(1)(e), Rome Statute.

259 Article 7(1)(f), Rome Statute.

260 Article 7(1)(h), Rome Statute.

- \* ‘Enforced disappearance of persons;’<sup>261</sup>
- \* ‘Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.’<sup>262</sup>

Numerous inhuman(e) acts against the Palestinian people have been documented and reported over the years. Palestinian human rights organisations have documented the following inhuman(e) acts, among others, committed by the Israeli authorities against the Palestinian people:

- \* Murder;<sup>263</sup>
- \* Forcible transfer;<sup>264</sup>
- \* Deportation;<sup>265</sup>

261 Article 7(1)(i), Rome Statute.

262 Article 7(1)(k), Rome Statute.

263 See, for example, discussion of the crime against humanity of murder in Al-Haq *et al*, *Joint Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Ahmad Erekat by the Israeli Occupying Forces on 23 June 2020* (13 July 2020) <[https://www.alhaq.org/cached\\_uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf](https://www.alhaq.org/cached_uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf)>; see also The Palestinian Disability Coalition *et al*, *Joint Parallel Report to the Committee on the Rights of Persons with Disabilities for its List of Issues on Israel's Initial Report* (24 July 2020) <<https://www.alhaq.org/advocacy/17185.html>>; Al-Haq, Al-Haq Sends Urgent Appeal to UN Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq (9 June 2020) <<https://www.alhaq.org/advocacy/16963.html>>; 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) <<https://www.alhaq.org/advocacy/6070.html>>; Adalah, Israeli police video reveals cops opened fire on Bedouin man before his car accelerated, contradicting police claims (19 January 2017) <<https://www.adalah.org/en/content/view/9002>>; Adalah, The October 2000 Killings (11 August 2020) <<https://www.adalah.org/en/content/view/8639>>.

264 See, for example, Al-Haq, Palestinian Human Rights Organisations Submit Evidence to the ICC Prosecutor on Crimes Committed in West Bank (20 September 2017) <<https://www.alhaq.org/advocacy/6318.html>>; Simon Reynolds, *Coercive Environments: Israel's Forcible Transfer of Palestinians in the Occupied Territory* (BADIL, February 2017) <<https://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/FT-Coercive-Environments.pdf>>.

265 See, for example, PHROC *et al*, *Joint Urgent Appeal to the United Nations Special Procedures on the Imminent Threat of Forcible Transfer/Deportation of Salah Hammouri for "Breach of Allegiance"* (30 September 2020) <[https://www.alhaq.org/cached\\_uploads/download/2020/10/05/200930-joint-urgent-appeal-to-the-united-nations-special-procedures-on-the-imminent-threat-of-forcible-transfer-or-deportation-of-salah-hammouri-for-breach-of-allegiance-1601889872.pdf](https://www.alhaq.org/cached_uploads/download/2020/10/05/200930-joint-urgent-appeal-to-the-united-nations-special-procedures-on-the-imminent-threat-of-forcible-transfer-or-deportation-of-salah-hammouri-for-breach-of-allegiance-1601889872.pdf)>; Addameer, Observations on Behalf of Victims (16 March 2020, ICC-01/18) <[https://www.icc-cpi.int/CourtRecords/CR2020\\_01151.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_01151.PDF)>; Al-Haq *et al*, Omar Barghouti at Imminent Risk of Deportation as Israeli Interior Minister Initiates Proceedings to Punitively Revoke his Residency Status (4 November 2019) <<https://www.alhaq.org/advocacy/16156.html>>; Addameer and BADIL, Deportation as Policy: Palestinian Prisoners & Detainees in Israeli Detention (17 April 2016) <<https://www.addameer.org/publications/deportation-policy-palestinian-prisoners-detainees-israeli-detention>>; Al-Haq, Six Human Rights Organisations Submit an Urgent Appeal to UN Special Procedures on Israel's Imminent Deportation of Palestinian Jerusalemite (26 April 2019) <<https://www.alhaq.org/advocacy/6063.html>>.

- \* Arbitrary detention and arrests;<sup>266</sup>
- \* Torture and other ill-treatment;<sup>267</sup>
- \* Persecution;<sup>268</sup>
- \* Enforced disappearance;<sup>269</sup> and
- \* Other inhumane acts, notably causing serious injury to body or to mental or physical health.<sup>270</sup>

Critically, these inhuman(e) acts do not stop at the Green Line, given the continuity of policies and practices of, *inter alia*, murder, arbitrary detention, denial of family unification, expropriation of landed property, and deportation.<sup>271</sup> Additionally, Palestinian refugees continue to be denied their right of return contrary to Article II(c) of the Apartheid Convention and, as the ICC's Pre-Trial Chamber I found in relation to the denial of the right of return of Rohingya refugees, this denial may constitute a crime against

266 See, for example, Addameer, *Annual Violations Report 2019* (2020) <<https://www.addameer.org/media/4287>>; Adalah, Adalah demands Israeli police end mass arrests of Palestinian citizens (27 May 2021) <<https://www.adalah.org/en/content/view/10334>>; Al-Haq, Israeli Occupying Forces Violate the Right to Life of Mr Omar As'ad, an 80-year-old Man from Jaljiliyya (18 January 2022) <<https://www.alhaq.org/advocacy/19408.html>>.

267 See, notably, Addameer, Addameer Collects Hard Evidence on Torture and Ill-Treatment Committed against Palestinian Detainees at Israeli Interrogation Centers (23 December 2019) <<https://www.addameer.org/news/addameer-collects-hard-evidence-torture-and-ill-treatment-committed-against-palestinian>>; Adalah, What happened in the 'torture room' at Israel's police station in Nazareth? (7 June 2021) <<https://www.adalah.org/en/content/view/10351>>; Al Mezan, The Torture and Abuse of Children Fleeing Gaza's Humanitarian Catastrophe (26 October 2020) <<http://mezan.org/en/post/23840>>.

268 See Al Mezan et al, *Palestinian Human Rights Organizations & Victims' Communication to the ICC on the Illegal Closure of the Gaza Strip: Persecution and Other Inhumane Acts Perpetrated against the Civilian Population as Crimes against Humanity* (23 November 2016) <<http://mezan.org/en/post/21630>>.

269 See, notably, Al-Haq, Al-Haq Sends Urgent Appeal to UN Special Procedures on the Enforced Disappearance of Saleh Omar Barghouthi (27 December 2018) <<https://www.alhaq.org/advocacy/6119.html>>; Al-Haq, United Nations Working Group on Enforced or Involuntary Disappearances Sends Response to Al-Haq on the Case of Saleh Barghouthi (31 December 2018) <<https://www.alhaq.org/advocacy/6118.html>>.

270 See, e.g., Al-Haq, Israel Deliberately Injures and Maims Palestinian Civilians, Prevents Evacuation of Wounded, and Denies Access to Vital Healthcare Facilities Outside the Gaza Strip (18 April 2018) <<https://www.alhaq.org/monitoring-documentation/6243.html>>; Nidal Alazza (ed), *Excessive Use of Force by the Israeli Army: Case Study* (BADIL, April 2017) <<http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/CaseStudy-EUOF.pdf>>; Al Mezan et al, *Palestinian Human Rights Organizations & Victims' Communication to the ICC on the Illegal Closure of the Gaza Strip: Persecution and Other Inhumane Acts Perpetrated against the Civilian Population as Crimes against Humanity* (23 November 2016) <<http://mezan.org/en/post/21630>>.

271 Muhareb, 'Apartheid, the Green Line, and the Need to Overcome Palestinian Fragmentation.'

humanity.<sup>272</sup> Thus, the Coalition argues that the element of inhuman(e) acts of the crime against humanity of apartheid is satisfied with respect of the Palestinian people as a whole.

#### **4.2.2 Institutionalised Regime**

Acts illustrative of apartheid must take place within the context of a wider policy<sup>273</sup> of an institutionalised regime of systematic oppression and domination. The framework of crimes against humanity requires that the underlying acts be ‘committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.<sup>274</sup> The ICC’s Elements of Crimes clarify:

The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.<sup>275</sup>

With reference to the crime of apartheid, the ICC’s Elements of Crimes list the following elements:

1. The perpetrator committed an inhumane act against one or more persons.
2. Such act was an act referred to in article 7, paragraph 1, of the

<sup>272</sup> See PTC I, *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* (6 September 2018) ICC-RoC46(3)-01/18, para 77; Michael G Kearney, ‘The Denial of the Right of Return as a Rome Statute Crime’ (2020) 18(4) *Journal of International Criminal Justice* 985; see also Clancy and Muhareb, ‘Putting the International Criminal Court’s Palestine Investigation into Context.’

<sup>273</sup> ICC, *Elements of Crimes* (2011) 5.

<sup>274</sup> Article 7(1), Rome Statute.

<sup>275</sup> ICC, *Elements of Crimes* (2011) 5.



Statute, or was an act of a character similar to any of those acts.

3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.
5. The perpetrator intended to maintain such regime by that conduct.
6. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
7. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>276</sup>

The term ‘regime,’ although not defined in either the Apartheid Convention or Rome Statute, refers to an institutional structure or system of governance. Lingaas writes: ‘[a]n established law or practice by a government or prevailing order is most likely the closest to a definition of an institutionalised regime one gets.’<sup>277</sup> The finding of apartheid requires the existence of an institutionalised structure or system constitutive of a ‘regime,’ or in the case of the Apartheid Convention, an *attempt* to establish such a structure.<sup>278</sup> Sections 5 and 6 of this report detail Israel’s laws, policies, and practices establishing and maintaining Zionist settler colonial domination over the Palestinian people as part of an institutionalised regime. These are asserted to be evidence of the existence of an institutionalised regime of domination and oppression constitutive of the crime of apartheid against Palestinians.

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276 ICC, *Elements of Crimes* (2011), 12.

277 Lingaas, ‘The Crime against Humanity of Apartheid,’ 97-98.

278 Miles Jackson, ‘Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law’ (*Diakonia*, 23 March 2021), paras 24-25 <<https://www.diakonia.se/ihl/news/israel-palestine-publication/expert-opinion-occupation-palestine-apartheid/>>.

### 4.2.3 Racial Groups

Race has been described as a social construct,<sup>279</sup> meaning that it emerges from the particular local context in which it is ‘constructed.’<sup>280</sup> Article 1(1) of ICERD adopts a wide definition of racial discrimination as:

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>281</sup>

Thus, Article 3 of ICERD prohibiting racial segregation and apartheid encompasses discrimination based on ‘race, colour, descent, or national or ethnic origin.’ The Apartheid Convention highlights this provision in its Preamble.<sup>282</sup> In the specific context of international criminal law, general practice has been to eschew any attempt at identifying ‘race’ or other such outdated concepts in favour of the social construction approach.<sup>283</sup> It is therefore appropriate to adopt the same approach to the current apartheid analysis.

Therefore, the question is not whether Palestinians and Jewish Israelis are *per se* racial groups but whether their identities are racialised in the local context. Racialisation, notably, is a tool or ‘organizing grammar’ of settler colonialism<sup>284</sup> and is deployed toward replacing the indigenous people(s) on the land.<sup>285</sup> It is therefore important to consider how Israeli laws and

<sup>279</sup> See, for example, Carola Lingaas, *The Concept of Race in International Criminal Law* (Routledge 2020) 35.

<sup>280</sup> See Michael Banton, *The Idea of Race* (Travistock Publications 1977); see also Dugard and Reynolds, ‘Apartheid, International Law,’ 885 and 889.

<sup>281</sup> Article 1(1), ICERD.

<sup>282</sup> Preamble, Apartheid Convention.

<sup>283</sup> In support, see Miles Jackson, ‘The Definition of Apartheid,’ 851, citing ICTY, *Prosecutor v. Radislav Brdjanin* (Trial Judgement), IT-99-36-T (1 September 2004), para 683-684; see also Carola Lingaas, ‘The Elephant in the Room: The Uneasy Task of Defining ‘Racial’ in International Criminal Law’ (2015) 15 International Criminal Law Review 485.

<sup>284</sup> Patrick Wolfe, *Traces of History*, 8.

<sup>285</sup> See discussion in Muhareb and Clancy, ‘Palestine and the Meaning of Domination,’ 10-11.



policies create a distinction between ‘Jewish’ and ‘non-Jewish’ persons. The Law of Return (1950) establishes privileges for Jewish persons to immigrate to and settle in the country as *olim* (Jewish settlers).<sup>286</sup> Pursuant to Amendment No 2 to the Law of Return of 1970, ‘[f]or the purposes of this Law, “Jew” means a person who was *born of a Jewish mother* or has become converted to Judaism and who is not a member of another religion.’<sup>287</sup> The 1970 Amendment to the Law of Return adds that:

The rights of a Jew under this Law and the rights of an *oleh* [Jewish settler] under the Citizenship Law, 5712–1952, as well as the rights of an *oleh* under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.<sup>288</sup>

Key Israeli laws, such as the Law of Return and the Citizenship Law (1952), establish a strict distinction between Jewish and non-Jewish persons; thus, an individual defined as Jewish, born anywhere in the world, may enter the country as a ‘Jewish immigrant,’ settle the land, and receive Israeli citizenship and preferential treatment because of her or his status as a Jewish person under the law. Meanwhile, an indigenous Palestinian refugee whose family was expelled in and around 1948 is prohibited by Israeli law from returning to their homes, lands, and properties. Not only this, Palestinians inside the Green Line are accorded Israeli citizenship not based on birth but on the basis of residence in the land. Thus, the expulsion of Palestinian refugees was supplemented with a process of denationalisation.<sup>289</sup>

While Palestinian and Jewish identities are not in and of themselves racial, Israeli laws as well as Zionist ideology and policy categorise Jewish Israelis and Palestinians as distinct ‘racial groups,’ according to which rights and privileges, as well as exploitation and oppression, are determined at birth. In this context, the racialisation of Jewish Israelis and Palestinians operates

<sup>286</sup> Article 1, Law of Return 1950.

<sup>287</sup> Article 4B, State of Israel, Law of Return (Amendment No 2) 5730-1970 (hereinafter ‘Law of Return 1970 Amendment’) (emphasis added).

<sup>288</sup> Article 4A(a), Law of Return 1970 Amendment.

<sup>289</sup> Uri Davis, *Israel: An Apartheid State* (Zed Books, 1987) 25-38.

as a tool to entrench the domination and oppression of Palestinians under Zionist settler colonialism.

#### **4.2.4 Intention of Maintaining the Regime**

The crime of apartheid under the Rome Statute requires the presence of an intention to maintain the regime. Thus, it is important that any inhuman(e) acts committed are carried out as part of an institutionalised regime by one racial group to systemically dominate and oppress another group or groups, and it must be shown that such acts are committed with the intention of ensuring that this regime remains in place.

The intention to maintain the domination of Jewish Israelis over Palestinians is clearly reflected in Zionist policies of population transfer and demographic manipulation, whereby Israel pursues the ‘Judaisation’ of the land, dispossession of Palestinians, and manipulation of Palestine’s demography to create a Jewish demographic majority. This report details Israeli laws, policies, and practices that establish domination over the Palestinian people. As will become apparent in the sections below, Palestinians are subjected to widespread and systematic human rights violations by the Israeli settler colonial state, amounting to inhuman(e) acts within the meaning of the crime of apartheid. These are committed with an intention to deny Palestinians their collective right to self-determination, through strategic fragmentation, the denial of the right of return of Palestinian refugees and displaced persons, freedom of movement and access restrictions, and the exploitation of Palestinian land and other natural resources.

Additionally, an examination of repressive Israeli policies and practices targeting the Palestinian people, such as excessive use of force, denial of the right to life, arbitrary detention, torture, collective punishment, and the persecution of individuals and organisations opposing apartheid, shows a clear intention on the part of the state authorities to maintain the regime by aiming to prevent Palestinians from mounting a unified resistance against their oppression.



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## 5

## Israel's Apartheid Legal Regime

Upon its establishment through the *Nakba* of 1948, Israel installed a legal regime to legitimise and legalise its violations and crimes committed against the Palestinian people, thus laying the foundations of its apartheid regime. According to Yifat Holzman-Gazit, ‘what was notable about this process of transferring a very large percentage of the national territory from Arab to Jewish hands was the effort and energy expended by the authorities to construct a legal regime that would legitimize the expropriation.’<sup>290</sup> George Bisharat and others have observed that ‘while justice and fairness were not present in the process of de-Arabization of the land, resort to law as a means for executing the negation of Arab ownership rights was a prime concern.’<sup>291</sup> The laws adopted following 1948 were transposed as military orders to the occupied Palestinian territory in 1967. Since 1948, Israeli laws, policies, and practices have been designed to provide the legal basis for Israel’s apartheid regime. Israel’s overall objective today remains the

<sup>290</sup> Holzman-Gazit, Yifat, *Land Expropriation in Israel: Law, Culture and Society*, (Routledge, 2007) 105.

<sup>291</sup> *Ibid.*, 105.



expropriation of Palestinian land and alteration of Palestine's demography by transferring Palestinians to expand Jewish settlement and effective control on both sides of the Green Line. New Israeli policies and laws are regularly adopted to achieve this objective.

## 5.1 The Central Task of Zionist Parastatal Institutions

### 5.1.1 Zionist Parastatal Institutions

As clarified in the 1933 Montevideo Convention,<sup>292</sup> the modern state is understood to comprise: (1) a permanent population; (2) a defined territory; (3) (institutions of) government; and (4) the 'capacity to enter into relations with the other states.' Israel's case for constituting a state is unique, however.

Well before Israel's so-called 'Proclamation of Independence' in 1948, the Zionist movement's pursuit of a state rested on first establishing proto-state institutions, before claiming to have a distinct population (people) or defined territory. The Zionist movement then set about establishing so-called 'national' institutions, predominantly in the forms of the WZO, in 1897, the JNF in 1901, and the JA, in 1921. The WZO and JA then conjoined in 1929 as the Zionist Executive.<sup>293</sup>

The founders developed and maintained a complementary division of roles between and among these institutions so as to assume the public functions of a 'state in the making.' The WZO/JA sought international recognition as 'public' institutions to make way for recognition as a 'government.' The Zionist leadership established other similarly chartered institutions as needed to capture and administer the other resources of the country. The consistent WZO/JA program and strategy have pursued the population transfer of Jewish persons to settle in Palestine for 'agricultural colonization based on [exclusive] Jewish labour' and land acquisition, or 'redeeming' land as 'inalienable;' i.e., for Jewish possession 'in perpetuity.' To manage the material dimensions of colonising Palestine (finance and acquisitions), the Fifth Zionist Congress in 1901 founded the JNF as a subsidiary of the

292 Article 1, *Montevideo Convention*.

293 CERD Report, para 38.

WZO and its eventual sister organisation, the JA. In 1905, the JNF began purchasing lands in Palestine. The JNF assumed the task of acquiring and administering land resources essential to the formation of a viable colony and settler colonial state.

The JNF's charter explicitly restricts its benefits 'whether directly or indirectly, to those of Jewish *race* or descent'<sup>294</sup> (emphasis added). Its chartered purpose and 'primary objective' were—and remain—to 'acquire lands in Palestine'<sup>295</sup> and to 'promote the interests of Jews in the prescribed region'.<sup>296</sup> In decoding Israel's Zionist law and policy, any reference to these parastatal institutions in public functions means a statutory obligation to discriminate against all others. The JNF charter also stipulates that, 'upon [its] dissolution...any properties whatsoever...shall be transferred to the Government of Israel,'<sup>297</sup> further affirming its public and state functions.

The close working relationship of the WZO/JA and JNF to the British mandate administration emerged as a 'shadow government' in Palestine,<sup>298</sup> leading up to Israel's 1948 'Proclamation of Independence.' Those specialised settler colonial, apartheid, and population transfer institutions were soon fused to the Israeli settler colonial state by a series of legislative acts of the Israeli parliament (the Knesset), including:

- \* WZO-JA (Status) Law (1952);
- \* Keren Kayemet Le-Israel [JNF] Law (1953);
- \* Covenant with Zionist Executive (1954, amended 1971);
- \* Basic Law: Israel Lands [People's Lands] (1960);
- \* Agricultural Settlement Law (1967).

The WZO/JA and the JNF remain pillars of Israel's discriminatory systems of

294 That is 'to purchase, acquire on lease, or in exchange, or receive on lease or otherwise, lands, forests, rights of possession, easements and any similar rights, as well as immovable properties of any class...for the purpose of settling Jews on such lands and properties'; Article 3(iii), JNF Memorandum of Association (1952).

295 Article 3(a), JNF Memorandum of Association (1901), and Article 3(i), JNF Memorandum of Association (1953).

296 *Ibid.*, Article 3(g) and Article 3(vii), respectively.

297 *Ibid.*, Article 6.

298 Mallison and Mallison, *The Palestine Problem*, 98-101.



housing, urban planning and development, and land administration. They advise, draft, promote, and implement laws and policies that discriminate—not always explicitly, but with deference to their discriminatory charters—against the indigenous Palestinian people, whether inside historic Palestine or in exile where today's approximately eight million Palestinian refugees and displaced persons remain dispersed and dispossessed.

In 1952, the Knesset adopted the WZO-JA (Status) Law (hereinafter 'Status Law'),<sup>299</sup> which authorises 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 colonial settlement projects in the state. It authorises it to develop and settle Jews in the country and to coordinate with Jewish institutions and organisations active in those fields. The Status Law also establishes that their joint operations under a conjoined Zionist Executive constitute '[t]he mission of gathering in the exiles [sic]... the central task of the State of Israel.'

### 5.1.2 Apartheid and Settler Colonial Charters

Since their founding, these proto-state and now, parastatal, institutions have built on the ideological foundation, expressed in their respective charters, that persons of Jewish faith constitute a separate 'Jewish nationality'<sup>300</sup> defined in 'racial' supremacy terms with correspondingly exclusive control of, and benefit from the resources of Palestine. Israeli legislation, deferring to principles of the JA, for example, triggers the condition of only benefitting Jews as natural persons holding this superior 'nationality' status. Through these institutions' extraterritorial operations, Israel imposes this status, distinct from Israeli citizenship, on persons of Jewish faith who are citizens of states other than Israel. Meanwhile, this supposed 'Jewish nationality' status entitles each member to automatic citizenship in Israel upon arrival in Palestine (except in certain cases of criminal conviction or apostasy).

299 WZO-JA (Status) Law 5713-1952 (hereinafter 'Status Law').

300 See generally, W T Mallison, Jr, 'The Zionist-Israel Juridical Claims to Constitute "the Jewish People" Nationality and to Confer Membership in It: Appraisal in Public International Law' (1963) 32 The George Washington Law Review 983.

The Status Law authorises the WZO, JA, and their affiliates to function in areas under Israel's effective control—which, since 1967, include the occupied Palestinian territory and the occupied Syrian Golan—as quasi-governmental entities.<sup>301</sup> The Law states for its purposes that the WZO, operating also as the JA, continues to manage Jewish settlement projects in the state and authorises it to develop and settle 'Jewish nationals' in the country and to coordinate with Jewish institutions and organisations active in those fields.

Israel's parastatal institutions, notably the WZO, JA, and the JNF, are chartered to carry out material discrimination against non-Jewish persons and have historically prevented the Palestinian people on both sides of the Green Line from accessing or exercising control over their means of subsistence, including their natural wealth and resources, by exploiting and diverting these for the benefit of Jewish Israeli settlers. These institutions play a key role in Israel's apartheid regime over the Palestinian people, its demographic manipulation, population transfer, and the colonisation of Palestinian land through Jewish settlement, with their principal task being 'to work actively to build and maintain Israel as a Jewish State, particularly through immigration policy.'<sup>302</sup> In 1998, the UN Committee on Economic, Social and Cultural Rights (CESCR) held that the 'large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that 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>303</sup>

All three of these sister apartheid institutions also operate extraterritorially, registered as tax-exempt 'charities' in some 50 countries around the world.<sup>304</sup>

<sup>301</sup> Status Law.

<sup>302</sup> ESCWA Report, 35.

<sup>303</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>304</sup> Argentina, Australia, Austria, Belgium, Belarus, Bolivia, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Curacao, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Greece, Honduras, Hong Kong, Hungary, Ireland, Israel, Italy, Latvia, Luxembourg, Mexico, Moldova, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Russian Federation, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan and Venezuela. See *Jewish Agency for Israel Yellow Pages* <<http://www.jafi.org.il/about/abroad.htm>>.



Shortly after anti-Zionist rabbis in the United States successfully challenged the WZO's claim to non-governmental charity status in that country,<sup>305</sup> the 1970 Zionist Congress resolved to rebrand itself and created a territorial division of labour between the two entities, at least nominally, with the JA determining development inside the Green Line and the WZO colonising the occupied Palestinian territory and occupied Syrian Golan. The JNF supports both operations.<sup>306</sup> The Israeli state, its laws, and organs formally defer to Zionist parastatal institutions in all matters of legislation and policy affecting development, commerce, agriculture, access to and control over natural resources, urban planning, and civil matters.<sup>307</sup> Thus, the granting of quasi-governmental status to Zionist institutions forms part and parcel of the institutionalisation of Israel's apartheid regime over the Palestinian people, wherever they reside.

Other such apartheid-chartered institutions include the Histadrut trade-union conglomerate (1920), managing (Jewish) labour resources,<sup>308</sup> and Mekorot, formed in 1937 by Histadrut, the JNF, and the JA, to govern water resources with the same discriminatory purpose and effect. Histadrut, in turn, also founded the Haganah, the Zionist militia group in 1920, later to become the Israeli armed forces, and Mapai, the Israeli Labour Party in 1930.<sup>309</sup>

The most evident example of Israel's exploitation of natural resources is its discriminatory control and allocation of Palestine's water resources. In 1937, Histadrut, JA, and JNF collaborated to establish the Israeli publicly owned Mekorot organisation, which practices Jewish-only privilege over

305 *American Council for Judaism v. United States Department of Justice*, Superior Court, 9<sup>th</sup> District, Washington DC, 1968; for further information, see 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' (1967) 9(3) William and Mary Law Review i.

306 David Blougrund, 'The Jewish National Fund' (2001) 49 Policy Studies 1.

307 CERD Report, para 39.

308 Formally known as the General Confederation of Hebrew Labour. From its inception, Histadrut excluded Arab labour and, thus, rejected worker solidarity in favor of national exclusivism; see Tony Greenstein, 'Histadrut - Israel's racist union' (*Electronic Intifada*, 10 March 2009), <[https://www.researchgate.net/publication/289674682\\_Histadrut\\_-\\_Israel's\\_racist\\_union](https://www.researchgate.net/publication/289674682_Histadrut_-_Israel's_racist_union)>; William Frankel, *Israel Observed: An Anatomy of the State* (Thames and Hudson, 1980) 183-86.

309 Zeev Sternhell, *Founding Myths of Zionism: Nationalism, Socialism, and the Making of the Jewish State* (trs. David Maisel, Princeton University Press, 1998) 180.

the country's water resources.<sup>310</sup> After the proclamation of the Israeli state, Mekorot (Israel National Water Co.) was joined in 1951 by the Tahal Group, combining the efforts of the Israeli Agriculture Ministry with Mekorot's engineering division in 1952. This implementation agency today operates with majority shares (52 per cent) held by the Israeli government, with the remainder divided equally between the JA and JNF.

The apartheid charters of Zionist parastatal institutions have been incorporated into Israeli laws, policies, and practices. They have been deployed to displace and dispossess the indigenous Palestinian people, denying Palestinians the exercise of their right to self-determination, including permanent sovereignty over natural resources, and thus denying them their means of subsistence as a people.<sup>311</sup> This configuration of Zionist parastatal institutions ensures superior status of 'Jewish nationals' in the enjoyment of fundamental rights and freedoms, including the human right to water and sanitation. Beyond revoking the explicitly or implicitly discriminatory provisions in the charters of Zionist institutions, Israel should repurpose its Zionist parastatal institutions to apply their population-transfer and development expertise, assets, and programmes to implement full reparations for the Palestinian people by applying the UN reparations framework provided in General Assembly Resolution 60/147, comprising 'restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition' for 'victims of gross violations of international human rights law and serious violations of international humanitarian law.'<sup>312</sup>

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<sup>310</sup> See, Al-Haq, *Water For One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT* (8 April 2013) 35 <<https://www.alhaq.org/publications/8073.html>>

<sup>311</sup> Amy Teibel, 'Lawsuit brings murky West Bank land deals to light' (Associated Press, 20 June 2009) <<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) <<https://www.haaretz.com/2014-10-23/ty-article/.premium/what-will-wzo-do-with-nis-130m/0000017f-ef6f-d8a1-a5ff-ffeef3d60000>>.

<sup>312</sup> UN General Assembly, Resolution 60/147, UN Doc A/RES/60/147, 21 March 2006, para 18.



## 5.2 Nationality, Citizenship, and Residency Rights

Since 1948, Israel has entrenched its apartheid regime through laws, policies, and practices in two main domains: land and nationality. With the start of the *Nakba* in 1948, around 80 per cent of the Palestinian people became refugees, dispossessed of their land and property and displaced to the West Bank, including the eastern part of Jerusalem, the Gaza Strip, and neighbouring countries. The Palestinian people have endured an ongoing cycle of displacement and denial of return ever since, with a second wave of mass displacement following the 1967 war and Israel's ongoing policy of population transfer.<sup>313</sup> By the end of 2018, approximately 8.7 million Palestinians<sup>314</sup> had been displaced, both within historic Palestine and abroad. Today, some 5.7 million Palestinian refugees are registered with UNRWA.<sup>315</sup>

Once domination was established through military conquest, occupation, and the extension of Zionist colonisation, the Israeli regime adopted a series of instrumental laws and related policies and practices pertaining to nationality, residency, and immigration to rationalise the displacement, dispossession, and transfer of the indigenous Palestinian people from their ancestral lands.<sup>316</sup> Israeli laws pertaining to immigration and citizenship establish two separate and unequal legal categories for 'Jews' and 'non-Jews,'<sup>317</sup> in which Jews are prioritised, privileged, and receive preferential treatment, while indigenous Palestinians are further dispossessed of their lands and properties and face ongoing oppression.

313 BADIL, *Q and A: What you need to know about Palestinian Refugees and Internally Displaced Persons* (March 2020) 15-16 <<http://www.badil.org/phocadownloadpap/badil-new/campaigning-tools/brochures/2020/Q&A-en.pdf>>.

314 *Ibid.*, 16.

315 UNRWA, 'UNRWA in Figures 2020-2021' (6 September 2021) <<https://www.unrwa.org/resources/about-unrwa/unrwa-figures-2020-2021>>.

316 Baptiste Sellier, 'L'usage du droit foncier par l'État d'Israël comme arme d'appropriation de l'espace Palestinien : Quelle comparaison avec l'Algérie Coloniale ?' 1 <<http://larhra.ish-lyon.cnrs.fr/sites/default/files/event-files/article%20B%20Sellier.pdf>>.

317 Uri Davis, *Israel: An Apartheid State* (Zed Books, 1987) 26-38.

### 5.2.1 Constructing a Superior ‘Jewish Nationality’ Status

The Law of Return (1950)<sup>318</sup> is the cornerstone of Israel’s apartheid regime over the Palestinian people. It grants every Jewish person the exclusive right as an *oleh* ('Jewish immigrant') to enter and settle the land of historic Palestine. Since 1950, this law has been the basis for the immigration thereto of Jewish persons born anywhere in the world. The Law of Return is applicable exclusively to Jewish persons and cements the existence of two separate legal categories for 'Jewish' and 'non-Jewish' persons. Through incorporation of Zionist ideology into Israeli law, Israel thereby established a superior status for 'Jewish nationals' that is distinct from citizenship. In stark contrast, Palestinian refugees, whether living in the occupied Palestinian territory or abroad, are categorically denied their right of return.

The Law of Return 'assigns the right for "Jewish nationality" to every Jewish individual anywhere in the world,' as BADIL has noted.<sup>319</sup> The public law notion of 'Jewish nationality' is an extraterritorial concept. It encompasses Jewish persons with the citizenship of other states. This concept forms the core of Zionist ideology that claims that all Jewish persons belong to a separate 'Jewish nation' and, as a result, owe 'allegiance' to the Israeli state and hold exclusive rights to settle the land of Palestine. This status, according to Israeli law, is conferred upon birth to any Jewish person in the world. In a challenge to this notion by the American Council for Judaism, the United States Department of State rejected the notion of 'Jewish nationality' as a concept of international law already in the 1960s.<sup>320</sup>

In 1952, the Knesset adopted the Citizenship Law,<sup>321</sup> which is often deceptively mistranslated as a 'law of nationality,' creating confusion

318 The Law of Return, 1950.

319 BADIL, *Forced Population Transfer: The Case of Palestine – Denial of Residency Working Paper No. 16* (April 2014) 10 <<http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf>>.

320 Letter of United States Assistant Secretary of State Phillip Talbot to the American Council for Judaism's Executive Vice-President Rabbi Elmer Berger, 20 April 1964, reprinted in W. Thomas Mallison, Jr., 'The Zionist-Israel juridical claims to constitute the 'Jewish people' entity and to confer membership in it: appraisal in public international law' (1964) 32(5) *The George Washington Law* 983, 1075.

321 Citizenship Law (5712-1952).



and deflecting attention from the important distinction between these two kinds of status in Zionist policy. Israel's Citizenship Law recognises 'return' as one pathway to Israeli citizenship. However, this pathway is unique to Jewish persons, defined as persons born to a Jewish mother or, in rare cases, who have converted to Judaism. The Citizenship 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 and has never been a basis for equal rights in the Israeli legal system.<sup>322</sup> Thus, the Citizenship Law entrenches Israel's separate and unequal apartheid regime into Israeli law. Moreover, the Citizenship Law nullified the British mandate-era 1925 Palestinian Citizenship Order-in-Council that created the legal status of Palestinian citizenship in mandatory Palestine. As Tatour argued, 'Israel's decision to discontinue Palestinian citizenship was an act affirming Jewish independence and proclaiming sovereignty... an act of erasure.'<sup>323</sup>

The Citizenship Law confers automatic Israeli citizenship by *birth* to any Jewish person born anywhere in the world, who enters Israeli-controlled territory under the Law of Return. It grants Jewish persons the right to settle in any part of the territory under Israeli jurisdiction or effective control, including the occupied Palestinian territory and the occupied Syrian Golan. Since the start of its occupation, the Law of Return has been used by the Israeli regime to extend the same benefits and privileges to Jewish settlers illegally residing in the territories occupied since 1967, who are considered 'residents of Israel' or are entitled to 'immigrate' under the Law of Return.

In turn, Palestinian rights or rather the denial thereof is justified under Israeli law on the basis of *residency* (or failure to prove residency) in the country. It is through this mechanism that millions of Palestinians who became refugees in and around 1948 have been legally denationalised and, through prevention of their right of return, denied residency in the country and barred from obtaining legal status in their homeland. Through

322 Roselle Tekiner, 'Race and the Issue of National Identity in Israel' (1991) 23(1) International Journal of Middle Eastern Studies 39-55.

323 Tatour, 'Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel' (3 December 2019) 18 <<https://ssrn.com/abstract=3533490>>.

its discriminatory application to the benefit of ‘Jewish nationals,’ the Citizenship Law has precluded Palestinians who were displaced from or otherwise residing outside of historic Palestine between 1948 and 1952 (i.e., ‘absentees’) from obtaining Israeli citizenship.<sup>324</sup> In essence, the Citizenship Law and related laws and policies, as Tatour argues, ‘function as the legal embodiment of wider processes of settler indigenization and native de-indigenization, in which “settlers and their polity appear to be proper to the land” and natives become foreign invaders.’<sup>325</sup>

These and similar laws empower the Israeli regime to manage and manipulate the demographics in the territories under its effective control in favour of Jewish settlement, while denying the realisation of the inalienable rights of the Palestinian people, including Palestinian refugees and their descendants. Jewish nationals are accorded full rights and privileges under Israeli law, including to bring their spouses into the country. In this way, the constructed legal concept of ‘Jewish nationality’ operates through the inclusion of persons identified as superior and the exclusion of everyone else, particularly targeting the indigenous Palestinian people.

In 2018, the Knesset adopted the Basic Law: Israel—The Nation-State of the Jewish People (hereinafter ‘Jewish Nation-State Basic Law’).<sup>326</sup> The law exemplifies the apartheid nature of Israel’s legal system. It reaffirms the Zionist character of the Israeli state and further elevates the privileged status of Jewish persons therein, whether or not they hold Israeli citizenship. Through its articulation of the state’s character as ‘exclusively Jewish,’ the Jewish Nation-State Basic Law further weakens the constitutional status of the indigenous Palestinian people.<sup>327</sup> As a Basic Law, it modifies the state’s constitutional framework to serve Jewish persons, as a racial group. It explicitly provides under Article 1(c) that: ‘The exercise of the right to national self-determination in the State of Israel is unique to the Jewish people.’ Article 7 of the law further provides:

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<sup>324</sup> HSRC Study, 212-14.

<sup>325</sup> Tatour, ‘Citizenship as Domination,’ 10.

<sup>326</sup> Basic Law: Israel – The Nation-State of the Jewish People (2018) (hereinafter ‘Jewish Nation-State Basic Law’) <<https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>>.

<sup>327</sup> See Adalah, Israel’s Nation State Law <<https://www.adalah.org/en/content/view/9569>>.



The State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and strengthening.

Thus, throughout historic Palestine and in the occupied Syrian Golan, the Jewish Nation-State Basic Law provides for the entrenchment and expansion of Jewish colonial settlement at the expense of the indigenous peoples. As such, it escalates indigenous displacement and dispossession.<sup>328</sup> Within the framework of international humanitarian law, the Jewish Nation-State Basic Law effectively extends illegal Israeli settlement as a ‘national value’ into the territories occupied since 1967, in direct violation of Israel’s obligations as the Occupying Power.

The Jewish Nation-State Basic Law represents the most significant escalation in the *overt* legalisation of Israel’s apartheid regime against the Palestinian people since 1948. Yet, as discussed earlier in this report, it only entrenched what was already established under Zionist doctrine and policy since the start of settler colonisation in historic Palestine. Through Israeli legislation in the area of nationality, the Palestinian people are relegated to an inferior status and expressly denied their collective rights, notably to self-determination, return, and permanent sovereignty over natural resources. Such institutionalised discrimination exemplifies the use of Israeli apartheid legislation as a tool to enable and further entrench Zionist settler colonialisation.

<sup>328</sup> See Al-Haq, Factsheet: Israel’s “Jewish Nation-State Law” and the Occupied Palestinian Territory (23 January 2019) <<http://www.alhaq.org/advocacy/6115.html>>.

### 5.2.2 Denationalisation of Palestinians: (Denial of) Citizenship and Residency

Through institutionalising a superior ‘Jewish nationality’ status under Israeli law, Israel has denationalised Palestinian refugees *en masse* since 1948. The denial of residency and citizenship rights to Palestinians is a key tool used by the Israeli regime as part of its wider strategy to transfer and fragment the Palestinian people, and thereby engineer a Jewish demographic majority. Palestinians permanently residing within the Green Line after 1948 were granted Israeli citizenship from 1952 onward. However, the process was by no means straightforward and for many Palestinian families it took years and even decades before they were granted Israeli citizenship. Indeed, approximately 63,000 of the estimated 160,000 Palestinians living inside the Green Line received citizenship with the enactment of the Citizenship Law in 1952.<sup>329</sup> As noted by Tatour, ‘the decision to extend citizenship was motivated by a desire to solidify the demographic outcomes of the Nakba... by denying the possibility of citizenship to as many Palestinians as possible.’<sup>330</sup>

Given its bifurcation from ‘nationality’ status, Israeli citizenship remains a precarious status that can be revoked at any time by the Israeli regime, using broad and vague criteria. For example, the Israeli state has summarily revoked the citizenship of thousands of Palestinian Bedouin living in the Naqab region, thus rendering them stateless.<sup>331</sup> Amendment No 30 (2008) to the Citizenship Law gave the Israeli government the power to revoke Israeli citizenship on grounds of ‘breach of allegiance’ to the Zionist state, a measure that is defined broadly. For example, it lists as grounds for revocation the act of residing in one of nine Arab and Muslim states as well as the Gaza Strip, without requiring a criminal investigation.<sup>332</sup> The law has never been used against a Jewish Israeli citizen.<sup>333</sup>

<sup>329</sup> Tatour, ‘Citizenship as Domination,’ 30.

<sup>330</sup> *Ibid.*, 14.

<sup>331</sup> Adalah, Israel illegally revoking citizenship from thousands of Bedouin citizens, leaving them stateless (18 September 2017) <<https://www.adalah.org/en/content/view/9238>>.

<sup>332</sup> Haneen Naamnih, ‘New Anti-Arab Legislation’ (2008) 50 Adalah’s Newsletter 1 <<http://www.adalah.org/newsletter/ara/jul08/haneene.doc>>.

<sup>333</sup> BADIL, *Forced Population Transfer*, No. 16, 25-26.

In Jerusalem, the same process has been implemented through targeting Palestinians' residency rights in the city. By creating the precarious status of 'permanent residents' for Palestinians in the eastern part of Jerusalem since 1967, the Israeli state 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 the city of Jerusalem.<sup>334</sup> Israeli occupying authorities instituted onerous requirements for Palestinians in Jerusalem to continuously prove that their so-called 'centre of life' is in the city in order to maintain their residency rights. In 1995, the Israeli Interior Ministry initiated a new policy whereby residency could be revoked if a permanent resident's 'centre of life' had moved 'outside of Israel,' a policy that also included the rest of the West Bank and the Gaza Strip. Palestinians with permanent residency in Jerusalem are required to provide proof that Jerusalem is their 'centre of life' through documentation such as home ownership papers, rent contracts, bills for municipal services, and children's school registration in a stringent and non-transparent process.<sup>335</sup> Palestinians in Jerusalem who cannot prove this severe criteria for seven years or more thereby lose their right to live in their city and are forced to leave their homes.<sup>336</sup> Since 1967, the Israeli state has revoked the residency status of over 14,500 Palestinians from Jerusalem.<sup>337</sup>

Over the years, Israel has gradually expanded the criteria for the revocation of residency rights, including increasingly on punitive grounds. On 7 March 2018, the Knesset codified such practice with the adoption of Amendment No 30 to the Entry into Israel Law, which gave the Interior Minister the power to revoke the permanent residency status of Palestinian residents of Jerusalem for so-called 'breach of allegiance to Israel.'<sup>338</sup> According to

334 Al-Haq, *Residency Revocation: Israel's Forcible Transfer of Palestinians from Jerusalem* (3 July 2017) <<https://www.alhaq.org/advocacy/6331.html>>.

335 BADIL, *Forced Population Transfer*, No. 16, 24.

336 *Ibid.*

337 Al-Haq, *Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer* (17 March 2018) <<http://www.alhaq.org/advocacy/6257.html>>.

338 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) <<https://www.alhaq.org/advocacy/6262.html>>.

the Interior Ministry, there have been 13 cases of residency revocation due to ‘breach of allegiance’ since 2006. In accordance with Article 45 of the Hague Regulations, international humanitarian law prohibits Israel, as the Occupying Power, from compelling the civilian population in the occupied territory to swear allegiance to the occupier.

Nevertheless, as part of its establishment of an institutionalised regime of oppression and domination, the Israeli state continues to control the granting of residency status to Palestinians. After the 1967 war, the Israeli occupying authorities also put in place a residency system for Palestinians in the rest of the West Bank and Gaza Strip under Israeli military law. This system also included mechanisms for revoking residency status. Palestinians in the occupied Palestinian territory were required to acquire exit permits, at the discretion of the Israeli Interior Ministry, to travel abroad. If a resident failed to return before the expiration of their permit, they were at risk of being deleted from the population registry and losing their residency status.<sup>339</sup> From 1967 until 1994, the Israeli state revoked the residency status of around 140,000 Palestinians from the West Bank and 108,878 from the Gaza Strip.<sup>340</sup> Under the Oslo Accords, authority over the population registry was transferred to the newly-established Palestinian Authority in 1995. The Palestinian Authority was permitted to grant permanent residency in the West Bank, excluding the eastern part of Jerusalem, and the Gaza Strip for family unification, subject to the approval of the Israeli occupying authorities. On this basis, the Palestinian Authority cannot issue valid identity cards for Palestinians on its own without Israel’s approval, as a result of which many Palestinians are left without documentation. Until October 2021, the Israeli occupying authorities had imposed a decade-long freeze on the process, during which almost no residency requests for Palestinians were approved.<sup>341</sup>

339 BADIL, *Forced Population Transfer*, No. 16, 18.

340 HaMoked, ‘Ceased Residency’: between 1967 and 1994 Israel revoked the residency of some quarter million Palestinians from the West Bank and Gaza Strip (12 June 2012) <<http://www.hamoked.org/Document.aspx?dID=Updates1175>>.

341 The Times of Israel, ‘Israel approves residency for 4,000 Palestinians, after 10-year freeze’ (19 October 2021) <<https://www.timesofisrael.com/israel-authorizes-some-4000-undocumented-palestinians-after-10-year-freeze/>>.



### 5.2.3 Targeting Palestinian Rights in Jerusalem

In 1967, the Israeli occupying authorities illegally annexed the eastern part of Jerusalem, in violation of international law and seized control over and placed restrictions on the movement of people to, from, and within the occupied Palestinian territory. Under the Entry into Israel Law of 1952,<sup>342</sup> Israeli occupying authorities imposed the precarious ‘permanent resident’ status on Palestinians present in the eastern part of Jerusalem following the 1967 war, effectively rendering Palestinians ‘foreign visitors’ in the city of their birth. As of May 2021, there were 358,804 Palestinian ‘permanent residents’ of Jerusalem.<sup>343</sup> Residency revocation became a tool of Zionist population transfer and demographic manipulation in Jerusalem to implant Jewish settlers and settlements in their place, in violation of the status of the city of Jerusalem under international law and the inalienable right of the Palestinian people to self-determination, including permanent sovereignty.<sup>344</sup>

The 2000 Jerusalem Master Plan, the first comprehensive plan developed by the municipality of occupation for the whole city of Jerusalem, was tellingly drafted without any consultation with Palestinians living in the city. The plan clearly shows the Israeli settler colonial state’s intentions to dominate and control the city of Jerusalem, while imposing its desired demographic makeup. The occupation municipality’s plan is overtly discriminatory as it explicitly seeks to secure a demographic ratio of 70 per cent Israeli Jews to 30 per cent Palestinians in the city. At the same time, it recognises as more probable a ratio of 60 per cent Israeli Jews to 40 per cent Palestinians, ‘to create a demographic and geographic reality capable of curbing any efforts to challenge Israeli sovereignty in East Jerusalem.’<sup>345</sup> For example, the plan calls for 13,500 new housing units for Palestinians in the city, far short of the projected 15,000–30,000 units needed by 2030. In contrast,

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

343 ACRI, East Jerusalem – Facts and Figures, 2021 (10 May 2021) <[https://www.english.acri.org.il/post/\\_283](https://www.english.acri.org.il/post/_283)>.

344 Article 1, ICCPR and ICESCR.

345 BADIL, *Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning Working Paper No. 17* (December 2014), 38 <<https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf>>.

the plan allocates 5,000 dunams of land for the expansion of illegal Israeli settlements for 200,000 Jewish settlers.<sup>346</sup>

To further its demographic goals and incorporate the maximum amount of land with the minimum number of Palestinians, both the executive and legislative branches of the Israeli government have in recent years adopted and proposed bills before the Knesset seeking to expand the occupation's municipal boundaries of Jerusalem to annex illegal West Bank settlements, while expelling thousands of Palestinians from the city.<sup>347</sup> Today, at least 140,000 Palestinian residents of Jerusalem live in Jerusalem neighbourhoods separated behind the Annexation Wall, including in Shu'fat refugee camp, 'Anata, and Kufr 'Aqab.<sup>348</sup> They make up roughly a third of the city's Palestinian residents and yet are severed from Jerusalem through the Annexation Wall and Israeli checkpoints. The Israeli legislature's so-called 'Greater Jerusalem' bills openly seek to alter the city's demographic composition through forcing the removal of densely-populated Palestinian neighbourhoods from Jerusalem and the incorporation of roughly the same number of Jewish settlers.

These measures are in addition to the Israeli state policy to isolate and physically separate Palestinians in Jerusalem from the rest of the West Bank and Gaza Strip, a policy that has resulted in the severe obstruction and marginalisation of Palestinian political, social, economic, and cultural life in the city. Since construction began in 2002, the Annexation Wall and its associated closure and permit regime, including checkpoints and road closures, have radically transformed the city and entrenched Palestinian fragmentation.<sup>349</sup> The route of the Annexation Wall in and around the city of Jerusalem serves Israel's long-term demographic goals to annex as much land as possible with minimal Palestinian presence.<sup>350</sup>

346 *Ibid.*, 39-40.

347 Al-Haq, The Occupation and Annexation of Jerusalem through Israeli Bills and Laws (15 March 2018) <<https://www.alhaq.org/advocacy/6263.html>>.

348 Jaclynn Ashly, 'Palestinians in Kufr Aqab: "We live here just to wait"' (*Al Jazeera*, 7 January 2018) <<https://www.aljazeera.com/news/2018/1/7/palestinians-in-kufr-aqab-we-live-here-just-to-wait>>.

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

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

Through its fragmentation of the occupied Palestinian territory and closure of Jerusalem, Israel has pursued the social and economic suffocation of Palestinians in Jerusalem while attempting to redirect Palestinian presence away from the city.<sup>351</sup>

The Israeli policy toward Jerusalem has worked to radically alter the character and composition of the city through ‘Judaisation’ of street names and expansion of illegal Israeli settlements,<sup>352</sup> including within Palestinian neighbourhoods such as Sheikh Jarrah<sup>353</sup> and Silwan.<sup>354</sup> These policies have been further apparent in the Old City of Jerusalem, which remains a central target of Israel’s goal to erase Palestinian presence, culture, heritage, and identity in the city.<sup>355</sup>

#### 5.2.4 Denial of Family Life and Child Registration

In accordance with Zionist doctrine, Israeli policy pertaining to the domains of family life and child registration is materially discriminatory and intended to escalate the transfer of Palestinians from their homes and lands. Palestinians from the West Bank and Gaza Strip, as well as Palestinian exiles who are citizens of third states, face significant challenges in receiving family unification permits when marrying a Palestinian resident of Jerusalem or a Palestinian citizen of Israel.<sup>356</sup> Such racially-motivated restrictions not only undermine the right to family life, but also prevent natural Palestinian population growth and place severe stress and uncertainty on Palestinian families and children.

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

352 Al-Haq, *Atarot Settlement: The Industrial Key in Israel’s Plant to Permanently Erase Palestine* (2020) <[https://www.alhaq.org/cached\\_uploads/download/2020/06/02/atarot-settlement-interactive-1591084307.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/02/atarot-settlement-interactive-1591084307.pdf)>.

353 Al-Haq, ‘Sheikh Jarrah and Silwan: Ongoing Nakba and Israeli Dispossession of Palestinians’ (27 May 2021)<<https://www.alhaq.org/advocacy/18442.html>>.

354 Antoine Frère, *House Demolitions and Forced Evictions in Silwan: Israel’s Transfer of Palestinians from Jerusalem* (Al-Haq, 2020) <<https://www.alhaq.org/publications/17247.html>>.

355 Marya Farah, *Occupying Jerusalem’s Old City*, 57.

356 Al-Haq, *Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians* (13 February 2019) 6-7 <<https://www.alhaq.org/advocacy/6106.html>>.

The Citizenship and Entry into Israel Law, first enacted in 2003 as a Temporary Order by the Knesset, prohibits the granting of residency or citizenship status to Palestinian spouses from the occupied Palestinian territory who are married to Palestinians with Israeli citizenship, thereby denying them of their rights to family unification, family life, equality in marriage, and choice of spouse, contrary to Article 23 of the ICCPR. In 2008, the Israeli state completely banned family unification for Palestinians from the Gaza Strip.<sup>357</sup> Meanwhile, Palestinians with Jerusalem residency status who marry West Bank residents are required to apply for family unification. Palestinian residents of Jerusalem must provide a long list of supporting documents to the Israeli Interior Ministry, which has the discretion to decide not to grant the couple's family unification request. It can take two years to receive an answer from the Ministry, during which time the couple cannot 'legally' live together in Jerusalem.<sup>358</sup>

Prior to 2003, the spouse of a Palestinian resident of Jerusalem would receive permanent residency status in the city following a very long and discriminatory family unification process by the Interior Ministry.<sup>359</sup> However, since the adoption of the 2003 Temporary Order spouses, if approved, would only receive temporary residency to be renewed annually. The Temporary Order also set a minimum age requirement for Palestinians requesting family unification: women must be 25 years of age or older and men must be 35 years of age or older, effectively banning family unification for those who do not meet the age requirement.<sup>360</sup>

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357 BADIL, *Forced Population Transfer*, No. 16, 37.

358 *Ibid.*, 31.

359 The Society of St. Yves, Catholic Center for Human Rights, *Palestinian Families Under Threat: 10 Years of Family Unification Freeze in Jerusalem* (December 2013) 8-9 <<http://www.saintyves.org/uploads/d450c02766ff53363d7e583c00c7c5de.pdf>>.

360 Haaretz, 'Israel Can't Keep Denying Palestinian Family Unification, Top Court Says' (11 January 2022) <<https://www.haaretz.com/israel-news/.premium-israel-s-can-t-keep-denying-palestinian-family-unification-top-court-says-1.10530213>>.



Over a third of family unification applications coming from Palestinian Jerusalem residents were denied between 2000 and 2013.<sup>361</sup> By November 2020, some 12,700 Palestinians were said to have been living with temporary permits in Jerusalem through the family unification procedure, with around 70 per cent deprived of social security rights or status within the Israeli system.<sup>362</sup> In many cases, Palestinians may have their family unification permits cancelled for so-called ‘security reasons.’ If a member of the extended family is declared a ‘security threat’ by the Israeli regime, their relatives living in Jerusalem through family unification will also have their permit to live in the city punitively revoked as collective punishment.<sup>363</sup>

In 2019, the Israeli Population and Immigration Authority began rejecting family unification requests based on ‘intolerable workload’ rather than the merits of the request.<sup>364</sup> Despite criticism from UN human rights treaty bodies, notably CERD,<sup>365</sup> the racist Temporary Order was renewed on an annual basis until July 2021 when it was voted down by the Knesset as a result of political infighting between the ruling coalition, Likud, and Religious Zionism.<sup>366</sup> Despite the law’s expiration, the Israeli Interior Minister and the state prosecutor’s office continued to apply the discriminatory law to

361 Al-Haq, Living Under Israeli Policies of Colonization in Jerusalem (4 February 2017) <<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).

362 HaMoked, Ministry of Interior data reveals: some 12,700 Palestinians live in East Jerusalem and Israel by virtue of family unification processes; of them, some 70% are without social security rights or status in Israel (23 November 2020) <<https://hamoked.org/document.php?dID=Updates2248>>.

363 See UN OCHA, Concern about collective punishment: new measures targeting the residency rights of East Jerusalem Palestinians (13 April 2017) <<https://www.ochaopt.org/content/concern-about-collective-punishment-new-measures-targeting-residency-rights-east-jerusalem>>; HaMoked, Minister of Interior announced yesterday he had revoked the status of relatives of the Armon HaNatziv attacker: ‘Only immediate and practical acts will deter assailants. I am convinced that the revocation of family members’ status will serve as a warning for others’ (26 January 2017) <<https://hamoked.org/document.php?dID=Updates1833>>.

364 Nir Hasson, ‘Israel Seeks to Block All East Jerusalem Family Reunification Hearings Over ‘Workload’’ (Haaretz, 1 May 2019) <<https://www.haaretz.com/israel-news/.premium-israel-seeks-to-block-all-e-jerusalem-family-reunification-hearings-over-workload-1.7188984>>.

365 CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc CERD/C/ISR/CO/17-19, paras 24-25.

366 Haaretz, ‘In Blow to Bennett, Knesset Votes Down Extending Citizenship Law’ (5 July 2021) <<https://www.haaretz.com/israel-news/.premium.HIGHLIGHT-deal-on-citizenship-law-may-grant-israel-residency-to-hundreds-of-palestinians-1.9972128>>.

Palestinian applications in 2021,<sup>367</sup> demonstrating that such discriminatory policy does not end when Israeli laws are not renewed. In March 2022, the Knesset approved the Citizenship and Entry into Israel Law (Temporary Order) of 2022, which bans Palestinian family unification, including with Palestinian citizens of Israel and ‘with spouses from “enemy states”, including Syria, Lebanon, Iraq, and Iran.’<sup>368</sup>

With respect to child registration, the Israeli state imposes severe restrictions on the registration of children born of couples where one or both spouses are Palestinian residents of Jerusalem,<sup>369</sup> while new-borns of Israeli Jewish citizens immediately receive an identification number at the hospital. After the child’s birth, Palestinian permanent residents of Jerusalem receive only a form titled ‘notification of live birth,’ and face significant obstacles to register their child, thereby leaving them in a vulnerable situation. This deprives the child of the right to live permanently in the place where they were born or where their parents reside.<sup>370</sup> The parents must then submit to the Israeli Interior Ministry a ‘request to register a birth’ and include a long list of documents as proof that the family’s ‘centre of life’ has been in Jerusalem for the previous two years.<sup>371</sup> Such documents include: a rental lease agreement, home ownership documents, water and electricity bills, and payment of the municipal tax.<sup>372</sup> Moreover, the Israeli Interior Ministry does not always inform parents that their child does not have an identity number or that they must initiate the child registration process before the child reaches 14 years of age, after which the Ministry only grants ‘temporary permits’ resembling a tourist visa that allows the child to remain inside the Green Line or in Jerusalem.<sup>373</sup>

367 Haaretz, ‘Months after Citizenship Law lapses, ban on Palestinian spouses still in place’ (7 October 2021) <<https://www.timesofisrael.com/months-after-citizenship-law-falls-ban-on-palestinian-spouses-still-in-place/>>.

368 Adalah, ‘Israel Reinstates Ban on Palestinian Family Unification’ (10 March 2022) <<https://www.adalah.org/en/content/view/10576>>.

369 BADIL, *Forced Population Transfer*, No. 16, 39.

370 *Ibid.*, 40.

371 *Ibid.*, 40-41.

372 *Ibid.*, 40.

373 *Ibid.*, 41.



According to an estimation by the Society of St. Yves, between 2004 and July 2013, some 10,000 Palestinian children were not registered in Jerusalem.<sup>374</sup> For children, the Israeli Interior Ministry has based its rejection of child registration on so-called ‘security concerns’ and by claiming that the family does not fulfil its requirements to prove Jerusalem is their ‘centre of life.’<sup>375</sup> Thus, under the Israeli regime, fragmented Palestinians face a systematic denial of their right to family life, including family unification and child registration, in direct violation of Articles 23 and 24 of the ICCPR. They are forced to live apart or live ‘illegally’ together under constant risk of arrest and forcible transfer.

374 The Society of St. Yves, Catholic Center for Human Rights, *Palestinian Families Under Threat*, 10.

375 *Ibid.*

## 5.3 (Denying) Land and Property Rights

Since 1948, the Israeli state has devised a system to ‘legalise’ and otherwise legitimise its illegal seizure of Palestinian land, homes, and properties taken by force. Israeli law and Zionist parastatal institutions then expanded this demographic-manipulation system through discriminatory zoning and planning policies to further confiscate and appropriate Palestinian land, restrict and confine the growth of Palestinian villages and cities, and exclude Palestinians from residing in exclusive Jewish settlements on both sides of the Green Line. After annexing the whole of the Naqab region in the south, the Israeli military proceeded to demolish 108 Naqab villages and village points, while transferring their Palestinian inhabitants into a central-Naqab enclosure, known as *siyaj*, in what Israeli planners called *rekuzim* (concentrations), where they mostly are confined today.<sup>376</sup>

Within weeks after the 1967 war, the Israeli military government extended such laws and practices, already well established under Israeli military administration inside the Green Line (1948–1966), to the occupied Palestinian territory.<sup>377</sup> These actions violated the international humanitarian law prohibition against an Occupying Power altering the legal institutions in an occupied territory.<sup>378</sup> As in the 1948 *Nakba*, these included depopulating and transferring Palestinians from strategic areas to achieve the desired Jewish-majority demography and justifying the annexation of additional Palestinian territory. The legal planning regime devised by Israel has effectively rendered the indigenous Palestinian people ‘trespassers’ in their own land ‘[b]y retracing the boundaries of domains and their possible legal uses, changing the procedures for land sales and acquisition, [and] redefining property regimes as well as the statutes and rights of the populations previously occupying these spaces.’<sup>379</sup>

<sup>376</sup> See Anthony Coon, Steven Kahanovitz, Miloon Kothari, Rudolfo Stavenhagen, The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel (HIC-HLRN, 2010) <<http://hlrn.org/img/publications/FFM%20Naqab%202010.pdf>>.

<sup>377</sup> Nakhleh, ‘The Two Galilees.’

<sup>378</sup> Articles 43 and 47, Hague Regulations.

<sup>379</sup> Baptiste Sellier, ‘L’usage du droit foncier par l’État d’Israël comme arme d’appropriation de l’espace Palestinien : Quelle comparaison avec l’Algérie Coloniale ?’ 1 (authors’ translation from French) <<http://larhra.ish-lyon.cnrs.fr/sites/default/files/event-files/article%20B%20Sellier.pdf>>.

In addition to the international law prohibition of cross-border population transfer and demographic manipulation domestically, the UN Vancouver Declaration and Action Plan (Habitat I, 1976) recognised that:

The 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>380</sup>

Subsequently, the 1998 UN Guiding Principles on Internal Displacement prohibited arbitrary displacement ‘when 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.’<sup>381</sup> Through discriminatory planning and zoning and the exploitation of land and other natural resources, the Israeli regime displaces and dispossesses Palestinians, denying them their means of subsistence as part of their collective right to self-determination.<sup>382</sup> These policies, in turn, contribute to the constant threat—and actual experience—of forced displacement and dispossession for indigenous Palestinians.

### 5.3.1 Expropriation and Appropriation of Palestinian Land

After conducting a series of strategic massacres, Zionist militias drove at least 750,000 Palestinians,<sup>383</sup> including 80,000 from the western part of Jerusalem, whose homes, lands, and properties were seized by Zionist militias and settlers.<sup>384</sup> Israel now claims to control 93 per cent of the land

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

381 UN, *Guiding Principles on Internal Displacement* (1998), Principle 6(2)(a).

382 Article 1(2), ICCPR and ICESCR.

383 Figure cited in UNWRA, Palestine Refugees <<https://www.unrwa.org/palestine-refugees>>; see estimation of 770-780,000 expelled, in Janet L Abu Lughod, ‘The demographic transformation of Palestine’ in Ibrahim Abu Lughod (ed), *The Transformation of Palestine, 1948–1967* (Northwestern University Press, 1971) 161.

384 Adam Raz, *Looting of Arab Property in the War of Independence* (Carmel Publishing House, 2020) Avi-ram Tzoreff, ‘Carpets, books, and jewelry: Why looting was central to the Nakba’ (+972 magazine, 24 March 2022) <<https://www.972mag.com/looting-1948-historiography/>>.

inside the Green Line.<sup>385</sup> The new state began to institute a legal framework that would serve to ‘obscure the issue of dispossession and refugees,’ while also establishing structural inequality between Jewish Israelis and Palestinians.<sup>386</sup> In doing so, the Israeli state sealed the dispossession of Palestinian refugees, displaced persons, and other Palestinians who were abroad at the time of the 1948 war, by legally classifying them as ‘absentees,’ thus barring their inalienable right of return and appropriating their property.

In addition to conquest, the Israeli state legalised and expanded its control of Palestinian land through both *de jure* confiscation, which transfers ownership to the state, and *de facto* confiscation, which hinders or denies the owner of use and access to their property after it has been designated for various uses, such as closed military zones, ‘national parks,’ checkpoints, and by-pass roads.<sup>387</sup> These laws, policies, and practices already well-established within Israeli polity were then extended and operationalised in the occupied Palestinian territory since 1967 and have continued to evolve as a main tool of population transfer and apartheid.<sup>388</sup>

In 1950, the Israeli legislature adopted the Absentee Property Law,<sup>389</sup> the main law regulating the property of Palestinians who were forced to flee, were away from their property, or were deported with the start of the *Nakba*.<sup>390</sup> The law defines as ‘absentee’ any person who was expelled, fled, or left the country after 19 November 1947 and designates their movable and immovable property as ‘absentee property.’ Through this law,

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<sup>385</sup> Adalah, Challenging ILA Policy of Tenders Open Only to Jews for Jewish National Fund Lands, <<https://www.adalah.org/en/content/view/6558>>.

<sup>386</sup> Baptiste Sellier, ‘L’usage du droit foncier par l’État d’Israël comme arme d’appropriation de l’espace Palestinien : Quelle comparaison avec l’Algérie Coloniale ?’ 3 <<http://larhra.ish-lyon.cnrs.fr/sites/default/files/event-files/article%20B%20Sellier.pdf>>.

<sup>387</sup> BADIL, *Land Confiscation and Denial of Use – Working Paper No. 21* (October 2017) 9-10 <[https://www.badil.org/cached\\_uploads/view/2021/04/19/wp21-lc-1618823891.pdf](https://www.badil.org/cached_uploads/view/2021/04/19/wp21-lc-1618823891.pdf)>.

<sup>388</sup> *Ibid.*, 10-11.

<sup>389</sup> Absentee Property Law (5710-1950) <[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>390</sup> Norwegian Refugee Council, *Legal Memo: The Absentee Property Law and its Application to East Jerusalem* (February 2017) 1 <[https://www.nrc.no/globalassets/pdf/legal-opinions/absentee\\_law\\_memo.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf)>.

Palestinian property deemed to be ‘absentee property’ was confiscated by the state and the control thereof was transferred to the Custodianship Council for Absentee Property, stripping Palestinians of their rights to their property ever since. In 1967, the Israeli occupying authorities extended the law to the eastern part of Jerusalem along with its illegal annexation. Since then, Israeli settler groups have used the Absentee Property Law to further pursue Palestinian dispossession across the city.<sup>391</sup>

The Absentee Property Law has created significant obstacles for Palestinians to successfully establish their rights to property or land. This law did not only apply to Palestinians outside of historic Palestine, but also to Palestinian survivors of the *Nakba*, including those internally displaced inside the Green Line. It has also resulted in significant difficulties for Palestinians when seeking to obtain Israeli-issued licenses to build and complete property transactions.<sup>392</sup> The Absentee Property Law also created the paradoxical category of ‘present absentees’ for Palestinians who were internally displaced within the Green Line and whose properties were confiscated by the state.<sup>393</sup> In addition to the Absentee Property Law, the Israeli state adopted the Prevention of Infiltration Law (1954). This legislative device considered Palestinians whom Zionist militias had expelled to be ‘infiltrators’ who could be imprisoned for up to five years or heavily fined for returning to their homes and properties.

In January 1949, shortly after Zionist forces ethnically cleansed much of Palestine, the Israeli settler state conferred one million dunams of Palestinian refugees’ land and other properties to the JNF. In October 1950, the state transferred another 1.2 million dunams of refugees’ lands 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 was intended to ‘redeem the lands and... turn them over to the Jewish people—to the people and not the state, which in the current composition

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391 *Ibid.*

392 *Ibid.*

393 Haneen Naamni, ‘Palestinian Refugees’ Property in Their Own Land: Politics of Absence and Alienation’ in Nadim N Rouhana and Areej Sabbagh-Khoury (eds), *The Palestinians in Israel: Readings in History, Politics and Society* (2nd volume, Mada al-Carmel Arab Center for Applied Social Research, 2018) 50.

of population cannot be an adequate guarantor of Jewish ownership.<sup>394</sup>

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 settle Jewish persons,<sup>395</sup> and thus began a practice that forms an unbroken pattern to this day.

Three months before that 1953 transaction, the JNF also executed a contract with the Israeli Department of Construction and Development, acquiring 2,373,677 dunams of land. By this time, the JNF had become statutorily fused to the Israeli state by the Status Law. 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 Israeli state in 1948. The landed properties are referred to in Israel 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 rightful private and collective owners.<sup>396</sup>

In addition, the Land Acquisition Law (Actions and Compensation), adopted in 1953, allowed for the transfer of land ownership from its Palestinian owners to the state that had been previously taken for military and development purposes or existing and newly-established Jewish settlements.<sup>397</sup> As a result,

<sup>394</sup> Jewish National Fund, Report to the 23<sup>rd</sup> Congress, 32-33 (emphasis in original), cited in Walter Lehn and Uri Davis, *The Jewish National Fund* (Kegan Paul, 1988) 108.

<sup>395</sup> Sabri Jiryis, *The Arabs in Israel* (Monthly Review Press, 1976) 77-101; Usama Halabi, 'Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy' (2000) 2 *Adalah's Review* 7-13.

<sup>396</sup> Jiryis, *The Arabs in Israel*, 77-101.

<sup>397</sup> Baptiste Sellier, 'L'usage du droit foncier par l'État d'Israël comme arme d'appropriation de l'espace Palestinien : Quelle comparaison avec l'Algérie Coloniale ?' 4 <<http://larhra.ish-lyon.cnrs.fr/sites/default/files/event-files/article%20B%20Sellier.pdf>>.



an additional 1.2 to 1.3 million dunams of land were expropriated from the Palestinian people.<sup>398</sup> In conjunction, the Land Ordinance of 1943 and its amendments, originating from the British mandate era, has also been used to confiscate Palestinian land for ‘public purposes’ and transfer it to state ownership.<sup>399</sup> Much of the confiscations of Palestinian land inside the Green Line took place between 1948 until the end of military rule in 1966, but they continue under various other pretexts.<sup>400</sup>

Other laws imposed following Israel’s establishment also contribute to the ‘legalisation’ of the acquisition of territory by force and the forcible transfer of Palestinians. The Basic Law: Israel Lands (1960) ensured that the ownership of ‘Israel lands’—namely land, houses, buildings, and anything permanent fixed to land—by Israeli state institutions and Zionist parastatal institutions is non-transferrable beyond three entities, the state, the JNF, and the Development Authority, thereby preventing its return to Palestinians.<sup>401</sup> In parallel, the Israel Lands Administration Law (1960) established the Israel Lands Administration to administer the newly-gained land acquired by conquest, confiscation, and expropriation, and the Israel Lands Council, which is empowered to develop the land policy and supervise the activities of the administration.<sup>402</sup> 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.<sup>403</sup>

It must be understood that, within the founding principles of the 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

398 *Land Acquisition Law (Actions and Compensation)* (1953) <[https://www.adalah.org/en/law/view/533#:~:text=The%20massive%20transfer%20of%20land,%20Property%20Law%20\(1950\)](https://www.adalah.org/en/law/view/533#:~:text=The%20massive%20transfer%20of%20land,%20Property%20Law%20(1950))>.

399 Land (Acquisition for Public Purposes) Ordinance – Amendment No. 10 (2010) <<https://www.adalah.org/en/law/view/502>>.

400 Human Rights Watch, *Israel: Discriminatory Land Policies Hem in Palestinians* (12 May 2020) <<https://www.hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians>>.

401 Basic Law: Israel Lands (1960) <<https://www.adalah.org/en/law/view/528>>.

402 Israel Lands Administration Law (1960) <<https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/08-Israel-Land-Administration-Law-1960.pdf>>.

403 See CERD Report, paras 42-46.

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 expanded the Israel Lands Administration’s powers and those of its agencies to use administrative orders to dispossess Palestinians. Although Israeli state agencies have applied it to alter the demographic composition of Jerusalem<sup>404</sup> and elsewhere, the 2005 amendment was aimed primarily against the Palestinian Bedouin in the southern Naqab.

In 1967, Israel extended the application of the Absentee Property Law to the eastern part of Jerusalem following its illegal annexation. As a result, most property in there was considered ‘absentee property,’ because it was within the ‘territory of Israel’ and the Palestinian owners were Jordanian citizens following Jordan’s control over the West Bank from 1948 to 1967.<sup>405</sup> This issue was partially resolved following the passage of the Legal and Administrative Matters Law in 1970, which determined that Palestinian residents of Jerusalem would not be considered absentees for their property in the city, yet Palestinians residing outside the eastern part of Jerusalem remained defined as ‘absentees.’<sup>406</sup> Palestinian Jerusalem residents remained absentees with respect to their property within the Green Line as well. The Legal and Administrative Matters Law cemented the dispossession and displacement of Palestinians in Jerusalem, and allowed Israeli Jews to pursue claims for land and property allegedly owned by Jewish persons in the eastern part of Jerusalem prior to the establishment of the Israeli state in 1948.<sup>407</sup> Under the law, the assets of Jews in the eastern part of Jerusalem, which had been managed by the Jordanian Custodian of Enemy

404 Gil Stern Stern Zohar, ‘The land is whose land? Private landowners, urban planners and political activists grapple with territorial disputes in east Jerusalem’ (*The Jerusalem Post*, 26 July 2007) <<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) <<https://www.breakingisraelnews.com/94394/arab-squatters-evicted-jerusalem-house-owned-jews-140-years/>>; see also CERD Report, para 99.

405 Norwegian Refugee Council, *Legal Memo*, 5-6.

406 *Ibid.*, 5.

407 Al-Haq, *Joint Urgent Appeal to the United Nations Special Procedures on Forced Evictions in Jerusalem* (10 March 2021) 4 <[https://www.alhaq.org/cached\\_uploads/download/2021/03/10/joint-urgent-appeal-to-the-united-nations-special-procedures-on-forced-evictions-in-east-jerusalem-1615372889.pdf](https://www.alhaq.org/cached_uploads/download/2021/03/10/joint-urgent-appeal-to-the-united-nations-special-procedures-on-forced-evictions-in-east-jerusalem-1615372889.pdf)>.

Property until 1967, were transferred to the Israeli Custodian General within the Israeli Justice Ministry, who can release the property to Israeli Jews who claim ownership or inheritance of properties from before 1948.<sup>408</sup> Utilising this discriminatory law, '[i]deological settler organisations have exploited these legal mechanisms and the support they enjoy from state bodies like the General Custodian to advance [expulsions] of Palestinians and takeovers of their homes as a means to establish settler strongholds in the heart of Palestinian neighbourhoods.'<sup>409</sup> Like the Absentee Property Law, the Legal and Administrative Matters Law has served to dispossess Palestinians of their homes, lands, and properties. Article II(d) of the Apartheid Convention considers 'the expropriation of landed property belonging to a racial group or groups or to members thereof' as an inhuman act of the crime of apartheid.

### 5.3.2 Discriminatory Zoning and Planning Laws

The Israeli state has combined a strategy of adopting laws to legalise and legitimise the dispossession that took place during the periods of conquest while also facilitating future land grabs creating a comprehensive plan to appropriate Palestinian land. The second phase of this process uses discriminatory zoning and planning policies on both sides of the Green Line to hem in Palestinian villages and cities, restricting their natural growth and expansion, while driving the transfer of Palestinians for the benefit of Jewish localities and illegal settlements.<sup>410</sup> The Israeli authorities have instituted increasingly aggressive planning and zoning policies targeting Palestinians within the Green Line, particularly in the Naqab, and in the occupied West Bank, including the eastern part of Jerusalem, that deprive them of their rights to freedom of movement and residence, adequate housing, and access to and control over their land and other natural resources.<sup>411</sup> These policies

408 *Ibid.*, 4.

409 Ir Amim, Ir Amim with Sheikh Jarrah Residents Submit Legal Petition against the Israeli General Custodian (31 December 2020) <<https://www.ir-amim.org.il/en/node/2587>>.

410 Baptiste Sellier, 'L'usage du droit foncier par l'État d'Israël comme arme d'appropriation de l'espace Palestinien : Quelle comparaison avec l'Algérie Coloniale ?' 6 <<http://larhra.ish-lyon.cnrs.fr/sites/default/files/event-files/article%20B%20Sellier.pdf>>.

411 Articles 5(d)(i) and 5(e)(iii), ICERD; Article 1(2), ICESCR and ICCPR.

have dramatically reduced the amount of land available for Palestinian use as a result of unlawful appropriation, illegal expansion of settlements, and designation of lands as 'state land' and closed military zones.

The National Planning and Building Law (1965)<sup>412</sup> is one of the main laws pertaining to planning. It gives the Israeli government extensive powers, including the design of national land-use plans.<sup>413</sup> Following the expulsion of the majority of the Palestinian people, the Israeli state destroyed almost 80 per cent of Palestinian towns and villages, which were then deemed 'closed military areas'.<sup>414</sup> Israeli authorities currently control 93 per cent of the land inside the Green Line and in the eastern part of Jerusalem, which is either direct 'property' of the state, the JNF, or the Development Authority.<sup>415</sup> The remaining 36 Palestinian villages in the Naqab were not included in the original plans and were not recognised by Israel. According to the National Planning and Building Law, all buildings in these villages became illegal and under threat of demolition.<sup>416</sup> In 2013, these villages came under additional threat following the passage of the Prawer-Begin Bill by the Knesset, which authorised the mass expulsion of Palestinians in the Naqab and the destruction of the 36 villages.<sup>417</sup>

In the Naqab, the Palestinian Bedouin village of al-'Araqib was demolished for the 209<sup>th</sup> time on 14 November 2022.<sup>418</sup> The Israeli courts have played a role in imposing fines on affected Palestinian citizens for the cost of demolishing and evacuating their village, under the pretext that the indigenous Palestinian people of the Naqab are 'trespassing'

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<sup>412</sup> National Planning and Building Law, 5725-1965 <<https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/07-National-Planning-Building-Law-1965.pdf>>.

<sup>413</sup> BADIL, *Forced Population Transfer*, No. 17, 15.

<sup>414</sup> BADIL, *Israel's Land Laws as a Legal-Political Tool* (December 2004) 4 <[https://www.badil.org/phocadownloadpap/Badil\\_docs/Working\\_Papers/WP-E-07.pdf](https://www.badil.org/phocadownloadpap/Badil_docs/Working_Papers/WP-E-07.pdf)>.

<sup>415</sup> Israel Land Authority, Israel Land Authority Projects <<https://land.gov.il/en/Pages/AboutUs.aspx>>.

<sup>416</sup> BADIL, *Forced Population Transfer*, No. 17, 19.

<sup>417</sup> *Ibid.*

<sup>418</sup> Middle East Monitor, 'Israel demolishes Palestinian village of Al-Araqeeb for 209th time' (14 November 2022) <<https://www.middleeastmonitor.com/20221114-israel-demolishes-palestinian-village-of-al-araqeeb-for-209th-time/>>.

on ‘state-owned’ land.<sup>419</sup> In January 2022, Israeli authorities continued their dispossession and displacement of Palestinian Bedouin citizens in the Naqab. The JNF restarted its unsustainable ‘afforestation’<sup>420</sup> in the Bedouin village of Sa’wa on lands allocated by the Israel Lands Authority despite registered claims of ownership and agricultural use by Palestinian residents.<sup>421</sup> In the past year, protests by Palestinians in the Naqab against the JNF’s ‘afforestation’ campaign have been met with excessive use of force by the Israeli police.<sup>422</sup> The National Planning and Building Law established the National Council for Planning and Construction and the Regional Councils for Planning and Construction, centralising planning inside the Green Line under the national government. Jewish Agency representatives maintain a constant voting majority in the Regional Councils, while part of their role is to exclude Palestinian citizens of Israel.

Following the occupation and annexation of the eastern part of Jerusalem, the Israeli occupying authorities used the National Planning and Building Law to preclude the authorisation of permits for areas not zoned for construction or which otherwise lack planning schemes.<sup>423</sup> For example, Palestinians are allowed, on rare occasions, to build up to a maximum of three floors, while Jewish Israeli settlers are allowed to build up to nine floors or more.<sup>424</sup> Local town planning schemes are supposed to define development and allocate territory to respond to expected demand, population growth, and infrastructure needs. However, since the occupation of the eastern part of Jerusalem in 1967, no town planning scheme has been approved. This makes it impossible for Palestinians to obtain building permits and forces many to

419 WAFA, ‘Israel demolishes Naqab Bedouin village for 157<sup>th</sup> time’ (2 September 2019) <<http://english.wafa.ps/page.aspx?id=q665bba111421723710aq665bb>>.

420 Alon Rothschild, *From “Improving Landscape” to Conserving Landscape: The need to stop Afforestation in Sensitive Natural Ecosystems in Israel and Conserve Israel’s Natural Landscapes* (trs., Esther Lachman, Society for the Protection of Nature in Israel, May 2019) 24.

421 Adalah, Israeli police violently dispersed demonstrations by Palestinian Bedouins and human rights activists over the Jewish National Fund’s afforestation work in the Naqab (16 January 2022) <<https://www.adalah.org/en/content/view/10524>>.

422 Yumna Patel, ‘What’s happening in the Naqab? Israel uproots Palestinians to plant trees’ (*Mondoweiss*, 14 January 2022) <<https://mondoweiss.net/2022/01/whats-happening-in-the-naqab-israel-uproots-palestinians-to-plant-trees/>>.

423 BADIL, *Forced Population Transfer*, No. 17, 37.

424 *Ibid.*

build without permits, putting their structures at risk of demolition.<sup>425</sup> In the rest of the West Bank, the oppressive zoning and planning framework consists of a complex tapestry of land laws from Ottoman rule, the British mandate period, and Jordanian control, supplemented by numerous Israeli military orders designed to displace Palestinians from large areas of land through arbitrary declarations of land as ‘state land’ belonging to the Occupying Power, in order to replace Palestinians with Jewish settlers.<sup>426</sup> Overall, Al-Haq documented the demolition of 2,451 Palestinian structures in the West Bank, including the eastern part of Jerusalem, between 2012 and 2018, resulting in the displacement of 6,473 Palestinians, including 3,348 children.<sup>427</sup>

Palestinian citizens of Israel reside in three main areas, namely the Galilee and the Triangle in the north and the Naqab in the south. Since 1948, only a handful of government-planned townships were created to concentrate Palestinian Bedouin communities in the Naqab and the Galilee, while in contrast more than 900 Jewish localities have been created.<sup>428</sup> In order to confine Palestinian towns and villages, Israeli authorities have systematically designated the land surrounding them for ‘security zones,’ Jewish regional councils, ‘national parks,’ nature reserves, and highways.<sup>429</sup> As a result, some 15 to 20 per cent of homes in Palestinian towns and villages lack permits, putting some 60,000 to 70,000 Palestinian homes inside the Green Line at risk of demolition.<sup>430</sup> In contrast, the state provides sufficient land and zoning permissions for Jewish Israelis, ‘to facilitate their growth.’<sup>431</sup>

In the Gaza Strip, while isolating Palestinians through an illegal 15-year-long land, sea, and air blockade and closure, the Israeli occupying authorities designated land along the Gaza fence as ‘access restricted area’ or ‘buffer zone’ to restrict Palestinians’ access to their land. The ‘buffer zone’ extends to land within 100–300 metres of the Gaza fence, expanded

<sup>425</sup> *Ibid.*, 38.

<sup>426</sup> *Ibid.*, 27.

<sup>427</sup> Al-Haq, Monitoring and Documentation Department (2019); *see also* CERD Report, 102.

<sup>428</sup> Human Rights Watch, *Discriminatory Land Policies*.

<sup>429</sup> *Ibid.*

<sup>430</sup> *Ibid.*

<sup>431</sup> *Ibid.*



during times of military escalation, that is only accessible by foot by farmers and remains difficult to access. The zone within 100 metres of the fence is a military 'no-go zone,' in which access and the planting of plants and trees higher than 80 centimetres is strictly prohibited.<sup>432</sup> The Israeli occupying authorities have also completed a new underground fence equipped with sensory equipment<sup>433</sup> and have constructed an undersea wall of boulders extending some 200 metres into the sea, a concrete wall, and a fence to further restrict access to the sea from the Gaza Strip.<sup>434</sup> These restrictions affect up to 35 per cent of Gaza's agricultural land, with deleterious effects on Gaza's ability to be food sufficient for its population of approximately two million Palestinians.<sup>435</sup>

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432 BADIL, *Forced Population Transfer*, No. 17, 50.

433 Al Jazeera, 'Israel completes 'iron wall' underground Gaza barrier' (7 December 2021) <<https://www.aljazeera.com/news/2021/12/7/israel-announces-completion-of-underground-gaza-border-barrier>>.

434 Times of Israel, 'Israel's Gaza sea barrier nears completion' (1 January 2019) <<https://www.timesofisrael.com/gaza-sea-barrier-nears-completion/>>; Judah Ari Gross, "A wall of iron, sensors and concrete": IDF completes tunnel-busting Gaza barrier' (*The Times of Israel*, 7 December 2021) <<https://www.timesofisrael.com/a-wall-of-iron-sensors-and-concrete-idf-completes-tunnel-busting-gaza-barrier/>>.

435 BADIL, *Forced Population Transfer*, No. 17, 50.

## 5.4 Fragmenting the Palestinian People

According to the Palestinian Central Bureau of Statistics (PCBS), by mid-2022, there were 14.3 million Palestinians around the world.<sup>436</sup> 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 authored by Falk and Tilley.<sup>437</sup> It is through this systematic and widespread fragmentation that the Israeli regime obfuscates the reality of apartheid and represses the ability of the Palestinian people to effectively challenge the regime. As outlined in the ESCWA report, Israel's apartheid has administratively divided the Palestinian people into at least four legal 'domains,' including Palestinians with Israeli citizenship subject to Israeli civil law, Palestinians with permanent residency status in occupied East Jerusalem, Palestinians in the occupied West Bank and Gaza Strip subject to Israeli military law, and Palestinian refugees and exiles abroad, whose right of return continues to be denied.<sup>438</sup>

By 2019, there were approximately 1.9 million Palestinians with Israeli citizenship, comprising some 21 per cent of the state's citizens.<sup>439</sup> As non-Jewish persons, they are accorded an inferior legal status, face discrimination in access to services, limited budget allocations, and restrictions in access to jobs and other professional opportunities. While Palestinians are represented in the Knesset, their representation is superficial, because their elected officials are barred by Israel's Basic Laws from challenging or introducing legislation that would compromise the 'Jewish character' of the state.<sup>440</sup> For example, when the Joint List attempted to challenge the proposed bill for the Jewish Nation-State Basic Law in 2018 by submitting a bill titled 'Israel as the Nation-State of all its Citizens,' the Knesset presidium

<sup>436</sup> Wafa, 'PCBS: Some 14.3 million Palestinians in the world in mid-2022' (7 July 2022) <<https://english.wafa.ps/Pages/Details/129983>>; PCBS, 'Palestinian Central Bureau of Statistics (PCBS) Presents the Conditions of Palestinian Populations on the Occasion of the International Population Day,' (11 July 2022)<<https://pcbs.gov.ps/post.aspx?lang=en&ItemID=4279>>.

<sup>437</sup> ESCWA Report, 37.

<sup>438</sup> *Ibid.*, 37-38.

<sup>439</sup> IMEU, 'Fact Sheet: Palestinian Citizens of Israel' (17 March 2021) <<https://imeu.org/article/fact-sheet-palestinian-citizens-of-israel>>.

<sup>440</sup> *Ibid.*, 4.



refused to allow discussion of the proposal.<sup>441</sup>

In the occupied Palestinian territory, there are some 3.19 million Palestinians in the West Bank, including 871,537 Palestinian refugees registered with UNRWA, and some 2.17 million Palestinians in the Gaza Strip, including 1.47 million Palestinian refugees registered with UNRWA.<sup>442</sup> Palestinians in the occupied Palestinian territory are governed by Israeli military law, while Jewish Israeli settlers, whose mere presence in the occupied Palestinian territory is illegal, are subject to Israeli civil law. The latter is extended to the occupied territory in violation of the Israeli occupying authorities' responsibilities under the Hague Regulations and the Geneva Conventions.<sup>443</sup> Zionist settler colonisation was supplemented within the occupied territory by a segregated legal system with different jurisdictions over Palestinians and Jewish settlers. This discrimination affects almost every aspect of Palestinian life under Israeli occupation.<sup>444</sup>

Palestinian refugees and involuntary exiles make up the fourth 'domain' in which Israel has fragmented the Palestinian people.<sup>445</sup> While they may find themselves outside the territory under Israel's jurisdiction or territory of effective control, Israeli state policy in accordance with Zionist ideology denies them their inalienable right of return as part of an institutionalised regime of systematic racial oppression and domination. There are some 5.7 million Palestinian refugees registered with UNRWA today in the West Bank, Gaza Strip, Lebanon, Syria, and in Jordan.<sup>446</sup> Palestinians, wherever they reside, are collectively denied the exercise of their right to self-determination.

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

442 PCBS, 'Palestinian Central Bureau of Statistics (PCBS) Presents the Conditions of Palestinian Populations on the Occasion of the International Population Day,' (11 July 2022) <<https://pcbs.gov.ps/post.aspx?lang=en&ItemID=4279>>. UNRWA, 'UNRWA in Figures 2020-2021' (6 September 2021) <<https://www.unrwa.org/resources/about-unrwa/unrwa-figures-2020-2021>>.

443 Article 43, Hague Regulations; Article 64, Fourth Geneva Convention.

444 The Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (October 2014) 7 <<https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>>.

445 ESCWA Report, 37-38 and 47-48.

446 UNRWA, 'UNRWA in Figures 2020-2021' (6 September 2021) <<https://www.unrwa.org/resources/about-unrwa/unrwa-figures-2020-2021>>.

### 5.4.1 Denial of Collective Rights to Return and Self-Determination

The right of return of Palestinian refugees, displaced persons, and exiles is firmly rooted in the prohibition of deportations and expulsions enshrined in the laws and customs of war, which had gained customary character by 1945.<sup>447</sup> It is similarly reflected in the law of state responsibility, which requires states to provide reparations to victims of serious breaches of international law.<sup>448</sup> The UN General Assembly specifically recognises the right of return of Palestinian refugees in Resolution 194 (III) of 11 December 1948, which resolves 'that the refugees wishing to return to their homes... should be permitted to do so at the earliest practicable date.'<sup>449</sup>

Reaffirmed in over a hundred UN resolutions since, General Assembly Resolution 194 reflects binding customary international law as it stood at the time, which requires Israel to fulfil the right of return of Palestinian refugees, displaced persons, and exiles.<sup>450</sup> In the same vein, the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, enshrines the right of everyone 'to leave any country, including his[/her] own, and to return to his[/her] country'.<sup>451</sup> The same language was adopted in 1965 in Article 5(d)(ii) of ICERD, which prohibits racial discrimination in the enjoyment of '[t]he right to leave any country, including one's own, and to return to one's country'.<sup>452</sup> The Israeli authorities thereby have a legal obligation to fulfil the right of return of Palestinians displaced, dispossessed, and denationalised.<sup>453</sup> In 1973, the Apartheid Convention expressly recognised denial of the right of return as an inhuman act of the crime of apartheid in Article II(c).<sup>454</sup>

<sup>447</sup> IMT, Trial of the Major War Criminals before the International Military Tribunal (1947) 253-54.

<sup>448</sup> Albanese and Takkenberg, *Palestinian Refugees*, 352-353, 360; see also Mallison and Mallison, *The Palestine Problem*, 177, 409.

<sup>449</sup> UN General Assembly, Resolution 194 (III), 11 December 1948, UN Doc A/RES/194 (III), para 11.

<sup>450</sup> Albanese and Takkenberg, *Palestinian Refugees*, 350; 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) 30.

<sup>451</sup> Article 13(2), UDHR.

<sup>452</sup> See also 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>453</sup> Albanese and Takkenberg, *Palestinian Refugees*, 358.

<sup>454</sup> Article II(c), Apartheid Convention (emphasis added).

The Israeli state's persistent denial of the right of return of millions of Palestinians constitutes a root cause of ongoing oppression and is a core element in its establishment and maintenance of Israel's apartheid regime over the Palestinian people as a whole. It maintains the Israeli state's Zionist policy of population transfer and demographic manipulation on both sides of the Green Line and precludes all Palestinians from exercising their collective right to self-determination. The 2017 ESCWA report concluded that denial of the right of return of Palestinian refugees and exiles:

ensures that the Palestinian population never gains the demographic weight that would either threaten Israeli military control of the occupied Palestinian territory, 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>455</sup>

The Palestinian people's inalienable right to self-determination is internationally recognised and has been reaffirmed in countless UN General Assembly resolutions. As advocated for by the UN Special Rapporteur on Palestine, Francesca Albanese, its realisation requires a decolonisation praxis and paradigm shift as well as 'recognition of the absolute illegality of the settler-colonialism and apartheid' imposed by the Israeli regime.<sup>456</sup>

#### 5.4.2 Restricting the Right to Freedom of Movement

As this section has highlighted, the Israeli regime has imposed draconian restrictions on Palestinian residency rights, family life, sovereignty over natural resources as part of the right to self-determination, while dispossessing and displacing Palestinians from their land and properties. Integral to the fragmentation of the Palestinian people are further restrictions on movement and access varying across 'domains' of Israeli control. Article II(c) of the Apartheid Convention considers denial of 'the

<sup>455</sup> *Ibid.*, 48.

<sup>456</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN Doc A/77/356, 21 September 2022, paras 25 and 68-70.

right to freedom of movement and residence' an inhuman act of the crime of apartheid.

Restrictions on the right to freedom of movement and residence within the occupied Palestinian territory and inside the Green Line severely impact Palestinian rights to family life, choice of residence and spouse, adequate housing, an adequate standard of living for oneself and one's family, and ultimately the right to self-determination. Within the occupied Palestinian territory, Palestinians in the Gaza Strip have been subjected to a cruel 15-year closure and blockade, which isolates them from the rest of the Palestinian people, denies them their right of return to their villages and towns of origin, and has detrimentally impacted virtually every aspect of their life. Palestinians in the Gaza Strip are largely denied the right to travel to the rest of the occupied Palestinian territory, the rest of historic Palestine, and abroad, through an Israeli-imposed permit regime. In addition to the blockade of the Gaza Strip, Palestinian communities across the occupied Palestinian territory and inside the Green Line are severed from one another through the Annexation Wall and its associated permit and closure regime, the denial of family unification, and ongoing Israeli settlement construction and expansion.

Some of the Israeli regime's measures for Palestinian dispossession and fragmentation are more visible than others, including the physical separation of Palestinians between the Gaza Strip, the West Bank, Jerusalem, inside the Green Line, and in exile. In the occupied Palestinian territory, the Israeli occupying authorities have established checkpoints, roadblocks, and other barriers, which severely impact the freedom of movement of Palestinians, denying them access to essential services, including healthcare in Jerusalem, Israel, and abroad, and access to places of worship in Jerusalem, Bethlehem, Nazareth, and elsewhere. In 2004, the ICJ determined that the Annexation Wall and its associated regime violate Israel's obligation to realise the Palestinian people's right to self-determination.<sup>457</sup> Despite this, Israel has not halted its construction of the Annexation Wall, which remains standing and continues to result in material discrimination against Palestinians, including the appropriation

<sup>457</sup> Wall Opinion, paras 122 and 151.



of Palestinian land for illegal Israeli settlement construction and expansion.<sup>458</sup>

At the same time, the Israeli regime has also imposed less visible measures designed to fragment the Palestinian people and to undermine the exercise of their inalienable rights, notably through its control of the population registry on both sides of the Green Line, its implementation of a tiered and racially discriminatory ID system, its denial of Palestinian family unification, and its control over who is allowed to enter and exit the occupied Palestinian territory.<sup>459</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 Israeli-issued permits, in constant fear of arrest and expulsion.<sup>460</sup> Israel's fragmentation of the Palestinian people, including denial of Palestinian refugee return and restrictions on freedom of movement and residence across historic Palestine, constitute core methods of its apartheid regime.<sup>461</sup>

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458 CERD Report, 4.

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

460 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.

461 This is also the analysis adopted by Falk and Tilley in the ESCWA Report.

### 5.4.3 A Palestinian Bantustan: The Closure and Blockade of the Gaza Strip

The Israeli occupying authorities have imposed a land, sea, and air blockade, and comprehensive closure of the Gaza Strip as collective punishment since 2007, detrimentally impacting the entire population of over two million Palestinians. In November 2021, the Gaza-based Al Mezan Center for Human Rights published its report titled *The Gaza Bantustan: Israeli Apartheid in the Gaza Strip*. The report showed that the Israeli closure of the Gaza Strip, unprecedented in its duration and severity, has ‘isolated, segregated, and cut off the two million Palestinians in Gaza,’ approximately 70 per cent of whom are Palestinian refugees from 1948, from the rest of the occupied Palestinian territory, historic Palestine, and the world, ‘making it one of the world’s largest “open air prisons” and a Bantustan.’<sup>462</sup> The Israeli occupying forces’ recurring full-scale military assaults, de-development policies, and 15 years of illegal closure and blockade ‘have undermined all social, economic, cultural, civil, and political rights’ of Palestinians living in the Gaza Strip, forcing over two million Palestinians into ‘profound levels of poverty, aid dependency, food insecurity, and unemployment, and... [causing] the collapse of essential public services, including health care and water, sanitation, and hygiene.’<sup>463</sup> The former UN Special Rapporteur on Palestine, John Dugard, noted in an interview with Al Mezan that the Israeli occupying authorities’ policies targeting Palestinians in the Gaza Strip are far more severe than what was experienced in South African Bantustans, saying:

The Israeli government is determined to impoverish the people of Gaza rather than to advance their welfare. The Bantustans did not have to endure military attacks as we have seen in the Gaza Strip. The restrictions on freedom of movement imposed on the Gaza Strip are much more draconian than were experienced in Bantustans.<sup>464</sup>

<sup>462</sup> Al Mezan Center for Human Rights, *The Gaza Bantustan: Israeli Apartheid in the Gaza Strip* (2021) 18 <<http://mezan.org/en/uploads/files/16381763051929.pdf>>.

<sup>463</sup> *Ibid.*, 21

<sup>464</sup> *Ibid.*, 23.



The illegal Israeli blockade and closure regime amount to a prohibited form of collective punishment<sup>465</sup> as recognised by, among others, former UN Secretary-General Ban Ki-moon<sup>466</sup> and the International Committee of the Red Cross (ICRC).<sup>467</sup> In his July 2020 report, the former Special Rapporteur on Palestine, Michael Lynk, found that ‘the actions of Israel towards the protected population of Gaza amount to collective punishment under international law.’<sup>468</sup> The term ‘closure’ denotes the list of Israeli policies and practices beyond 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. Moreover, the frequent presence of Israeli occupying forces inside the Gaza Strip to conduct incursions and military operations shows the Israeli regime’s ability to enter the territory at will.<sup>469</sup>

The deliberate Israeli policy of separation and fragmentation of the occupied Palestinian territory and of the Palestinian people ensure that the Palestinian government remains divided, the Palestinian people are without effective representation, and that the Israeli regime has more leeway in colonising historic Palestine. Both physical and political separation are key to enforcing a scheme that prevents the Palestinian people from exercising their right to self-determination. Palestinian families are forcibly divided between the Gaza Strip, the West Bank, including the eastern part of Jerusalem, as well as inside the Green Line, in exile, and elsewhere abroad. As a result, Palestinian parents, children, spouses, brothers, and sisters

465 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)>.

466 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)>.

467 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>>.

468 UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 15 July 2020, (A/HRC/44/60), para 60 <[https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A\\_HRC\\_44\\_60.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_60.pdf)>.

469 According to Al Mezan’s monitoring and documentation, since 2012 the Israeli military has entered the Gaza Strip 403 times.

have been unable to visit each other, let alone live together, for decades even within the occupied Palestinian territory. Students from the Gaza Strip are unable to attend universities in the West Bank, including the eastern part of Jerusalem, where they previously constituted up to 35 per cent of the mixed student body. They are also frequently denied or delayed the requisite travel permits to exit for study abroad. Businesspeople and traders are impeded in conducting their professional activities, even within the occupied Palestinian territory, as exports are virtually banned<sup>470</sup> and imports are severely restricted or included in the banned 'dual-use' goods or commodities list.<sup>471</sup> As a direct result of repressive Israeli policies, Palestinian familial, cultural, and economic linkages are ruptured both within the occupied Palestinian territory, inside the Green Line, and abroad.

While preventing Palestinian residents of the Gaza Strip from accessing the rest of the occupied Palestinian territory and historic Palestine, the Israeli regime also promotes the emigration of Palestinians from Gaza to other countries, both explicitly<sup>472</sup> and implicitly by making the Gaza Strip unliveable. In 2017, the UN reported that the Gaza Strip would be unable to properly support human life by 2020.<sup>473</sup> Now, in 2022, the Gaza Strip has clearly been rendered uninhabitable due to the Israeli-imposed closure and blockade resulting in extreme de-development and economic decline.

Additionally, the Israeli occupying authorities enforce a maritime and land 'buffer zone,' also referred to as 'access restricted area,' where the Israeli military enforces its unilaterally imposed movement restrictions within Palestinian coastal waters and the Gaza side of Israel's perimeter fence. Similarly, the Gaza Strip's agricultural sector has been undermined by

<sup>470</sup> Al Mezan, *Report on Israel's Decision to Suspend Gaza Customs Code* (2007) <<http://www.mezan.org/en/uploads/files/2559.pdf>>.

<sup>471</sup> Gisha, 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>472</sup> Times of Israel, 'Israel actively pushing Palestinian emigration from Gaza, official says' (19 August 2019) <<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) <<https://www.ynetnews.com/articles/0,7340,L-5571947,00.html>>.

<sup>473</sup> UN Country Team in the occupied Palestinian territory, *Gaza Ten Years Later* (July 2017) <[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)>.



the closure policy. Over a third of Gaza's agricultural land, about 27,000 dunams, falls within the 300-metre-wide Israeli-enforced 'buffer zone' inside the territory of the Gaza Strip, putting farmers at risk of injury or death from unlawful live fire. Meanwhile, Gaza's territorial sea is mostly closed off to fishermen and is used to secure the main pipeline route to export gas between Israel and Egypt.<sup>474</sup>

The blockade and closure regime over the Gaza Strip form part of the Israeli authorities' campaign to separate and fragment Palestinian communities within the occupied Palestinian territory, in historic Palestine, and in exile, as well as to deny the Palestinian people their right to self-determination. Al Mezan's report concluded that the Israeli occupying authorities have imposed living conditions that are calculated to cause the physical destruction of the Palestinian people in the Gaza Strip in whole or in part, in violation of Article II(b) of the Apartheid Convention.<sup>475</sup>

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474 Susan Power, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory* (Al-Haq, 2015) <<https://www.alhaq.org/publications/8066.html>>.

475 Al Mezan, *The Gaza Bantustan*, 32-42.



The Israeli settler colonial state's discriminatory legal foundations establish the basis for its creation and maintenance of an apartheid regime over the Palestinian people. This section examines how Israeli apartheid is maintained through inhuman(e) acts committed against Palestinians, which violate Palestinians' fundamental rights and freedoms and work to undermine Palestinian resistance to Israeli oppression. Among the policies and practices discussed in this section are excessive use of force, including extrajudicial executions, arbitrary detention, torture and other ill-treatment, collective punishment, and the denial of the rights to health and dignity, including underlying determinants. This section concludes with a discussion of Israeli measures of persecution and silencing of individuals and organisations opposing the apartheid regime, including the targeting and criminalisation of Palestinian civil society organisations. Underpinning all of this is a system of institutionalised impunity for widespread and systematic human rights violations committed against the Palestinian people, which enable the recurrence of grave violations and suspected international crimes.



## 6.1 Arbitrary Deprivation of Life

The Apartheid Convention recognises as an inhuman act of apartheid the '[d]enial to a member or members of a racial group or groups the right to life,' as well as denying them 'basic human rights and freedoms.'<sup>476</sup> Similarly, the Rome Statute prohibits murder as a crime against humanity 'when committed as part of a widespread or systematic attack directed against any civilian population'<sup>477</sup> and codifies wilful killing in the context of international armed conflict as a war crime 'when committed as part of a plan or policy or as part of a large-scale commission of such crimes.'<sup>478</sup> Under international human rights law, the right to life is protected as 'the supreme right from which no derogation is permitted even in situations of armed conflict'<sup>479</sup> under Article 6(1) of the ICCPR.

As of the time of writing, the year 2022 has been the deadliest year for Palestinians in the occupied West Bank since 2005, according to the UN Office for the Coordination of Humanitarian Affairs.<sup>480</sup> Since 1948, Israeli authorities have systematically resorted to lethal and other excessive force against Palestinians, targeting Palestinian lives, bodies, and livelihoods throughout historic Palestine. The denial to Palestinians of their right to life has been integral to the Zionist settler colonial project and is part and parcel of its 'logic of elimination' of Palestinians. Israel's widespread and systematic violation of the right to life of Palestinians has been a pillar of its establishment and maintenance of an apartheid regime since 1948. Arbitrary deprivations of Palestinian life serve to create a repressive environment designed to undermine the exercise by the Palestinian people of their collective rights.

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476 Articles II(a) and II(c), Apartheid Convention.

477 Article 7(1)(a), Rome Statute.

478 Articles 8(1) and 8(2)(a)(i), Rome Statute.

479 Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, UN Doc CCPR/C/GC/36, para 2.

480 UN OCHA, *Protection of Civilians Report | 11-24 October 2022* (1 November 2022) <<https://www.ochaopt.org/poc/11-24-october-2022>>; see also Huthifa Fayyad, 'West Bank: October was deadliest month in 'deadliest year' for Palestinians' (*Middle East Eye*, 1 November 2022) <<https://www.middleeasteye.net/news/israel-palestine-west-bank-october-deadliest-month-year-palestinians>>.

### 6.1.1 Massacres and Targeted Assassinations Since the Start of the Nakba

Since 1948, Israel has committed large-scale massacres and targeted assassinations of Palestinians, suppressed Palestinian protests, and conducted successive large-scale military offensives against Palestinians in the Gaza Strip, the latest of which was in August 2022.<sup>481</sup> These policies have led to arbitrary deprivation of Palestinian life, including as a result of excessive use of force, an ongoing shoot-to-kill policy by the Israeli occupying forces, and the fostering of lawlessness and organised crime within Palestinian communities inside the Green Line. Extrajudicial killings are perpetuated by a system of impunity, which shields Israeli perpetrators from accountability.<sup>482</sup>

During the *Nakba* of 1948, it is estimated that some 15,000 Palestinians were killed by Zionist militias<sup>483</sup> who committed at least 31 massacres against Palestinians.<sup>484</sup> These included the massacre of over a hundred Palestinians in Deir Yassin in the Jerusalem district on 9 April 1948 in an effort to ‘break Arab morale’ and ‘create panic throughout Palestine.’<sup>485</sup> On 15 May 1948, Zionist militias massacred 200 Palestinians in Tantura in the Haifa district, and on 29 October 1948, Israeli soldiers entered the village of Dawayma in the Hebron district, killing up to 300 Palestinians.<sup>486</sup> In the immediate aftermath of the *Nakba*, Israeli authorities imposed military rule on some 150,000 Palestinians inside the Green Line, including internally displaced Palestinians, with the aim of preventing

<sup>481</sup> UN OCHA, Escalation in the Gaza Strip and Israel | Flash Update #2 as of 18:00, 8 August 2022 (8 August 2022) <[https://www.ochaopt.org/content/escalation-gaza-strip-and-israel-flash-update-2-august-2022?\\_gl=1\\*x1cee4\\*\\_ga\\*ODY1ODc5Mzk3LjE2NjY5NTM4NzU.\\*\\_ga\\_E60ZNX2F68\\*MTY2ODYxODkwOS44LjEuMTY2ODYxODkzMS4zOC4wLjA.](https://www.ochaopt.org/content/escalation-gaza-strip-and-israel-flash-update-2-august-2022?_gl=1*x1cee4*_ga*ODY1ODc5Mzk3LjE2NjY5NTM4NzU.*_ga_E60ZNX2F68*MTY2ODYxODkwOS44LjEuMTY2ODYxODkzMS4zOC4wLjA.>)>.

<sup>482</sup> See, for example, Al-Haq, Impunity for Extrajudicial Killing: Israeli Soldier and Killer of Abdel Fattah Al-Sharif Released after Mere 9 Months in Prison (11 May 2018) <<https://www.alhaq.org/advocacy/6225.html>>.

<sup>483</sup> See, for example, Al Jazeera, ‘The Nakba did not start or end in 1948’ (23 May 2017) <<https://www.aljazeera.com/features/2017/5/23/the-nakba-did-not-start-or-end-in-1948>>.

<sup>484</sup> Pappé, *The ethnic cleansing of Palestine*, 258; see also BADIL, ‘Massacres and the Nakba’ (2000) 7 al-Majdal <<https://www.badil.org/en/publication/periodicals/al-majdal/item/1096-massacres-and-the-nakba.html>>.

<sup>485</sup> BADIL, ‘Massacres and the Nakba’ (Autumn 2000) 7 al-Majdal.

<sup>486</sup> *Ibid.*

Palestinian refugees' return.<sup>487</sup> According to BADIL, between 1948 and 1956, 'Israeli forces killed some 5,000 Palestinian refugees trying to return to their homes inside Israel.'<sup>488</sup> These massacres continued throughout the decades that followed, with 49 Palestinians killed by Israeli border police during the Kufr Qassim massacre on 29 October 1956, many of them returning from their fields unaware that a curfew had been imposed on the village earlier that day.<sup>489</sup> Thereafter, Ilan Pappé writes, 'there was Qibya in the 1950s, Samoa in the 1960s, the villages of the Galilee in 1976, Sabra and Shatila in 1982, Kfar Qana in 1999, Wadi Ara in 2000 and the Jenin Refugee Camp in 2002,' concluding that: '[t]here has never been an end to Israel's killing of Palestinians.'<sup>490</sup>

Over the decades, the Israeli regime further adopted a policy of political assassinations targeting Palestinian resistance within and outside of Palestine in an effort to 'erode the Palestinian leadership' and with the effect of undermining the exercise by the Palestinian people of their right to self-determination.<sup>491</sup> As scholars observed, 'Israel has gained notoriety for its willingness to resort to assassination,' including of key Palestinian armed resistance figures.<sup>492</sup> Carried out since 1948, targeted killings have been approved by the Israeli establishment at the highest political and military levels.<sup>493</sup>

487 BADIL, 'From the 1948 Nakba to the 1967 Naksa' Occasional Bulletin No. 18 (June 2004) 1 <[https://www.badil.org/phocadownloadpap/Badil\\_docs/bulletins-and-briefs/Bulletin-18.pdf](https://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-18.pdf)>.

488 *Ibid.*

489 Adel Manna, 'The Massacre of Kufr Qassem' in Nadim N Rouhana and Areej Sabbagh-Khoury (eds), *The Palestinians in Israel: Readings in History, Politics and Society* (Mada al-Carmel, 2011) 74, 75; see also Ofer Aderet, '60 Years After Massacre, Kafr Qasem Doesn't Want an Apology from the Israeli Government' (*Haaretz*, 28 October 2016) <<https://www.haaretz.com/israel-news/.premium.MAGAZINE-kafr-qasem-doesnt-want-an-apology-1.5454121>>.

490 Pappé, *The ethnic cleansing of Palestine*, 258.

491 Nir Gazit and Robert J Brym, 'State-directed political assassination in Israel: a political hypothesis' (2011) 26(6) *International Sociology* 862, 872.

492 Thomas Ward, 'Norms and Security: The Case of International Assassination' (2000) 25 *International Security* 105, 114; see also Patty Nieberg and Fares Akram, 'A look at Israel's targeted killings of militant leaders' (AP News, 12 November 2019) <<https://apnews.com/article/40995aaaf33404879bf39db678d4b9532>>; see also Al-Haq, Al-Haq condemns practice of "targeted killings" in Gaza, calls for an immediate investigation into deaths of Gazan civilians, including children (16 November 2019) <[https://www.alhaq.org/advocacy/16190.html#\\_ftn9.x](https://www.alhaq.org/advocacy/16190.html#_ftn9.x)>.

493 Al-Haq, *Wilful Killing: The Assassination of Palestinians in the Occupied Palestinian Territories by the Israeli Security Forces* (Al-Haq Briefing Paper, 2001) 21 <<https://www.alhaq.org/publications/8156.html>>; Steven R David, 'Fatal choices: Israel's policy of targeted killing' *Mideast Security and Policy Studies* No 51 (Begin-Sadat Center for Strategic Studies, 2002) 1, 3-4; see also Leila Shahid, 'The Sabra and Shatila Massacres: Eye-Witness Reports' (2002) 32(1) *Journal of Palestine Studies* 36.

### 6.1.2 Suppression of Palestinian Demonstrations

The Apartheid Convention considers as inhuman acts of apartheid the denial of the rights to freedom of peaceful assembly and association as well as denying the rights to freedom of opinion and expression.<sup>494</sup> Since the *Nakba*, the Israeli regime has deployed excessive use of force, including lethal force, against Palestinians, notably in the suppression of peaceful assemblies demanding the realisation of Palestinians' inalienable rights. On *Yawm al-Ard* (or Land Day) on 30 March 1976, Palestinian citizens inside the Green Line organised a general strike in protest of the Israeli government's approval of a plan to expropriate 21,000 dunams of Palestinian land in the Galilee and the Triangle areas.<sup>495</sup> The *Yawm al-Ard* demonstrations, now commemorated annually in Palestine and by Palestinians in exile, were violently suppressed by the Israeli police at the time, who killed six Palestinian citizens, injured 50 others, and arrested 300 Palestinians protesting the plan to illegally confiscate their lands.<sup>496</sup> Such repression is illustrative of how Israeli apartheid policies are aimed at furthering Zionist colonisation.

The Israeli occupying authorities' suppression of Palestinian protests was also a prominent feature of the First *Intifada*, which began on 9 December 1987, born out of 'twenty years of a regime designed to suppress, humiliate, and perpetually disenfranchise Palestinians' and the Israeli regime's continued efforts to eliminate the Palestinian national movement in exile.<sup>497</sup> During the First *Intifada*, the Israeli occupying forces pursued an assassination policy against Palestinian activists.<sup>498</sup> Israeli repression of the Palestinian *Intifada* and mass extrajudicial executions of Palestinians, as Edward Said put it, were 'part of an orchestrated campaign to exterminate Palestinians as a political presence in Palestine.'<sup>499</sup> Between 1988 and 1993, Israeli forces killed over 1,200 Palestinians, including 200 youth under the

494 Article II(c), Apartheid Convention.

495 Khalil Nakleh, 'Yawm al-Ard (Land Day)' in Nadim N Rouhana and Areej Sabbagh-Khoury (eds), *The Palestinians in Israel: Readings in History, Politics and Society* (Mada al-Carmel, 2011) 83, 84.

496 *Ibid.*

497 Edward Said, 'Intifada and Independence' (1989) 22 Social Text 23, 23 and 28.

498 Al-Haq, *Wilful Killing*, 7.

499 Said, 'Intifada and Independence' 29.

age of 16.<sup>500</sup> According to Al-Haq's documentation in the 1980s, the Israeli occupying forces 'opened fire directly at people.' Such incidents were determined to be 'not isolated,' illustrating 'consistent illegality by Israeli army personnel in their use of force in response to demonstrations.'<sup>501</sup>

The suppression of Palestinian protests continued during the Second *Intifada*, with an open Israeli acknowledgement of its policy of targeted killings of Palestinians,<sup>502</sup> aimed at suppressing the *Intifada* and thus denying the exercise by Palestinians of their collective rights.<sup>503</sup> At the time, Al-Haq found that '[t]he decision to kill is seemingly taken by a cabal of intelligence officials and senior military and political figures who effectively act as judge, jury and executioner, which is completely at odds with due process procedures.'<sup>504</sup> In October 2000, Israeli police killed 13 unarmed Palestinians, including 12 Palestinian citizens and one resident of the Gaza Strip, during protests against Israeli oppression.<sup>505</sup> An Israeli inquiry into these killings, the Or Commission, found that there was no justification for the use of live fire by the Israeli police. Yet, 22 years on, not a single Israeli officer or official has been held accountable, a testament to Israeli impunity for the arbitrary deprivation of Palestinian life.<sup>506</sup>

Israel's policy of excessive use of force against Palestinians remains ongoing, as evidenced by the Israeli occupying forces' systematic suppression of the Great March of Return demonstrations in the Gaza Strip in 2018–2019. The demonstrations called for the realisation of the right of return of Palestinian refugees and an end to the illegal closure and blockade of the Gaza Strip.

500 Rami Nasrallah, 'The first and second Palestinian intifadas' in Joel Peters and David Newman (eds), *The Routledge Handbook on the Israeli-Palestinian Conflict* (Routledge, 2013) 56, 60.

501 Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-1988* (Al-Haq, 1988) 17-18 <<https://www.alhaq.org/publications/8171.html>>.

502 Nir Gazit and Robert J Brym, 'State-directed political assassination in Israel: a political hypothesis' (2011) 26(6) *International Sociology* 862, 862-863; see also Al-Haq, *Wilful Killing*, 6.

503 Nizar Ayoub, *The Israeli High Court of Justice and the Palestinian Intifada: a stamp of approval for Israeli violations in the Occupied Territories* (Al-Haq, 2004) 46 <<https://www.alhaq.org/publications/8118.html>>.

504 Al-Haq, *Wilful Killing*, 6.

505 Adalah, The October 2000 Killings (11 August 2020) <<https://www.adalah.org/en/content/view/8639>>.

506 *Ibid.*

During over 80 weeks of protests, the Israeli occupying forces killed 217 Palestinians during the demonstrations, including 48 children, nine persons with disabilities, four paramedics, and two journalists.<sup>507</sup> Additionally, 9,517 were injured by live ammunition.<sup>508</sup> According to the Palestinian Centre for Human Rights (PCHR), 207 Palestinians suffered permanent disability as a result of their injuries, including 149 who required amputation.<sup>509</sup> Statistics compiled by Al Mezan found that ‘upper-body gunshot wounds [were] the leading cause of death,’ constituting 89 per cent of killings during the Great March of Return.<sup>510</sup> Additionally, statements by Israeli officials confirmed that the use of live fire by Israeli snipers was deliberate and planned<sup>511</sup> and that clear orders were given to Israeli snipers to shoot-to-kill Palestinians, including children, during the demonstrations.<sup>512</sup> The UN Commission of Inquiry on the demonstrations ‘found reasonable grounds to believe that Israeli snipers shot at journalists, health workers, children and persons with disabilities, knowing they were clearly recognizable as such’<sup>513</sup> and urged the Israeli occupying forces to bring their rules of engagement for the use of live fire in line with international human rights law.<sup>514</sup> These recommendations remain unimplemented.<sup>515</sup>

507 Al Mezan, *Attacks on Unarmed Protesters at the “Great March of Return” Demonstrations: A Two-Year Report from the Start of Demonstrations on 30 March 2018* (2020) 7 <<http://www.mezan.org/en/uploads/files/15952354571567.pdf>>.

508 *Ibid.*, 9.

509 PCHR, 2nd Anniversary of the Great March of Return: Impunity Continues to Prevail (30 March 2020) <<https://www.pchrgaza.org/en/2nd-anniversary-of-the-great-march-of-return-impunity-continues-to-prevail/>>.

510 Al Mezan, *Attacks on Unarmed Protesters*, 8.

511 Al-Haq, Planning to Kill: Israel’s Public and Stated Plans to Commit War Crimes (11 June 2018) <<https://www.alhaq.org/advocacy/6188.html>>.

512 Ali Abunimah, ‘Snipers ordered to shoot children, Israeli general confirms’ (*The Electronic Intifada*, 22 April 2018) <<https://electronicintifada.net/blogs/ali-abunimah/snipers-ordered-shoot-children-israeli-general-confirms>>.

513 UN OHCHR, No Justification for Israel to Shoot Protesters with Live Ammunition (28 February 2019) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24226&LangID=E>>.

514 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, UN Doc A/HRC/40/CRP.2, para 793, p 226.

515 UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/HRC/50/21, 9 May 2022, p 1.

### 6.1.3 Successive Israeli Military Offensives Over the Gaza Strip

Over the past 15 years, the Israeli occupying forces have carried out six large-scale military offensives against Palestinians in the besieged Gaza Strip in 2006, 2008–2009, 2012, 2014, 2021, and 2022. On 27 December 2008, the Israeli occupying authorities launched a 22-day military offensive against the Gaza Strip code-named ‘Operation Cast Lead’ that involved massive aerial bombardments and a ground invasion that began on 3 January 2009.<sup>516</sup> During ‘Operation Cast Lead,’ 1,172 Palestinian civilians including 342 children were killed.<sup>517</sup> Al-Haq and Al Mezan found ‘a glaring disregard for civilian life, both in the orders received and the practices carried out by the invading [Israeli] troops.’<sup>518</sup> The Palestinians human rights organisations concluded that ‘[p]rima facie evidence exists of the commission of war crimes amounting to grave breaches of the Geneva Conventions, most notably wilful killing of civilians’.<sup>519</sup>

Between 8 and 21 November 2012, the Israeli occupying forces launched ‘Operation Pillar of Defence’ against the Gaza Strip, firing indiscriminate and disproportionate airstrikes against Palestinians; 173 Palestinians were killed, of whom 113 were civilians, including 38 children.<sup>520</sup> Video testimonies collected by Al-Haq highlighted massive devastation and loss of Palestinian life.<sup>521</sup> Between 8 July and 26 August 2014, the Israeli occupying forces launched ‘Operation Protective Edge’ against Palestinians in the Gaza Strip, in which 2,215 Palestinians were killed, including 1,639 civilians,

516 Al-Haq, ‘*Operation Cast Lead*: A Statistical Analysis’ (August 2009) <<https://www.alhaq.org/advocacy/7191.html>>.

517 *Ibid.*, 3.

518 *Ibid.*

519 *Ibid.*, 15.; see also Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, UN Doc A/HRC/12/48, para 1938.

520 Al-Haq, *Questions & Answers: Al-Haq’s Legal Analysis on the Escalation of Attacks in the Gaza Strip between 8 and 21 November 2012* (27 November 2012) 2 <[https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/images/stories/PDF/2012/QA\\_Gaza\\_Strip\\_27Nov2012.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/QA_Gaza_Strip_27Nov2012.pdf)>.

521 Al-Haq, Voices from Gaza: enduring devastation (17 December 2012) <<https://www.alhaq.org/advocacy/6803.html>>.

of whom 556 were children.<sup>522</sup> The UN Commission of Inquiry on the 2014 Gaza conflict noted that '[t]he death toll alone speaks volumes... all the more so in the many cases in which several family members died together.'<sup>523</sup> The Israeli occupying forces' practice of killing entire Palestinian families resumed during the Israeli military assault on the Gaza Strip in May 2021.<sup>524</sup> Between 10–21 May 2021, 240 Palestinians were killed by the Israeli occupying forces in the Gaza Strip, comprising 151 civilians, including 59 children.<sup>525</sup> Most were killed in or near their homes.<sup>526</sup> Between 5 and 7 August 2022, 33 Palestinians, including 17 civilians, were killed by the Israeli occupying forces in a further Israeli military escalation.<sup>527</sup> In its October 2022 report on the escalation, Amnesty International concluded that the Israeli regime:

has benefited from impunity for the apparent war crimes and crimes against humanity it committed during the [Gaza] offensives, the deadly repression of protests against the blockade, the blockade itself... and Israel's overall cruel and institutionalized regime of domination and oppression against the entirety of the Palestinian people, which amounts to the crime of apartheid.<sup>528</sup>

522 Susan Power and Nada Kiswanson van Hooydonk, *Divide and Conquer: A Legal Analysis of Israel's 2014 Military Offensive against the Gaza Strip* (Al-Haq, 2015) 7 and 28, <<https://www.alhaq.org/publications/8070.html>>.

523 Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 24 June 2015, UN Doc A/HRC/29/CRP.4, para 574.

524 See Daniel Estrin, '22 Members of One Family Killed in Gaza' (NPR, 23 May 2021) <<https://www.npr.org/2021/05/23/999563043/gaza-residents-access-damage-amid-ceasefire>>.

525 Al-Haq, Al Mezan, and PCHR, *Assault on Gaza in Numbers: A Statistical Report of Civilian Casualties and Damage to Private and Public Properties by Israeli Occupation Forces During Israel's Full-scale Military Operation on the Gaza Strip Between 10–21 May 2021* (January 2022) 13-14 <<https://www.mezan.org/en/post/24097/Al+Mezan%2C+PCHR+and+Al-Haq+issue+statistical+report+on+May+2021+assault+on+the+Gaza+Strip>>.

526 *Ibid.*

527 Amnesty International, '*They Were Just Kids': Evidence of War Crimes During Israel's August 2022 Gaza Offensive* (Research Briefing, 25 October 2022) 3 <<https://www.amnesty.org/en/documents/mde15/6079/2022/en/>>.

528 *Ibid.*, 6.

### 6.1.4 A Shoot-to-Kill Policy Targeting Palestinians

In September 2015, the Israeli security cabinet relaxed measures for the use of live fire,<sup>529</sup> authorising the use of live ammunition by the Israeli police against Palestinians not only when their lives are at risk, but also should they determine ‘an immediate and concrete danger to police or civilians.’ Since then, an increase in killings and injuries of Palestinians by Israeli fire has been documented by Palestinian human rights organisations. Between 1 October 2015 and 30 September 2019, Al-Haq documented the killing of 704 Palestinians, including 184 children in the occupied Palestinian territory, as a result of what has been identified as the Israeli occupying forces’ systematic ‘shoot-to-kill’ policy against Palestinians.<sup>530</sup> These killings have taken place in various contexts, including Israeli military raids and arrest and detention operations across Palestinian villages, towns, and refugee camps in the occupied West Bank, including the eastern part of Jerusalem, as well as in the targeting of Palestinian peaceful assemblies across historic Palestine, and other recurrent Israeli attacks.

In January 2017, the Office of the UN High Commissioner for Human Rights (OHCHR) found that the Israeli occupying forces ‘often use firearms against Palestinians on mere *suspicion* or as a precautionary measure, in violation of international standards.’<sup>531</sup> Israeli officials have also encouraged use of force by Israeli settlers against Palestinians with impunity.<sup>532</sup> Al-Haq found in 2013 that:

529 See, for example, Peter Beaumont, ‘Israel relaxes live-fire rules against Palestinian stone-throwers’ (*The Guardian*, 25 September 2015) <<https://www.theguardian.com/world/2015/sep/25/israel-live-ammunition-measures#:~:text=Isra.%E2%80%99s%20security%20forces%20will%20have,the%20prime%20minister%2C%20Binyamin%20Netanyahu.>>.

530 See, e.g., the analysis contained in Al-Haq, ‘83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel’s Shoot-to-Kill Policy’ (14 July 2020) <<https://www.alhaq.org/advocacy/17112.html>>.

531 UN General Assembly, Implementation of Human Rights Council resolutions S-9/1 and S-12/1, Report of the UN High Commissioner for Human Rights, 25 January 2017, UN Doc A/HRC/34/36, para 11 (emphasis added); see also Al-Haq, ‘83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel’s Shoot-to-Kill Policy’ (14 July 2020) 6 <<https://www.alhaq.org/advocacy/17112.html>>.

532 See, notably, Valentina Azarov, *Institutionalised Impunity: Israel’s Failure to Combat Settler Violence in the Occupied Palestinian Territory* (Al-Haq, 2013) <<https://www.alhaq.org/publications/8072.html>>.

Israel's... systematic lack of law enforcement against [Israeli] settlers as well as the failure to investigate such incidents have led to the creation of a culture of impunity and contributed to an increase in the frequency and severity of such attacks.<sup>533</sup>

In 2022, in a context of ongoing escalations of widespread and systematic attacks against Palestinians, notably in the occupied West Bank, Al-Haq documented 'a sharp spike in settler attacks, and collective punishment' by the Israeli occupying forces, including military incursions, excessive use of force, and extrajudicial killings.<sup>534</sup> Settler violence has included raids on towns supported by the Israeli occupying forces, attacks against Palestinians and their properties, and disruption of the Palestinian olive harvest, a longstanding practice throughout Israel's military occupation.<sup>535</sup>

In March 2019, the UN Commission of Inquiry on the Great March of Return found reasonable grounds to believe that during the demonstrations, the Israeli occupying forces 'killed and gravely injured civilians who were neither participating directly in hostilities nor posing an imminent threat to life.'<sup>536</sup> Inside the Green Line, Adalah has called for 'an end to Israeli police killings of Palestinian citizens, and to the state culture of impunity'<sup>537</sup> adding that this 'impunity also has a collective aspect, as it leaves all Palestinian Arab citizens... vulnerable to state violence and encourages the recurrence of grave human rights violations against them.'<sup>538</sup> Yet, institutionalised

533 *Ibid.*, 6.

534 Al-Haq, Al-Haq Urges Third States to Take Concrete Actions to Halt Israel's Grave Escalation of Military Raids, Killings, Settler Violence and Collective Punishment in the West Bank (19 October 2022) <<https://www.alhaq.org/advocacy/20695.html>>.

535 See, for example, Al-Haq, Israeli Settlers Attack and Destroy Palestinian Olive Trees (10 October 2013) <<https://www.alhaq.org/monitoring-documentation/6708.html>>; Al-Haq, The Olive Harvest Season Disrupted by Settler Violence and Israeli Restrictions Imposed on Palestinian Farmers (7 November 2014) <<https://www.alhaq.org/monitoring-documentation/6589.html>>; B'Tselem, West Bank olive harvest, 2021: Settlers attack farmers, steal olives and damage trees with full state backing (25 January 2022) <[https://www.btselem.org/settler\\_violence/2021\\_olive\\_harvest](https://www.btselem.org/settler_violence/2021_olive_harvest)>.

536 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, UN Doc A/HRC/40/CRP.2.

537 Adalah, Adalah: Israel's perception of Palestinian citizens as 'enemy' continues to grant blanket impunity to police for killings (1 October 2020) <<https://www.adalah.org/en/content/view/10141>>.

538 *Ibid.*

impunity prevails for excessive use of force against Palestinians on both sides of the Green Line, and for acts of settler violence.<sup>539</sup> The continued systematic arbitrary deprivation of Palestinian life with impunity led 83 Palestinian, regional, and international civil society organisations in July 2020 to call for international justice and accountability for Israel's shoot-to-kill policy targeting the Palestinian people.<sup>540</sup>

This policy remains ongoing, and on 11 May 2022, the Israeli occupying forces killed Shireen Abu Akleh, 51, renowned Al Jazeera journalist, while she was reporting on an Israeli military raid on Jenin refugee camp. Shireen and fellow journalists wore clearly marked 'PRESS' vests when Israeli occupying forces shot live fire directly at them and fatally shot Shireen in the head. Al-Haq found that Shireen's targeting amounts to:

wilful killing, a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute, and contributes to commission of the crime against humanity of murder, considering the [Israeli occupying forces'] widespread and systematic shoot-to-kill policy and excessive use of force on both sides of the Green Line.<sup>541</sup>

The Coalition understands Israel's resort to lethal and other excessive force against the Palestinian people since the start of the *Nakba* as part of a widespread and systematic attack directed against the Palestinian civilian population, satisfying the chapeau elements of crimes against humanity under the Rome Statute.<sup>542</sup> Arbitrary deprivation of Palestinian life and violations of Palestinians' right to freedom of peaceful assembly<sup>543</sup> have been used to impose and continuously maintain apartheid over Palestinians, aimed at preventing them from challenging the regime.

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539 Azarov, *Institutionalised Impunity*.

540 Al-Haq, 83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel's Shoot-to-Kill Policy (14 July 2020) <<https://www.alhaq.org/advocacy/17112.html>>.

541 Al-Haq, Legal Brief on the Extrajudicial Killing of Shireen Abu Aqleh (3 November 2022) para 16 <<https://www.alhaq.org/monitoring-documentation/20666.html>>.

542 Article 7(1), Rome Statute.

543 Articles 6(1) and 21, ICCPR.

### 6.1.5 Lawlessness in Palestinian Communities inside the Green Line

In contrast to Israeli authorities' excessive policing of Palestinian demonstrations, incidents of crime and homicide in Palestinian communities within the Green Line remain largely neglected.<sup>544</sup> Fuelled by Israeli policy allowing the spread of firearms and a deliberate failure to hold perpetrators accountable when the victims are Palestinian, between 2000 and 2020, 1,466 Palestinian citizens are reported to have been killed from gun violence.<sup>545</sup> According to the Palestinian youth association Baladna, 85 homicides of Palestinians were recorded in 2019,<sup>546</sup> and in 2018, 'the homicide rate was effectively eight times higher in the Arab Palestinian society than it was in the Jewish Israeli sector.'<sup>547</sup> Overall, between 2011 and 2019, Baladna found that the rate of homicides in Palestinian towns within the Green Line multiplied by 1.5.<sup>548</sup> Baladna also found that 74.3 per cent of homicides targeting Palestinians between 2011 and 2019 were carried out by perpetrators using firearms.<sup>549</sup>

For its part, the Israeli police has not only shown indifference to organised crime within Palestinian communities, but has even actively encouraged Palestinian crime organisations as part of a policy to weaken Palestinian society.<sup>550</sup> Notably, the policy ensures that Palestinians are kept busy 'trying to survive' while distancing them from central issues, including the Israeli occupation, and the denial of Palestinians' collective rights. It

544 Nisreen Salameh Shahbari, 'The Arab public wants better policing — and Israeli police don't care' (*+972 Magazine*, 26 August 2018) <<https://www.972mag.com/state-report-on-policing-reveals-what-arabs-have-known-all-along/>>.

545 Shahrazad Odeh, 'How crime became a cover for Israel to tighten control of Palestinian citizens' (*+972 Magazine*, 4 December 2020) <<https://www.972mag.com/crime-palestinian-citizens-israel/>>.

546 Baladna and Centre for Trust, Peace and Social Relations, Coventry University, UK, *Nine Years of Bloodshed: A Statistical Report on Homicide Cases among Arab Palestinians in Israel (2011-2019)* (June 2020) 6 <<http://www.momken.org/Public/files/9YOB%20report%20english.pdf>>.

547 *Ibid.*

548 Odeh, 'How crime became a cover'; see also Baladna and Centre for Trust, Peace and Social Relations, Coventry University, UK, *Nine Years of Bloodshed*; Suha Arraf, 'How organized crime took over Israel's Palestinian communities' (*+972 Magazine*, 20 January 2020) <<https://www.972mag.com/police-crime-palestinian-communities/>>.

549 Baladna and Centre for Trust, Peace and Social Relations, Coventry University, UK, *Nine Years of Bloodshed*, 12.

550 Arraf, 'How organized crime took over.'



aims to sever Palestinians' connection to the land and is indirectly geared toward pushing Palestinians to leave the country.<sup>551</sup> Meanwhile, at least 70 per cent of firearms in Palestinian communities within the Green Line come from the Israeli military and police.<sup>552</sup> In stark contrast, Israeli authorities mobilise full resources to locate and prosecute perpetrators of attacks against Jewish Israelis and to seize their weapons.<sup>553</sup>

Following October 2000, no Israeli officers were indicted for the killings of Palestinians. Instead, in an effort to prevent political mobilisation by Palestinian citizens, Israeli authorities fostered a climate of lawlessness and organised crime within Palestinian communities.<sup>554</sup> In turn, Israeli authorities refuse to address the structural conditions that fuel violence within Palestinian communities, including poverty, high unemployment, the inability to expand due to denial of building permits, and the lack of land to build on due to systematic confiscation of Palestinian land and dispossession.<sup>555</sup> The UN Human Rights Committee has understood that '[d]eprivation of life involves an intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission.'<sup>556</sup> Accordingly, Israeli policy not to investigate and prevent the killings of Palestinians constitutes another aspect of its systematic disregard for Palestinian life, amounting to an inhuman(e) act of apartheid.

551 Henriette Chacar, 'Protests against gun violence trigger a political awakening for Palestinians in Israel' (+972 Magazine, 23 October 2019) <<https://www.972mag.com/gun-violence-palestinians-israel-fida-tabony/>>.

552 Arraf, 'How organized crime took over'; Judith Sudilovsky, "No one cares": Palestinian citizens decry Israeli inaction on gun violence' (+972 Magazine, 29 September 2020) <<https://www.972mag.com/gun-violence-police-palestinian-citizens/>>.

553 Charlie Hoyle, 'A deadly gun violence epidemic has gripped Palestinian communities. Is Israeli police neglect to blame?' (*The New Arab*, 18 October 2019) <<https://english.alaraby.co.uk/english/indepth/2019/10/18/deadly-gun-violence-epidemic-plagues-palestinian-communities-in-israel>>.

554 Odeh, 'How crime became a cover.'

555 Sudilovsky, 'No one cares.'

556 UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc CCPR/C/GC/36, 30 October 2018, para 6.

## 6.2 Denying Economic, Social, and Cultural Rights: The Example of the Right to Health

The Apartheid Convention prohibits any measures 'calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country,' including preventing the full development of a group by denying them basic human rights and freedoms.<sup>557</sup> Article II(c) of the Convention lists both violations of civil and political rights as well as violations of economic, social, and cultural rights. Notably, the word 'including' in Article II(c) makes clear that the provision does not provide an exhaustive list of human rights violations, which may amount to inhuman acts of apartheid. Thus, the Apartheid Convention potentially encompasses the denial of the full spectrum of human rights and fundamental freedoms as inhuman acts of apartheid, including the failure to ensure the full realisation of economic, social, and cultural rights.<sup>558</sup> Article 7(1)(k) of the Rome Statute, in turn, codifies '[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health' as a crime against humanity and as inhumane acts of apartheid within the meaning of Article 7(2)(h).

This part examines Israeli violations of the right to health to illustrate measures taken to prevent the full realisation of Palestinians' economic, social, and cultural rights. Indeed, under international human rights law, the right to health is recognised as encompassing the underlying determinants of health and well-being, such as the rights to adequate 'food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.'<sup>559</sup> Examination of the Israeli regime's violations of the right to health of Palestinians allows for consideration of structural violence<sup>560</sup> as it impacts the lives, health, and livelihoods of Palestinians, including socio-political factors precluding their full enjoyment in the context of apartheid.

<sup>557</sup> Article II(c), *Apartheid Convention*.

<sup>558</sup> Article 2(1), ICESCR.

<sup>559</sup> CESCR, General Comment No 14 (2000): The right to the highest attainable standard of health (Article 12 of the ICESCR), UN Doc E/C.12/2000/4, 11 August 2000, para 4.

<sup>560</sup> David Mills *et al*, 'Structural violence in the era of a new pandemic: the case of the Gaza Strip' (*The Lancet*, 27 March 2020), <<https://www.sciencedirect.com/science/article/pii/S0140673620307303#!>>



### 6.2.1 The Right to the Highest Attainable Standard of Health

ICERD prohibits racial discrimination in the enjoyment of '[t]he right to public health, medical care, social security and social services.'<sup>561</sup> The ICESCR further proscribes racial discrimination<sup>562</sup> in 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'<sup>563</sup> This requires Israel, as a state party,<sup>564</sup> to adopt measures aimed at reducing the stillbirth rate and infant mortality, provide for the healthy development of the child,<sup>565</sup> improve 'environmental and industrial hygiene,'<sup>566</sup> prevent, treat, and control epidemic and other diseases,<sup>567</sup> and create conditions 'which would assure to all medical service and medical attention in the event of sickness.'<sup>568</sup>

While Israel has obligations to respect, protect, and fulfil the right to health of Palestinians on both sides of the Green Line,<sup>569</sup> including under its military occupation,<sup>570</sup> the health status and health access of Palestinians differs significantly based on the rights accorded to them by the Israeli regime. Indeed, Palestinians on both sides of the Green Line experience health inequities resulting from discriminatory Israeli policies and practices in the provision of and access to healthcare. In 2019, CERD expressed concern '[a]bout the disproportionately poor health status of the Palestinian and Bedouin populations, including shorter life expectancy and higher rates of infant mortality compared to those of the Jewish population.'<sup>571</sup> The Committee went on to recommend that Israel, as state party, '[t]ake

561 Article 5(e)(iv), ICERD.

562 CESCR, General Comment No. 14 (2000) on Article 12, The right to the highest attainable standard of health, 11 August 2000, UN Doc E/C.12/2000/4, para 18.

563 Article 12(1), ICESCR.

564 Israel ratified the ICESCR on 3 October 1991, which entered into effect for it on 3 January 1992.

565 Article 12(2)(a), ICESCR.

566 Article 12(2)(b), ICESCR.

567 Article 12(2)(c), ICESCR.

568 Article 12(2)(d), ICESCR.

569 CESCR, Concluding observations on the fourth periodic report of Israel, 12 November 2019, UN Doc E/C.12/ISR/CO/4, paras 8-9.

570 Article 56, Fourth Geneva Convention.

571 CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc CERD/C/ISR/CO/17-19, para 38(c).

concrete measures to improve the health status of the Palestinian and Bedouin populations.<sup>572</sup> CERD was particularly concerned about the dire health situation in the occupied Gaza Strip. The Committee considered that ‘the blockade continues to violate the right to freedom of movement, access to basic services, especially to health care, and impedes the ability to access safe drinking water.’<sup>573</sup>

### **6.2.2 Health Apartheid: Israel’s Discriminatory Response to the Covid-19 Pandemic**

Israeli authorities systematically violate the right of Palestinians to health and accord various degrees of rights and privileges to Palestinians under its effective control. Such violations range from its discriminatory response to the ongoing Covid-19 pandemic, to the de-development and neglect of the Palestinian healthcare system in the occupied Palestinian territory, including in the eastern part of Jerusalem, the denial of access to healthcare particularly impacting Palestinians in the Gaza Strip, excessive use of force against Palestinians, including attacks on healthcare workers and facilities, and the denial of underlying determinants of Palestinian health under conditions of structural violence.<sup>574</sup> The Covid-19 pandemic exposed and further exacerbated these stark health inequities,<sup>575</sup> which form part of Israel’s apartheid regime.<sup>576</sup>

In March 2020, when the Covid-19 outbreak began, Israeli authorities initially failed to provide real-time updates and public health information in Arabic for Palestinian citizens and Jerusalem residents. Virtually all

572 *Ibid.*, para 39(c).

573 *Ibid.*, para 44.

574 See, for example, Osama Tanous, ‘A New Episode of Erasure in the Settler Colony’ (*Critical Times*, 9 April 2020) <<https://ctjournal.org/2020/04/09/a-new-episode-of-erasure-in-the-settler-colony/>>.

575 See, for example, Al-Haq ‘Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line’ (21 December 2019) <<https://www.alhaq.org/advocacy/16324.html>>.

576 See Al-Haq, *COVID-19 and the Right to Health of Palestinians under Israeli Occupation, Colonisation, and Apartheid* (8 December 2020) <<https://www.alhaq.org/publications/17621.html>>; see also Ramzy Baroud, ‘Covid-19 under Apartheid: How Israel manipulates suffering of Palestinians’ (*Middle East Monitor*, 12 January 2021) <<https://www.middleeastmonitor.com/20210112-covid-19-under-apartheid-how-israel-manipulates-suffering-of-palestinians/>>.

information issued by the Israeli Ministry of Health at the time was in Hebrew, creating barriers in access to essential information about the pandemic's spread.<sup>577</sup> In the weeks that followed, Israeli authorities failed to release accurate real-time data on the spread of Covid-19 within Palestinian communities inside the Green Line, who were absent(ed) from Israeli Ministry of Health maps.<sup>578</sup> The Israeli occupying authorities also failed to disaggregate data for infections in the eastern part of Jerusalem,<sup>579</sup> where the gap left in official data reporting required the establishment of an *ad hoc* Palestinian civil society alliance.<sup>580</sup> Overall, tracking Covid-19 infections among Palestinians was largely undermined by Israel's policy of political and legal fragmentation.<sup>581</sup>

Israeli authorities also initially showed reluctance to open drive-through testing centres in Palestinian communities. Within the Green Line, Palestinian villages and towns, which already suffer from poor infrastructure, faced delays in the opening of testing facilities, even while Israeli authorities established testing centres for the Jewish Israeli population.<sup>582</sup> At the time, the authorities also failed to allocate resources

577 See Adalah, Israel fails to provide real-time coronavirus updates in Arabic for Palestinian citizens (10 March 2020) <<https://www.adalah.org/en/content/view/9916>>; see also OHCHR, COVID-19: Israel has 'legal duty' to ensure that Palestinians in OPT receive essential health services – UN expert (19 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25728&LangID=E>>.

578 Osama Tanous wrote at the time, for example, 'The following maps taken from the website of the Israeli Ministry of Health show confirmed cases of COVID-19. Palestinian towns are almost completely absent from these maps with zero confirmed cases'; see Osama Tanous, 'A New Episode of Erasure in the Settler Colony.'

579 Al-Haq, JLAC, and MAP UK, *COVID-19 and the Systematic Neglect of Palestinians in East Jerusalem* (14 July 2020) 7-8 <<https://www.alhaq.org/publications/17118.html>>.

580 *Ibid.*, 6; see also Daoud Kuttab, 'Jerusalem alliance fills gap in coronavirus awareness' (*Al-Monitor*, 18 March 2020) <<https://www.al-monitor.com/pulse/originals/2020/03/jerusalem-alliance-confront-coronavirus-israel-palestinians.html>>.

581 Al-Haq, *COVID-19 and the Right to Health*, 4-5; see also Rania Muhareb and Rita Giacaman, 'Tracking COVID-19 responsibly' (*The Lancet*, 27 March 2020) <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30693-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30693-0/fulltext)>; Ali Abunimah, 'Johns Hopkins COVID-19 map faulted for erasing Palestinians' (*The Electronic Intifada*, 27 March 2020) <<https://electronicintifada.net/blogs/ali-abunimah/johns-hopkins-covid-19-map-faulted-erasing-palestinians>>.

582 Nihaya Daoud, 'The Reluctance to Test Israeli Arabs for COVID-19 Is a Ticking Time-bomb' (31 March 2020) <<https://www.haaretz.com/opinion/.premium-israel-pays-a-price-for-ignoring-the-arab-community-in-its-coronavirus-response-1.8729117>>.

for Covid-19 testing and emergency medical services for unrecognised Palestinian villages in the Naqab.<sup>583</sup> Similarly, there were delays in establishing Covid-19 testing centres in the eastern part of Jerusalem, which hampered preparedness efforts by an already over-burdened and under-resourced Palestinian hospital network.<sup>584</sup> Only about a month into the outbreak were testing centres finally opened by Israeli authorities in Palestinian communities inside the Green Line and in the eastern part of Jerusalem, demonstrating grave negligent conduct vis-à-vis Palestinians' health during the pandemic.<sup>585</sup>

As the pandemic continued to spread, the Israeli occupying authorities further undermined the health and dignity of Palestinian workers from the occupied Palestinian territory by continuing to exploit their labour under precarious conditions during lockdown.<sup>586</sup> Israeli occupying authorities failed to test and treat Palestinian workers prior to their return to the occupied Palestinian territory, while Palestinian workers who displayed symptoms were denied treatment in Israeli clinics.<sup>587</sup> This led to the stigmatisation and dehumanisation of Palestinian workers and their families, who made up most of the Covid-19 infections in the West Bank by May 2020.<sup>588</sup> Israeli occupying authorities even obstructed measures

583 See Adalah, Before disaster strikes: Adalah submits urgent Israeli Supreme Court petition demanding immediate access to coronavirus testing, bolstered ambulance services in Bedouin villages (14 April 2020) <<https://www.adalah.org/en/content/view/9948>>.

584 Al-Haq Israeli Apartheid Undermines Palestinian Right to Health Amidst COVID-19 Pandemic (7 April 2020) <<https://www.alhaq.org/advocacy/16692.html>>; Al-Haq, JLAC, and MAP UK, *COVID-19 and the Systematic Neglect*, 7.

585 Al-Haq, JLAC, and MAP UK, *COVID-19 and the Systematic Neglect*, 6-7.

586 Al-Haq *et al*, Joint Open Letter – Protection of Palestinian Workers During and After COVID-19 (5 May 2020) 2 <<https://www.alhaq.org/advocacy/16831.html>>; see also Al-Haq, Civil Society Groups Send Appeal to UN Special Procedures on the Rights and Dignity of Palestinian Workers in Israel during COVID-19 (15 April 2020) <<https://www.alhaq.org/advocacy/16733.html>>.

587 Al-Haq, Civil Society Groups Send Appeal to UN Special Procedures on the Rights and Dignity of Palestinian Workers in Israel during COVID-19 (15 April 2020) 3 <<https://www.alhaq.org/advocacy/16733.html>>; see also Suha Arraf, 'The moment a worker is sick, they throw him to the checkpoint like a dog' (+972 Magazine, 24 March 2020) <<https://www.972mag.com/checkpoint-palestinian-laborers-coronavirus/>>.

588 Al-Haq *et al*, Joint Open Letter – Protection of Palestinian Workers During and After COVID-19 (5 May 2020) 2 <<https://www.alhaq.org/advocacy/16831.html>>; see also Al-Haq, Civil Society Groups Send Appeal to UN Special Procedures on the Rights and Dignity of Palestinian Workers in Israel during COVID-19 (15 April 2020) <<https://www.alhaq.org/advocacy/16733.html>>.

taken by the Palestinian Authority to contain the spread of Covid-19 among Palestinian workers and their families by opening gates in the Annexation Wall and clipping passages through barbed fence for returning Palestinian workers, to circumvent Palestinian preparedness efforts.<sup>589</sup>

In Israeli prisons, the pandemic further exacerbated the vulnerabilities of Palestinian prisoners and detainees. Despite global calls by UN human rights experts for the release of those arbitrarily detained in the context of Covid-19,<sup>590</sup> including political prisoners<sup>591</sup> and human rights defenders,<sup>592</sup> the Israeli occupying authorities refused to do so. Meanwhile, the Israel Prison Service started releasing hundreds of ‘non-violent prisoners’ in March 2020 amid fears of a Covid-19 outbreak.<sup>593</sup> Those selected for release included prisoners serving lighter sentences and nearing the end of their prison time selected on the basis of age and health condition, but excluded Palestinian political prisoners.<sup>594</sup> As Al-Haq and Addameer stressed at the time, ‘[t]his decision lays bare Israel’s institutionalised regime of systematic racial domination and oppression over the Palestinian people.’<sup>595</sup> The Israeli occupying authorities also failed to adequately mitigate the spread of

589 Al-Haq, Civil Society Groups Send Appeal to UN Special Procedures on the Rights and Dignity of Palestinian Workers in Israel during COVID-19 (15 April 2020) 4 <<https://www.alhaq.org/advocacy/16733.html>>.

590 UN OHCHR, Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet (25 March 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>>.

591 UN OHCHR, Human rights experts call for immediate release of political prisoners and detainees in Yemen given risk of spread of COVID-19 (30 March 2020) <<https://ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25759&LangID=E>>.

592 See, for example, OHCHR, Citing COVID risk, Bachelet calls on Iran to release jailed human rights defenders (6 October 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26345&LangID=E>>.

593 The Jerusalem Post, ‘Israel releases 230 prisoners early to reduce crowding amid COVID-19 fears’ (29 March 2020) <<https://www.jpost.com/breaking-news/israel-releases-230-prisoners-early-to-reduce-crowding-amid-covid-19-fears-622844>>.

594 Al-Haq and Addameer, *Joint Urgent Appeal to the United Nations Special Procedures: Urgent Intervention Needed to Protect Palestinian Prisoners and Detainees in Israeli Prisons Amidst Concerns over COVID-19 Exposure* (1 April 2020) 3 <<https://www.alhaq.org/advocacy/16674.html>>.

595 *Ibid.*, 3.

Covid-19 in Israeli prisons,<sup>596</sup> including by continuing to arbitrarily detain Palestinians during the pandemic.<sup>597</sup> In July 2020, the Israeli Supreme Court ruled that Palestinian prisoners and detainees had no right to social distancing protection against Covid-19 in Israeli prisons.<sup>598</sup>

Critically, in early 2021, Israel's discriminatory Covid-19 vaccination campaign exposed Israeli 'medical apartheid' worldwide.<sup>599</sup> In violation of its obligations as the Occupying Power under Article 56 of the Fourth Geneva Convention, Israel refused to vaccinate millions of Palestinians in the occupied West Bank and Gaza Strip, even while it had vaccinated the most individuals per capita in the world by mid-January 2021.<sup>600</sup> The Israeli authorities vaccinated Israeli settlers illegally residing in the occupied West Bank as part of their overtly discriminatory vaccination programme, even while excluding millions of Palestinians under prolonged Israeli military occupation and illegal closure and blockade in the Gaza Strip from receiving vaccines.<sup>601</sup> The refusal to vaccinate Palestinians under

596 See Al-Haq, On Palestinian Prisoners' Day, Civil Society Calls for Urgent Release of Palestinian Prisoners and Detainees in Israeli Prisons (17 April 2020) <<https://www.alhaq.org/advocacy/16736.html>>.

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

598 Adalah, Israeli Supreme Court rules: Palestinian prisoners have no right to social distancing protection against COVID-19 (23 July 2020) <<https://www.adalah.org/en/content/view/10063>>.

599 See, for example, Democracy Now, "'Medical Apartheid': Israeli Vaccine Drive Excludes Millions of Palestinians in Occupied Territories' (5 January 2021) <[https://www.democracynow.org/2021/1/5/israel\\_vaccines\\_palestinian\\_territories\\_mustafa\\_barghouti](https://www.democracynow.org/2021/1/5/israel_vaccines_palestinian_territories_mustafa_barghouti)>; see also Amnesty International, Denying COVID-19 vaccines to Palestinians exposes Israel's institutionalized discrimination (6 January 2021) <<https://www.amnesty.org/en/latest/press-release/2021/01/denying-covid19-vaccines-to-palestinians-exposes-israels-institutionalized-discrimination/>>; Al-Haq, Racism and Institutionalised Discrimination in the Roll-Out of the COVID-19 Vaccine (18 January 2021) <<https://www.alhaq.org/advocacy/17767.html>>.

600 Times of Israel, 'Israel hits 2 million vaccinated with 1st dose; police to up closure enforcement' (14 January 2021) <<https://www.timesofisrael.com/israel-hits-2-million-vaccinated-with-1st-dose-police-to-up-closure-enforcement/>>.

601 See, for example, Guy Davies, 'Israel is leading the world in its vaccinations, but the program is not without controversy' (ABC News, 16 January 2021) <<https://abcnews.go.com/International/israel-leading-world-vaccinations-program-controversy/story?id=75253507>>; Mustafa Barghouthi, 'Israel's Vaccination Drive Is Going Great. But We're Being Sidelined' (The New York Times, 12 January 2021) <<https://www.nytimes.com/2021/01/12/opinion/israel-palestinians-vaccine-covid.html>>; Oliver Holmes and Hazem Balousha, 'Palestinians excluded from Israeli Covid vaccine rollout as jabs go to settlers' (The Guardian, 3 January 2021) <<https://www.theguardian.com/world/2021/jan/03/palestinians-excluded-from-israeli-covid-vaccine-rollout-as-jabs-go-to-settlers>>.

occupation,<sup>602</sup> coupled with obstruction of the Palestinian Authority's vaccination efforts,<sup>603</sup> violate Israel's obligations under international humanitarian law and international human rights law. Notably, the International Commission of Jurists found that '[t]o the extent that the lack of necessary COVID-19 vaccines has caused deaths among the Gaza population, or endangered their right to life, Israel's policies and practices have... breached article 6 of the ICCPR.'<sup>604</sup> By 26 October 2022, only 51.4 per cent have been fully vaccinated against Covid-19 in the occupied Palestinian territory according to the World Health Organization (WHO),<sup>605</sup> and as of 18 November 2022, there have been 5,708 Covid-19-related deaths in the occupied Palestinian territory.<sup>606</sup>

### **6.2.3 De-development, Fragmentation, and Discriminatory Healthcare Provision**

The Israeli authorities' discriminatory Covid-19 response falls within a broader policy to de-develop the Palestinian healthcare system and fragment the Palestinian people and the occupied Palestinian territory.<sup>607</sup> The prolonged Israeli occupation and illegal closure and blockade of the Gaza Strip, denial of sovereignty over natural resources,<sup>608</sup> movement and access restrictions, and further discriminatory measures have undermined the development of the Palestinian healthcare system and the functioning

602 Yara Hawari, 'The dark side of Israel's vaccine success story' (*Al Jazeera*, 11 January 2021) <<https://www.aljazeera.com/opinions/2021/1/11/the-dark-side-of-israels-vaccine-success-story>>.

603 Oliver Holmes, 'Israel blocked Covid vaccines from entering Gaza, say Palestinians' (*The Guardian*, 16 February 2021) <<https://www.theguardian.com/world/2021/feb/16/israel-blocked-covid-vaccines-from-entering-gaza-say-palestinians>>.

604 International Commission of Jurists, *Under Occupation: Unprotected and Unvaccinated Israel's Denial of Equitable Access to COVID19 Vaccines in the Occupied Palestinian Territory* (October 2021) 20 <<https://www.icj.org/wp-content/uploads/2021/10/Israel-COVID-19-Vaccines-Briefing-Paper-2021-ENG.pdf>>.

605 WHO, COVID-19 vaccination in the occupied Palestinian territory (26 October 2022) <<https://bit.ly/3AG6sod>>.

606 WHO, WHO Health Emergency Dashboard (18 November 2022) <<https://covid19.who.int/region/emro/country/ps>>.

607 See WHO, *Right to Health 2018* (October 2019) 16 <<https://www.emro.who.int/opt/news/who-launches-report-on-the-right-to-health-2018-october-2019.html>>.

608 Suha Jarrar, *Adaptation under Occupation: Climate Change Vulnerability in the Occupied Palestinian Territory* (Al-Haq, 2019) <<https://www.alhaq.org/publications/15261.html>>.

of its hospital networks, while fuelling unemployment, impoverishment, and entrenching Palestinian dispossession.<sup>609</sup> In the occupied Palestinian territory, ongoing Zionist settler colonial expansion and 15 years of illegal closure and blockade of the Gaza Strip have produced a captive Palestinian market and accelerated economic de-development.<sup>610</sup> The UN Conference on Trade and Development described ‘asymmetric economic relations [that] continue to reinforce the imposed Palestinian economic dependence on Israel.’<sup>611</sup> In 2019, before the Covid-19 pandemic, WHO concluded that ‘[t]he health system in the Palestinian territory occupied by Israel since 1967 is fragmented and fragile.’<sup>612</sup>

Palestinian hospitals suffer from a lack of specialised health services<sup>613</sup> and have faced decades of systematic neglect.<sup>614</sup> In the besieged Gaza Strip, the illegal Israeli blockade and closure and successive, brutal Israeli military escalations have directly targeted Palestinian health infrastructure and driven the Palestinian healthcare system to the brink of collapse.<sup>615</sup> The siege and de-development have resulted in long-term shortages and depletion of essential medicines.<sup>616</sup> According to UNRWA:

the health sector across the Gaza Strip lack[s] adequate physical infrastructure and training opportunities. Facilities are overstretched, and service is frequently interrupted by power cuts.

609 UNCTAD, *Report on UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory* (September 2017), UN Doc TD/B/64/4, pp 12-13 <[https://unctad.org/system/files/official-document/tdb64d4\\_embargoed\\_en.pdf](https://unctad.org/system/files/official-document/tdb64d4_embargoed_en.pdf)>.

610 UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: Cumulative Fiscal Costs* (2019) <[https://unctad.org/system/files/official-document/gdsapp2019d2\\_en.pdf](https://unctad.org/system/files/official-document/gdsapp2019d2_en.pdf)>; UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2020, UN Doc A/75/532, para 55; see also Mark Samander, *Captive Markets, Captive Lives / Palestinian Workers in Israeli Settlements* (Al-Haq, 2021) <<https://www.alhaq.org/publications/18265.html>>.

611 UNCTAD, *Report on UNCTAD Assistance to the Palestinian People*, 2.

612 WHO, *Right to Health in the occupied Palestinian territory 2018* (2019) 16 <[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)>.

613 *Ibid.*, 19.

614 Al-Haq, JLAC, and MAP UK, *COVID-19 and the Systematic Neglect*.

615 See, for example, Al-Haq, *Gaza Closure Enters its Tenth Year* (19 June 2017) <<https://www.alhaq.org/advocacy/6335.html>>.

616 WHO, *Right to Health in the occupied Palestinian territory 2018*, 25.

These challenges further threaten the health of the population, which is already at increasing risk. Food insecurity and rising poverty mean that most residents cannot meet their daily caloric requirements, while over 90 per cent of the water in Gaza has been deemed unfit for human consumption...

Across the Gaza Strip, psychological trauma, poverty and environmental degradation have had a negative impact on residents' physical and mental health; many, including children, suffer from anxiety, distress and depression.<sup>617</sup>

In the eastern part of Jerusalem, the Palestinian hospital network treating patients from the West Bank and Gaza Strip has faced chronic underfunding, which has undermined healthcare provision for Palestinians across the occupied Palestinian territory.<sup>618</sup> In Area C, which makes up about 60 per cent of the West Bank, Palestinians are largely prevented from building permanent structures and do not have a single permanent healthcare centre.<sup>619</sup> Some 35 per cent of 300,000 Palestinians in Area C of the West Bank 'depend on mobile clinics for access to essential primary health services.'<sup>620</sup> In 2018, six of these clinics were denied access to communities for a period of at least two weeks and Israeli occupying authorities confiscated one mobile clinic vehicle.<sup>621</sup> In March 2020, at the beginning of the Covid-19 outbreak, Israeli occupying authorities confiscated tents designated for a field clinic in Khirbet Ibziq, a Palestinian community in the northern Jordan Valley in Area C.<sup>622</sup> Similarly, a clinic set up to test Covid-19 in Silwan in the eastern part of Jerusalem was shut down, despite delays by the Israeli occupying authorities at the time to open Covid-19 testing

617 UNRWA, Health in the Gaza Strip <<https://www.unrwa.org/activity/health-gaza-strip>>.

618 Al-Haq, JLAC, and MAP UK, *COVID-19 and the Systematic Neglect*, 6-7 and 9.

619 MAP UK, New MAP briefing exposes how Israel's occupation obstructs the development of Palestinian healthcare (23 June 2017) <<https://www.map.org.uk/news/archive/post/685-new-map-briefing-exposes-how-israelas-occupation-obstructs-the-development-of-palestinian-healthcare>>.

620 WHO, *Right to Health in the occupied Palestinian territory 2018*, 23.

621 *Ibid.*, 66.

622 B'Tselem, During the Coronavirus crisis, Israel confiscates tents designated for clinic in the Northern West Bank (26 March 2020) <[https://www.btselem.org/press\\_release/20200326\\_israel\\_confiscates\\_clinic\\_tents\\_during\\_coronavirus\\_crisis](https://www.btselem.org/press_release/20200326_israel_confiscates_clinic_tents_during_coronavirus_crisis)>.

facilities for Palestinians in the city.<sup>623</sup>

In the rest of the West Bank, the Palestinian Authority's capacity for adequate healthcare provision has been hampered by the Israeli occupation. According to WHO, the Palestinian Ministry of Health spends more than a third of its expenditure on purchasing services from non-state providers, while the Palestinian health system faces a shortage of nurses and midwives and a scarcity of doctors for certain medical specialties.<sup>624</sup> In December 2020, Al-Haq concluded that geographical fragmentation, '[c]ompounded by physical closures, closed areas, zones with restricted access, bureaucratic barriers, and political oppression,' render provision and development of Palestinian healthcare 'virtually impossible.'<sup>625</sup> Overall, Palestinians in the occupied Palestinian territory continue to be denied the right to develop a functioning healthcare system under conditions of occupation, settler colonialism, and apartheid.<sup>626</sup>

#### **6.2.4 Denial of Access to Healthcare and Coercion of Patients**

As a result of Israeli de-development policies, the Palestinian healthcare system lacks specialised health services and faces shortages in essential medicines, creating a dependence on hospitals in Jerusalem, the rest of the West Bank, and inside the Green Line for medical treatment.<sup>627</sup> In the Gaza Strip, all Palestinians, including patients, their companions, and health workers require permits issued by the Israeli occupying authorities to leave the Strip, including to access healthcare.<sup>628</sup> In the West Bank, only Palestinian men over the age of 55, Palestinian women over 50, and children under 14 traveling with a permitted adult companion are exempted and can access Jerusalem and Israel without Israeli-issued permits.<sup>629</sup>

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623 Al-Haq, JLAC, and MAP UK, *COVID-19 and the Systematic Neglect*, 8.

624 WHO, *Right to Health in the occupied Palestinian territory 2018*, 8.

625 See Al-Haq, *COVID-19 and the Right to Health*, 9-10.

626 *Ibid.*, 7.

627 WHO, *Right to Health in the occupied Palestinian territory 2018*, 19.

628 *Ibid.*

629 *Ibid.*

The Israeli occupying authorities' discriminatory restrictions on access to healthcare in the occupied Palestinian territory illustrate an intention to punish the Palestinian civilian population, particularly in the Gaza Strip. As a general rule, Israeli occupying authorities prevent patients from travelling to receive medical treatment with the exception of some life-saving cases whose treatment is unavailable in Gaza.<sup>630</sup> In turn, the steep decline of Gaza's healthcare system and unavailability of specialised medical services have increased the need for patients to be referred for more advanced facilities in the West Bank, including in the eastern part of Jerusalem, inside the Green Line, and abroad.<sup>631</sup> Some 70 per cent of patients in the Gaza Strip required permits for treatment outside of the Gaza Strip in 2018<sup>632</sup> and in 2019.<sup>633</sup> The Israeli permit system arbitrarily and unlawfully preconditions Palestinian access to healthcare, contrary to the Israeli occupying authorities' obligation to realise the right to health without discrimination.<sup>634</sup>

Due to the illegal Israeli closure, between 2008 and 2021, 839 Palestinian patients died while waiting for a response to their permit applications to access treatment from the Israeli occupying authorities.<sup>635</sup> A survival analysis conducted by WHO found that Palestinian 'cancer patients initially denied or delayed permits to access chemotherapy and/or 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

630 PCHR, Treatment Denied: A Report on Israeli Policy of Denying Patients Treatment Abroad, Claiming Treatment is Available in the Gaza Strip or is only for 'Improving Quality of Life' and not for 'Life-Saving' (16 October 2019) <<https://www.pchrgaza.org/en/treatment-denied-a-report-on-israeli-policy-of-denying-patients-treatment-abroad-claiming-treatment-is-available-in-the-gaza-strip-or-is-only-for-improving-quality-of-life-and-not-for-life-saving/>>.

631 UN OCHA, Recent trends in Palestinian access from Gaza: Erez and Rafah crossings (8 October 2018) <<https://www.ochaopt.org/content/recent-trends-palestinian-access-gaza-erez-and-rafa-crossings>>.

632 WHO, *Right to Health in the occupied Palestinian territory 2018*, 35.

633 Al-Haq, PCHR, Al Mezan, and CIHRS, *Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip* (26 June 2020) 2-3 <[https://www.alhaq.org/cached\\_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf)>.

634 *Ibid.*, 2.

635 WHO, *15 Years of Gaza Blockade and Barriers to Health Access* (2022) <<https://www.emro.who.int/images/stories/palestine/documents/15-Years-Gaza-Blockade-Factsheet.pdf?ua=1>>.

permits.<sup>636</sup> Moreover, between 2018 and 2021, 43 per cent of Palestinian children accessing healthcare outside of the Gaza Strip were forced to travel without their parents.<sup>637</sup> CESCR expressed its concern about the:

significant increase in the number of requests for permits that have been refused or delayed [by the Israeli occupying authorities], with devastating consequences, including the death of patients waiting for permits and the carrying out of critical medical procedures on children without their parents at their side.<sup>638</sup>

Accordingly, in November 2019, CESCR called on the Israeli occupying authorities to:

- a. Facilitate the entry of essential medical equipment and supplies and the movement of medical professionals from and to Gaza;
- b. Review the medical exit-permit system with a view to making it easier for residents of Gaza to access, in a timely manner, all medically recommended health-care services;
- c. Ensure that all children referred for medical treatment outside Gaza can be accompanied by at least one parent.<sup>639</sup>

In March 2019, the UN Commission of Inquiry on the Great March of Return called on Israel, the Occupying Power, to lift its closure and blockade of the Gaza Strip with immediate effect.<sup>640</sup> WHO and Health Cluster partners in the occupied Palestinian territory similarly called for 'an immediate end

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<sup>636</sup> WHO, *Right to Health in the occupied Palestinian territory 2018*, 35; see also Ben Bouquet et al, 'Comparative survival of cancer patients requiring Israeli permits to exit the Gaza Strip for health care: A retrospective cohort study from 2008 to 2017' (2021) 16(6) PLoS one <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0251058>>.

<sup>637</sup> WHO, *15 Years of Gaza Blockade and Barriers to Health Access*.

<sup>638</sup> CESCR, Concluding Observations on the Fourth Periodic Report of Israel, UN Doc E/C.12 ISR/CO/4, 12 November 2019, para 58.

<sup>639</sup> *Ibid.*, para 59.

<sup>640</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, UN Doc A/HRC/40/CRP.2, para 797, p 226.



to the blockade of the Gaza Strip' in 2022.<sup>641</sup> In its consideration of the 'root causes' of systematic discrimination in Palestine, the ongoing UN Commission of Inquiry has considered that:

The continuing occupation... the 15-year blockade of Gaza and longstanding discrimination within Israel are all intrinsically linked, and cannot be looked at in isolation. The conflict and the occupation must be considered in their full context.<sup>642</sup>

An additional practice compounding the denial of access to healthcare for Palestinians from the Gaza Strip has been the Israeli occupying authorities' attempt to coerce Palestinian patients and their companions to collaborate with them as a prerequisite for permit processing.<sup>643</sup> In November 2015, the Israeli occupying authorities imposed more severe restrictions on permit processing for patient companions from the Gaza Strip—not only for those under the age of 35 as was the case until then—but for all male companions aged 16 to 55 and female companions aged 16 to 45.<sup>644</sup> Under this policy, the Israeli occupying authorities deny Palestinian patients the right to access healthcare outside of Gaza under the guise of 'security.' Between January 2008 and May 2022, WHO recorded 3,815 cases of Palestinian patients who were summoned for Israeli 'security' interrogations as a prerequisite for receiving permits for treatment outside of the Gaza Strip.<sup>645</sup> An additional 1,075 patient companions were similarly summoned for interrogations as preconditions to receiving permits.<sup>646</sup>

641 WHO, *15 Years of Blockade and Health in Gaza* (July 2022) 2 <[https://www.emro.who.int/images/stories/palestine/documents/15\\_years\\_of\\_blockade\\_and\\_health\\_in-gaza.pdf?ua=1](https://www.emro.who.int/images/stories/palestine/documents/15_years_of_blockade_and_health_in-gaza.pdf?ua=1)>.

642 UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/HRC/50/21, 9 May 2022, para 72.

643 Al-Haq, PCHR, Al Mezan, and CIHRS, *Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip* (26 June 2020) 12 <[https://www.alhaq.org/cached\\_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf)>; see also Al-Haq, Al-Haq Statement on World Health Day (7 April 2017) <<https://www.alhaq.org/advocacy/6342.html>>.

644 WHO, *Right to Health in the occupied Palestinian territory 2018*, 37.

645 WHO, *15 Years of Gaza Blockade and Barriers to Health Access*.

646 *Ibid.*

Palestinian human rights organisations have documented countless cases where Palestinian patients and their companions have been called in for interrogation at Beit Hanoun (Erez) checkpoint in the northern Gaza Strip, with Israeli intelligence officers attempting to coerce patients into collaborating in exchange for accessing healthcare. In October 2016, in an emblematic case documented by Al-Haq, 17-year-old Palestinian patient, Ahmad Hassan Shubeir, who was born with congenital heart disease and had been receiving treatment in hospitals outside of the Gaza Strip since birth, was summoned for Israeli interrogation at Beit Hanoun (Erez) checkpoint as a precondition for receiving a permit. Ahmad was strip-searched and all his medicines were confiscated during an interrogation that lasted seven hours. An Israeli intelligence officer told him: '[w]e 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.' Refusing to collaborate with the Israeli occupying authorities, Ahmad died on 14 January 2017, denied the right to access lifesaving treatment.<sup>647</sup>

In November 2020, during the Covid-19 pandemic, ten patients from the Gaza Strip were required to undergo interrogation as a prerequisite to permit processing.<sup>648</sup> This repressive policy may amount to cruel and inhuman treatment of Palestinian patients and their companions<sup>649</sup> and is emblematic of the Israeli authorities' systematic disregard for Palestinian health, dignity, and life under its effective control.

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647 Al-Haq, Al-Haq Statement on World Health Day (7 April 2017) <<https://www.alhaq.org/advocacy/6342.html>>; see also Al-Haq, Gaza Closure Enters its Tenth Year (19 June 2017) 8 <<https://www.alhaq.org/advocacy/6335.html>>; Al-Haq, PCHR, Al Mezan, and CIHRS, *Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip* (26 June 2020) 12 <[https://www.alhaq.org/cached\\_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf)>.

648 WHO, *Health Access: Barriers for patients in the occupied Palestinian territory*, *Monthly Report* (November 2020) 3 <[http://www.emro.who.int/images/stories/palestine/documents/WHO\\_Nov\\_2020\\_Monthly\\_Report.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/WHO_Nov_2020_Monthly_Report.pdf?ua=1)>.

649 Article 7, ICCPR.

### 6.2.5 Attacks on Healthcare

The Israeli occupying authorities have also carried out deliberate attacks on Palestinian healthcare, including the killing and injury of Palestinian healthcare workers; raids and assaults on Palestinian hospitals; obstruction of ambulance access; and denying medical assistance to Palestinians injured by Israeli forces and settlers. During the Covid-19 pandemic, Al-Haq documented Israeli attacks on three Palestinian hospitals in Gaza, Tulkarm, and Ramallah between December 2020 and January 2021.<sup>650</sup> These attacks on healthcare, in violation of Israel's obligations as Occupying Power<sup>651</sup> and under international human rights law,<sup>652</sup> put the lives of healthcare workers and patients at risk.<sup>653</sup> Such incidents are not unprecedented. WHO found that Israeli occupying authorities carried out:

[Sixty-eight] attacks on health care in the West Bank in 2019, with 33 of these involving physical attacks against health staff or facilities, 36 involving obstructions to access and two incidents of incursion into Palestinian hospitals. There were nine incidents recorded of obstruction of medical teams to accessing to provide medical assistance to 11 Palestinians who had been fatally wounded.<sup>654</sup>

In May 2021, two senior Palestinian doctors, Dr Ayman Tawfik Abu Al-Ouf, 50, head of internal medicine at Al-Shifa hospital, and Dr Mo'een Ahmad Al-'Aloul, 67, a psychiatric neurologist, were killed by the Israeli occupying forces in airstrikes on the Gaza Strip.<sup>655</sup> Between 12 April and 28 May 2022, WHO recorded damage to 38 health facilities in the Gaza Strip from Israeli military bombardment, including ten hospitals and 25 clinics as well as the

<sup>650</sup> Al-Haq, Special Focus: Amidst a Global Pandemic, IOF Continue to Attack Palestinian Hospitals, Disregarding the Legal Obligations of the Occupying Power (17 January 2021) <<https://www.alhaq.org/advocacy/17779.html>>.

<sup>651</sup> Article 27, Hague Regulations; Article 18, Fourth Geneva Convention.

<sup>652</sup> Article 12(1), ICESCR.

<sup>653</sup> Al-Haq, Special Focus: Amidst a Global Pandemic.

<sup>654</sup> WHO, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, Report by the Director-General* (5 November 2020) UN Doc A73/15, para 37.

<sup>655</sup> Joseph Stepansky, “Huge loss”: Experienced Gaza doctors killed in Israeli attacks’ (Al Jazeera, 17 May 2021) <<https://www.aljazeera.com/news/2021/5/17/holdshockformedical-system-as-israeli-strikes-kill-gaza-doctors>>.

injury of two healthcare workers.<sup>656</sup> Since 2018, WHO has recorded 645 attacks on healthcare in the Gaza Strip by the Israeli occupying forces.<sup>657</sup>

In addition to direct attacks on healthcare, injured Palestinians are systematically denied access to medical care by the Israeli occupying forces.<sup>658</sup> Such denial of medical assistance forms part of Israel's shoot-to-killed policy targeting Palestinians.<sup>659</sup> In 2019, Al-Haq documented 114 cases where Israeli soldiers failed to provide medical assistance or first aid to Palestinians injured by Israeli fire.<sup>660</sup> On 30 May 2020, the Israeli occupying forces killed Iyad Khayri Al-Hallaq, 31, in the eastern part of Jerusalem, while he was on his way to a day centre for youth and adults with disability in the Old City. Iyad was shot with live fire by Israeli border police from a distance not exceeding five metres and was denied access to medical care until some 20 minutes after he had been critically injured.<sup>661</sup> On 23 June 2020, Israeli occupying forces killed Ahmad Mustafa Erekat, 26, at a West Bank checkpoint. Ahmad was shot and left to bleed to death for an hour and a half, despite the presence of an Israeli ambulance at the scene.<sup>662</sup>

As part of its shoot-to-kill policy against Palestinians, the Israeli occupying forces have also employed lethal and other excessive force against healthcare workers. During the Great March of Return in the Gaza Strip between 30 March 2018 and the end of 2019, Israeli snipers extrajudicially

<sup>656</sup> Al-Haq, Special Focus: Al-Haq Condemns Israel's Targeting of Health Facilities and Workers in the Gaza Strip (2 June 2021) <<https://www.alhaq.org/advocacy/18465.html#:~:text=On%2011%20May%202021%2C%20the,center%20to%20stop%20services%20completely.>>.

<sup>657</sup> WHO, *15 Years of Blockade and Health in Gaza*, 1.

<sup>658</sup> Al-Haq *et al.*, *Joint Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Ahmad Erekat by the Israeli Occupying Forces on 23 June 2020* (13 July 2020) 10 <[https://www.alhaq.org/cached\\_uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf](https://www.alhaq.org/cached_uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf)>.

<sup>659</sup> *Ibid.*, 11.

<sup>660</sup> *Ibid.*

<sup>661</sup> Al-Haq, *Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq by the Israeli Occupying Forces on 30 May 2020 in East Jerusalem* (8 June 2020) <[https://www.alhaq.org/cached\\_uploads/download/2020/06/09/200608-urgent-appeal-to-the-un-special-procedures-on-the-killing-of-iyad-al-hallaq-final-1591703351.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/09/200608-urgent-appeal-to-the-un-special-procedures-on-the-killing-of-iyad-al-hallaq-final-1591703351.pdf)>.

<sup>662</sup> Al-Haq *et al.*, *Joint Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Ahmad Erekat*, 1.

executed four Palestinian healthcare workers. By December 2019, WHO had recorded 565 attacks by the Israeli occupying forces on healthcare during the demonstrations. In addition, WHO found that 844 healthcare workers had been injured, 118 ambulances had sustained damage, as well as ten other forms of health transport, six health facilities, and one hospital.<sup>663</sup> The UN Commission of Inquiry on the demonstrations found that Palestinian healthcare workers killed during the Great March of Return were clearly marked as such and posed no imminent threat to Israeli soldiers at the time.<sup>664</sup>

### 6.2.6 Denial of Underlying Determinants

International human rights law recognises that the right to health is not limited to the right to receive medical care but encompasses ‘a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health.’<sup>665</sup> Similarly, WHO considers that ‘conditions in which people live and work can help to create or destroy their health.’<sup>666</sup> Zionist settler colonialism, ongoing *Nakba* and displacement, prolonged occupation, and blockade have deprived the Palestinian people of the progressive realisation and full enjoyment of their economic, social, and cultural rights,<sup>667</sup> including their right to health and to an adequate standard of living, which includes the

663 WHO, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, Report by the Director-General* (5 November 2020) UN Doc A73/15, para 31 <[https://apps.who.int/gb/ebwha/pdf\\_files/WHA73/A73\\_15-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_15-en.pdf)>; see also WHO, Attacks on health care during the Gaza Great March of Return (March 2018 to December 2019) <<https://www.un.org/unispal/document/attacks-on-health-care-during-the-gaza-great-march-of-return-march-2018-to-dec-2019-who-infographic/>>.

664 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, UN Doc A/HRC/40/CRP.2, paras 523-524 and 526, pp 151-152 and 154.

665 CESCR, General Comment No. 14 (2000) on Article 12, The right to the highest attainable standard of health, 11 August 2000, UN Doc E/C.12/2000/4, para 4.

666 WHO, Commission on Social Determinants of Health Brochure, UN Doc Ref WHO/EIP/EQH/01/2006, 3 <[https://www.who.int/social\\_determinants/resources/csdh\\_brochure.pdf?ua=1](https://www.who.int/social_determinants/resources/csdh_brochure.pdf?ua=1)>.

667 Al-Haq, *Al-Haq's Follow-Up Written Responses to the United Nations Committee on Economic, Social and Cultural Rights for Israel's Fourth Periodic Review* (8 October 2019) 14 <[https://www.alhaq.org/cached\\_uploads/download/2019/10/09/al-haq-cescr-written-responses-8-october-2019-final-1570617455.pdf](https://www.alhaq.org/cached_uploads/download/2019/10/09/al-haq-cescr-written-responses-8-october-2019-final-1570617455.pdf)>.

corresponding state obligation to ensure ‘the continuous improvement of living conditions.’<sup>668</sup> In its March 2019 findings, the UN Commission of Inquiry on the Great March of Return concluded that:

The right to life includes the right to a life with dignity... the ongoing blockade of Gaza and its impact on the health-care system in Gaza, and the ensuing deprivation of essential goods and services necessary for a dignified life, including basic medical supplies, safe drinking water, electricity and sanitation, constitute violations of the fundamental rights to life and health.<sup>669</sup>

The Israeli regime’s strategic fragmentation of the Palestinian people and of historic Palestine has detrimentally impacted the enjoyment by Palestinians under its effective control of their right to the highest attainable standard of health.<sup>670</sup> This includes ensuring the underlying determinants necessary for the enjoyment of health, well-being, and human dignity.<sup>671</sup> To ensure Palestinians’ full enjoyment of economic, social, and cultural rights, structural interventions are necessary to end Israeli oppression of Palestinians.<sup>672</sup>

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<sup>668</sup> Article 11(1), ICESCR.

<sup>669</sup> See, for example, 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, UN Doc A/HRC/40/CRP.2, para 701, pp 200-201.

<sup>670</sup> Article 12(1), ICESCR.

<sup>671</sup> CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc CERD/C ISR/CO/17-19, para 38(c).

<sup>672</sup> Al-Haq, *COVID-19 and the Right to Health of Palestinians under Israeli Occupation, Colonisation, and Apartheid*, 13, 25.



### 6.3 Arbitrary Detention and Illegal Imprisonment

'[A]rbitrary arrest and illegal imprisonment of the members of a racial group or groups' constitutes an inhuman act of apartheid under Article II(a)(iii) of the Apartheid Convention. The Rome Statute lists '[i]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law' as a crime against humanity under Article 7(1)(e), also constituting an inhuman act of apartheid. With reference to the detention of Palestinians by the Israeli occupying forces, the UN Working Group on Arbitrary Detention (WGAD) has considered detention to be arbitrary in cases when: (i) 'it is clearly impossible to invoke any legal basis justifying the deprivation of liberty;' (ii) it is based on the exercise of fundamental rights and freedoms; (iii) the violation of fair trial rights 'is of such gravity as to give the deprivation of liberty an arbitrary character;' and (iv) when it is based on prohibited grounds of discrimination.<sup>673</sup> As this part discusses, these four instances apply to the Israeli regime's arbitrary detention and imprisonment policies targeting the Palestinian people.

The Israeli regime has consistently resorted to widespread arbitrary detention of Palestinians both as a measure of collective punishment and to silence, intimidate, and undermine any resistance to its apartheid regime. An estimated 13,000 Palestinian children have been arrested by the Israeli occupying forces in the West Bank since 2000, and some 500 to 700 Palestinian children are prosecuted in Israeli military courts each year.<sup>674</sup> As of October 2022, the Israeli regime continues to detain around 4,700 Palestinian political prisoners and detainees across 17 prisons, four interrogation centres, and four detention centres.<sup>675</sup> Palestinian political prisoners detained in Israeli prisons include nine members of the Palestinian Legislative Council, 190 Palestinian children, and 30 women. Children as young as 14 have been placed under administrative detention by the Israeli occupying authorities and serve out their detention in the same facilities

<sup>673</sup> WGAD, Opinion No 8/2021 concerning Layan Kayed, Elyaa Abu Hijla and Ruba Asi (Israel), UN Doc A/HRC/WGAD/2021/8, 7 June 2021, para 3.

<sup>674</sup> DCI-Palestine, Factsheet: Palestinian Child Detainees (12 January 2022) <[https://nwttac.dci-palestine.org/statistics\\_and\\_talking\\_points\\_palestinian\\_children\\_in\\_israeli\\_military\\_detention](https://nwttac.dci-palestine.org/statistics_and_talking_points_palestinian_children_in_israeli_military_detention)>.

<sup>675</sup> Addameer, Statistics (18 November 2022) <<http://www.addameer.org/statistics>>.

as adults.<sup>676</sup> Currently, 820 Palestinian administrative detainees, including four children and three women continue to be detained indefinitely in Israeli prisons without charge or trial.<sup>677</sup> Former UN Special Rapporteur on Palestine, Michael Lynk, observed in 2020 that:

Administrative detention... allows a state to arrest and detain a person without charges, without a trial, without knowing the evidence against her or him, and without a fair judicial review... It is a penal system that is ripe for abuse and maltreatment.<sup>678</sup>

Already in its 2012 concluding observations on Israel's report, CERD had raised concerns about the widespread use of administrative detention, in particular against Palestinian children, and the use of 'secret evidence' in Israeli military courts. The Committee recommended that the Israeli regime 'ensure equal access to justice for all persons residing in territories under [its] effective control' and urged Israel 'to end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law.'<sup>679</sup>

The frequency of the use of administrative detention as a method of subjugation, intimidation, and control by the Israeli regime has fluctuated over the years. Since 1948, the Israeli regime has relied on arbitrary detention and imprisonment of Palestinians, notably of political leaders,<sup>680</sup> but also of activists, human rights defenders, and others as collective punishment.<sup>681</sup> Indefinite administrative detention without charge or trial is one of the many aspects of the discriminatory Israeli judicial system. Since the start of 2022, over 6,000 Palestinians have been detained by Israeli forces, according to

<sup>676</sup> *Ibid.*

<sup>677</sup> *Ibid.*

<sup>678</sup> UN OHCHR, UN expert calls for Israel to end practice of administrative detention and immediately release Maher Al-Akhras (23 October 2020) <<https://www.ohchr.org/en/press-releases/2020/10/un-expert-calls-israel-end-practice-administrative-detention-and-immediately>>.

<sup>679</sup> CERD, Concluding Observations on the Fourteenth to Sixteenth Periodic Reports of Israel, UN Doc CERD 4 /C/ ISR /CO/116, 9 March 2012, para 27.

<sup>680</sup> See, for example, John Quigley, 'Apartheid Outside Africa: The Case of Israel' (1991) 2(1) Indiana International and Comparative Law Review 221, 241.

<sup>681</sup> See, e.g., Muhareb, Rghebi, Power, and Clancy, *Persecution of Palestinian Civil Society*, 13 and 27; see also Uri Davis, *Israel: An Apartheid State* (Zed Books, 1987) 67.



the Palestinian Prisoners' Club, with 1,829 administrative detention orders issued since the start of the year. The majority of detentions targeted Palestinians in Jerusalem, with 2,700 detained as of early November 2022.<sup>682</sup> Israeli authorities' use of administrative detention has become a key tool to silence Palestinians and to undermine any challenge to Israel's apartheid regime. The Israeli regime continues to detain over 800 administrative detainees indefinitely without charge or trial based on 'secret evidence.'<sup>683</sup>

The Israeli regime has continued to escalate its policy of arbitrary detention of Palestinians on both sides of the Green Line. In May 2021, Israeli police launched 'Operation Law and Order' targeting Palestinian citizens, as a form of collective punishment for their participation in the Unity *Intifada*.<sup>684</sup> This 'operation' led to mass arrests of Palestinian citizens in order to 'penalise those who have taken part in demonstrations against settler violence, the Israeli forces' crackdown on the Al-Aqsa Mosque compound, and the military's 11-day bombardment campaign of Gaza,' to entrench fragmentation and undermine Palestinian unity.<sup>685</sup> In March 2022, to undermine Palestinian resistance in the West Bank, the Israeli occupying forces launched 'Operation Break the Wave' as part of which the Israeli military stated it has arrested over 1,500 Palestinians.<sup>686</sup> Within the understanding of WGAD, these 'operations' are intended to undermine the exercise by the Palestinian people of their fundamental rights and freedoms, with this exercise often forming the basis for arbitrary detentions in the first place. Thus, arbitrary detention and imprisonment are deployed to maintain Palestinian oppression and to undermine any effort at challenging the Israeli regime.

682 Middle East Monitor, 'Report: Israel detained 6,000 Palestinians so far in 2022' (*Middle East Monitor*, 9 November 2022) <<https://www.middleeastmonitor.com/20221109-report-israel-detained-6000-palestinians-so-far-in-2022/>>.

683 Addameer, Statistics (10 October 2022) <<http://www.addameer.org/statistics>>.

684 Mariam Barghouti and Yumna Patel, 'What is happening in the West Bank right now: a full breakdown' (*Mondoweiss*, 17 October 2022) <<https://mondoweiss.net/2022/10/what-is-happening-in-the-west-bank-right-now-a-full-breakdown/>>.

685 Farah Najjar, 'A war declaration': Palestinians in Israel decry mass arrests' (*Al Jazeera*, 24 May 2021) <<https://www.aljazeera.com/news/2021/5/24/a-war-declaration-palestinians-in-israel-decrys-mass-arrests>>.

686 Barghouti and Patel, 'What is happening in the West Bank right now.'

The Israeli regime's imprisonment policy is marred with gross violations of Palestinians' rights to a fair trial. Notably, the Israeli Military Commander exercises judicial, legislative, and executive functions. Palestinians may be denied access to a lawyer for up to 60 days in the Israeli military court system as well as to interpreters and are subjected to a near-99 per cent conviction rate within military courts.<sup>687</sup> In its November 2022 submission to the UN Special Rapporteur on Palestine, Francesca Albanese, Addameer highlighted the racially discriminatory nature of the Israeli judicial system, contrary to Articles 9 and 14(1) of the ICCPR and Article 3 of ICERD.<sup>688</sup> Notably, with reference to Israeli Military Order 1651, which 'authorises' administrative detention in the occupied West Bank, WGAD has found that this practice 'is particularly directed against Palestinians.'<sup>689</sup>

In 2011, Sahar Francis, General Director of Addameer, analysed the Israeli policy of deprivation of liberty as an inhuman act of apartheid, concluding that:

Israel's arrest and detention of Palestinians in the [occupied Palestinian territory] and within Israel proper is governed by a regime of laws and institutions almost completely separate from the one administering the arrest of Jewish Israelis. Because this system enables the large-scale arbitrary arrest of Palestinians while generally affording them lower protections and guarantees than Jewish Israelis, it should be understood as a discriminatory institutional tool of domination and oppression against them.<sup>690</sup>

Thus, Israeli authorities commit the inhuman(e) act of arbitrary detention and imprisonment against the Palestinian people, with the intention of maintaining the regime.

<sup>687</sup> Addameer, *Illegal and Arbitrary: The Deprivation of Liberty of Palestinians in Occupied Territories* (10 November 2022) 3-5 <<https://www.addameer.org/news/4928>>.

<sup>688</sup> *Ibid.*, 5-6, 8, 15-16.

<sup>689</sup> *Ibid.* WGAD, Opinion No 31/2017 concerning Omar Nazzal (Israel), UN Doc A/HRC/WGAD/2017/31, 25 July 2017, para 35; see also International Human Rights Clinic at Harvard Law School and Addameer, *Apartheid in the Occupied West Bank: A Legal Analysis of Israel's Actions* (28 February 2022) 15 <<http://hrp.law.harvard.edu/wp-content/uploads/2022/03/IHRC-Addameer-Submission-to-HRC-COI-Apartheid-in-WB.pdf>>.

<sup>690</sup> Sahar Francis, 'Denial of the right to life and liberty of person as an act of apartheid' (2011) 47 al-Majdal 20, 21.

## 6.4 Torture and Other Ill-Treatment

The infliction of ‘serious bodily or mental harm... by subjecting [persons] to torture or to cruel, inhuman or degrading treatment or punishment’ is an inhuman(e) act of apartheid under Article II(a)(ii) of the Apartheid Convention and Article 7(1)(f) of the Rome Statute. The Israeli judicial system has repeatedly sanctioned the use of physical and psychological torture and other forms of ill-treatment as ‘interrogation’ techniques that are systematically used against Palestinians.

Israeli authorities have resorted to systematic torture and ill-treatment against Palestinian detainees in violation of the absolute and non-derogable prohibition of torture.<sup>691</sup> Affidavits and documented cases gathered by various human rights organisations, including Addameer, have shown that the Israeli occupying authorities use torture as a core technique in extracting statements from Palestinian detainees, in violation of their rights to bodily integrity, physical safety, and dignity, doing so with legal cover provided by the Israeli courts.<sup>692</sup> In 2016, the UN Committee against Torture, in its concluding observations on Israel, expressed its concerns regarding:

allegations of torture and other cruel, inhuman or degrading treatment or punishment of persons deprived of liberty, including minors. According to these allegations, torture and ill-treatment are mostly perpetrated by law enforcement and security officials, mainly from the Israel Security Agency, the police and the Israeli [military], particularly during arrest, transfer and interrogation. In addition, the Committee remains concerned at allegations that Israel Security Agency interrogators continue to resort to interrogation methods that are contrary to the Convention, such as stress positions and sleep deprivation.<sup>693</sup>

Torture techniques, including physical pressure and methods of psychological torture, have been used since the beginning of the Israeli

691 See, notably, International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 90, Torture and Cruel, Inhuman or Degrading Treatment <[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule90](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90)>; see also Article 32, Fourth Geneva Convention; Article 7, ICCPR; Article 2(1), CAT.

692 See International Human Rights Clinic, Harvard Law School, and Addameer, *Apartheid in the Occupied West Bank*, 18-19; Ardi Imseis, ‘Moderate Torture on Trial: Critical Reflections on the Israeli Supreme Court Judgement concerning the Legality of General Security Service Interrogation Methods’ (2001) 19(2) Berkeley Journal of International Law 328.

693 UN Committee against Torture, Concluding observations on the fifth periodic report of Israel, UN Doc CAT/C ISR/CO/5, 3 June 2016, para 30.

occupation and have become standard operating procedure.<sup>694</sup> 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, and threats of harming family members. Moreover, Addameer's documentation indicates that Israeli occupying authorities continue to develop new methods of psychological torture that are used in conjunction with physical torture.<sup>695</sup>

According to Defense 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.<sup>696</sup> Another Israeli technique is the use of informants to extract information from detainees by misleading, luring, or threatening them. Informants exert psychological pressure by threatening detainees and their family members with physical violence or harm.<sup>697</sup> As Addameer has found, torture has been committed by the Israeli authorities since 1948. In the most extreme cases, Palestinian detainees have died in Israeli detention as a result.<sup>698</sup> Finally, Addameer has highlighted:

The [Israeli] judicial and medical systems contribute in concealing crimes of torture by often refraining from documenting the torture Palestinian detainees endure, extending the detention of detainees for the purpose of interrogation in a complete disregard of markings of torture littering their bodies, as well as perpetually certifying that detainees are medically fit to withstand interrogation despite their pains and suffering.<sup>699</sup>

694 Yara Hawari, 'The Systematic Torture of Palestinians in Israeli Detention' (*Al Shabaka*, 28 November 2019)<<https://al-shabaka.org/briefs/the-systematic-torture-of-palestinians-in-israeli-detention/>>.

695 Addameer, *Cell 26: A Study on the Use of Torture against Palestinian Prisoners in Israeli Interrogation Center* (13 June 2022)<<https://www.addameer.org/media/4821>>.

696 DCI-Palestine, *Youth Conviction: Palestinian Children Describe Solitary Confinement in Israeli Military Prisons* (20 December 2014)<[https://www.dci-palestine.org/bound\\_bifolded\\_and\\_convicted](https://www.dci-palestine.org/bound_bifolded_and_convicted)>.

697 CERD Report, para 128; Addameer, *Cell No. 26*, 40-41.

698 CERD Report, para 128; Addameer, *Cell No. 26*, 48, 127.

699 Addameer, *Cell No. 26*, 48, 127; Derek Summerfield, 'The campaign about doctors and torture in Israel five years on' (2014) 349 *The BMJ* <<https://www.bmjjournals.com/content/349/bmj.g4386>>; see also Sharmila Devi, 'Israeli doctors accused of collusion in torture' (2013) 381(9869) *The Lancet* <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)60612-1/fulltext#%20](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)60612-1/fulltext#%20)>.



## 6.5 Collective Punishment

Collective punishment has been a staple of Israel's apartheid regime and prolonged 55-year military occupation, in a continuation of the colonial tactics of the British mandate. Collective punishment, that is the punishment of an individual for 'an offence he or she has not personally committed,' is expressly prohibited under international humanitarian law as set out in Article 33 of the Fourth Geneva Convention.<sup>700</sup> Israeli authorities utilise a range of such policies and practices to collectively punish the Palestinian people, with damaging effects on Palestinian families and communities.

In the occupied West Bank, including the eastern part of Jerusalem, Israeli occupying authorities carry out home demolitions and sealings of homes to collectively punish Palestinians. Such demolitions and sealings are carried out with reference to the sweeping permissions provided for under Regulation 119 of the 1945 Defence (Emergency) Regulations inherited from the British mandate system. Under this regulation, the Military Commander may forfeit, seal off, or destroy the property of individuals whom he suspects of having allegedly committed acts of violence against the state; this practice has also been directed against the family members of those accused of carrying out alleged attacks, as well as their immediate neighbours.<sup>701</sup> Punitive house demolitions and the threat thereof serve to punish entire Palestinian families and communities based wholly on allegations from the Israeli authorities.

A particularly disturbing form of collective punishment used by the Israeli occupying authorities is that of withholding the bodies of Palestinians killed by the occupying forces. As discussed earlier, a common policy of Israeli military operations throughout the occupied Palestinian territory is the use of excessive, disproportionate, and unnecessary lethal force, executed through a shoot-to-kill policy amounting to an official practice of unlawful and extrajudicial killing. Following such operations, the Israeli occupying forces may withhold the bodies of deceased Palestinians and obstruct the collection of information and evidence, thereby frustrating attempts to investigate and ascertain the exact circumstances of the killings. Many of the bodies withheld

<sup>700</sup> Article 33, Fourth Geneva Convention; Article 50, Hague Regulations.

<sup>701</sup> See Al-Haq, Punitive House Demolitions (31 October 2015) <<https://www.alhaq.org/advocacy/6475.html>>.

are buried in ‘cemeteries of numbers,’ effectively anonymous mass graves, in undisclosed locations without identification markers.<sup>702</sup> The total number of such cases is unknown; however according to Palestinian civil society, as of the end of May 2020, at least 62 bodies of deceased Palestinians were being withheld by the Israeli occupying authorities in addition to those buried in the cemeteries of numbers.<sup>703</sup> The withholding of bodies is a particularly cruel policy by the Israeli regime and violates a range of Palestinians’ fundamental rights and freedoms. In 2020, the Jerusalem Legal Aid and Human Rights Center, Al-Haq, and the Cairo Institute for Human Rights Studies submitted to the UN special procedures that:

Israel’s refusal to repatriate the mortal remains of indigenous Palestinians violates, *inter alia*, Article 12(2) of the UN Declaration on the Rights of Indigenous Peoples. It also contravenes the customary [international humanitarian law] rules on the disposal of the War Dead’s bodies as well as the human rights to dignity, family life, religious freedom and cultural customs, and the prohibition against degrading or inhuman treatment.<sup>704</sup>

The 15-year Israeli closure of the Gaza Strip stands as one of the most notable examples of collective punishment targeting the Palestinian people. As held by the ICRC: ‘[t]he whole of Gaza’s civilian population is being punished for acts for which they bear no responsibility. The closure therefore constitutes a collective punishment imposed in clear violation of Israel’s obligations under international humanitarian law.’<sup>705</sup> Former UN Special Rapporteur on Palestine, Michael Lynk, similarly highlighted that:

<sup>702</sup> See Al-Haq, Human Rights Groups Submit to UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians (27 June 2020) <<https://www.alhaq.org/advocacy/17033.html>>.

<sup>703</sup> JLAC, Al-Haq, and CIHRS, *Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians: Response to Call for Inputs: Comments on the Study on the Right to Land under the UN Declaration on the Rights of Indigenous Peoples, and the Report on the Right to Repatriation of ceremonial objects, human remains, and intangible properties under the UN Declaration on the Rights of Indigenous Peoples* (22 June 2020) 5 <[https://www.alhaq.org/cached\\_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf)>; see also UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (22 December 2020) UN Doc A/HRC/44/60, para 72.

<sup>704</sup> JLAC, Al-Haq, and CIHRS, *Joint submission to EMRIP and UN experts*, 2.

<sup>705</sup> ICRC, *Gaza Closure: Not Another Year!* (14 June 2010) <<https://www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm>>.



An additional important purpose behind Israel's closure of Gaza is to accelerate the separation of Gaza from the West Bank... Creating and entrenching the fragmentation of these territories—beyond sinking the chances for creating a viable Palestinian economy as well as blocking Palestinians from building the larger collective and political bonds with each other that nourish a functioning society—is designed to prevent the independence of Palestine.<sup>706</sup>

Al Mezan argued that the Israeli occupying authorities' policies and practices against the Gaza Strip are designed to institute economic subjugation and dependency, force Palestinians into poverty, and inflict 'serious bodily or mental harm upon members of a racial group and subjecting them to inhuman or degrading treatment or punishment, and further constitute a deliberate imposition of living conditions that are calculated to cause the physical destruction of Palestinians in the Gaza Strip, in whole or in part.'<sup>707</sup>

The use of collective punishment against Palestinians constitutes a key component of Israeli authorities' commission of the crime of apartheid and serves to maintain the regime. While collective punishment is not specifically included as an inhuman act within either the Apartheid Convention or the Rome Statute, the discrete policies and practices underlying Israel's broader policy of collective punishment, not limited to those described above, fall under the 'inhuman acts' as described in Article II of the Convention and the 'inhumane acts' listed in Article 7 of the Rome Statute. Through such policies, the Israeli regime inflicts serious bodily and mental harm on Palestinians and prevents their exercise of political, social, economic, civil, and cultural rights.

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706 UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (15 July 2020) UN Doc A/44/60, para 57.

707 Al Mezan, *The Gaza Bantustan*, 47.

## 6.6 Persecution and Silencing of Opposition to Apartheid

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 considered an inhuman act of the crime of apartheid. The Rome Statute does not replicate this provision. The Israeli authorities have long pursued a campaign of intimidation, harassment, and delegitimisation of human rights defenders and human rights and civil society organisations calling for justice and accountability for Israel’s widespread and systematic human rights violations.

The Israeli government, through its former Strategic Affairs Ministry, which has since been merged into the Foreign Affairs Ministry, and affiliated groups, carries out ongoing, systematic, and organised attacks amounting to a concerted smear campaign against human rights defenders and organisations advocating for the rights of the Palestinian people. This is done through, *inter alia*, incitement to racial hatred and violence, character assassinations, defamation, seeking to brand Palestinian human rights defenders as ‘terrorists,’ and exerting direct attacks and raids on human organisations and their resources to undermine—and eventually halt—their human rights and accountability work, and with the goal of impeding the granting and award of funds from international donors to Palestinian organisations.<sup>708</sup>

Palestinian human rights organisations seeking international accountability for suspected Israeli war crimes and crimes against humanity have been specifically targeted by Israeli state-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 officials, newspapers, and organisations and institutions both at the local

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708 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) <<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) <<http://www.alhaq.org/advocacy/6039.html>>; see also FIDH and OMCT, *Target Locked: The Unrelenting Israeli Smear Campaigns to Discredit Human Rights Groups in Israel, Palestine, and the Syrian Golan* (27 April 2021) <<https://target-locked-obs-defenders.org/>>.

and international levels in an attempt to derail their work.<sup>709</sup> Attempts have been made to target the relationships of Palestinian non-governmental organisations and human rights defenders with universities abroad,<sup>710</sup> funding from states and bodies such as the European Union (EU),<sup>711</sup> and their ability to travel out of Palestine and abroad.<sup>712</sup>

Israeli authorities also use punitive residency revocation under the Entry into Israel Law to target Palestinians seeking accountability under international law. In September 2020, Salah Hammouri, Palestinian-French human rights defender and lawyer at Addameer, was notified by Israeli occupying authorities of their intention to revoke his permanent residency status in Jerusalem, the city where he was born, for so-called ‘breach of allegiance’ to the Occupying Power.<sup>713</sup> On 18 October 2021, the Israeli Interior Minister announced the official revocation of Salah’s Jerusalem residency status. More recently, on 7 March 2022, Salah was arbitrary detained and placed under administrative detention.<sup>714</sup>

709 See, for example, Al-Haq, Al-Haq Under Attack – Staff Member’s Life Threatened (3 March 2016) <<http://www.alhaq.org/advocacy/6432.html>>.

710 See Washington Examiner, ‘Universities promoting “human rights” internships with group tied to terrorists’ (26 October 2019) <<https://www.washingtonexaminer.com/politics/universities-promoting-human-rights-internships-with-group-tied-to-terrorists>>.

711 Jerusalem Post, ‘Erdan to EU: Make sure your funds don’t go to NGOs with terror ties’ (2 January 2020) <<https://www.jpost.com/middle-east/palestinian-ngos-refuse-eu-funds-after-being-told-not-to-fund-terror-612733>>.

712 The Guardian, ‘I co-founded the BDS movement. Why was I denied entry to the US?’ (16 April 2019) <<https://www.theguardian.com/commentisfree/2019/apr/16/bds-movement-omar-barghouti-denied-entry>>; Amnesty International, Israel/OPT: Court to rubber stamp travel ban on Amnesty campaigner, a bitter blow for justice and human rights (31 May 2020) <<https://www.amnesty.org/en/latest/news/2020/05/israelopt-court-to-rubber-stamp-travel-ban-on-amnesty-campaigner-a-bitter-blown-for-justice-and-human-rights/>>; Middle East Eye, ‘Palestinian human rights advocates refused entry to US, blocked from leaving Palestine’ (5 May 2022) <<https://www.middleeasteye.net/news/israel-palestinian-campaigners-us-refused-entry>>.

713 Al-Haq, Human Rights Organisations Send Urgent Appeal to UN Special Procedures on the Imminent Threat of Forcible Transfer of Salah Hammouri (5 October 2020) <[https://www.alhaq.org/cached\\_uploads/download/2020/10/05/200930-joint-urgent-appeal-to-the-united-nations-special-procedures-on-the-imminent-threat-of-forcible-transfer-or-deportation-of-salah-hammouri-for-breach-of-allegiance-1601889872.pdf](https://www.alhaq.org/cached_uploads/download/2020/10/05/200930-joint-urgent-appeal-to-the-united-nations-special-procedures-on-the-imminent-threat-of-forcible-transfer-or-deportation-of-salah-hammouri-for-breach-of-allegiance-1601889872.pdf)>.

714 UN OHCHR, UN experts condemn Israel’s ‘sadistic’ punitive measures against French-Palestinian rights defender Salah Hammouri (9 October 2022) <<https://www.ohchr.org/en/press-releases/2022/10/un-experts-condemn-israels-sadistic-punitive-measures-against-french>>. See also Addameer, ‘Salah Hammouri’ (last updated 9 August 2022) <<https://www.addameer.org/prisoner/2992>>.

On 19 October 2021, the Israeli Defence Minister announced the designation of six leading Palestinian human rights and civil society organisations as so-called ‘terror organisations,’ including Addameer, Al-Haq, Bisan Center for Research and Development, DCI-Palestine, the Union of Agricultural Work Committees, and the Union of Palestinian Women’s Committees.<sup>715</sup> On 3 November 2021, the Israeli Military Commander-in-Chief signed a military order that declared the six organisations as ‘unlawful associations’ thereby activating the designation in the occupied Palestinian territory.<sup>716</sup> Subsequently, during the early morning of 18 August 2022, the Israeli occupying forces raided the offices of the aforementioned designated organisations, as well as the Health Work Committee, confiscated various pieces of office equipment, and sealed the doors of each with metal plates. Military orders declaring the organisations ‘unlawful’ were also affixed by their doorways.<sup>717</sup> The space for these organisations to continue their work thus continues to shrink substantially, with their staff now at risk of being targeted for their work, including through travel bans and arbitrary detention.

The culminative effect of such practices and policies is to create an environment wherein the ability of the Palestinian people, as well as those sympathetic to their predicament, to resist and organise against Israel’s settler colonial apartheid regime is curtailed in order to preserve the ongoing existence and maintenance of an institutionalised regime of racial oppression and domination. Under the terms of the Apartheid Convention, this repression amounts to a component of the crime of apartheid itself and is prosecutable by domestic courts in the same way as other underlying inhuman acts of apartheid listed elsewhere in Article II.

<sup>715</sup> NPR, ‘Israel designates 6 Palestinian human rights groups as terrorist organizations’ (23 October 2021) <<https://www.npr.org/2021/10/23/1048690050/israel-palestinian-human-right-groups>>.

<sup>716</sup> Al-Haq, Palestinian Organizations Declared as ‘Unlawful Associations’ by Israeli Military File Objection: Illegal Decision Devoid of Due Process (3 February 2022) <<https://www.alhaq.org/advocacy/19456.html>>.

<sup>717</sup> Muhareb, Rghebi, Power, and Clancy, *Persecution of Palestinian Civil Society*, 20-21.



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## 7

# Responsibility and Accountability for Israel's Apartheid Regime

In line with the prohibition of apartheid as a *jus cogens* norm of international law, Israel's apartheid regime triggers obligations on the part of all states to cooperate to end the unlawful situation.

## 7.1 Third State Duty to Cooperate

The construction and maintenance of an apartheid regime constitutes a breach of *jus cogens* norms of international law giving rise to obligations *erga omnes*.<sup>718</sup> As noted by the former UN Special Rapporteur on Palestine, Michael Lynk, '[t]he purpose for these special third-party responsibilities is to counteract the challenge that such serious breaches pose to the legal, political and moral order of the international community as a

<sup>718</sup> See Dugard and Reynolds, 'Apartheid, International Law,' 883.

whole.<sup>719</sup> The essence of these principles stem from a legal principle whereby legal rights cannot be derived from an unlawful act; accordingly, the assumption of unlawful power through illegitimate means may not be recognised by the international community, which may include ‘sovereign title to annexed territory, lawful condonation of its practices of racial discrimination or apartheid, or legal acceptance of its denial of self-determination through its sustained defiance and the passage of time.’<sup>720</sup> States must ensure that they do not contribute toward the maintenance of this regime, either directly or indirectly, including through private and corporate entities domiciled within their territory,<sup>721</sup> and through their relationships with local and regional authorities.<sup>722</sup> Finally, states must take positive actions to bring the unlawful situation to an end, which should include measures such as economic sanctions.<sup>723</sup>

In the commentaries to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,<sup>724</sup> it is noted, in the context of Principle 9(b) that ‘the obligations of a state under international human rights law may effectively be triggered when its responsible authorities know or should have known the conduct of the

719 UN General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (21 October 2019), UN Doc A/74/507, para 47.

720 *Ibid.*, para 48.

721 Marya Farah, *Business and Human Rights in Occupied Territory*, 79-80.

722 On this, see Al-Haq, Al-Haq Submits Legal Position Paper to European Union on the Membership of Mr Haim Bibas, Mayor of Modi'in-Maccabim-Re'ut, in the Euro-Mediterranean Regional and Local Assembly (ARLEM) (2 March 2020) <<http://www.alhaq.org/advocacy/16547.html>>.

723 Al-Haq, Al-Haq Response to ‘Regulation’ Bill: Time for Actions, Time for Sanctions (7 February 2017) <<http://www.alhaq.org/advocacy/6357.html>>; Al-Haq, Al-Haq Condemns as Illegal Prime Minister Netanyahu’s Stated Plans to Annex West Bank Settlements and Calls on Third States to Apply Economic Sanctions on Israel (10 September 2019) <<http://www.alhaq.org/advocacy/15096.html>>; Al-Haq, Al-Haq’s Open Letter to the UN Security Council on Israel’s Plans to Annex the West Bank (23 April 2020) <<http://www.alhaq.org/advocacy/16769.html>>; see also James Crawford, ‘Opinion: Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories’ (25 January 2012) <<https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf>>.

724 ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* (2013) <[https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23)> (hereinafter the ‘Maastricht Principles’).

state will bring about substantial human rights effects in another territory,' and in the context of Principle 9(c), 'that there are situations where a state is required to take measures in order to support the realization of human rights outside its national territory.'<sup>725</sup> This is supported by the analysis of the UN Human Rights Committee, which has held that:

With regard to the [ICCPR], such obligations may exist where a jurisdictional link is established with persons affected by such activities. Such a link of jurisdiction may be established... on the basis of: (a) the effective capacity of the State to regulate the activities of the businesses concerned and (b) the actual knowledge that the State had of those activities and their necessary and foreseeable consequences in terms of violations of human rights recognized in the Covenant.<sup>726</sup>

These obligations, in conjunction with those of third state responsibility,<sup>727</sup> further extend to states' roles as members of international organisations:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.<sup>728</sup>

Thus, a state's extraterritorial obligations as a member of an international organisation under the Maastricht Principles are closely aligned with those under the 2011 Draft Articles on the Responsibility of International

<sup>725</sup> Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 Human Rights Quarterly 1109 (hereinafter the 'Maastricht Commentary').

<sup>726</sup> UN Human Rights Committee, *Decision adopted by the Committee under article 5(3) of the Optional Protocol, concerning communication No. 2285/2013: Concurring opinion of Committee members Olivier de Frouville and Yadh Ben Achour*, 7 December 2017, UN Doc CCPR/C/120/D/2285/2013, para 10.

<sup>727</sup> See Principle 11, *Maastricht Principles*.

<sup>728</sup> Principle 15, *Maastricht Principles*.



### Organizations:

A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.<sup>729</sup>

States have a positive obligation, particularly arising from the ICCPR and ICESCR, which encompass the right to self-determination, to ensure that their acts and omissions do not result in breaches of their human rights obligations to respect and protect self-determination in foreign territories, including through their actions in international and regional organisations. Read in parallel with analogous obligations under the law of state responsibility, it is abundantly clear that states must take active measures to ensure that they do not contribute, both in their own individual acts or omissions or those done in their capacity as member states of institutions such as the EU or UN, toward the violations of the rights of the Palestinian people, and the continued maintenance of an apartheid regime, which systematically violates the gamut of human rights enshrined under the ICCPR and ICESCR. Nonetheless, many third states have systematically failed in this regard.

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<sup>729</sup> Article 61, *Draft Articles on the Responsibility of International Organizations* (2011); Maastricht Commentary, 1120.

## 7.2 Universal Jurisdiction

Universal jurisdiction provides an important legal avenue to challenge Israel's pervasive impunity for its apartheid regime and other suspected international crimes. Despite the legal obligation for third states to try suspected perpetrators of grave breaches of the Fourth Geneva Convention under Article 146, the obligation to try those suspected of torture under CAT,<sup>730</sup> and of the crime of apartheid under the Apartheid Convention,<sup>731</sup> the activation of universal jurisdiction mechanisms has been undermined through politicisation, particularly in the context of Israeli conduct. Palestinian organisations and claimants who have sought justice through such mechanisms have been accused of 'forum-shopping,' painting their use of the doctrine as illegitimate, and frustrating the pursuit of genuine and effective accountability.<sup>732</sup> While the ICC is an important avenue for international accountability for suspected crimes committed in Palestine, its jurisdiction is limited only to alleged crimes committed since 13 June 2014 in the occupied Palestinian territory and to those crimes enumerated in the Rome Statute. In this context, universal jurisdiction remains a potent avenue for the pursuit of international accountability for international crimes, including the crime of apartheid, and related widespread and systematic human rights violations targeting the Palestinian people as a whole.<sup>733</sup>

<sup>730</sup> Article 5(2), CAT.

<sup>731</sup> Article 4(b), Apartheid Convention.

<sup>732</sup> See *Bil'in (Village Council) v. Green Park International Inc.* (18 September 2009) QCCS 4151, para 328; for more on the case, see, *inter alia*, Al-Haq, Update on the case of Bil'in v. Green Park in Canada – Hearings scheduled 22-25 June (13 October 2010) <<http://www.alhaq.org/advocacy/7205.html>>; Al-Haq, Bil'in Seeks Permission to Appeal to the Supreme Court of Canada the dismissal of its case (11 December 2010) <<http://www.alhaq.org/advocacy/7069.html>>; Al-Haq, Bil'in Village Council v. Green Park (12 October 2011) <<http://www.alhaq.org/advocacy/6986.html>>.

<sup>733</sup> As noted by Valentina Azarova and Triestino Mariniello, 'Thus far, many of the attempts to trigger the universal jurisdiction of third states under their domestic laws, have been thwarted by political pressures and legislative amendments to ensure political vetting': Valentina Azarova and Triestino Mariniello, 'Why the ICC Needs A 'Palestine Situation' (More Than Palestine Needs the ICC): On the Court's Potential Role(s) in the Israeli-Palestinian Context' (2017) 1 *Diritti umani e diritto internazionale* 115.

### 7.3 The ICC

The ICC is a permanent international court established through the Rome Statute, in order to investigate and try individuals suspected of war crimes, crimes against humanity, the crime of genocide, and the crime of aggression.<sup>734</sup> Following the accession of the State of Palestine to the Rome Statute in January 2015,<sup>735</sup> the ICC Prosecutor formally opened an investigation into the Situation in Palestine in March 2021.<sup>736</sup> In addition to having subject-matter jurisdiction over the crime of apartheid,<sup>737</sup> the Court also has jurisdiction over many of the constitutive elements of Israel's settler colonial apartheid regime, including population transfer,<sup>738</sup> wilful killing,<sup>739</sup> extensive destruction and appropriation of property not justified by military necessity,<sup>740</sup> persecution,<sup>741</sup> pillage,<sup>742</sup> the use of torture and other ill-treatment,<sup>743</sup> and the denial of the right of Palestinian refugees to return to their homeland.<sup>744</sup>

734 ICC, *Understanding the International Criminal Court*, 3 <<https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>>.

735 See UN, State of Palestine: Accession (6 January 2015) Ref. C.N.13.2015.TREATIES-XVIII.10 (Depository Notification).

736 OTP, Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine (3 March 2021) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>>.

737 Article 7(1)(j), Rome Statute.

738 Articles 7(1)(d) and 8(2)(b)(viii), Rome Statute.

739 Articles 7(1)(a), 7(2)(a), and 8(2)(b)(i), Rome Statute.

740 Article 8(2)(a)(iv), Rome Statute.

741 Article 7(1)(h), Rome Statute.

742 Article 8(2)(b)(xvi), Rome Statute.

743 Article 7(1)(f), 8(2)(a)(ii), Rome Statute.

744 On this, see Scottish Legal News, 'Edinburgh meeting hears Britain's refusal to allow Chagos Islanders to return home is "crime against humanity"' (20 January 2020) <<https://bit.ly/2VlKsKw>>; see also, ICC, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar: Request for authorization of an investigation pursuant to article 15* (4 July 2019) ICC-01/19-5, para 75 <[https://www.icc-cpi.int/CourtRecords/CR2019\\_03510.PDF](https://www.icc-cpi.int/CourtRecords/CR2019_03510.PDF)>.

## 7.4 Corporate Complicity

As with apartheid in South Africa, Israel's apartheid regime has been supported and legitimised through the partnership of Israeli and multinational corporate entities. Facilitated through the aligned interests of maintaining the existing regime of domination, exploitation, and profit,<sup>745</sup> corporate entities, financial institutions, and non-governmental organisations, including registered non-profits and charities, have contributed to, *inter alia*, the continued economic subjugation and displacement of Palestinians in the occupied Palestinian territory and the appropriation of refugee property within the Green Line.<sup>746</sup> As noted in the report of the Don't Buy Into Occupation (DBIO) Coalition:

[w]hile the State of Israel has played a key role in advancing the construction and expansion of settlements in the occupied West Bank and Jerusalem, their maintenance and growth would not have been possible without private actors, including non-profits such as the Jewish National Fund, the World Zionist Organisation, and the Israel Land Fund, as well as Israeli and multinational business enterprises.<sup>747</sup>

Moreover, corporate activities conducted at the expense of the rights of the Palestinian people, on both sides of the Green Line, have served to normalise Israel's settler colonial apartheid regime and undermine the realisation of the rights of the Palestinian people, including to self-determination, permanent sovereignty, and the right of return.<sup>748</sup>

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<sup>745</sup> See Pearce Clancy, 'Corporate Capture and Solidarity during Occupation: The Case of the Occupied Palestinian Territory' (*Business and Human Rights Journal Blog*, 20 February 2020) <<https://www.cambridge.org/core/blog/2020/02/20/corporate-capture-and-solidarity-during-occupation-the-case-of-the-occupied-palestinian-territory/>>.

<sup>746</sup> On this, see WhoProfits, *Profiting through Dispossession: Another Side of Airbnb's Complicity* (October 2019) <<https://www.whoprofits.org/updates/airbnbs-complicity-in-the-plunder-of-palestinian-refugee-properties/>>.

<sup>747</sup> Al-Haq, *Don't Buy into Occupation: Exposing the financial flows into illegal Israeli settlements* (30 September 2021) 25 <<https://www.alhaq.org/publications/18870.html>>.

<sup>748</sup> On the corporate profiting of the denial of the right of return beyond the Green Line, see Who Profits, *Profiting Through Dispossession*.



Among other activities, by continuing to allow trade with illegal Israeli settlements in the occupied West Bank, including the eastern part of Jerusalem, exploiting appropriated Palestinian refugee property, and failing to prevent business enterprises domiciled in their territories and/or jurisdiction from respecting international law, states are acting in direct violation of the principle of non-maintenance of unlawful situations.<sup>749</sup>

As with the commission of international crimes by Israeli state agents, activating and incorporating domestic legislation to give effect to universal jurisdiction as a means to pursue accountability for private actors, including corporate entities and 'charities,' is key, particularly considering the countless documented cases of their sustained involvement in grave breaches and internationally recognised crimes.<sup>750</sup> This mechanism and principle should therefore be activated, including in relation to companies that are listed in the UN Database of businesses involved in illegal Israeli settlements, as well as others that commit, or are otherwise involved in, serious breaches of international law, including the crime of apartheid, on both sides of the Green Line.

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749 Article 41(2), Draft Articles on State Responsibility.

750 See, for example, Al-Haq and SOMO, *Violations Set in Stone: HeidelbergCement in the Occupied Palestinian Territory* (4 February 2020) <<http://www.alhaq.org/publications/16408.html>>; Lawyers for Palestinian Human Rights, LPHR files OECD Guidelines Complaint against JCB for involvement in human rights breaches in the occupied Palestinian territory (10 December 2019) <<https://lphr.org.uk/latest-news/lphr-files-oecdguidelines-complaint-against-jcb-for-involvement-in-human-rights-breaches-in-the-occupied-palestinian-territory/>>; UN OHCHR, UN rights office issues report on business activities related to settlements in the Occupied Palestinian Territory (12 February 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542&LangID=E>>.

## 7.5 The UN Database of Businesses Operating with Israeli Settlements

The UN Human Rights Council adopted Resolution 31/36 on 24 March 2016, which requested the UN High Commissioner for Human Rights ‘to produce a database of all business enterprises involved in the activities detailed in paragraph 96’ of the 2012 UN Fact-Finding Mission’s (FFM) report to be updated annually.<sup>751</sup> The FFM concluded that ‘business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth’ of Israel’s illegal settlement enterprise and identified a number of activities and related issues that raise particular human rights concerns.<sup>752</sup> These activities include: the supply of equipment and materials that facilitate the construction and expansion of Israeli settlements and the demolition of Palestinian housing and property, the Annexation Wall and associated infrastructure, including checkpoints, the supply of surveillance and identification equipment for Israeli settlements, the destruction of agricultural farms, greenhouses, and crops, the supply of security services, equipment, and materials to enterprises operating in Israeli settlements, and the provision of services and utilities supporting the maintenance and existence of settlements, including through loans and the development of business.<sup>753</sup>

It is thus impossible to engage in Israel’s unlawful settlement enterprise without being complicit in some form of international wrongdoing. OHCHR warned in 2018 that:

Considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, as laid out in Human Rights Council resolution 31/36, and the systemic and pervasive nature of the negative human rights impact caused by them, the report notes that “it is difficult to imagine a scenario

<sup>751</sup> UN Human Rights Council Resolution 31/36 (20 April 2016) UN Doc A/HRC/RES/31/36, para 17.

<sup>752</sup> UN Human Rights Council, Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (7 February 2013) UN Doc A/HRC/22/63, para 96.

<sup>753</sup> *Ibid.*, para 96.



in which a company could engage in listed activities in a way that is consistent with the [UN] Guiding Principles [on Business and Human Rights] and international law.”<sup>754</sup>

Given the sweeping nature of Israel’s institutionalised regime of racial domination and oppression, it is similarly unlikely that businesses and corporate entities can responsibly engage with illegal Israeli settler colonisation without being complicit in the international wrong and crime of apartheid, on whichever side of the Green Line their activities may take place.

The UN Database’s delayed publication in February 2020 lists 112 Israeli and multinational corporate enterprises out of the 321 reviewed in the process.<sup>755</sup> While the list is limited and does not reflect the full picture of corporate involvement in Israel’s illegal settlement enterprise, the Database provides a stark illustration of corporate involvement in Israel’s apartheid regime, and the corporate contributions toward the regime’s maintenance and normalisation as well as its human rights violations. Despite the ongoing delay of the mandated annual updating of the Database, it has had an impact on driving corporate entities to end their involvement in or with Israel’s illegal settlement enterprise, such as the Norwegian KLP pension fund<sup>756</sup> and Ben & Jerry’s Homemade Holdings Inc.<sup>757</sup> The maintenance and annual updating of the Database is integral to ending the economic incentives for private actors that help maintain and expand Israel’s illegal settlement enterprise, which represents a key manifestation of Israel’s apartheid regime.

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754 UN OHCHR, UN rights office issues report on business and human rights in settlements in the occupied Palestinian territory (31 January 2018) <<https://www.ohchr.org/en/press-releases/2018/01/un-rights-office-issues-report-business-and-human-rights-settlements>>.

755 UN Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (12 February 2020) UN Doc A/HRC/43/71.

756 Reuters, ‘Nordic fund KLP excludes 16 companies over links with occupied West Bank’ (5 July 2021) <<https://www.reuters.com/world/middle-east/nordic-fund-klp-excludes-16-companies-over-links-with-occupied-west-bank-2021-07-05/>>.

757 Ben & Jerry’s, Ben & Jerry’s Will End Sales of Our Ice Cream in the Occupied Palestinian Territory (19 July 2021)<<https://www.benjerry.com/about-us/media-center/opt-statement>>.

For Israel's apartheid regime to be meaningfully challenged, states must take serious steps based on information made available through the Database and other credible sources, including those made available by civil society. This includes providing political and financial support for the annual updating of the Database to provide a comprehensive list of all business entities involved in Israel's unlawful settlement enterprise. Despite its limitations, the Database provides a stark illustration of corporate involvement in Israel's settler colonial apartheid regime, and the extent of corporate involvement in maintaining and normalising this regime and associated human rights violations.

Moreover, mandatory labelling<sup>758</sup> guidelines for settlement products pursued by a number of states have proven ineffective at deterring the selling of settlement products and services. Therefore, it is important that states prohibit trade with Israel's unlawful settlements, ban settlement goods and services from their markets, and impose economic sanctions to challenge the corporate incentives linked to Israel's apartheid regime, population transfer, and settler colonialism on both sides of the Green Line. In this vein, in September 2021, a European citizen-led initiative was registered with the European Commission, and later launched in February 2022, calling for legislation to prohibit products originating from illegal settlements, including those in Palestine, from entering the EU market and to ban EU exports to them.<sup>759</sup>

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758 Al-Haq, EU Takes a Step Forward with CJEU Ruling in Favour of Accurate Labelling (19 December 2019) <<http://www.alhaq.org/advocacy/16316.html>>; Al-Haq, Al-Haq Welcomes Advocate General Hogan's CJEU Opinion Explicitly Requiring Labelling of Settlement Goods, but calls on States and the EU to Prohibit the Import of Illegal Settlement Goods (4 July 2019) <<http://www.alhaq.org/advocacy/14485.html>>.

759 See <<https://stopsettlements.org/>>.



## 7.6 UN Anti-Apartheid Mechanisms

The UN and the international community played a central role in supporting South African, Namibian, and international activists and civil society toward bringing the South African apartheid regime to an end. The establishment of the UN Special Committee against Apartheid (the Special Committee) and the UN Centre against Apartheid (the Centre) were key tools in the anti-apartheid struggle.<sup>760</sup> In 1962, the UN General Assembly established the Special Committee to ‘keep the racial policies of the Government of South Africa under review’ and to report to the General Assembly and the Security Council.<sup>761</sup> The Special Committee promoted the international campaign against apartheid and worked to build support for international collective action,<sup>762</sup> while legitimising calls for boycotts, divestment, and sanctions against the apartheid regime.<sup>763</sup> In 1976, the Centre was created under the auspices of the Special Committee to coordinate UN anti-apartheid activities.<sup>764</sup> The Centre reported on third state compliance with international law and countermeasures such as the arms embargo,<sup>765</sup> and otherwise assisted the anti-apartheid movement.<sup>766</sup>

On 17 March 2021, Namibia became the first state at the UN Human Rights Council to publicly call for the reconstitution of the Special Committee to address Israeli apartheid policies and practices. Namibia affirmed its support

760 Muhareb, Rghebi, Power, and Clancy, *Persecution of Palestinian Civil Society*, 37-38.

761 United Nations General Assembly, Resolutions Adopted on the Reports of the Special Political Committee, 17th Session, Res. 1761 (XVII).

762 African Activist Archive, Special Committee Against Apartheid <<https://africanactivist.msu.edu/organization.php?name=Special%20Committee%20Against%20Apartheid>>.

763 ESCWA Report, 53-54; Muhareb, Rghebi, Power, and Clancy, *Persecution of Palestinian Civil Society*, 38.

764 United Nations, General Assembly, *Report of the Special Committee on Apartheid*, A/9022, 1974, 60 <<https://digitallibrary.un.org/record/725202?ln=en>>.

765 See for example George Houser, ‘Relations Between the United States and South Africa’ (*United Nations Centre Against Apartheid*, August 1984) <[http://psimg.jstor.org/fsi/img/pdf/t0/10.5555/al.sff.document.nuun1984\\_11\\_final.pdf](http://psimg.jstor.org/fsi/img/pdf/t0/10.5555/al.sff.document.nuun1984_11_final.pdf)>.

766 United Nations, General Assembly, Report of the Special Committee on Apartheid, A/9022, 1974, 60-61 <<https://digitallibrary.un.org/record/725202?ln=en>>; Enuga S. Reddy, ‘The U.N.’s World Campaign Against Apartheid’ (*The UNESCO Courier: Southern Africa at Grips with Racism*, November 1977) 7 <<https://unesdoc.unesco.org/ark:/48223/pf0000074816>>; Muhareb, Rghebi, Power, and Clancy, *Persecution of Palestinian Civil Society*.

for the ‘restoration’ of the Special Committee ‘to ensure the implementation of the Apartheid Convention to the Palestinian situation.’<sup>767</sup> Then, on 8 June 2021, South Africa and Namibia hosted a high-level side event on Israeli apartheid at the General Assembly, during which the South African Minister of International Relations and Cooperation further expressed support for the call to reconstitute the Special Committee.<sup>768</sup> The UN’s anti-apartheid mechanisms meaningfully contributed to the international movement against apartheid in South Africa and occupied Namibia. There have been calls for their reconstitution to address apartheid in Palestine for over a decade.<sup>769</sup> Such a step would lend support to the Palestinian struggle for self-determination.<sup>770</sup>

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<sup>767</sup> UN Human Rights Council, Statement by Ms. Julia Imene, Chanduru, Ambassador/Permanent Representative at the 46th Session of the Human Rights Council (17 March 2021) <[https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/41/SP/32992\\_46\\_9ac930dc\\_b6ff\\_46e1\\_84da\\_a8649111583c.docx](https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/41/SP/32992_46_9ac930dc_b6ff_46e1_84da_a8649111583c.docx)>.

<sup>768</sup> DIRCOZA, *Virtual Side Event on Justice for the Palestinian People* (YouTube, 8 June 2021) <<https://www.youtube.com/watch?v=Rw0MTqwr0I8>>.

<sup>769</sup> See Russell Tribunal on Palestine, *Executive summary of the findings of the third session of the RToP* (7 November 2011) <<http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%94-full-findings/cape-town-session-summary-of-findings>>; ESCWA Report, 53.

<sup>770</sup> Muhareb, Rghebi, Power, and Clancy, *Persecution of Palestinian Civil Society*, 40.



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## 8 Conclusion

Through the implementation of the Zionist settler colonial project, Israel has institutionalised a regime of racial domination and oppression over the Palestinian people. This is not a new reality but the continuation of decades of settler colonialism, ongoing *Nakba*, and apartheid. The international law framework prohibiting apartheid offers avenues to punish perpetrators of the crime, whether in the courts of third states through the principle of universal jurisdiction or at the ICC. It requires third states not to recognise the unlawful situation resulting from Israeli apartheid, not to aid or assist in its maintenance, and to cooperate to bring Israeli apartheid to an end. These obligations are enshrined in the Apartheid Convention and, more broadly, in the law of state responsibility. While these obligations are also contained in international humanitarian law provisions, up to this date, they have not been enforced to hold Israeli authorities to account. Moreover, their scope has largely been limited to the occupied Palestinian territory, maintaining the fragmentation of the Palestinian people. Unlike the previous approaches, a comprehensive apartheid framework allows us to overcome the fragmentation of the Palestinian people in law and in practice.



Successive condemnations by the UN General Assembly and Security Council, the establishment of UN anti-apartheid mechanisms, and the adoption of effective measures cumulatively contributed to the international community's efforts to suppress and eradicate the crime of apartheid in South Africa and occupied Namibia. Political will played a central role in advancing decolonisation in this process. Only through such concerted action, including adoption of coercive measures by third states, can a similar effort be led toward dismantling the Israeli settler colonial apartheid regime.

Importantly, Israel's institutionalised regime of racial domination and oppression over the Palestinian people as a whole cannot be understood nor dismantled without an appreciation of its settler colonial character. The dismantlement of Israel's settler colonial apartheid regime must involve a decolonisation praxis toward the dismantlement of all structures of domination, exploitation, and oppression and the realisation of the Palestinian people's inalienable rights, including to return to their homes, lands, and properties, as provided for under international law. The right of return, and the dismantlement of the Israeli settler colonial apartheid regime are essential to realising the collective right of the Palestinian people to self-determination.

It is for the Palestinian people to reclaim their agency and to pave the way toward a future of justice, dignity, self-determination, return, and liberation. We hope that this report has done justice to the decades of tireless work by Palestinian activists and organisers on the ground, who have advanced our understanding of the root causes of Palestinian oppression.

**9**

## Recommendations

### 9.1 To All States

1. Recognise and condemn, including through regional and international organisations and fora, that Israel's discriminatory laws, policies, and practices have cumulatively established and continue to maintain an apartheid regime of systemic racial oppression and domination over the Palestinian people as a whole, as part of the Zionist settler colonial project, using strategic fragmentation as its primary tool, giving rise to individual criminal responsibility in addition to engaging Israel's state responsibility for internationally wrongful acts;
2. Uphold the Namibia Doctrine under peremptory norms of international law by formally recognising the inalienable right of the Palestinian people as a whole to self-determination and bring an end to efforts aimed at denying that right;

3. Take positive action to ensure the full realisation of the right of the Palestinian people to self-determination, including under Article 1 of the ICCPR and ICESCR, and cooperate toward the full realisation of complete freedom and independence of the Palestinian people, who are subjected to ongoing settler colonialism, in accordance with their freely expressed will and desire;
4. Refrain from recognising any legitimacy of the unlawful situation created by Israel's settler colonial apartheid regime and ensure they do not contribute, directly or indirectly, toward the maintenance of Israeli apartheid, in line with extraterritorial obligations;
5. Cooperate to bring the unlawful situation created by Israel's settler colonial apartheid regime to an end, including by taking effective measures toward the dismantlement of Zionist parastatal institutions, including the WZO/JA, and JNF, and by implementing economic sanctions nationally and multilaterally and by severing diplomatic, cultural, and trade ties with Israel as required by international law and suspend existing trade and cooperation agreements with Israel, including at the national and regional levels;
6. Pressure Israel to cease all measures and policies and practices that contribute to the fragmentation of the Palestinian people, including the denial of the rights of return and self-determination, the denial of family unification, the closure and blockade of the Gaza Strip, the construction and maintenance of the Annexation Wall and its associated regime, and other movement and access restrictions, as core elements of Israel's apartheid regime;
7. Demand Israel cease conferring public functions of the state to the WZO/JA, JNF, and affiliated Zionist institutions, which are chartered to carry out material discrimination against non-Jewish persons and have historically prevented the Palestinian people from exercising control over their means of subsistence, including their natural resources, by exploiting and diverting these for the benefit of Zionist settler colonisation;

8. Rescind ‘charitable’ and other tax-exempt or ‘non-governmental’ status of parastatal institutions and their affiliates operating within domestic jurisdiction, recognising instead their actual status as foreign agents;
9. Demand Israel cease forthwith and lift with immediate effect the ongoing closure and blockade of the Gaza Strip, including lifting restrictions on dual use items and access to essential services, including healthcare, for Palestinians;
10. Call on the Israeli regime to release all Palestinian political prisoners, to end its widespread and systematic use of arbitrary detention and commission of torture and other ill-treatment in Israeli prisons and detention centres, as well as to end the trial of Palestinian civilians, including children, in the Israeli military court system;
11. Recognise that the Israeli civilian and military court systems are complicit in Israel’s settler colonial apartheid regime and have normalised and entrenched the pervasive impunity enjoyed by Israeli military and state officials, including for systematic torture and other ill-treatment by state bodies in the unlawful extraction of information for use in judicial proceedings;
12. Impose travel bans and asset freezes on Israeli political, military, and government officials as well as settlers associated with Israel’s apartheid regime, its illegal settler colonial enterprise, and related international crimes;
13. Demand that Israel immediately cease any and all practices of intimidation, harassment, smear campaigns, and other forms of silencing of human rights defenders and civil society organisations for their opposition to apartheid, including by repealing with immediate effect the unlawful October 2021 designations of the six Palestinian human rights and civil society organisations both under Israeli domestic law and under military orders;
14. Ensure that in their own laws, policies, and practices, the rights to freedom of opinion, expression, freedom of assembly and



association, of Palestinians and anyone advocating for the rights of the Palestinian people are respected, protected, and fulfilled, including their right to engage in boycotts and, where relevant, to immediately repeal all legislation and other measures that aim to criminalise boycotts of Israel;

15. Implement a mandatory and comprehensive arms embargo nationally or multilaterally against Israel that includes:
  - (i) Prohibition of the provision to Israel of arms and related matériel of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, security equipment, paramilitary equipment, and spare parts for the aforementioned;
  - (ii) Termination of all existing and forthcoming contractual arrangements with and licenses granted to Israel relating to the manufacture and maintenance of arms, ammunition, military equipment, vehicles, and security and surveillance equipment;
  - (iii) Prohibition of any cooperation with Israel in the manufacture and development of nuclear weapons;
16. Demand that Israel ensures the immediate and full realisation of the inalienable rights of Palestinian refugees, displaced persons, and involuntary exiles, including to return to their homes, lands, and properties in their villages, towns, and cities of origin, as well as to restitution of their property and compensation for the damages inflicted upon them as a result of the ongoing *Nakba*, as integral to realising the Palestinian people's right to self-determination;
17. Demand that Israel repeal all domestic legislation and military orders enshrining racial discrimination, domination, and oppression over the Palestinian people as a whole, including the Law of Return (1950), the Absentee Property Law (1950), the Citizenship Law (1952), the Status Law (1952), the Citizenship and Entry into Israel Law (1952), the Legal and Administrative

Matters Law (1970), the Jewish Nation-State Basic Law (2018), the Citizenship and Entry into Israel Law (Temporary Order) (2022), and all other laws and measures imposing material discrimination against the Palestinian people;

18. Demand an immediate end to Israel's discriminatory planning and zoning policies as manifestations of the crimes of population transfer and apartheid, including illegal house demolitions, the destruction of Palestinian property, and denial of access to land and other natural resources;
19. Warn against the direct and indirect legal risks and consequences of carrying out and maintaining business activities and relationships with Israel's settler colonial apartheid regime, including through public advisories and notices disseminated among businesses, financial institutions, and other private actors;
20. Declare as criminal organisations, institutions, and individuals committing and/or complicit in the crimes of apartheid and population transfer against the Palestinian people;
21. Activate universal jurisdiction mechanisms to try suspected perpetrators of grave breaches and other international crimes, including the crimes of population transfer and apartheid, against the Palestinian people in their own domestic courts, including on the basis of the Apartheid Convention;
22. For states who have not already done so, ratify relevant international treaties, including the Apartheid Convention, Rome Statute, and international human rights law instruments; and
23. Support the Prosecutor of the ICC in conducting a prompt, thorough, and comprehensive investigation into the Situation in Palestine and urge the investigation and prosecution of perpetrators of the crimes of apartheid and population transfer, among other international crimes.

## 9.2 To the High Contracting Parties to the Geneva Conventions

24. Consider individual, joint, and collective measures to implement common Article 1 of the Geneva Conventions, which requires the High Contracting Parties ‘to respect and ensure respect’ for the Conventions in all circumstances by undertaking practical measures of enforcement and effective measures available under the Fourth Geneva Convention to bring an end to Israel’s settler colonial apartheid regime and other breaches of international humanitarian law, including but not limited to:<sup>771</sup>
  - (i) Engaging the enquiry procedure under Article 149 of the Fourth Geneva Convention;
  - (ii) Dispatching an International Humanitarian Fact-finding Commission to report back to the High Contracting Parties;
  - (iii) Applying corresponding domestic adjudication obligations, in particular, through the application of universal jurisdiction mechanisms;
  - (iv) Putting an end to the Israeli closure and blockade of the Gaza Strip, recognising its illegality, not rendering aid or assistance in maintaining it;
  - (v) Divesting from and imposing economic and military sanctions on Israel and other states abetting grave breaches of international humanitarian law;
  - (vi) Downgrading diplomatic relations with Israel and other states abetting grave breaches;
  - (vii) Freezing the assets of legal and natural persons responsible for gross violations and grave breaches;
  - (viii) Recognising Israel’s parastatal institutions (WZO/JA, JNF, United Israel Appeal, and affiliates) as organs of the

<sup>771</sup> These recommendations were put forward in 2010 by civil society from Palestine and other countries in a letter to Switzerland for convening the High Contracting Parties. See NGO Joint Letter to Switzerland on HCP Conference (5 February 2010) <<http://www.hlrn.org/activitydetails.php?title=NGO-Joint-Letter-to-Switzerland-on-HCP-Conference&id=o29tYw==#.Y4MczezP23I>>.

Israeli state where they operate in the territory of a High Contracting Party and claim ‘non-governmental,’ private, ‘charitable’ and/or other tax-exempt status, while engaging in population transfer, including the implantation of settlers and settlements in the occupied Palestinian territory and the occupied Syrian Golan;

- (ix) Applying international and, as appropriate, domestic law to sanction Israel’s parastatal institutions and other organizations where they are found to engage in grave breaches of international humanitarian law, including population transfer, and other humanitarian and criminal breaches of international law;
- (x) Refraining from supplying Israel with any weapons and related equipment, and suspending any military assistance that Israel receives from them;
- (xi) Refraining from acquiring any weapons or military equipment from Israel;
- (xii) Suspending economic, financial and technological assistance to and cooperation with Israel; and
- (xiii) Ensuring that the specialised agencies and other international organisations conform their relations with Israel to these remedial terms.



### 9.3 On States' Duty to Ensure Corporate Accountability

25. Ensure that individuals, corporate actors, and other for-profit and non-profit organisations involved in and/or complicit in the commission of the crime of apartheid, other crimes against humanity and war crimes, and grave human rights violations are held to account through all available mechanisms at national, regional, and international levels;
26. Provide political and financial support for the annual update of the UN Database on corporate entities involved in illegal Israeli settlements and take effective steps to ensure that the list of companies continues to be updated, as mandated, and as a comprehensive and living tool for corporate accountability, and to broaden the scope to include all business entities and for-profit and non-profit organisations that are complicit in apartheid;
27. Legislate, in domestic legal systems, for mandatory human rights due diligence procedures for all corporate entities and for-profit and non-profit organisations engaged in activities within and outside their jurisdictions, with special attention afforded to conflict-affected areas, occupied and annexed territory, where enhanced mandatory human rights due diligence is necessary. Such legislation should align with the UN Guiding Principles on Business and Human Rights, the Organisation for Economic Co-operation and Development (OECD) Guidelines, and relevant provisions of international human rights law and international humanitarian law, as applicable;
28. Adopt legislation, domestically and regionally, to prohibit the import of goods and services from illegal settlements, including in Palestine, and ban trade with and economic support for the illegal settlement enterprise; as Israel's largest trade partner, the EU should lead by example in this regard;
29. Apply public procurement law in line with relevant obligations and responsibilities for states under international law, the UN Guiding Principles on Business and Human Rights, and the OECD

Guidelines, which entails denying public contracts to companies involved in grave violations of international law;

30. Investigate and prosecute private enterprises and individual ‘charities’ that materially or otherwise support the Israeli settler colonial apartheid regime; and
31. Incorporate legislation to give effect to the principle of universal jurisdiction domestically for the prosecution of business entities, financial institutions, for-profit and non-profit organisations, and individuals for the crimes of apartheid and population transfer, grave breaches of the Geneva Conventions, and other international crimes to ensure perpetrators are held to account.

#### **9.4 To Palestinian Officials**

32. Continue to recognise and condemn, including through regional and international organisations, that Israel’s discriminatory laws, policies, and practices have cumulatively established and continue to maintain an apartheid regime of systemic racial oppression and domination over the Palestinian people as a whole, as part of the Zionist settler colonial project, using strategic fragmentation as its primary tool, giving rise to individual criminal responsibility in addition to engaging Israel’s state responsibility for internationally wrongful acts;
33. Ensure that they do not render direct or indirect assistance to Israel’s settler colonial apartheid regime, including by not contributing to the Israeli policy of strategic fragmentation; and
34. Ensure a comprehensive representation of the Palestinian people as a whole, including Palestinian refugees and exiles abroad and Palestinian citizens inside the Green Line, through functional and democratic institutions, in pursuing the realisation of the collective right of the Palestinian people to self-determination.



## 9.5 To Member States of the Human Rights Council

35. Adopt a resolution recognising that Israel has established and maintains an apartheid regime over the Palestinian people as a whole and adopt effective measures to dismantle the regime;
36. Continue to mainstream and mobilise support against Israel's settler colonial apartheid regime by delivering statements recognising and condemning this regime in national capacities as well as through cross-regional statements;
37. Ensure the ongoing Commission of Inquiry on root causes of systematic discrimination on both sides of the Green Line is provided with sufficient funding, resources, and staffing to conduct its investigations, work, the compiling of a list of suspected perpetrators, and the preservation of evidence and documentation;
38. Adopt a resolution to expand the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967 to encompass the human rights of the Palestinian people as a whole, including Palestinian citizens inside the Green Line and Palestinian refugees, displaced persons, and exiles abroad; and
39. Ensure the UN Database of businesses involved in Israel's illegal settlement enterprise is updated annually and broaden the scope of the Database to include businesses entities and other for-profit or non-profit organisations that are complicit in Israeli apartheid on both sides of the Green Line.

## 9.6 To UN Special Procedures

40. Continue to examine the detrimental human rights impacts of Israel's settler colonial apartheid regime and build on the mounting recognition that Israeli laws, policies, and practices amount to the commission of the crime of apartheid over the Palestinian people as a whole as well as other war crimes and

crimes against humanity;

41. Adopt a comprehensive approach that places violations of the human rights of the Palestinian people as a whole within the wider context of Zionist settler colonialism and Israeli apartheid, focusing on the need for states to adopt effective, coercive measures toward ending Israel's institutionalised regime of systematic racial oppression and domination and the colonial subjugation of the Palestinian people; and
42. Provide meaningful support for the work of Palestinian civil society and human rights organisations and defenders, in their monitoring, documentation, and reporting on widespread and systematic human rights violations and international crimes committed on both sides of the Green Line.

## 9.7 To UN Treaty Bodies

43. Examine and recognise Israel's settler colonial apartheid regime as an underlying root cause and determinant of the widespread and systematic human rights violations committed against Palestinians in their concluding observations on Israel; and
44. Build on and take note of the previous concluding observations and reporting by CERD, CESCR, and the Human Rights Committee, among others, who have made determinations regarding Israel's systematic and institutionalised discrimination against Palestinians.

## 9.8 To the Ongoing UN Commission of Inquiry

45. Examine Israel's settler colonial apartheid regime in its investigations into the root causes of systematic discrimination in the occupied Palestinian territory and in Israel, including material racial discrimination carried out by Zionist parastatal institutions in their effort to displace, dispossess, and replace the indigenous Palestinian people on the land.



## 9.9 To the CEIRPP and Other UN Bodies

46. Address the Palestinian people as a whole in investigations, reporting, statements, and deliberations, in order to de-fragment the UN's treatment of those subjected to Israel's settler colonial apartheid regime; and
47. Recognise and condemn Israel's settler colonial apartheid regime in its reporting, events, and other relevant activities and work to counter the fragmentation of the Palestinian people in its research, work, dissemination, and recommendations.

## 9.10 To the UN General Assembly

48. Adopt effective, coercive measures under the Uniting for Peace resolution and take other necessary steps to ensure international justice and accountability and an end to Israeli impunity for the crime of apartheid and other international crimes and wrongful acts; and
49. Adopt a resolution to reconstitute the UN Special Committee against Apartheid and the UN Centre against Apartheid to address Israeli authorities' commission of the crime against humanity of apartheid and its elements against the Palestinian people as a whole and empower these bodies to proactively pursue the dismantlement of Israel's settler colonial apartheid regime.

## 9.11 To the ICJ

50. Address Israel's settler colonial apartheid regime targeting the Palestinian people as a whole and legal responsibilities arising therefrom in its consideration of 'the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem,

and from its adoption of related discriminatory legislation and measures.<sup>772</sup>

## 9.12 To the UN Security Council

51. Restore legal and operational integrity by implementing a mandatory and comprehensive arms embargo under Chapter VII of the UN Charter, similar to the one imposed on the former South African apartheid regime, including:
  - (i) Prohibition of the provision to Israel of arms and related materials of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, security equipment, paramilitary equipment, and spare parts for the aforementioned;
  - (ii) Termination of all existing and forthcoming contractual arrangements with and licenses granted to Israel relating to the manufacture and maintenance of arms, ammunition, military equipment, vehicles, and security and surveillance equipment; and
  - (iii) Prohibition of any cooperation with Israel in the manufacture and development of nuclear weapons.

## 9.13 To Parliamentarians

52. Incorporate language in relevant statements, resolutions, and relevant internal and external documents that recognise the context of Israel's settler colonial apartheid regime and its strategic fragmentation of the Palestinian people;
53. Put forward parliamentary resolutions recognising and condemning Israel's settler colonial apartheid regime over the Palestinian people as a whole; such legislation should call on the corresponding state to adopt effective measures and end

<sup>772</sup> UN General Assembly, Fourth Committee, Draft Resolution, 10 November 2022, UN Doc A/C.4/77/L.12/Rev.1, para 18(a).



complicity in Israel's settler colonial apartheid regime, including but not limited to filling any legislative gaps necessary to apply universal jurisdiction domestically for the prosecution of gross violations, grave breaches, war crimes, crimes against humanity, and violations of peremptory norms of international law; and

54. Adopt legislation prohibiting the import of illegal settlement goods and services into their jurisdiction.

#### **9.14 To Local and Other Sub-national Spheres of Government**

55. Declare municipal jurisdictions to be 'Apartheid-Free Zones' and facilitate public deliberations and learning events to inform the public about Zionism, Israel's settler colonial apartheid regime, and its dire consequences on the Palestinian people, the region, and the world;
56. Exercise extraterritorial obligations as organs of the state under international human rights law treaties and peremptory norms of international law to avoid recognition of, cooperation, and transaction with entities supporting or otherwise benefitting from Israel's settler colonial apartheid regime, including through selective-procurement resolutions and other responsible mechanisms; and
57. Expand engagement and cooperation with Palestinian municipalities and local councils to foster exchanges and practical solidarity.

#### **9.15 To the Office of the Prosecutor of the ICC**

58. Ensure that the current ICC investigation into the Situation in Palestine proceeds without undue delay and involves a full, thorough, and comprehensive examination of suspected international crimes, including war crimes and crimes against humanity, comprising, *inter alia*, the crimes of apartheid, population transfer, appropriation and destruction of property, pillage, persecution, wilful killing, murder, torture, and other

inhumane acts, including the denial of the right to return, committed by Israeli military and state officials and associated actors, including representatives of private entities, businesses, and other for-profit and non-profit organisations.

## **9.16 To Corporate Entities and Financial Institutions**

59. Responsibly cease and disengage from all business activities and relationships that may render them complicit, or otherwise contribute to the maintenance and entrenchment of Israel's settler colonial apartheid regime, including its illegal enterprise in the occupied Palestinian territory;
60. Respect all applicable provisions of international law in all activities and relationships linked to Israel and the occupied Palestinian territory;
61. Use the UN Database to bring their business activities, conduct, and relationships in line with relevant international responsibilities;
62. Introduce and commit to undertaking ongoing, rigorous enhanced human rights due diligence to ensure that operations and relationships are in full compliance with relevant responsibilities, namely under international human rights law, international humanitarian law, and the UN Guiding Principles on Business and Human Rights; and
63. Introduce appropriate reparations and remedial processes, in consultation with those directly affected, i.e., the Palestinian people, to provide for redress and effective remedy for violations and harm caused by direct and indirect business relationships or activities linked to Israel's settler colonial project in Palestine.



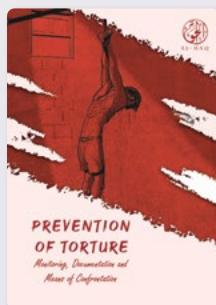
## 9.17 To Civil Society Organisations

64. Adopt organisational positions that recognise and condemn Israel's settler colonial apartheid regime over the Palestinian people as a whole, including Palestinians in the occupied Palestinian territory, Palestinians inside the Green Line, and Palestinian refugees, displaced persons, and exiles around the world; and
65. Call upon their respective governments, representatives, and state agencies to adopt immediate effective, coercive measures, including the aforementioned recommendations for states, toward dismantling Israel's settler colonial apartheid regime and ensuring the full realisation of the inalienable rights of the Palestinian people as a whole to return and self-determination.

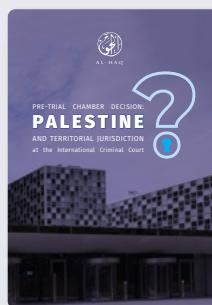




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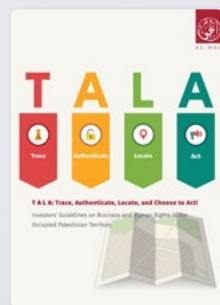
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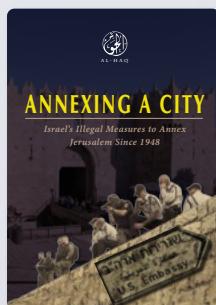
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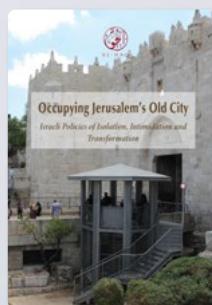
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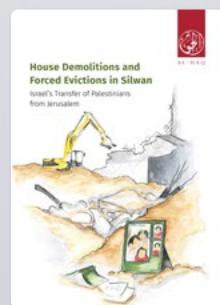
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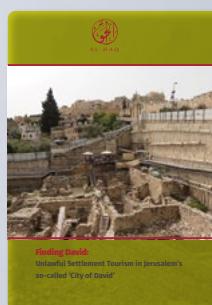
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A L - H A Q

### About Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

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

Al-Haq is the West Bank affiliate of the International Commission of Jurists – Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award. In 2020, Al-Haq received the Gwynne Skinner Human Rights Award presented by the International Corporate Accountability Roundtable (ICAR) for its outstanding work in the field of corporate accountability.

