

TO: The Honorable Erin Grall  
Chair, Public Integrity & Ethics Committee

RE: Sworn Complaint Alleging Violation of House Rules  
Relating to the Egregious Conduct of Representative Randy Fine

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The undersigned, Taj P. Murphy, Sr., being duly sworn, files this complaint alleging violation the Rules of the Florida House of Representatives relating to the vile, hateful, and atrocious conduct of Representative Randy Fine, who has violated his duty as an elected official and has disgraced the seat which he holds in the Florida House, pursuant to House Rules 15.1 and 15.2:

1. In a May 15, 2021, Facebook post, Representative Randy Fine, as well as on behalf of the Jewish Caucus, called Palestinians “animals.” See exhibit A.
2. In response to a comment on the same post, Representative Fine called for the annihilation of the Palestinian people by responding, “#BlowThemUp.” See exhibit B.
3. Representative Fine has privately messaged a Florida citizen on Instagram in reference to her private post, saying “Go blow yourself up.” See exhibit C.
4. Representative Fine has attacked people of the Muslim faith, calling them “monsters,” “terrorists,” and “rapists.” See exhibit D.
5. Representative Fine has weaponized Florida laws against Palestinians and those peacefully protesting violations of human rights against Palestinians, using current law to fit his personal political agenda.
6. Representative Fine weaponized “HB1: Combatting Public Disorder” from the 2020 Legislative Session in his incitement of violence against protestors, encouraging his constituents to run over people at Palestinian advocacy protests, asserting that HB1 will protect the driver from criminal liability. See exhibit E.
7. Representative Fine has weaponized “HB741: Anti-Semitism,” along with “HB1” by threatening punishment against people advocating for peace, justice, and human rights for the Palestinian people (See exhibit F) who have been living in egregious conditions under military occupation and apartheid for decades as recorded by the United Nations, Human Rights Watch, as well as many others. See exhibit G.
8. Representative Fine has violated Rule 15.1 by violating his duty to uphold the integrity of the House by using his official Representative Facebook and Twitter pages to make these comments.
9. He has also violated Rule 15.2 by performing in a manner that does not promote public confidence in the integrity and independence of the House and of the Legislature; Representative Fine’s behavior threatens the honor of the lawmaking body.

10. Constituents of Representative Fine have complained of this behavior and fear the lack of accountability for this violence, as well as the lack of his ability to adequately represent them.

The Public Integrity and Ethics Committee, and the Florida House of Representatives, must act against this egregious behavior. It is hurtful and abominable enough coming from anyone, but to have an elected official spew this hate and violence is disturbing and harmful to our state.

Accordingly, the undersigned requests the committee to uphold its mandate and perform a thorough and non-biased investigation of Representative Fine for his horrific conduct and failure to comply with House Rules 15.1 and 15.2.

**VERIFICATION**

I HEREBY SWEAR OR AFFIRM THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

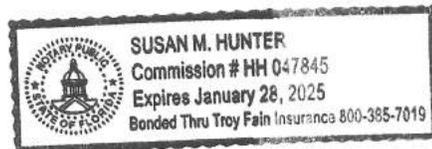
Taj P. Murphy  
Taj P. Murphy, Sr.

STATE OF FLORIDA     )  
  )  
COUNTY OF Seminole )

SWORN TO AND SUBSCRIBED before me this 11<sup>th</sup> day of August, 2021, by Taj P. Murphy who is personally known to me or has produced as identification.

Susan M Hunter  
(Notary Signature)

Susan M Hunter  
(Notary Name Printed)  
NOTARY PUBLIC  
Commission No. HH 047845



# EXHIBIT A



State Representative Randy Fine

5d

Proud to stand with my colleagues, both Republicans and Democrats, in condemning the Islamic terrorism coming out of Gaza. I fully support Israel using maximum force to punish these animals. #NoMercy



The Florida Legislature



Jewish Caucus

Florida State Capitol

Senate  
404 South Monroe Street  
Tallahassee, FL 32399

House of Representatives  
402 South Monroe Street  
Tallahassee, FL 32399

Representative Michael  
Gottlieb, Co-Chair  
District 98

Representative Emily  
Slosberg, Co-Chair  
District 91

Senators  
Senator Lori Berman  
District 31

Senator Lauren Book  
District 32

Senator Tina Polsky  
District 29

Senator Annette Taddeo  
District 40

Representatives  
Representative Mike Caruso  
District 89

Representative Ben Diamond  
District 68

Representative Randy Fine  
District 53

Representative Joe Geller  
District 100

Representative Michael Gottlieb  
District 98

Representative David Silvers  
District 87

Representative Emily Slosberg  
District 91

Representative Allison Tant,  
District 9

FOR IMMEDIATE RELEASE  
May 14, 2020

CONTACT:  
Jack Anderson  
Legislative Assistant to Representative Slosberg  
(850) 717-5091  
[Jack.Anderson@myfloridahouse.gov](mailto:Jack.Anderson@myfloridahouse.gov)

Statement by Florida's Bipartisan Jewish  
Legislative Caucus Supporting Israel's Right to  
Defend Itself

TALLAHASSEE, FL — Today, Florida's Bi-Partisan Jewish Legislative  
Caucus issued the following joint statement:

"The Florida Jewish Legislative Caucus is horrified by the terrorist attacks against Israel, and strongly condemns the indiscriminate targeting of civilians and use of religious, medical, educational, and human shields by the Islamic terrorist group, Hamas. We mourn not only the lives lost in Israel, but the civilian victims in Gaza who have died as a direct result of these terrorists. We hope for a speedy end to all violence in this area, and hope that Arab nations will stand up to this terrorism and normalize ties and relations with Israel and in doing so will help the region find peace. Israel is a strong ally of the United States and we stand by them in their defense of their land and people."

###

Write a comment...



# EXHIBIT B



### Replies



**Christopher Johnson**

What about the Palestinians rights to defend themselves against the Israelis bullying them and forcing them out of their homes I didn't agree with what's going on they need to respect each other right to live

1d Like Reply

23



Author

**State Representative Randy Fine**

[Christopher Johnson](#)  
[#BlowThemUp](#)

1d Like Reply

17



**JT Allen**

[State Representative Randy Fine](#) - this comment has been reported. When you advocate for someone else's death, you are clearly out of line.

1d Like Reply

14



**Avril Gordon**

[State Representative Randy Fine](#) you are a sad and hateful person. Children were murdered by Israel. Are

Write a reply...



# EXHIBIT C



# State Representative Randy Fine

Politician

[VIEW PROFILE](#)

State Representative Randy Fine is responding to a comment you made on their Page. [View comment.](#)



Go blow yourself up.



dima32



dima32 Florida State elected State Representative sent me this in messenger for commenting on his post. Please share.

3h



olaaqel Wow!!!

2h Reply



roobs83 What?!? Please put his on blast!!!

2h Reply



hayitsfay Whaaaaaaaaaaaaat!!!

1m Reply



3 likes

3 HOURS AGO



Log in to like or comment.

# EXHIBIT D

  **State Representative Randy Fine** ✓ 2d ·  

 **Aziza Nasser**  
Where is Robert burns when you need him

2d Like Reply 1 

  Author  
**State Representative Randy Fine** ✓  
[Aziza Nasser](#) Raping. Something you all are familiar with.

2d Like Reply 8   

 **Randy Fine** @VoteRandyFine 

The Muslim Brotherhood-affiliated terrorist group CAIR is trying to silence the one Republican Jew willing to stand up for Israel. Well I have two words for these monsters: Bring it. [cairflorida.org/newsroom/press...](http://cairflorida.org/newsroom/press...)

12:30 PM · May 26, 2021 from Sarasota, FL · Twitter for iPhone

1 Retweet 6 Likes

# EXHIBIT E



Top Fan

**Joyce Straight**

Time that we should avoid the causeway?  
Information needed.

28m Like Reply



Author

**State Representative Randy Fine** ✓

[Joyce Straight](#) Not the worst idea. It's supposed to be around 5:30. Though part of our anti-riot bill offers increased protection were these Islamic terrorist sympathizers to surround your car. You could do what you needed to escape without risk of punishment.

20m Like Reply



Write a reply...



**State Representative Randy Fine** ✓

May 21 at 11:31 AM · ⚙️



BREAKING: An anti-Israel, anti-Semitic "rally" sponsored by local Hamas supporters encouraging attendees to "resist" is occurring later along the Melbourne Causeway. Be aware if you are in the area. I have spoken to Melbourne City officials who have assured me they will take full advantage of our recently passed anti-riot legislation should this hate group act here in the manner they are around the country (see article in comments). We won't put up with their hate in Brevard.

👍👎😱 741

830 Comments 179 Shares

👍 Like

💬 Comment

➦ Share

# EXHIBIT F



State Representative Randy Fine

June 10 ·



Thanks to HB 741, which I sponsored and Governor DeSantis signed alongside me in Israel, this would never be allowed in a Florida public college or university, and those participating would be fired or expelled. In Florida, we stand against this Muslim hatred.



FOXNEWS.COM

Protesters at NYC public college hijack Zoom lecture with anti-Semitic rhetoric, Jewish students say

57

6 Comments 2 Shares

# EXHIBIT G



# General Assembly

Distr.: General  
30 August 2016

Original: English

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## Seventy-first session

Item 50 of the provisional agenda\*

### **Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories**

## **Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem\*\***

### **Report of the Secretary-General**

#### *Summary*

The present report has been prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 70/90. It focuses on Israeli practices affecting the human rights of Palestinians in the Occupied Palestinian Territory, with a particular focus on the use of force by Israel, arrest and detention practices and the application of collective punishment measures across the Occupied Palestinian Territory. The report provides details on how the lack of accountability for such violations feeds the cycle of violence and compromises prospects for sustainable peace and security.

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\* [A/71/150](#).

\*\* The present report was submitted after the deadline to reflect the most recent developments.



## I. Introduction

1. The present report covers the period from 1 June 2015 to 31 May 2016 and is primarily based on monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information collected by other United Nations entities and non-governmental organizations.
2. The report does not provide a comprehensive account of all human rights concerns in the Occupied Palestinian Territory, nor does it address concerns arising from the actions of Palestinian authorities or Palestinian armed groups. For such an overview, the present report should be read in conjunction with other reports of the Secretary-General and the High Commissioner for Human Rights (see [A/70/421](#), [A/HRC/31/40](#) and Add.1, [A/HRC/31/41](#) and [A/HRC/31/44](#)).
3. The reporting period was marked by an upsurge in violence that started in mid-September 2015 and continued into 2016, although it declined in intensity. According to the Office for the Coordination of Humanitarian Affairs and OHCHR, in the occupied territory, a total of 232 Palestinians, including 52 children, were killed and over 5,774 seriously injured, while 32 Israelis were killed and 356 seriously injured.<sup>1</sup>
4. In the occupied West Bank, the scale of deaths and injuries, in particular in the fourth quarter of 2015, made the reporting period the most deadly for Israelis and Palestinians since the end of the second intifada (2000-2005). Incarceration, including the administrative detention of children and adults, reached new records, while an increase in closures and checkpoints was reported in the occupied West Bank, including East Jerusalem. Unlawful practices, including punitive demolitions, revocations of residency and the withholding of bodies, resumed, occurring with alarming frequency.
5. The blockade of Gaza,<sup>2</sup> which entered its tenth year in 2016, continued to undermine basic human rights and economic prospects, as well as the availability of essential services, exacerbating poverty and aid dependency. Restrictions on freedom of movement and the use of force by Israel in the so-called access-restricted areas remained of particular concern.
6. The Secretary-General reiterates his view that a general sense of despair and frustration is growing under the weight of a half-century of occupation and a paralysed peace process. In the occupied West Bank, young Palestinians are resorting to violence, in particular lone-wolf attacks against Israelis, while Gaza has witnessed a rise in crime, violence and suicides, including by self-immolation. The lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law are exacerbated by the lack of accountability for previous violations. That feeds the cycle of violence

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<sup>1</sup> Office for the Coordination of Humanitarian Affairs and OHCHR. The number of Palestinians killed does not include nine Palestinians killed by Israelis other than the Israeli security forces. The number of Palestinians injured excludes injuries sustained from tear gas inhalation. There is no record of Israeli children having been killed as a result of the upsurge in violence during the reporting period.

<sup>2</sup> The term “blockade” has been used by the United Nations to describe Israel’s imposition of prolonged closures and economic and movement restrictions in the Gaza Strip (see [A/HRC/24/30](#), paras. 21 to 23, [A/RES/69/93](#) and [A/69/347](#)).

and compromises chances for sustainable peace and security. Tackling impunity must be the highest priority for the parties.

## II. Legal framework

7. A detailed analysis of the applicable international humanitarian and international human rights law framework and the corresponding obligations of duty bearers can be found in reports of the Human Rights Council (see [A/HRC/12/37](#), paras. 5 to 9) and the Secretary-General (see [A/69/347](#), paras. 3 to 6).

## III. Implementation of General Assembly resolution 70/90

### A. Use of force by Israeli security forces in the context of law enforcement

8. During the reporting period, OHCHR documented several incidents of Israeli security forces using apparent excessive force in the course of law enforcement operations (see [A/HRC/31/40](#) and [A/71/355](#)). The Secretary-General is particularly concerned by the high number of apparent unlawful killings of Palestinians, including that of a 72-year-old woman, Tharwat al-Sharawi, shot by an Israel Defense Forces soldier in Hebron on 6 November 2015, allegedly during a car-ramping incident. Concerns over extrajudicial executions also arose with the killing of a 14-year-old girl, Hadeel Wajih Awwad, who was shot repeatedly by an off-duty police officer in West Jerusalem on 23 November while she lay wounded on the ground after having attacked bystanders with scissors. In both incidents, publicly available video footage showed repeated lethal use of firearms, which continued even after any possible threat had ended.

9. Questions of extrajudicial execution also arose in the death of Abdelfattah al-Sharif and Ramzi al-Qasrawi, who were shot dead after attacking soldiers at a checkpoint in Hebron on 24 March 2016 (see [A/71/355](#), para. 38). According to witness testimony provided to OHCHR, both men were killed after they had been wounded and “neutralized” and no longer presented an imminent threat that could justify the intentional lethal use of a firearm. The killing of Abdelfattah al-Sharif received far more attention than that of Ramzi al-Qasrawi, owing largely to a widely circulated video recording which showed an Israel Defense Forces medic fatally shooting the wounded Abdelfattah al-Sharif in the head from a few metres away.

10. Another disturbing element of the video and corroborating witness accounts was that, although seriously wounded, Abdelfattah al-Sharif did not receive medical attention, despite the presence of at least two Magen David Adom ambulances and several Israel Defense Forces medics at the site. While the medics aided the wounded Israeli soldier, who was conscious and able to walk, they disregarded the more seriously injured Palestinian. A forensic pathologist has reportedly testified that had Abdelfattah al-Sharif been given medical treatment, he could have possibly been saved.<sup>3</sup>

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<sup>3</sup> Yonah Jeremy Bob, “Pathologist in Hebron manslaughter case says terrorist could have survived if given treatment”, *Jerusalem Post*, 16 June 2016.

11. Throughout the reporting period, OHCHR documented and raised concerns that Palestinians wounded by Israeli security forces were not being provided medical assistance, or that such assistance was being significantly delayed, including by blocking Palestinian ambulances and first responders (see [A/HRC/31/40](#), para. 16). Those practices are inconsistent with international standards, for example, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which require assistance and medical aid to be rendered at the earliest possible moment. Such practices also amount to an arbitrary deprivation of the right to life.<sup>4</sup>

12. Additional concerns arose over the widespread use of live ammunition by Israeli security forces, in particular against stone-throwers and in the context of clashes, protests and demonstrations. A majority of Palestinians who died in such contexts were killed by live fire, which also injured 2,129 Palestinians, despite witness accounts and video footage on several occasions indicating that there was no imminent threat to life or serious injury to Israeli security forces or other bystanders that would have warranted the use of lethal force (see [A/HRC/31/40](#), paras. 14 and 23).

13. The use of firearms by Israeli forces appears even more rampant in access-restricted areas, in particular against protestors along the perimeter fence.<sup>5</sup> Most of the 20 demonstrators killed during the reporting period, and over 30 per cent of those injured, were hit by live ammunition, compared with 10 per cent of injuries caused by firearms in the occupied West Bank.<sup>6</sup> The use of high velocity ammunition also caused excessive and unnecessary harm, often leading to long-term disability.

14. According to the United Nations Department of Safety and Security, apart from demonstrations, there were 798 shootings into access-restricted areas by Israeli security forces on sea and land, as a result of which three Palestinians were killed and 58 others injured. Based on OHCHR monitoring and available information, none of the victims appeared to present an imminent threat to life or serious injury to Israeli security forces that would have warranted the use of firearms and, in some instances, those hit were outside the designated restricted areas. At sea, the use of force, including live fire, injured nine fishermen and led to the destruction of 18 boats.<sup>7</sup>

15. In a case documented by OHCHR in early 2016, the Israeli navy pursued and opened fire on two fishing boats that were reportedly within the six-nautical-mile limit in force at the time and did not present a threat. One fisherman was hit

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<sup>4</sup> After the incident involving Abdelfattah al-Sharif, Magen David Adom clarified its policy so that staff could treat attackers after Israeli security forces had searched the attackers and declared it safe to approach. Previously, staff had to await clearance from a sapper before approaching wounded attackers. Prior to December 2015, rules of the Israeli Medical Association also contributed to failures since they permitted medical professionals to treat victims before attackers, irrespective of who was more seriously wounded.

<sup>5</sup> As recounted in previous reports, the extent where access is permissible by land remains unclear. Areas up to 300 metres from the perimeter fence are generally considered “no-go” areas, and up to 1,000 metres as “high-risk” areas. Israel continues to enforce a six-nautical-mile fishing limit along the entire coast. However, between April and June 2016, it temporarily extended the fishing area limit in the south of the Strip to nine nautical miles.

<sup>6</sup> See [www.ochaopt.org/humanitarian-overview-2015](http://www.ochaopt.org/humanitarian-overview-2015).

<sup>7</sup> The Gaza Fishermen’s Union and the Protection Cluster: Occupied Palestinian Territory.

multiple times with rubber bullets and, according to medical records, sustained fractures to bones in his back, neck and face after one of the Israeli navy vessels rammed into his boat. The man is no longer able to work owing to significant physical and cognitive disabilities. Moreover, Israeli security forces confiscated his boat. Three other fishermen arrested during that incident were forced to undress before their boats were boarded. They were handcuffed, blindfolded and transported to the Israeli port of Ashkelon where they were held for several hours in a container before being released. One of the fishermen was subjected to lengthy interrogation. At no point were the fishermen informed of the reasons for their arrest, nor were they allowed to communicate with their families or provided with an opportunity to contact a lawyer.

16. With respect to the use of less lethal force, the Secretary-General has concerns about the frequent and often unwarranted resort to rubber-coated metal bullets, including their use at short range, in contravention of Israeli regulations (see [A/HRC/31/40](#), para. 26). A total of 3,786 Palestinians were wounded by rubber-coated metal bullets during the reporting period. The black sponge bullets used by the Israeli police in East Jerusalem also cause serious injury.<sup>8</sup> At least 15 people, including 6 children and a 67-year-old woman, were injured by such ammunition during the reporting period, and about half of them lost sight in one eye.<sup>9</sup> The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) raised concerns about such ammunition causing serious injuries to children in the Shu'fat refugee camp, as well as about the extensive use of tear gas by Israeli security forces in densely populated refugee camps, including in areas close to playgrounds.<sup>10</sup>

## B. Hostilities

17. The 2014 ceasefire between Israel and Hamas has largely held. However low-level hostilities between Israeli security forces and Palestinian armed groups in Gaza during the reporting period resulted in 7 Palestinians being killed, of whom five were civilians, including 3 children, while at least 10 were wounded, including 3 children. An additional 6 Palestinians were killed and 49 wounded by explosive remnants of war. No Israeli casualties were reported.

18. During that period, Palestinian armed groups fired 112 rockets towards Israel, with 27 landing inside Israel. The launch of unguided missiles towards Israel continues to cause deep concern. Tunnel digging into Israel and Egypt, allegedly by Palestinian armed groups, was also reported. Meanwhile, Israeli forces conducted 92 incursions into Gaza and fired 80 missiles, mainly at alleged military

<sup>8</sup> According to the Association for Civil Rights in Israel, in July 2014, police in East Jerusalem began using black sponge-tipped bullets as a means to disperse demonstrations and riots, instead of the blue sponge-tipped bullets. The black bullets are twice as hard and heavy and their potential to cause injury is much greater.

<sup>9</sup> Association for Civil Rights in Israel, "Injuries caused by sponge bullets in East Jerusalem", 16 March 2016. Available from [www.acri.org.il/en/2016/03/16/injuries-caused-by-sponge-bullets-in-east-jerusalem/](http://www.acri.org.il/en/2016/03/16/injuries-caused-by-sponge-bullets-in-east-jerusalem/).

<sup>10</sup> UNRWA, "Children in distress: raising the alarm for 2016 and beyond", Briefing Note, April 2016. Available from <http://www.unrwa.org/resources/reports/children-distress-raising-alarm-2016-and-beyond>.

installations of Palestinian armed groups. At least 113 shells were also reportedly fired by the Israel Defense Forces from land and sea.

19. The most significant exchange of fire took place between 4 and 7 May 2016. For the first time since the 2014 ceasefire, both the Izz el-Deen al-Qassam Brigades and Palestinian Islamic Jihad claimed responsibility for firing up to 40 mortars towards Israeli forces near the fence, reportedly in response to incursions by the Israel Defense Forces in Gaza. Israel responded with air strikes and shelling, killing one civilian and wounding five, and damaging an unspecified number of civilian structures.

20. The Secretary-General is concerned that all necessary precautions have not been taken by the Israel Defense Forces to minimize civilian casualties during its operations, as required under international humanitarian law. For example, on 12 March 2016, Israeli warplanes reportedly targeted a building in a training ground of the Izz el-Deen al-Qassam Brigades in northern Gaza in response to rocket fire the day before. Owing to the magnitude of the explosion, debris fell onto the ceiling of a nearby civilian's house, killing two children and wounding a sibling and their mother. Concerns arose over the size of the blast, especially considering that the structure targeted was 50 to 70 metres away from a civilian residential area housing approximately 500 people.

21. Similar concerns arose over an air strike conducted on 11 October 2015 that killed a child and a pregnant woman (see [A/HRC/31/40](#), para. 54) and the shelling of an open field during the May 2016 escalation. OHCHR found that at least nine farmers were present in the field at the time and that shrapnel from shells fired nearby resulted in the death of an elderly woman.

### **C. Practices raising serious concerns of collective punishment**

22. Israeli practices that may amount to collective punishment continued during the reporting period. In addition to being explicitly prohibited by international humanitarian law,<sup>11</sup> collective punishment violates a range of human rights and may amount to a war crime.<sup>12</sup>

23. In the occupied West Bank, a commonly used form of collective punishment is the punitive demolition of homes, generally belonging to the families of attackers who killed Israelis, resulting in forced evictions and the risk of forcible transfer. According to the Office for the Coordination of Humanitarian Affairs, the practice of punitive demolitions, suspended until 2014, increased significantly during the reporting period, with 40 residential structures demolished or sealed off, displacing 237 persons, including 106 children.

24. In May 2016, the Committee against Torture observed that punitive demolitions constitute a violation of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and called upon Israeli authorities to end the practice (see [CAT/C/ISR/CO/5](#), para. 41).

<sup>11</sup> For example, see Fourth Geneva Convention (article 33), Hague regulations (article 50) and Customary International Humanitarian Law (rule 103).

<sup>12</sup> See articles 6, 7, 9, 14 and 16 of the International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI), annex.

25. During the reporting period, there was also an increase in the practice of Israeli authorities delaying the return of bodies of actual or alleged Palestinian attackers or suspects killed by Israeli security forces. At the time of writing, at least 12 bodies were still being held, several since October 2015. Although security considerations have been put forth at various times as the rationale for such delays, the Secretary-General is concerned that the extensive delay in returning bodies is being carried out with punitive intent against the families of the deceased. A commitment to release bodies for the purpose of burial “within a short space of time” was made by the Government of Israel to the nation’s High Court of Justice in the case of *Ewisat v. The Israel Police et al.* (HCJ 2882/16) on 5 May 2016.<sup>13</sup> However, after a gun attack in Tel Aviv in early June 2016, the new Minister of Defence issued an order not to return bodies as a measure “to deter potential attackers and their families”.<sup>14</sup> In addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel’s obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and 30) and violates the prohibition of torture and ill-treatment.

26. The closure of towns where actual or alleged Palestinian attackers resided is among the broadest forms of punishment employed by Israeli authorities. For example, on 3 February 2016, three residents of Qabatiya carried out an attack in East Jerusalem in which they injured a policeman prior to being killed. Immediately after, Qabatiya was raided by Israeli security forces and its seven entrances were closed off for over three days. Passage for the town’s 20,000 Palestinian residents was restricted, severing family and business links. Fourteen schools were reportedly closed in that period, and approximately 700 university students from Qabatiya were barred from attending classes on 6 February. The main vegetable market in town, the largest in the northern occupied West Bank, was also forced to close as trucks and vendors were not permitted to enter or exit.

27. Israeli authorities do not give detailed reasons for their specific actions, but instead usually make generic security claims. During a media interview, however, an Israel Defense Forces colonel highlighted the importance of economic levers having a massive influence and being an extremely efficient way of sending a message. Another colonel explained the tactical use of collective punishment and intimidation measures towards “dangerous groups”, comprising lists of 100 to 150 persons from various villages whom Israeli authorities considered to be potential attackers, stating that those who could be arrested, were arrested; that those for whom there was no reason to arrest were warned; and that the homes of others were mapped and then searched every night. He added that pressure was also exerted on their families and that it was made clear to them that if their children involved themselves in terror, the equipment the families used to provide for themselves, whether it was farming equipment or engineering tools, would be confiscated.<sup>15</sup>

28. In Gaza, the blockade and restrictions on movement continued to undermine the civil, political, economic, social and cultural rights of Palestinians. Socioeconomic indicators remain bleak, with acute crises in the public utility

<sup>13</sup> High Court of Justice, 2882/16.

<sup>14</sup> “Following Tel Aviv attack, Lieberman orders holding of terrorists’ bodies”, *Haaretz*, 9 June 2016.

<sup>15</sup> “Israel Defense Forces colonel: Hebron soldier had ‘no need to shoot’”, *YnetNews*, 29 April 2016.

sectors. According to the Palestinian Central Bureau of Statistics, the unemployment rate was 41.2 per cent. According to the Office for the Coordination of Humanitarian Affairs, the rate of aid dependency was 80 per cent, and as of May 2016, an estimated 75,000 people remained displaced from the escalation of hostilities in 2014. The rate of reconstruction and recovery remains well below the level needed, owing both to continued restrictions on the entry of goods and unfulfilled pledges of assistance by the international community. The impact of the blockade is further exacerbated by the almost continuous closure by the Egyptian authorities of the Rafah passenger crossing and by Jordan's increasing refusal to grant passage to Palestinians from Gaza through the Allenby crossing.

29. Following the escalation of hostilities in 2014, Israel introduced measures that considerably eased the movement of people and goods into and out of Gaza. Since the end of 2015, however, the gains started to be reversed. Worrisome measures instituted during the reporting period include the addition of crucial raw materials to the dual-use list, temporary restrictions on the entry of cement and other materials needed for reconstruction and recurring interrogations and confiscations or withdrawals of permits for traders and merchants.

30. Of particular concern was the significant drop in early 2016 of the approval rate for medical exit permits, which reached its lowest level since October 2009 (with the exception of the 2014 hostilities period).<sup>16</sup> There has also been a worrisome five-fold increase in the demand by the Israeli General Security Services for security interviews before medical exit applications are considered. In November 2015, the Coordinator of Government Activities in the Territories announced that only a first-degree relative would be allowed to accompany patients across the Erez checkpoint, and that security interviews would be required for all patient companions up to 55 years of age (an estimated 94 per cent of the population of Gaza).

31. Those practices raise alarm as some individuals called in for interrogations, including patients and would-be companions, have indicated to OHCHR that they had to resist pressure to collaborate with intelligence services. If substantiated, such practices can be construed as a form of coercion to extract information, which is forbidden under international law.<sup>17</sup>

32. The Secretary-General is particularly alarmed at the restrictions imposed by Israeli authorities on the movement and work of the staff of international and national human rights and humanitarian organizations operating in Gaza. Such measures have significantly impacted the work of those organizations. According to the Office for the Coordination of Humanitarian Affairs, by April 2016, the monthly approval rate of permits for travel from Gaza of national staff of the United Nations and international NGOs dropped significantly, to 24 per cent, while averages in the previous five years ranged from 70 to 80 per cent.<sup>18</sup>

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<sup>16</sup> World Health Organization, "Health access for referral patients from the Gaza Strip", May 2016. Available from [www.emro.who.int/images/stories/palestine/WHO\\_monthly\\_Gaza\\_access\\_report-May\\_2016\\_final.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/WHO_monthly_Gaza_access_report-May_2016_final.pdf?ua=1).

<sup>17</sup> See Fourth Geneva Convention (article 31) and Hague regulations (article 44).

<sup>18</sup> See [www.ochaopt.org/content/monthly-humanitarian-bulletin-may-2016](http://www.ochaopt.org/content/monthly-humanitarian-bulletin-may-2016).

## D. Arrest and detention

33. In the context of the upsurge in attacks against Israelis, demonstrations and clashes between Palestinians and Israeli security forces, there has been an alarming surge in arrests and detentions. According to the Commission of Prisoners and Ex-Prisoners' Affairs, a total of 7,800 Palestinians from the occupied West Bank and Gaza, including 2,400 children, were arrested and detained by Israeli security forces for varying durations during the reporting period.<sup>19</sup> Most were held in facilities on Israeli territory, in contravention of international humanitarian law.<sup>20</sup>

34. The human rights organization B'Tselem issued data provided by the Israeli Prison Service showing that the overall number of Palestinians held in its facilities at any one time peaked at the end of 2015 at 6,321 inmates, the highest number since June 2010. The number of Palestinians in administrative detention steadily increased during the reporting period, peaking on 30 April 2016 at 692, including 13 children. That represents the highest number of adults and children held without charge at any given time since early 2008. In a rare move, three Jewish-Israeli men were also held in administrative detention following the suspected settler attack in Duma village on 31 July.

35. Some administrative detainees resorted to prolonged hunger strikes to draw attention to their arbitrary detention, such as journalist Mohammed Al-Qiq, whose protest lasted 94 days, until February 2016. In May, the Committee against Torture joined the Human Rights Committee in calling upon Israel to end the practice of administrative detention and to ensure that all individuals currently held in administrative detention be afforded all basic legal safeguards (see [CAT/C/ISR/CO/5](#)).

36. During the reporting period, there was also a dramatic increase in the overall number of children in detention. According to Defence for Children International, some 163 Palestinian children were in Israeli detention at the start of the reporting period, increasing to 414 by the end of April 2016, after peaking at 440 at the end of February. That was the highest number of detained children since January 2008. In March 2016, a bill to allow courts to sentence children under 14 years of age to imprisonment in certain limited circumstances was approved by the Ministerial Committee for Legislation.

37. According to the Higher National Commission for Prisoners and Detainees Affairs, an estimated 300 people were arrested in Gaza by Israeli security forces passing through the Erez checkpoint, at sea or while breaching the Gaza-Israel perimeter fence. At least 35 among them were reportedly children. The majority of those arrested were usually released back into Gaza within 24 to 48 hours. Fishermen are particularly vulnerable to arbitrary arrest as highlighted in paragraph 15 above. There has been a worrisome increase in the number of fishermen being detained over the years, with the number of those arrested in the first half of 2016 already outstripping the total number in 2015. Israel claims that its restrictions on maritime activities in Gaza are necessary to prevent the illicit smuggling of arms by militant groups operating there. Nevertheless, only two fishermen<sup>21</sup> out of 130 arrested during the reporting period were charged with a crime, although not related to

<sup>19</sup> See <http://freedom.ps/freedom/>.

<sup>20</sup> See Fourth Geneva Convention (article 76).

<sup>21</sup> "Palestinian fishermen brought to Israeli court", *Maan News Agency*, 30 December 2015.

smuggling,<sup>22</sup> with one report of an individual disguised as a fisherman arrested on a boat allegedly with contraband.<sup>23</sup>

### **E. Accountability for human rights and humanitarian law violations committed by Israeli security forces**

38. Pursuant to international law, allegations of violations and abuses of international human rights law and international humanitarian law must be promptly, thoroughly, effectively, independently, impartially and transparently investigated and perpetrators brought to justice. Victims also are to have access to a prompt, adequate and effective remedy (see General Assembly resolution 60/147). Accountability is crucial not only in order to bring perpetrators to justice but also in order to deter future violations (see [A/HRC/28/45](#), paras. 32 and 33).

39. The Secretary-General and the United Nations High Commissioner for Human Rights have on several occasions expressed their concern at the lack of accountability in Israel for violations of international human rights and humanitarian law.<sup>24</sup> Various independent committees of experts as well as international, Israeli and Palestinian human rights organizations have also expressed such concerns and extensively documented the flaws in Israel's accountability mechanisms in addressing the killing, injury, torture and ill-treatment and the destruction of Palestinian property.<sup>25</sup>

40. Shortcomings in the Israeli justice system identified by those organizations include physical, financial, legal and procedural barriers that restrict the ability of Palestinians, particularly those living in Gaza, to gain access to justice. Findings suggest a consistent failure by the Military Advocate General, who heads the military justice system, and the Attorney General to open investigations in cases where there is prima facie evidence, including eye-witness testimony, medical reports and audiovisual materials indicating that actions by State agents were unlawful. When investigations are opened, they frequently fail to meet human rights standards, and only a small number of alleged perpetrators, mainly at the rank-and-file level, are brought to justice, facing mainly lenient indictments and sentences.

41. The Israeli legal system does not criminalize certain international crimes, which hampers prosecution efforts. At the same time, certain cases do not trigger the duty to investigate, for example, cases in which those implicated have acted in line with military policies or open-fire regulations. The challenge here is to consider whether such policies or regulations are compliant with international law. Although

<sup>22</sup> According to UNRWA, another four fishermen are in detention. Their legal status is unknown.

<sup>23</sup> Yaakov Lappin, "Security forces arrest suspected Gazan weapons smuggler", *Jerusalem Post*, 16 May 2016.

<sup>24</sup> See [A/68/502](#), paras. 29-35; [A/HRC/24/30](#), paras. 46-48; [A/69/47](#); [A/HRC/22/35](#), paras. 66-82, [A/HRC/28/45](#), paras. 26-33 and [A/69/347](#), paras. 52-69, 81 and 84.

<sup>25</sup> Recent examples include the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 ([A/HRC/29/CRP.4](#)); B'Tselem, *The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, May 2016. Available from [www.btselem.org/download/201605\\_occupations\\_fig\\_leaf\\_eng.pdf](http://www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf); Amnesty International, "Time to address impunity: two years after the 2014 Gaza/Israel war", 7 July 2016. Available from [www.amnesty.org/en/documents/mde15/4199/2016/en/](http://www.amnesty.org/en/documents/mde15/4199/2016/en/).

the lack of an outcome in some specific cases may be justifiable, a clear pattern of impunity appears evident.

#### **Accountability for killings and injury in law enforcement operations**

42. In 2011, the Military Advocate General adopted a policy requiring an immediate investigation into every killing of a civilian by the Israel Defense Forces. The policy, is limited, however, to the killing of individuals designated by the Military Advocate General as civilians and does not apply if it is clear that the activity in the course of which the civilian was killed was of a real combat nature.<sup>26</sup> The office of the Attorney General adopted a similar policy when reviewing cases where civilians were killed as a result of police action when operating alongside or under military orders in the occupied West Bank.<sup>27</sup> Those exceptions appear to have been interpreted very broadly over the years, and many civilian deaths have never been investigated. Furthermore, a mandatory investigation is not required in cases where civilians have survived, even when they suffer severe or life-threatening injuries due to the actions of Israeli security forces.

43. In the occupied West Bank, since the second intifada, an estimated 3.5 per cent of complaints have led to investigations that resulted in an indictment being issued.<sup>28</sup> Although the adoption of that policy by the Military Advocate General in 2011 led to a slight increase in the rate of investigation of fatalities compared with the previous decade, overall indictments and convictions rates did not change.

44. According to the Ministry of Justice of Israel, as of July 2016, 24 criminal investigations had been opened in connection with the death of 190 Palestinians and the injury (including by tear gas inhalation) of over 15,000 by Israeli security forces since the escalation of violence in October 2015.<sup>29</sup> Seventy-one cases were still under consideration for investigation by the Military Advocate General and the office of the Attorney General. In another 71 shooting incidents that resulted in death, both entities determined that no additional legal or disciplinary proceedings were required.

45. The only indictment pronounced so far was in the case of the above-mentioned killing of Abdelfattah al-Sharif. At the time of writing, the soldier responsible for the killing was facing trial at the Jaffa military court for manslaughter. That indictment contrasts with a decision by the court in April 2016 that upgraded the charge against an alleged Palestinian hit-and-run driver from manslaughter to murder under pressure from the victim's family, even though the driver had claimed it was an accident and had surrendered to the Palestinian police. Meanwhile, there has been no investigation in the killing of Ramzi al-Qasrawi and the cases of many

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<sup>26</sup> See High Court of Justice, case No. 9594/03, and [http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New\\_investigation\\_policy\\_Palestinian\\_casualties\\_IDF\\_fire\\_Judea\\_Samaria\\_6-Apr-2011.aspx](http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx).

<sup>27</sup> See Turkel Commission, "Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law". Available from [www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf](http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf).

<sup>28</sup> Figures are estimates based on status of all types of claims presented by B'Tselem to the Military Advocate General and a review conducted by Yesh Din of all fatality cases investigated by the Military Police Criminal Investigations Division since 2000.

<sup>29</sup> Letter from the Israeli Legal Counselling and Legislation Department, 15 July 2016.

other individuals allegedly killed under circumstances similar to those in the death of Abdelfattah al-Sharif.

46. In Gaza, OHCHR is not aware of any investigations related to the 23 civilians killed and over 650 injured in access-restricted areas during the reporting period, including during demonstrations. Human rights organizations have indicated that few of the incidents in which the Israel Defense Forces killed or injured Palestinians while enforcing access restrictions in Gaza's perimeter areas have ever been investigated, and no soldier has been indicted for such an offence since the end of the second intifada. One obstacle is that the 2011 policy of the Military Advocate General does not pertain to Palestinians killed or injured in Gaza, since Israel does not consider Gaza an occupied territory and thus considers all of its operations there to be of a "combat nature". Furthermore, Israeli authorities have stated to human rights organizations that investigations would not be opened because the victims had entered "prohibited areas" and/or the soldiers had acted in line with the rules of engagement.<sup>30</sup> However, according to the Basic Principles on Use of Force and Firearms by Law Enforcement Officials, the mere entrance into a prohibited area does not meet the threshold necessary for the use of force. Firearms may only be used when necessary to prevent risk to life or serious injury, which has not been the case in most situations within the access-restricted areas that have been documented.

47. The Secretary-General is concerned that one of the elements driving impunity is that the policies regulating the use of force may not be aligned with international human rights law and standards, in particular the Basic Principles on Use of Force and Firearms by Law Enforcement Officials. The open-fire regulations of the Israeli police, which are applicable in East Jerusalem, were updated in September 2015 and partially declassified in July 2016 following a court petition by human rights organizations, which questioned their consistency with relevant international standards. Similar concerns arose with regard to the rules of engagement of the Israel Defense Forces for their operations in the occupied West Bank and in Gaza, which remain confidential.

48. In April 2016, the Military Advocate General closed the investigation into an occupied West Bank brigade commander who, on 3 July 2015, had shot and killed Mohammad Qusbah, a 17-year-old who was attempting to escape after throwing a stone at the officer's vehicle, near the village of Al-Ram. The investigation reportedly found that the officer had followed proper arrest procedures, including warning calls, shots into the air and two shots aiming at the legs. According to the Military Advocate General, by firing while he was running, the officer had made "a professional mistake ... but one that was made in clearly operational circumstances" that led to the shots hitting the child in the upper body and killing him.<sup>31</sup> It is not known whether the officer was sanctioned.

49. As part of OHCHR monitoring of the case, questions were raised about the factual findings of the investigation. Regardless of those questions, the arrest procedures of the Israel Defense Forces, as described by the Military Advocate General in the incident involving Mohammad Qusbah, appear to be inconsistent

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<sup>30</sup> As communicated to the Palestinian Centre for Human Rights and the Al Mezan Centre for Human Rights.

<sup>31</sup> Charlotte Silver, "Israel excuses killing of fleeing Palestinian teen as 'professional mistake'", *Electronic Intifada*, 12 April 2016.

with international human rights law, in which it is clear that firearms may only be used against an escaping suspect if the latter poses an immediate or ongoing threat (see A/66/330, para. 88 (c)). At the time Mohammad Qusbah was shot, he did not appear to pose any such threat. Furthermore, the arrest procedures do not appear to require that use of less lethal force be considered before resorting to firearms. Following the incident, the Israel Defense Forces reportedly revised its orders to ban opening fire at fleeing suspected attackers.<sup>32</sup>

50. Unfortunately, calls to review the policies of the Israeli security forces and the Government that prima facie appear to be in contravention of international law have generally gone unheeded. Some structural concerns undermine the ability of the Military Advocate General to credibly carry out such reviews, especially where the office was involved in the development or implementation of those policies (see A/70/421, paras. 55 to 58). While the Attorney General and the Supreme Court both provide civilian oversight of military investigations and prosecutions, the oversight is limited and often fails to review the legality of the policies themselves or the orders issued at the highest levels.

#### **Accountability for violations committed during hostilities**

51. Pursuant to international law, investigations should be opened in response to every credible allegation of a war crime.<sup>33</sup> However, only around 7 per cent of all claims filed with the Israeli authorities for violations committed during the last three escalations in Gaza were ever investigated, with less than 0.5 per cent resulting in convictions.<sup>34</sup> Often, rank-and-file soldiers are investigated for minor offences while decisions or actions by senior level commanders are not scrutinized. The longest sentence served to date for a crime perpetrated during hostilities was 15 months of imprisonment for credit card theft.<sup>35</sup>

52. With regard to the 2014 hostilities, only one command-level officer came under investigation after an audio recording surfaced in 2015 that indicated that he had ordered his troops to shell a protected site in reprisal for the death of one of his soldiers.<sup>36</sup> The Military Advocate General found fault with the officer's action but closed the case in early 2016 without issuing an indictment. Little information was given about the basis for the decision but statements from the Military Advocate General seem to indicate that the ruling relied heavily on the version of events described by the officer in question and concluded that there was no evidence suggesting that "he had not acted out of military necessity".<sup>37</sup>

53. Two years after the 2014 escalation, justice remains elusive. At least 354 complaints to the Military Advocate General were filed by NGOs in connection with the hostilities. The latest public update from the Military Advocate General on the status of its investigations was published in June 2015. Several organizations,

<sup>32</sup> Gili Coher, "IDF refines orders: soldiers not to fire at fleeing Palestinian attackers", *Haaretz*, 12 August 2015.

<sup>33</sup> Customary international humanitarian law, rule 158.

<sup>34</sup> Based on data from B'Tselem: the Israeli Information Centre for Human Rights in the Occupied Territories, the Palestinian Centre for Human Rights, the Al Mezan Centre for Human Rights and Adalah: the Legal Centre for Arab Minority Rights in Israel. Data cross-referenced with updates of the Military Advocate General.

<sup>35</sup> *Ibid.*

<sup>36</sup> Yonah Jeremy Bob, "Analysis: Israel on thin ice with the ICC", *Jerusalem Post*, 16 June 2016.

<sup>37</sup> *Ibid.*

including the United Nations, have since been requesting updates on specific cases, but no response or details have been provided. Based on press briefings and Israel's interactive dialogue with the Committee against Torture in early 2016 (see [CAT/C/SR.1419](#)), the General Staff Mechanism for Fact-Finding Assessments<sup>38</sup> is said to have reviewed 225 "exceptional incidents". Of those, the Military Advocate General reportedly opened investigations into 25 cases of alleged soldier misconduct; 7 were still open as of July 2016 while the others had been closed. One indictment has been issued in a case of looting, with no convictions to date. According to recent reports, decisions in the pending investigations are not expected for several more months.<sup>39</sup>

54. It is not clear how many cases, if any, are being assessed by the General Staff Mechanism for Fact-Finding Assessments in relation to events in 2014, or if all the cases have been closed, including at least four involving attacks on United Nations facilities. Non-governmental organizations have appealed to the Attorney General concerning at least eight decisions by the Military Advocate General not to open investigations.

55. During the reporting period, at least one criminal complaint was filed by the Palestinian Centre for Human Rights on behalf of the family of a victim of the May 2016 escalation. The Military Advocate General has not issued any communication as to whether the General Staff Mechanism for Fact-Finding Assessments is assessing the case.

#### **Civil remedies**

56. There is limited up-to-date and publicly available information on successful tort claims against the State of Israel for alleged wrongdoing by the Israel Defense Forces in the Occupied Palestinian Territory. According to the Government of Israel, as of March 2016, there were 196 such cases, including 85 from Gaza, pending before the courts (see [CAT/C/SR.1419](#), para. 32). Human rights organizations have indicated, however, that less than 10 per cent of claimants have ever had any success with compensation claims, and most of those have been related to cases in the occupied West Bank.<sup>40</sup>

57. Compensation claims in the vast majority of cases from Gaza fail owing to physical, financial, legal and procedural barriers. Those include exceptions written into Israeli law, including the 2014 declaration of Gaza as "enemy territory", that have made Israeli authorities effectively immune to civil liability for their actions in Gaza. In the context of the 2014 hostilities, civil society organizations submitted 1,148 notifications to the Ministry of Defence within the prescribed 60-day window from the time of the incident to file a compensation claim with Israeli courts. Given barriers such as a lack of permission to travel to Israel as well as the prohibitive cost

<sup>38</sup> The General Staff Mechanism for Fact-Finding Assessments was established by the Chief of Staff of the Israel Defense Forces to examine "exceptional incidents" that occurred during the 2014 hostilities. It was created to counter criticisms that the Military Advocate General had not collected sufficient, balanced and timely information before determining whether to open investigations. In a previous report, the Secretary-General identified some of the shortcomings of the Mechanism, which continue to exist (see [A/70/421](#), paras. 55-58).

<sup>39</sup> Yonah Jeremy Bob, "No decision on Hannibal Protocol incident likely for several more months", *Jerusalem Post*, 25 February 2016.

<sup>40</sup> See Yesh Din, "Exceptions: prosecution of IDF soldiers during and after the second intifada, 2000-2007", pp. 26 -30.

of filing compensation claims, only a very small percentage of claims have actually been filed since the initial notifications were provided. As the two-year statute of limitations for Palestinians to file such claims approaches, it is unlikely that any more compensation requests will be made in relation to the 2014 hostilities.<sup>41</sup>

### **Accountability for ill-treatment and torture of detainees**

58. Allegations of ill-treatment and torture during arrests, transfers and interrogations of detainees have been extensively reported over the years. Accountability mechanisms differ depending on whether the official allegedly involved is a soldier, an agent of the Internal Security Agency, a police officer or a prison warden.<sup>42</sup>

59. The interrogation practices of the Internal Security Agency have regularly come under scrutiny since the 1970s. In 1999, Israel's High Court of Justice forbade certain types of interrogation methods, including physical pressure, that had been employed by Internal Security Agency officers. Notwithstanding, many of those practices continue to be reported. The Public Committee against Torture in Israel, an Israeli NGO, reviewed over 1,000 complaints of ill-treatment against the Internal Security Agency since the High Court of Justice ruling and found that none of them had led to the opening of a criminal investigation.<sup>43</sup> The Government has argued that there was "insufficient evidentiary basis" to justify the opening of criminal investigations. However, human rights organizations and OHCHR have indicated that there was credible evidence of violations that would have warranted, at the very least, the opening of investigations. Part of the challenge is that torture is not a crime in Israel and officers can refer to the so-called "necessity defence" clause, contained in section 34(11) of the Penal Law, to justify certain practices that result in death or injury to others, in contravention of international standards, as highlighted by the Committee against Torture (see CAT/C/ISR/CO/5).

60. Although a civilian torture complaint mechanism was established under the Ministry of Justice in June 2013, the mechanism has yet to issue a recommendation that a criminal investigation be launched. At the same time, organizations have claimed that the number of complaints of torture or ill-treatment against the Internal Security Agency has quadrupled since June 2013.<sup>44</sup> It is of great concern that the Government of Israel views the presentation of such complaints "as a method to burden and hinder the security agencies in Israel in their ongoing fight against terrorism" (see CAT/C/ISR/5, para. 11).

### **Addressing challenges**

61. The Government of Israel has enacted a number of measures over the years aimed at addressing some of the challenges identified above (see CAT/C/ISR/5). Those measures have been piecemeal, however, and have not resulted in significant improvements in accountability.

<sup>41</sup> In comparison, Israelis have seven years from the time of an incident to file a compensation claim and are not required to submit a notification to authorities beforehand or pay a guarantee.

<sup>42</sup> See <http://stoptorture.org.il/wp-content/uploads/2016/04/PCATI-CAT-report.pdf>.

<sup>43</sup> See [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT\\_CAT\\_CSS\\_ISR\\_23995\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT_CAT_CSS_ISR_23995_E.pdf).

<sup>44</sup> The Public Committee against Torture in Israel and Physicians for Human Rights.

62. In June 2010, the Government of Israel established the Public Commission to Examine the Maritime Incident of 31 May 2010 (the Turkel Commission), which, inter alia, was entrusted with assessing the compliance of Israeli criminal investigations with international law. The report of the Commission was published in February 2013 and included 18 recommendations for addressing issues such as delays in investigations, problems with impartiality and independence, and gaps in the legal framework. Human rights groups and the United Nations welcomed the report, noting that its implementation would be a positive first step towards tackling impunity (see [A/68/502](#), para. 29 and [A/69/347](#), para. 60).

63. In January 2014, the Prime Minister of Israel established an interministerial team, the Ciechanover Commission, to review the implementation of the Turkel Commission recommendations. The Ciechanover Commission published its findings in September 2015, which were approved by the Security Cabinet of Israel on 3 July 2016.

64. One of the key recommendations of the Ciechanover Commission was that the Government appoint, as a matter of priority, a standing body to monitor the full and timely implementation of the Turkel Commission recommendations. It remains to be seen if that and other time-bound recommendations by the Ciechanover Commission will be implemented. It also instructed the Chief Military Prosecutor to issue a directive setting out a clear time frame for criminal complaints to be processed and investigations concluded, and demanded that the Military Advocate General and the Attorney General publish their reasoning for the opening or closing of investigations. Both measures, if implemented, could help to improve the promptness and transparency of investigations. The Ciechanover Commission also noted that, although some of the Turkel Commission recommendations had been or were in the process of being implemented, further progress would be contingent upon the allocation of additional resources to relevant bodies, including the Ministry of Justice and the Military Advocate General.

65. The High Commissioner for Human Rights has noted that the Ciechanover Commission did not issue instructions for the full implementation of the first two recommendations of the Turkel Commission, namely, incorporating international norms and standards, including with respect to war crimes, into national legislation; and holding military commanders and civilian superiors responsible for offences committed by their subordinates (see [A/HRC/31/40/Add.1](#), para. 37). The Ciechanover Commission noted instead that the office of the Attorney General was in the process of drafting bills that would seek to anchor the crime of torture and crimes against humanity in domestic legislation. It noted, however, that little information on that process is publicly available. It is of concern is that war crimes as a category have not been included among the offences under review for incorporation into national law, and that the anchoring of responsibility of military commanders and civilian superiors in Israeli law is said to require further examination.<sup>45</sup>

66. Concerns also remain as to whether authorities are willing to address the underlying causes of impunity. The Secretary-General and the High Commissioner for Human Rights are concerned about statements by representatives of the Government and other high officials that unambiguously condone impunity and the

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<sup>45</sup> Report of the Ciechanover Commission. Available from [www.pmo.gov.il/Documents/ReportEng.pdf](http://www.pmo.gov.il/Documents/ReportEng.pdf).

use of force by Israeli police and defence forces in all instances. For instance, the Jerusalem police chief stated that “anyone who stabs Jews or hurts innocents — his due is to be killed”.<sup>46</sup> Similarly, while commenting on the ruling in the case involving Mohammad Qusbah, the then Yisrael Beytenu party leader and current Minister of Defence, Avigdor Lieberman, praised the Military Advocate General’s decision to close the file and noted “that everyone should know that the blood of Israeli soldiers is not free”. In reference to the case involving Abdelfattah al-Sharif, he added that the Military Advocate General should also “free from detention the soldier from Hebron”.<sup>47</sup>

67. New challenges are arising with recent legislative measures to increase the powers of the authorities at the expense of the rights of individuals. For example, two bills have recently been presented in the Knesset that put the families of attackers and alleged attackers at risk of residency revocation, “deportation” or added restrictions on residency.<sup>48</sup> Similarly, recently adopted laws stiffen penalties<sup>49</sup> for stone-throwing, including by stripping stone throwers and their families of their national insurance benefits,<sup>50</sup> imposing fines and legal expenses on assailants or fines on the parents of convicted children.<sup>51</sup> The Counter-Terrorism Law of 2016 expands the definition of a “terrorist entity” and of “support to a terrorist entity” and contains broad and ambiguous language concerning “incitement”. It also makes permanent draconian provisions that were being used as temporary measures such as those that extended detention periods for security suspects without judicial review, the extension of their detention *ex parte*, the use of secret evidence and the exemption of the Internal Security Agency interrogations from being recorded.

68. Recent decisions by human rights organizations to cease their engagement with the Israeli justice system reflect a lack of trust in Israeli institutions to ensure accountability for violations against Palestinians. In May 2016, B’Tselem, a leading Israeli human rights organization, announced it would no longer present claims to the Military Advocate General on behalf of Palestinian victims because they had come “to the realization that there is no longer any point in pursuing justice and defending human rights by working with a system whose real function is measured by its ability to continue to successfully cover up unlawful acts and protect perpetrators”.<sup>52</sup> Some prominent human rights organizations have started to call upon countries with universal jurisdiction and other international justice mechanisms to intervene. OHCHR has indicated also that individual rights-holders, particularly in Gaza, are disillusioned with the ability of Israeli authorities to ensure accountability for violations perpetrated against Palestinians.

69. Non-governmental organizations have played a leading role in pushing Israel’s investigatory mechanisms to act on hundreds of complaints by collecting victim and witness statements on behalf of authorities, identifying evidence, facilitating

<sup>46</sup> “Two stabbed in Jerusalem, teen Palestinian assailant killed”, *Times of Israel*, 10 October 2015.

<sup>47</sup> Yonah Jeremy Bob, “Case closed against IDF colonel who shot dead Palestinian rock thrower”, *Jerusalem Post*, 10 April 2016.

<sup>48</sup> The bills are expected to be discussed by the Ministerial Committee for Legislation in August 2016.

<sup>49</sup> Penal Code, amendments 119 and 120.

<sup>50</sup> National Insurance Law (combined version), amendment 163.

<sup>51</sup> Youth Law, amendment 20.

<sup>52</sup> B’Tselem, *The Occupation’s Fig Leaf: Israel’s Military Law Enforcement System as a Whitewash Mechanism*, May 2016. Available from [www.btselem.org/download/201605\\_occupations\\_fig\\_leaf\\_eng.pdf](http://www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf).

transport and translation services for victims and their families and providing legal aid to plaintiffs. There is a serious risk that the already low number and quality of investigations will further decline as organizations cease their cooperation with the justice system.

#### **IV. Conclusions**

70. Serious challenges persist to ensuring accountability for violations of international human rights and humanitarian law against Palestinians. Despite efforts to strengthen the system of accountability, critical key steps, notably including those recommended by Israeli commissions, remain unimplemented, partially implemented or are not followed in practice.

71. In order for meaningful change to happen, reforms are necessary. Without them, the failure to deliver accountability will continue to create a more permissive environment for Israeli security forces to commit human rights violations. Accountability for violations committed by all parties is a key factor in breaking the cycle of violence and moving towards a peaceful resolution of the conflict.

#### **V. Recommendations**

72. The following recommendations should be read in conjunction with the numerous recommendations contained in previous reports of the Secretary-General and the High Commissioner for Human Rights.

**(a) Israel should take all measures to ensure full respect for its obligations under international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for all violations;**

**(b) Israeli authorities should take all measures necessary to prevent incidents of excessive use of force during law enforcement operations. In cases in which force is used, including in the access-restricted areas near the Gaza fence, there should be compliance with international human rights law and standards. The authorities should ensure that independent reviews are conducted promptly and that any necessary revisions to rules of engagement, open-fire regulations and arrest procedures are made in order to ensure their compliance with international law;**

**(c) The use of force in the context of protests, clashes and demonstrations must be strictly consistent with international law. Regulations and practices with respect to the use of rubber-coated metal bullets and black sponge bullets should be reviewed to ensure that those weapons are only permitted to stop individuals engaged in violence, and not as a general tool to disperse a crowd. The use of firearms should only be permitted where there is an imminent threat of death or serious injury;**

**(d) Israel should ensure that medical assistance is promptly provided to persons wounded by security forces, without obstruction or discrimination. To that end, Israeli security forces should issue clear instructions to the effect that the wounded must receive immediate attention, without discrimination, and**

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that medical personnel, including Palestinian ambulance crews, are not to be obstructed in performing their duties;

(e) Prompt, thorough, effective, independent and impartial criminal investigations should be conducted into all instances in which firearms have been used by law enforcement officials, in particular where such force has resulted in death or injury, and the outcome of the process should be made public. Those responsible for violations should be held accountable and prosecuted in fair trials, with charges and sentences commensurate with the gravity of the offences. As an initial step to reforming the investigative system, the recommendations of the Turkel Commission and Ciechanover Commission should be fully implemented;

(f) Israel should adopt legislation on international crimes, such as torture and war crimes, and establish independent mechanisms to review government and military policies and to ensure command responsibility;

(g) The blockade of Gaza should be lifted and all practices that amount to collective punishment, including restrictions on freedom of movement across the Occupied Palestinian Territory, punitive demolitions of homes, punitive residency revocations, cutting of benefits, punitive closures of towns and delays in returning bodies for burial, should be ended;

(h) Israel should end the practice of administrative detention and charge or release any detainees currently being held in administrative detention;

(i) All children should be treated with due consideration to their age, in accordance with international law, and should be detained only as a last resort;

(j) The authorities and Palestinian armed groups in Gaza should ensure respect for international humanitarian law, in particular the principles of distinction, proportionality and precaution, and should ensure accountability for all violations.



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**Seventy-first session**

Item 50 of the provisional agenda\*

**Report of the Special Committee to Investigate Israeli  
Practices Affecting the Human Rights of the Palestinian  
People and Other Arabs of the Occupied Territories****Report of the Special Committee to Investigate Israeli  
Practices Affecting the Human Rights of the Palestinian  
People and Other Arabs of the Occupied Territories\*\*****Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the forty-eighth report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, submitted pursuant to General Assembly resolution 70/87.

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\* [A/71/150](#).

\*\* The present report was submitted after the deadline in order to reflect the most recent developments since the annual mission of the Special Committee to the region in May 2016.



## **Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories**

### *Summary*

The present report contains information regarding the efforts of the Special Committee to implement its mandate and on the human rights situation in the occupied Arab territories over the past year. The report includes information on consultations with Member States in Geneva in March 2016, followed by a mission to Jordan in May 2016. It addresses the situation of Palestinian detainees, including children in Israeli detention facilities. The report also focuses on the escalation of violence in the West Bank, including East Jerusalem, which began in September 2015, and related concerns of use of excessive force by the Israeli security forces; Israeli policies and practices related to settlement expansion and settler violence in the Occupied Palestinian Territory and the occupied Syrian Golan; demolition of homes and forcible transfer of Palestinians; interference by Israel with international humanitarian assistance; the dire humanitarian situation in Gaza, and the lack of accountability of and lack of faith in the Israeli justice system. The Special Committee further examines issues relating to the exploitation of natural resources in the Occupied Palestinian Territory and the occupied Syrian Golan.

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## **I. Introduction**

1. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories was established in 1968 by the General Assembly in its resolution 2443 (XXIII). The Special Committee is currently composed of three Member States: Sri Lanka (Chair), Malaysia and Senegal. In 2016, the Special Committee was represented by three members: the Permanent Representative of Sri Lanka to the United Nations in New York, Amrith Rohan Perera; the Permanent Representative of Malaysia to the United Nations in New York, Ramlan Bin Ibrahim; and the Permanent Representative of Senegal to the United Nations Office at Geneva, Mame Baba Cisse.

## **II. Mandate**

2. The mandate of the Special Committee, as set out in General Assembly resolution 2443 (XXIII) and subsequent resolutions, is to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the occupied territories. The occupied territories are considered those remaining under Israeli occupation since 1967, namely, the occupied Syrian Golan and the Occupied Palestinian Territory, which comprises the West Bank, including East Jerusalem, and the Gaza Strip.

3. The present report is submitted pursuant to General Assembly resolution 70/87, in which the Assembly requested the Special Committee pending complete termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, especially Israeli violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to consult, as appropriate, with the International Committee of the Red Cross according to its regulations in order to ensure that the welfare and human rights of the peoples of the territories, including prisoners and detainees, are safeguarded and to report to the Secretary-General as soon as possible and whenever the need arises thereafter. The present report covers the period from 11 August 2015 to 29 July 2016.

## **III. Activities of the Special Committee**

### **A. Consultations with Member States in Geneva**

4. The Special Committee held its annual consultations in Geneva on 21-22 March 2016 with Member States concerned with the implementation of General Assembly resolution 70/87. The consultations were held with a view to discussing the most pressing matters to be addressed in the Special Committee's report to the Assembly, and to gather information on recent developments on the political and human rights front. The Special Committee met with the Permanent Observer of the State of Palestine, the Permanent Representatives of Egypt, Jordan, Lebanon, the Syrian Arab Republic and Turkey and the Permanent Observer of the Organization of Islamic Cooperation. The Special Committee also met with the

Deputy High Commissioner for Human Rights, and the outgoing Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. A request to meet with the Permanent Representative of Israel to the United Nations Office at Geneva received no response. The Special Committee also followed the discussions under agenda item 7 of the Human Rights Council, entitled “Human rights situation in Palestine and other occupied Arab territories”.

5. During the discussions, representatives of Member States expressed support for the work of the Special Committee, but also expressed concern about the worsening situation in the occupied territories, particularly in relation to the escalation of violence that started in the West Bank, including East Jerusalem, in September 2015. Member States also addressed, as a matter of concern, the lack of cooperation by Israel with human rights mechanisms established by the Human Rights Council, such as the work of the Special Rapporteur, and fact-finding missions or commissions of inquiry on the situation of the Occupied Palestinian Territory, including those of the Special Committee itself. The Permanent Representative of the Syrian Arab Republic reiterated the Government’s invitation to the Special Committee to visit Damascus in 2016.

6. Key concerns raised by Member States included: settlement expansion; settler violence; exploitation of natural resources from settlements in the West Bank and Gaza and from the occupied Syrian Golan; the situation of detainees and deplorable conditions in detention centres; the refusal by Israeli security forces to release the dead bodies of Palestinians; administrative detention, including detention of children; excessive use of force and, in many cases, extrajudicial executions; punitive legislation adopted by Israel, for instance that which proposes that Palestinian families of alleged attackers should be deported to Gaza; the demolition of Palestinian homes and the forcible transfer of Bedouin and herder communities in the West Bank, including East Jerusalem; the blockade and lack of reconstruction in Gaza; and the general lack of accountability and remedies that accompanied all these violations.

7. The Special Committee was briefed on the main findings of the reports of the Secretary-General and the High Commissioner for Human Rights on the situation of human rights and settlements in the Occupied Palestinian Territory, which were presented at the thirty-first session of the Human Rights Council in March 2016. The Special Committee was also briefed about the conclusions of the addendum on implementation of the recommendations contained in the reports of the Independent Commission of Inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict in 2009.

8. Concerns raised during the consultations helped to inform the Special Committee’s annual field mission and were taken into consideration for the present report.

## **B. Field mission to investigate Israeli practices**

9. The Special Committee wrote to the Government of Israel on 28 March 2016 requesting access to the Occupied Palestinian Territory and other Arab territories occupied since 1967. As in previous years, no response to the letter was received from Israel. The Special Committee was therefore unable to hold consultations with

the relevant Israeli authorities, or to gain access to the occupied territories within its mandate.

10. Because of increased insecurity in the region, the Special Committee was unable to visit either the Syrian Arab Republic or Gaza through the Rafah crossing. Instead, it convened meetings with civil society representatives, witnesses, representatives of Bedouin and refugee communities, Palestinian officials and United Nations representatives in Amman between 2 and 5 May 2016. In a few instances, where witnesses were unable to travel to Amman, especially from Gaza because they had been denied travel permits from Israel or from the occupied Syrian Golan, the Special Committee gathered testimony and received briefings by teleconference. The Special Committee expresses its sincere appreciation to all those who provided testimony and briefings on a wide range of issues related to human rights and humanitarian law.

11. On 6 May, at the end of its annual mission, the Special Committee released a press statement.<sup>1</sup> Documentation and other materials submitted to the Committee were carefully examined prior to the preparation of the present report and were archived by the Secretariat. Information contained in the report is primarily based on testimony and submissions received by the Special Committee in May 2016.

#### **IV. Situation of human rights in the Occupied Palestinian Territory**

12. Representatives of the United Nations and civil society based in the Occupied Palestinian Territory all expressed concern about the continuing Israeli policy of settlement expansion. The Special Committee was also informed that a combination of State-sanctioned land seizures, retroactive legalization of outposts,<sup>2</sup> demolition of Palestinian homes and livelihood structures, denial of Palestinian building permits, restrictions of movement and access to livelihoods, settler violence and the lack of accountability have all contributed to creating a coercive environment leading to the forcible transfer of Palestinian communities. Testimonies about the facts on the ground heard by the Special Committee in May have subsequently been confirmed by the report of the Middle East Quartet in July 2016, which identified these factors, among others, and raised questions about Israel's long-term intentions.<sup>3</sup> The United Nations Office for the Coordination of Humanitarian Affairs has called the settlements in the Occupied Palestinian Territory a key driver of humanitarian vulnerability. In general, there is a growing perception that the settlement expansion could undermine the prospects for a "two-State solution".

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<sup>1</sup> Available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19926&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19926&LangID=E).

<sup>2</sup> Outposts are settlement buildings considered to be illegal under Israeli law. All settlements are considered to be illegal under international law.

<sup>3</sup> The Middle East Quartet (the United Nations, the European Union, the Russian Federation and the United States of America) was established in Madrid in 2002 following the Madrid Peace Conference (1991) to promote mediation efforts with a view to resolving the Israeli-Palestinian conflict (see <http://fmep.org/wp/wp-content/uploads/2016/07/Quartet-Report-2016.pdf>).

## **A. Settlement expansion**

13. Many examples of continuing illegal settlement expansion and activity in contravention of international law were highlighted in submissions to the Special Committee, particularly in the vicinity of the fast-growing Gush Etzion settlement bloc. In the nearby Palestinian community of Wadi Fukin, Israeli authorities have in recent years reportedly confiscated almost half the village land, including land used for agricultural purposes. According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Wadi Fukin community witnessed last year the bulldozing of their land, the destruction of two water wells and the issuance of a stop-work order on a donor-funded football field.

14. The Special Committee was also informed that work began in early 2015 on the first phase of a project to build 218 new settlement units for the expansion of Beitar Illit, an ultra-Orthodox settlement within the Gush Etzion settlement bloc. UNRWA also recorded several incidents of intrusions by armed settlers to the irrigation pools to intimidate Palestinian farmers working on private land. The Special Committee notes a persistent failure by the Israeli authorities to prevent or respond to settler attacks or to hold perpetrators accountable for their actions.

15. It was also emphasized in the submissions that, in early 2016, the Israeli Ministry of Defence announced the resumption of the construction of the separation wall in the part of Al Walaja village located in the Jerusalem municipality area unilaterally declared by Israel. The completion of the separation wall across Al Walaja would completely block off access to Palestinian farmland. Just two weeks before this announcement, it was reported that a tender had been issued by the Israeli Antiquities Authority for the construction of a visitor centre for the recently designated national park, on confiscated land belonging to the Al Walaja community. The Special Committee notes that residents living in the “Jerusalem section” of Al Walaja village have been subjected to multiple demolitions of residential structures and issuance of stop-work orders in 2016.

16. The Special Committee denounces the ongoing expansion of illegal settlement in the Occupied Palestinian Territory. At the time of writing the present report, in July 2016, Israel had issued tenders for 1,093 units in occupied East Jerusalem and the Gilo settlements. This was in addition to the recent advancement of plans for 531 units in Maale Adumim, 19 in Har Homa, 120 in Ramot, and 30 in Pisgat Ze’ev and the advancement of a plan to legalize retroactively an outpost near Ramallah. Israel also announced the issuance of tenders for 42 units in Kiryat Arba. The renewed and accelerated settlement activity has been denounced by the international community as systematically undermining the prospects for a two-State solution.

## **B. Demolitions and the obstruction of humanitarian assistance**

17. Representatives from the United Nations and civil society also gave a comprehensive presentation to the Special Committee on the current trends of demolitions and evictions under Israel’s restrictive and discriminatory planning and zoning regime in the occupied West Bank, including East Jerusalem. The unprecedented increase in obstruction of humanitarian assistance to the most vulnerable communities in Area C of the occupied West Bank, often based on their location in strategic priority areas for Israeli settlement expansion, was emphasized.

18. The Special Committee was informed that demolitions and confiscation across the occupied West Bank, including Area C, affected hundreds of Palestinian structures, including shelter, water and sanitation facilities, livelihood-related structures and community assets, in many cases provided by the international donor community, including the European Union.

19. The Special Committee was further informed that, in the first quarter of 2016, Israeli authorities demolished at least 871 homes or livelihood structures in the occupied West Bank, including East Jerusalem. This was reported as an unprecedented number of demolitions in such a short time, and the displacement figures by July 2016 had already exceeded the total number of displaced persons for the whole of 2015.<sup>4</sup> The monthly average number of structures demolished in 2016 in Area C of the occupied West Bank was almost three times higher than in 2015.<sup>5</sup> By July 2016, 981 Palestinians had been displaced from their homes in East Jerusalem and Area C in the occupied West Bank. This figure already exceeded the figure of 688 Palestinians displaced during 2015.

20. In the submissions, it was stressed that the humanitarian impact of these demolitions extended beyond the displacement of the Palestinian communities deprived of their shelter. It frequently destroyed their livelihood, increasing poverty and dependence on humanitarian aid. Children are at particular risk of a severe impact on their psychological well-being, resulting in emotional and behavioural problems that may last for months, with consequences for their educational achievement and school attendance.

21. The Special Committee recalls in this regard that Israel, as the occupying Power, has obligations to administer the Palestinian territory for the benefit of the protected Palestinian population,<sup>6</sup> in compliance with international humanitarian law and international human rights treaties applicable to the State of Israel, including the requirement to treat the protected population humanely at all times.<sup>7</sup> International humanitarian law sets out strict conditions under which the destruction of private property and relocation of the protected population may be lawful, related exclusively to military necessity or the security of the population.<sup>8</sup>

### C. Forcible transfer in a coercive environment

22. UNRWA representatives highlighted the plight of some 46 Bedouin communities residing in rural areas of Area C in the occupied West Bank, who are at risk of forcible transfer by the Israeli authorities to three planned “townships” of Al Jabal West, Nweima and Fasayil.

23. The Special Committee heard that these sites were being developed with the express purpose of “regulating Bedouin” and finding a “solution to the population residing in the area of the Adumim Bloc — Western Road No. 1”, and “the aim of

<sup>4</sup> See [www.ochaopt.org/content/protection-civilians-weekly-report-19-25-july-2016](http://www.ochaopt.org/content/protection-civilians-weekly-report-19-25-july-2016).

<sup>5</sup> On average, 146 structures were demolished per month in Area C in 2016, compared with 55 structures per month in 2015 and 43 structures per month in 2014.

<sup>6</sup> This principle was affirmed in the Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention (17 December 2014).

<sup>7</sup> See Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, United Nations, *Treaty Series*, vol. 75, No. 973, art. 27.

<sup>8</sup> *Ibid.*, arts. 49 and 53.

settling, permanently, those Bedouin who are there". The overwhelming majority of some 7,500 Bedouin at risk of being transferred are Palestinian refugees. The Special Committee noted that the relocation of Bedouin communities would pave the way for an expansion of illegal settlement construction in the Maale Adumim area on the Jerusalem periphery.

24. The Special Committee was informed that this process of forcible transfer would see pastoralist families forced into an urban environment, leading to a breakdown of their traditional economies and irreversibly damaging their distinct social fabric. The expectation was strongly expressed that the recent finalization of one of the alternative sites would accelerate the execution of pending demolition orders and the gradual relocation of Palestinian Bedouin communities.

25. Recent examples of the actions taken by Israeli authorities over the past year were listed in the submissions, such as multiple demolition and stop-work orders,<sup>9</sup> confiscations, the appointment of a retired brigadier-general of the Israeli Defence Force to act as "liaison" with the Bedouin communities and statements made to families encouraging them to move to the relocation sites.<sup>10</sup>

26. The Special Committee heard testimony from a Bedouin community representative from Abu Nwar<sup>11</sup> about the way his community had been targeted since April 2015 by the Israeli Civil Administration. According to the testimony, on 28 April 2015, the "liaison" official appointed by the Israeli Civil Administration informed the members of his community that they would be scheduled for full relocation, and that 34 families should sign up to the Al Jabal site within one month. The liaison official stressed that the Abu Nwar community would not be allowed by the Israeli Civil Administration to remain in its current location. The community representative indicated that the people rejected the proposal, calling for their right to return to their ancestral lands in the Negev and, pending that return, to remain in Abu Nwar, with planning solutions and services developed through community initiatives.

27. The Special Committee was informed that, despite the rejection by the Abu Nwar community of the proposal, 22 heads of affected households reportedly received a written invitation to a meeting with the Israeli Civil Administration on 22 July 2015 to discuss formally the details of the proposed relocation to the Al Jabal site. The invitations were issued together with 22 stop-work orders for residential structures. The residents did not attend the meeting upon the advice of

<sup>9</sup> Of the 46 Bedouin communities, 44 had a total of 1,281 demolition orders pending as of June 2016. Multiple homes are at risk of demolition in the communities of Abu Nwar and Jabal al Baba (in the controversial E-1 settlement area). Between January and March 2016, the Israeli Civil Administration demolished or confiscated at least 78 homes or livelihood structures of Bedouin communities (including ones financed by international donor-funded assistance) across Area C, causing at least 191 Palestinian Bedouins, including children, to be displaced (source: UNRWA submission to the Special Committee, June 2016).

<sup>10</sup> This is not the first time Bedouin communities have been subjected to transfer initiatives and relocated in connection with Israeli settlement construction or expansion. Between 1997 and 2000, 150 Jahalin Bedouin Palestine refugee families were transferred out of their rural kinship groups in the eastern Jerusalem periphery and concentrated into a single village, Arab al Jahalin.

<sup>11</sup> Abu Nwar is located in the southern part of the E1 Israeli settlement construction project.

their lawyers. In early August 2015, demolition orders were issued for the same 22 residential structures.<sup>12</sup>

28. The Special Committee learned that, on 6 January 2016, the Israeli Civil Administration entered Abu Nwar community and demolished five residential structures, as well as livelihood and other structures, leaving 26 Palestine refugees, including 17 children (4 of them with disabilities) displaced and without a home in the middle of winter. On 10 and 14 January, humanitarian materials donated by the international community as part of the post-demolition response were confiscated by the Israeli Civil Administration. It was reported that Israeli officials who attended the site to carry out the demolitions stated that “the Bedouin have an alternative place to go and they should move there”.

29. On 13 January 2016, the a liaison official appointed by the Israeli Civil Administration visited the community and, it was reported, informed one of the affected household members that those moving first would receive two plots of land rather than one. The Special Committee understands that Israeli Civil Administration officials have reportedly denied making any new offers, but acknowledged they encouraged community members to move.

30. On 22 February 2016, the Israeli Civil Administration dismantled and confiscated the Abu Nwar Mixed Primary School and its equipment, funded by international donors, only a day after community members had completed the project. Four days later, two large tents donated by the State of Palestine as temporary classrooms had also been confiscated by the Israeli Civil Administration. According to the testimony, the school had intended to accommodate the 30 children already attending primary school in the kindergarten structures of the community.

31. In addition to the specific case of the Abu Nwar community, the risk of demolitions carried out by the Israeli Civil Administration, settler violence, intimidation and harassment have been identified as factors contributing to an increasingly coercive environment, particularly in Area C of the occupied West Bank.

32. Recent examples from the Khan Al Ahmar cluster of communities presented to the Special Committee included: settler vehicles entering the community school at night, parking their vehicles close to residential structures, shining full headlights onto the structures and throwing stones on the roofs; the use of unmanned drones flown low over the communities; placing community members under continued surveillance, which generates, in women in particular, a feeling of discomfort and shamefulness; and searches of community members’ houses and trucks by private security guards from nearby settlements jointly with the Israeli police, in the presence of settlers.

33. The Special Committee notes that dozens of such incidents were reported elsewhere throughout the past year, contributing to an oppressive and “coercive environment” aimed at forcing out Bedouins, including Palestine refugees from

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<sup>12</sup> Temporary injunction orders for these 22 demolition orders were secured in September 2015.

these communities, by giving them a “false choice” of either agreeing to relocate or risking becoming homeless.<sup>13</sup>

#### **D. Escalation of violence in the occupied West Bank, including East Jerusalem**

34. The Special Committee heard that the wave of violence across the Occupied Palestinian Territory, which began in late September 2015, had claimed the lives of over 100 Palestinians and dozens of Israelis, with many more on both sides affected by injuries.<sup>14</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs, in 2015 there were 137 Palestinian fatalities recorded in the occupied West Bank and 24 in Gaza as a result of use of excessive force by Israeli security forces. On the Israeli side, there were 22 fatalities as a result of attacks by Palestinians in the Occupied Palestinian Territory, and 3 inside Israel. As at 18 July 2016, there were 67 Palestinian fatalities recorded in 2016 in the occupied West Bank and 7 Palestinian fatalities in Gaza caused by Israeli security forces. On the Israeli side, as at the same date, there were six fatalities as a result of Palestinian attacks in the Occupied Palestinian Territory and four fatalities inside Israel.

35. According to submissions made to the Special Committee, many of these incidents involved attacks reported to have been perpetrated by young Palestinians, mostly in the form of stabbings, against Israelis in East Jerusalem and Hebron in the Occupied Palestinian Territory, and in parts of Israel including Tel Aviv. A significant number of killings were also reported to have taken place in the context of clashes between Palestinians and Israeli security forces or security raids into the homes of Palestinians suspected of involvement in these attacks. In many cases, it was noted that the Israeli response may have amounted to excessive use of force, and that some incidents may be categorized as extrajudicial killings.<sup>15</sup>

36. Representations made to the Special Committee indicated that Israel’s own military and law enforcement regulations state that live ammunition must be used only under circumstances of real and imminent mortal danger. However, in September 2015, the Israeli Security Cabinet approved the decision that the security forces were allowed to use lethal force “when they face danger to any lives” thereby effectively relaxing the rules of engagement for law enforcement forces. Civil society actors referred to the statement released by the Security Cabinet, which noted that: “until recently police would open fire only when their own lives were in danger. As of now, they will be permitted to open fire — and they will know that they have the right to open fire — when they face danger to any lives”.<sup>16</sup> It was emphasized that the new regulations, which are not consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, had led to a dramatic increase in the use of lethal force in unjustifiable circumstances. As of

<sup>13</sup> Forcible transfer in the context of occupation without the free, prior and informed consent of individuals is prohibited as a grave breach of the Geneva Conventions and raises concerns of forced eviction and destruction of private property, contrary to Israel’s obligations under international human rights and humanitarian law.

<sup>14</sup> See [www.ochaopt.org/content/protection-civilians-weekly-report-12-18-july-2016](http://www.ochaopt.org/content/protection-civilians-weekly-report-12-18-july-2016).

<sup>15</sup> See [www.btselem.org/gunfire/20151216\\_cases\\_of\\_unjustified\\_gunfire\\_and\\_executions](http://www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions).

<sup>16</sup> See <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx>.

the time of writing of the present report, the Israeli police had not published their full open-fire regulations, despite requests from non-governmental organizations.

37. The Special Committee viewed a number of videos of excessive use of force and cases of possible extrajudicial executions, including that of a Palestinian man, Abd al-Fatah al-Sharif, on 24 March 2016 in the occupied West Bank. The Committee was informed that, in this case, two Palestinian men, one of whom was Abd al-Fatah al-Sharif, allegedly stabbed and wounded an Israeli soldier at a checkpoint in the Israeli-controlled area of Hebron. Both were shot and killed during the attack.

38. In the video footage, Mr. al-Sharif was shown lying injured but still alive on the ground. Medical staff attended to the wounded soldier, who was driven away in an ambulance, but did not offer any medical assistance to Mr. al-Sharif. An Israeli soldier then shot Mr. al-Sharif in the head, killing him almost instantly as he lay on the ground, posing no apparent threat. The Special Committee was disturbed that none of the Israeli medical personnel or security forces at the scene paid any attention to the wounded man while he was still alive.

39. The Special Committee notes that the Israeli authorities subsequently launched an investigation into this case, detained the soldier involved in the shooting, and charged him with manslaughter. However, as of July 2016, this exceptional case was still in progress, with no conviction. In a number of submissions, concerns were expressed that the majority of similar incidents were not systematically investigated, leading to a general and persistent lack of accountability that continued to fuel the violence.<sup>17</sup> The Commission of Detainees and Ex-Detainees Affairs reported at least 17 separate cases of alleged extrajudicial executions carried out by Israeli security forces since October 2015.

## **E. Impact of the escalation of violence on Palestinian communities**

40. In its submission, UNRWA noted that it had recorded an increase of 84 per cent in the number of live ammunition injuries from 2014 to 2015 in and around Palestine refugee camps. The situation in and around refugee camps in the occupied West Bank remains tense. Over 55 per cent of the live ammunition injuries in 2015 took place in the last quarter of the year, in two hotspots: the Shufat refugee camp and the Kalandia area. The Special Committee was informed that Palestinians, including children, had often been killed or injured during military incursions into refugee camps and during demonstrations, including many cases in which there was no apparent immediate threat to life.

41. Israel has an obligation to respect and protect the right to life, to comply with rules and standards governing the use of force by law enforcement officials and to investigate instances of excessive use of force by those officials. In cases where the use of force is unavoidable, Israeli security forces must seek to exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective

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<sup>17</sup> The Committee Against Torture has stated that Israel should make more vigorous efforts to effectively prevent and sanction incidents of excessive force, including by ensuring that law enforcement and security officials are adequately trained in and comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see [CAT/C/ISR/CO/5](#), para. 33).

to be achieved, minimize damage or injury, and respect and preserve human life. The Special Committee notes that the use of firearms is permitted only in extremely limited circumstances, namely, in self-defence or defence of others against imminent threat of death or serious injury, and as a measure of last resort. Intentional lethal use of firearms is permitted only when it is strictly unavoidable in order to protect life.

42. The increasing use of tear gas as a method of crowd control in crowded areas and confined spaces, including refugee camps with limited ways of entry and exit, was also brought to the attention of the Special Committee. It is reported that gas canisters are frequently fired into, or fall into, UNRWA installations in camps, including schools, which as United Nations premises should be inviolable. In the first four months of 2016, there were 28 such incidents, with at least 197 tear gas canisters, stun grenades and other ammunition landing in UNRWA installations. One incident led to the hospitalization of a security guard employed by UNRWA.

43. The Special Committee also heard about the negative impact of the Israeli occupation on children's education in the occupied West Bank, including East Jerusalem, as a result of frequent military raids by Israeli security forces inside school premises during classroom hours, the arrest and detention of teachers and students and the intimidating presence of soldiers on roads near schools and at multiple checkpoints along the way to school.

## **F. Attacks on medical personnel and ambulances**

44. Representations made to the Special Committee also highlighted incidents and attacks by Israeli security forces against medical personnel and ambulances in the occupied West Bank and East Jerusalem. Such cases included prohibiting ambulances from reaching Palestinian patients, holding up ambulances transferring Palestinian patients, directly shooting rubber and live bullets at ambulances, physically beating medical personnel and setting up checkpoints near hospitals and restricting access to them. These incidents were reported regularly — at times dozens of times every month — and have resulted in injuries to dozens of medical volunteers.

45. These testimonies were corroborated by a number of examples of video footage showing medical personnel being attacked in plain sight. The Special Committee noted with particular concern cases of Israeli security forces blocking ambulances from reaching injured Palestinians, and at times even attacking Palestinian medical personnel arriving at the scene of an incident to provide first aid. Such actions by Israeli security forces are, *prima facie*, in contravention of customary international law and the basic principles of the Geneva Conventions.

## **G. Retrieval of dead bodies**

46. The Special Committee heard testimony relating to some 70 dead bodies of Palestinians who were killed in the context of alleged attacks against Israelis in the period since October 2015. These bodies were reportedly held by Israel for many weeks and months because of security concerns, denying the families proper and dignified closure. Many of the bodies had since been returned to the families, but it

was noted that, as of May 2016, the bodies of 18 Palestinians (including an unborn child) continued to be held by Israel (see [CAT/C/ISR/CO/5](#), paras. 42 and 44).

47. It was further alleged that Israeli authorities had prohibited autopsies and that dead bodies were kept in poor and inhumane conditions, stacked on top of one another; this often resulted in bodies being disfigured, sometimes beyond recognition. According to the testimony, Israeli authorities refused the demands of the Palestinian families concerned to investigate the circumstances of the killings.

48. The Special Committee notes that, following the attack by two Palestinians from the occupied West Bank town of Yatta on 8 June 2016, in a shopping mall in Tel Aviv, which killed four Israelis and injured another seven, the practice of withholding dead bodies was reaffirmed by the newly appointed Defence Minister Avigdor Lieberman.<sup>18</sup> Palestinian families continue to be denied the right to conduct final religious rites with dignity.

## H. Punitive demolitions

49. It was indicated in the submissions that the Palestinian families of alleged perpetrators of crimes, including Palestine refugee families, continued to face the risk of punitive demolitions since the Israeli Security Cabinet officially reinstated this policy on 14 October 2015.<sup>19</sup>

50. According to the Israeli Information Center for Human Rights in the Occupied Territories (B'tselem), since October 2015 Israel has demolished or sealed 37 homes to punish relatives of Palestinians who attacked Israelis or were suspected of such attacks, leaving 149 people homeless, including 65 children. Dozens more homes were measured in preparation for demolition, leaving 339 people, including 128 children, living under threat.<sup>20</sup> These figures include seven Palestine refugee residences demolished or sealed for punitive reasons in the occupied West Bank. In all seven of those cases, the alleged perpetrator of an attack or offence was either killed on site or held in detention but had not been convicted of an offence.

51. The Special Committee further notes that, while Israel justifies the practice by claiming it deters the commission of crimes targeting Israeli security personnel, civilians and others, the practice of punitive demolitions violates international law, including the prohibition on collective punishment, and must be rescinded.<sup>21</sup> The Special Committee regrets that the Supreme Court of Israel continues routinely to approve demolition orders.

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<sup>18</sup> See “Lieberman orders moratorium on returning attackers’ bodies”, *The Times of Israel*, 9 June 2016, available from [www.timesofisrael.com/liberman-orders-moratorium-on-returning-attackers-bodies](http://www.timesofisrael.com/liberman-orders-moratorium-on-returning-attackers-bodies).

<sup>19</sup> The practice had been discontinued in 2005 on the recommendation of an Israeli military committee that found it ineffective.

<sup>20</sup> See [www.btselem.org/ota?tid=170](http://www.btselem.org/ota?tid=170).

<sup>21</sup> The practice of punitive demolitions contravenes article 33(1) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which prohibits collective punishment.

## I. Lack of faith in the Israeli judicial system

52. Against the backdrop of the lack of systematic investigation into cases of apparent excessive use of force by Israeli security forces in the context of the escalation of violence since September 2015, and the lack of progress made on accountability in relation to the escalation of violence in Gaza in 2014, fears were expressed by numerous civil society organizations about what they described as “the faulty justice system” in Israel, and the dilemma they faced, namely whether or not to approach the existing Israeli justice system, civil or military, for redress.

53. Non-governmental organizations submitted information from their own tracking of criminal complaints submitted by Palestinians,<sup>22</sup> and also referred to the report of the United Nations High Commissioner for Human Rights of 7 March 2016 on implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict ([A/HRC/31/40/Add.1](#)).

54. Civil society organizations also indicated in their submissions that they had sent a series of urgent letters to Israeli military and legal authorities, including the Minister of Defence, the Military Advocate General and the Attorney General, urging them to launch investigations into alleged war crimes committed by the Israeli army in Gaza.<sup>23</sup> However, the Special Committee was concerned to hear that the organizations had either not received responses about many cases or had been informed by the Israeli authorities that no investigation would be opened.

55. Civil society organizations stated that the Supreme Court of Israel issued a number of rulings in 2015 that negatively affected the human rights of Palestinians in the Occupied Palestinian Territory, casting further doubt about the accountability and the independence of the judicial system, civil or military, in Israel. It was stressed in the submissions that some decisions taken by the Supreme Court were brief, with no proper reasoning. Some of the examples of Supreme Court rulings presented before the Special Committee as having a negative impact on the human rights situation in the Occupied Palestinian Territory are briefly listed below:<sup>24</sup>

56. **Anti-Boycott Law:** in April 2015, the Supreme Court rejected a petition against the Law Preventing Harm to the State of Israel by Means of Boycott, 2011 (“Anti-Boycott Law”), which allows Israelis to sue individuals and groups who call for economic, cultural or academic boycotts of Israel’s West Bank settlements or of Israel itself. It was emphasized that, in this case, the Supreme Court asserted that boycotts amounted to “political terror”, ignoring the non-violent and legitimate nature of this act of freedom of expression and the efforts by many to use boycotts to pressure the State to end its military occupation and policies affecting the human rights of Palestinians.<sup>25</sup>

57. **Absentees’ Property Law in East Jerusalem:** the Supreme Court approved the Government’s policy of applying the Absentees’ Property Law of 1950 in occupied East Jerusalem, thereby allowing the State to confiscate the properties of Palestinians in the city if the owners currently live in the West Bank. Israel

<sup>22</sup> See [http://mezan.org/en/uploads/upload\\_center/kiWkMhPrYIZx.pdf](http://mezan.org/en/uploads/upload_center/kiWkMhPrYIZx.pdf).

<sup>23</sup> See [www.adalah.org/en/content/view/8304](http://www.adalah.org/en/content/view/8304).

<sup>24</sup> See [www.adalah.org/en/content/view/8710](http://www.adalah.org/en/content/view/8710).

<sup>25</sup> See [www.adalah.org/en/content/view/8525](http://www.adalah.org/en/content/view/8525).

“annexed” East Jerusalem following its occupation of the city in 1967, and has since pursued a policy of geographical, social and political separation from the occupied West Bank. It was submitted that the purpose of the confiscations was to facilitate further building of Jewish settlements on occupied territory.<sup>26</sup> The Special Committee raised concerns about this law in its 2015 report to the General Assembly (see [A/70/406](#), paras. 47-49).

58. **Banning higher education for prisoners:** in April 2015, the Supreme Court accepted the position of the General Security Service and dismissed a petition against the ban on Palestinian prisoners, classified as security prisoners by the Israel Prison Service, from pursuing higher education in prison. The Court ruled that the distinction between criminal and security prisoners, the vast majority of the latter being Palestinian, was “legal and legitimate”, and that denying education to security prisoners was proportionate and reasonable.<sup>27</sup>

59. **Banning family unification for Palestinians from Gaza:** in June 2015, the Supreme Court dismissed a petition by Hamoked, an Israeli non-governmental organization, against a government decree that ordered the Israeli Interior Ministry not to approve requests for Palestinian family unification in Israel if one of the parents or spouses was from Gaza. The decree treats all civilians from Gaza as a security threat in a sweeping and discriminatory manner, instead of dealing with individuals on a case-by-case basis. The decree also gravely violates the right to family life. The Court justified its decision on the basis that the security conditions in Gaza had not changed, and therefore the Government did not need to change its policy.<sup>28</sup> The Special Committee heard that the Legal Centre for Arab Minority Rights in Israel (ADALAH) had previously argued two petitions before the Supreme Court regarding the constitutionality of the ban on Palestinian family unification in Israel, and that the Court had upheld the ban in 2006, along with new amendments to the Citizenship and Entry into Israel Law (Temporary Provision) in 2012.<sup>29</sup>

60. **Home demolitions as collective punishment:** in November 2015, the Supreme Court rejected a petition to reconsider its decision to allow the Government’s policy of demolishing the homes of families of Palestinian individuals who were suspected, accused or convicted of carrying out attacks against Israel or its citizens.<sup>30</sup> Civil society organizations noted that the decision allowed the State to carry out demolitions as a punitive and retaliatory measure, which amounted to collective punishment. Civil society organizations considered the policy to be a severe violation of international humanitarian and criminal law.

#### **Failure of the Israeli military law enforcement system**

61. In a major decision, a leading Israeli non-governmental organization, B’tselem, announced in May 2016 that it would no longer file complaints to the

<sup>26</sup> See [www.adalah.org/en/content/view/8530](http://www.adalah.org/en/content/view/8530).

<sup>27</sup> See [www.adalah.org/en/content/view/8528](http://www.adalah.org/en/content/view/8528).

<sup>28</sup> See [www.hamoked.org/Document.aspx?dID=Updates1501](http://www.hamoked.org/Document.aspx?dID=Updates1501).

<sup>29</sup> See “Adalah case review: the Israeli Supreme Court’s decision in the citizenship and family unification law case”, *Adalah’s Newsletter*, vol. 91 (March 2012). Available from [www.adalah.org/uploads/oldfiles/newsletter/eng/mar12/docs/Case%20Review%20Citizenship%20Law%20English.pdf](http://www.adalah.org/uploads/oldfiles/newsletter/eng/mar12/docs/Case%20Review%20Citizenship%20Law%20English.pdf).

<sup>30</sup> In July 2016, the Supreme Court rejected another appeal against the home demolition orders affecting the families of two Palestinians accused of carrying out a deadly attack in Tel Aviv in June 2016.

Israeli military's law enforcement system. B'tselem explained that, since the second intifada in late 2000, it had demanded investigation in 739 cases in which Israeli soldiers killed, injured or beat Palestinians, used them as human shields or damaged their property. According to B'tselem, in around a quarter of these cases (182), no investigation was undertaken, while in half of them (343) the investigation was closed with no further action taken. Charges were brought against implicated soldiers in only 25 cases; another 13 cases were referred to disciplinary action. B'tselem stated that 132 cases were still at various stages of processing, and the Military Advocate General's office was unable to locate 44 complaints.<sup>31</sup>

62. B'tselem reported that, over more than 25 years, it had gathered information on hundreds of cases filed with the military law enforcement system. In addition to the vast amount of information collected to process these cases, B'tselem had received scores of investigation papers from the military police investigation unit. The organization claimed that it has also met with officials of the military law enforcement system numerous times over the years, and corresponded with the Military Advocate General Corps and other military officials. B'tselem argued that it was the sum of this knowledge gained through these interactions that served it as the basis for pointing out the structural failures that, despite the capacity of the Israeli military law enforcement system to process a sizeable caseload, meant that it closed the vast majority of cases without any further action.

63. B'tselem stated that, while changes had been made to the military law enforcement system, they served mostly to reinforce the impression that efforts were being made to get to the truth, and did not resolve the system's substantive problems.

64. In light of the decision of B'tselem and similar views heard from other experienced civil society organizations based on years of interaction and solid data, the Special Committee fears that the separation of powers between the judiciary and executive branches in Israel is increasingly narrowing, potentially affecting the independence of the judiciary and the decisions of the courts in Israel. The Committee is also of the opinion that information received casts doubt on the ability of the domestic accountability mechanisms in Israel to bring any measure of justice to the victims of human rights and humanitarian law violations.

## **J. Threats and intimidation against human rights defenders**

65. The Special Committee was also briefed on the threats and intimidation faced by human rights defenders in the Occupied Palestinian Territory and in Israel. These intimidations and threats have taken different forms, including restrictions on or denial of freedom of movement, threatening phone calls and e-mails, and death threats in extreme cases.

66. In one emblematic case, a Palestinian human rights non-governmental organization in Ramallah, Al-Haq, has been a target of a series of threats of attacks and a smear campaign since September 2015. It was noted that the level of threats against Al-Haq escalated in February 2016, taking the form of threatening anonymous e-mails, hacking of e-mail accounts, anonymous letters and phone calls and Facebook posts.

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<sup>31</sup> See [www.btselem.org/publications/summaries/201605\\_occupations\\_fig\\_leaf](http://www.btselem.org/publications/summaries/201605_occupations_fig_leaf).

67. The Special Committee also noted that anonymous letters had been sent to Al-Haq's European donors, containing allegations against the administration of the organization. It was alleged that the purpose of the threats was to undermine the organization and to convince their partners and donors not to support them.

68. In another case, on 1 November 2015 the Israel Defense Forces declared the area around the headquarters of a Palestinian non-governmental organization, Youth Against Settlements, a closed military zone. The order was renewed regularly until May 2016. It was, however, reported that, in the light of numerous public campaigns for the lifting of the order, it was not renewed in May 2016.

69. It was reported that, for many years, Youth Against Settlements ran the annual "Open Shuhada Street" campaign, with speaking tours in a number of European countries. It was claimed that the international attention the tour received infuriated the Israeli authorities, and that the final event of the campaign, a peaceful protest held on 26 February 2016 in Hebron, was put down violently, despite the peaceful nature of the protest. It was also alleged that a Youth Against Settlements coordinator was arrested on several occasions during these months. The Committee believes that these allegations raise serious concerns about threats and intimidation of human rights defenders working on human rights issues in the Occupied Palestinian Territory.

## **K. Situation of Palestinian detainees**

70. In 2016, Palestinian officials and civil society again drew attention to Israel's detention of thousands of Palestinians, including children, and raised alarm about the steadily increasing numbers of detainees held in 18 prisons, military camps and detention centres inside Israel, in contravention of international humanitarian law. The Committee was informed that, as of April 2016, there were an estimated 7,000 Palestinian detainees, including 450 children and six elected members of the Palestinian Legislative Council. It was noted that an estimated 700 Palestinians were held in administrative detention, including women and children. The overall number of Palestinian detainees in 2016 already exceeds the numbers recorded in 2015 (see [A/70/406](#), paras. 50-57).

71. The Special Committee notes that dozens of Palestinian detainees have again taken to hunger strikes in 2016 to protest Israel's continued practice of administrative detention, notably in solidarity with Bilal Kayed,<sup>32</sup> who had been on hunger strike for over 70 days at the time of writing of the present report. Mr. Kayed has been consuming only water, and it is reported that his health has seriously deteriorated.

72. On a related issue, civil society representatives noted the unsuccessful implementation of the controversial force-feeding bill adopted by the Knesset last year because of the refusal to cooperate by Israeli doctors and the Israel Medical Association.

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<sup>32</sup> Bilal Kayed was arrested in 2001 and sentenced to 14.5 years in prison. He was placed in isolation in Rimon prison in September 2015, until his scheduled release on 13 June 2016. The Israeli Government then issued a six-month administrative detention order on the day of his scheduled release.

73. Concerns were also raised in the submissions about punitive measures inside detention centres imposed on Palestinian detainees, such as prevention of family visits, cutting off power and alleged torture and ill-treatment, including the use of police dogs inside prisons, and deliberate medical neglect resulting in deaths among detainees which could have been avoided.

74. The year 2015 reportedly witnessed a remarkable rise in the number of Palestinians detained on the basis of their activities on social media. It was reported that, since October 2015, 150 Palestinians had been detained for the “crime” of posting incendiary comments on Facebook and other media; this raises concerns about restrictions placed by the Israeli authorities on freedom of expression and opinion.<sup>33</sup>

75. Representations from civil society highlighted harmful changes to legislation affecting children, including a penalty for stone-throwing of up to 20 years’ imprisonment in certain cases. Concerns were expressed about the Israeli practice of “home detentions”, particularly affecting children in East Jerusalem and mostly imposed for alleged stone-throwing offences. In 2015, Israel reportedly issued 60 home detention orders against children, effectively placing them under house arrest and appointing a family member to act as a guardian to enforce the house arrest, limiting the child’s ability to pursue education or health care.

## L. Human rights situation in Gaza

76. Civil society organizations stressed in their submissions that the continuing land closure and naval blockade by Israel in Gaza, now entering its tenth year, constituted a form of collective punishment of the civilian population that directly contradicted Israel’s obligations under international humanitarian law and its responsibilities as the primary duty-bearer to meet the needs of a protected population under occupation.

77. Two years after the most recent devastating conflict, the Special Committee was informed that donor pledges made at the International Conference on Palestine and Reconstructing Gaza in 2014 had not been fulfilled, and that an estimated 85,000 people remained displaced as a result of Israel’s destruction of homes.<sup>34</sup> Meanwhile, thousands of children suffer from the psychosocial consequences of experiencing repeated trauma in hostilities.<sup>35</sup>

78. Briefings on Gaza’s economic performance all pointed to chronic “de-development” over the past nine years. In 2015, real gross domestic product in Gaza was 20 per cent lower than in 2005, and per capita income was 30 per cent lower compared with the same year. There appear to be no other variables that could explain these developments other than the blockade and the toll taken by recurrent conflicts. Daily power outages of up to 12 hours’ duration also continue to affect households, businesses and public services across Gaza. The lack of electricity

<sup>33</sup> See Commission of Detainees and Ex-Detainees Affairs, *War Crimes and Crimes against Humanity toward Palestinian Detainees in Israeli jails* (Ramallah, 2016).

<sup>34</sup> An estimated 500,000 people were displaced at the peak of the conflict (see [A/HRC/28/45](#), para. 14).

<sup>35</sup> There have been three major escalations of hostilities between Israel and Palestinian armed groups in Gaza in seven years: December 2008-January 2009, November 2012 and July-August 2014.

means that families are unable to refrigerate food and wash clothing; children are unable to study in the evenings without light; and businesses, hospitals and water facilities incur tremendous costs to maintain generators.

79. The Special Committee notes that, in the absence of free access to natural end markets in Israel and the occupied West Bank, the private sector in Gaza has been forced to restructure inwards, focusing on non-tradable goods and service activities and transforming the Gaza economy from a productive, export-driven economy to a consumption, demand-driven economy. The Committee was informed that the local economy had stayed afloat through a constant expansion of the public sector which, according to the latest data, today accounts for the largest share of Gaza's gross domestic product. It was stressed in the submissions that Israeli military incursions and the often-violent enforcement of the extensive access-restricted areas along the land and sea borders of Gaza resulted in killings and injuries, as well as confiscation and destruction of boats and fishing equipment. As a result, such Israeli practices continue to prevent the cultivation of significant tracts of fertile agricultural land and severely hamper the livelihoods of thousands of fishermen and their families.

80. Civil society representatives noted that the Gaza reconstruction mechanism brokered by the United Nations resulted in some success in bringing much-needed materials into Gaza, but that Israel's exercise of full control of and restrictions over imports and exports, including Israel's prohibitive "dual-use list",<sup>36</sup> meant that Palestinians living in Gaza could not exercise their right to development. According to civil society organizations, these restrictions have a "chilling effect" on project development. In April 2016, Israel temporarily suspended the import of cement for private projects after it had accused the authorities in Gaza of diverting cement for the construction of underground tunnels built to attack Israel.<sup>37</sup> Some representatives expressed their frustration by calling into question the legitimacy of the Gaza reconstruction mechanism, claiming that "it is only legalizing the blockade" imposed since June 2007.

81. It was noted in the submissions that Gaza's hardship extended to every aspect of life — education, unemployment, gender-based violence, shelter, water and sanitation — and had an impact upon ordinary citizens. The chronic lack of construction materials due to the closures has resulted in over 400 schools running on double shifts to accommodate all students. Early in 2016, unemployment in Gaza stood at 38.4 per cent, with youth and women's unemployment at a staggering 60 per cent and 84 per cent, respectively. The Special Committee also heard concerns about the lack of women's participation in reconstruction committees in Gaza.

82. Civil society representatives noted that there were very few prospects for youth in Gaza of finding a decent job, even with a university degree. Violence against women in Gaza occurred at nearly double the rate in the occupied West Bank. Almost 60 per cent of children in Gaza were reportedly exposed to violence in the home. Concerns were also raised about the rising suicide rate among youth in

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<sup>36</sup> Israel's "dual-use list" includes most building materials and basic civilian materials such as wood, welding rods and medical equipment, going well beyond recognized international norms (see [www.wassenaar.org](http://www.wassenaar.org)).

<sup>37</sup> See "Israel suspends cement deliveries to Gaza's private sector", *The Jerusalem Post*. Available from [www.jpost.com/Arab-Israeli-Conflict/Israel-suspends-cement-delivers-to-Gazas-private-sector-450234](http://www.jpost.com/Arab-Israeli-Conflict/Israel-suspends-cement-delivers-to-Gazas-private-sector-450234).

a conservative society where suicide is considered a crime, reflecting the desperation and loss of hope resulting from the blockade and the Israeli occupation.

## **M. Energy dependence and exploitation of natural resources**

83. Officials from the Palestinian Energy Authority and civil society organizations briefed the Committee on the reasons Palestine finds itself in a “state of energy dependence”, despite the confirmed presence of natural oil and gas resources in the Occupied Palestinian Territory, notably off the coast of Gaza, but also in the occupied West Bank.<sup>38</sup>

84. In terms of electricity generation, it was noted that the Israel Electric Corporation owns the electricity grid in the West Bank and supplies 95 per cent of its electricity. Similarly, in Gaza two thirds of the electricity supply comes from Israel through feeder lines maintained by the Israel Electric Corporation and the Gaza Electricity Distribution Company. The only power station located inside Gaza operates partly on diesel fuel purchased by the Palestinian Authority from the Israeli Paz oil company refinery based in Ashdod.

85. Palestinian officials once again referred to the 2012 report entitled “Gaza in 2020: A liveable place?”, of the United Nations country team in the Occupied Palestinian Territory, and asserted that, should current trends continue, Gaza was getting closer every year to the projections of the United Nations country team that Gaza may no longer be a liveable place by 2020.

86. The Special Committee heard that, while Israel had nearly full control and monopoly over power supplies to the Occupied Palestinian Territory, it had also deliberately denied Palestinians their right to permanent sovereignty over their natural resources and their right to development.

87. One example brought to the attention of the Special Committee was that of the two wells in the Gaza Marine zone drilled in 2000 by British Gas Group under an exploration licence granted by the Palestinian Authority. Notwithstanding the discovery of substantial reserves in the Gaza Marine zone, reportedly estimated at 1.4 trillion cubic feet, the two wells have remained undeveloped and unexploited for over 16 years as a result of Israeli objections to the development of either gas pipelines for export to Egypt, or an onshore processing terminal with a view to supplying gas to Israel.

88. It was further noted that the enforcement by Israeli security forces, often with excessive use of force, of the “access-restricted area” extending 6 nautical miles off the shore of Gaza had not only had a detrimental impact on the livelihoods of Palestinian fishermen and their families, but had also ensured that Palestinian oil and gas resources remained undeveloped. It was recalled by Palestinian officials that past negotiations with Israel to delineate its exclusive maritime economic zone had achieved nothing, as Israel declared “closed areas” to protect its own gas platforms. According to Palestinian officials, Israel had employed similar strategies of preventing Palestinian access to potential oil fields in the occupied West Bank,

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<sup>38</sup> Part of the Meged oil fields (estimated 100 million barrels of oil) rests on the Green Line demarcating the Israeli town of Rosh Haayin and the West Bank Palestinian village of Rantis. See Susan Power, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory* (Ramallah, Al Haq, 2015).

namely near the Palestinian village of Rantis (adjacent to the Israeli Meged 5 oil field), through the designation of areas as military training zones and the construction of the separation wall.

89. The Special Committee is aware of recent media reports suggesting that progress has been made in negotiations to lay a pipeline supplying gas from the Leviathan gas fields off the coast of Israel to Gaza.<sup>39</sup> If such a deal is implemented, the Committee is of the view that, notwithstanding the short-term benefits for Palestinians in Gaza, it may further delay the development of Palestine's own natural gas reserves and perpetuate its state of energy dependence. The Committee notes with concern reports that Israel has for years unilaterally exploited offshore natural gas reserves at the Noa and Mari-B fields straddling the border with Palestinian waters at 13 nautical miles from the Gaza coast (through leases to the United States-based company Noble Energy), for its own benefit.

## **V. Human rights situation in the occupied Syrian Golan**

90. Civil society organizations presenting information on issues related to the occupied Syrian Golan raised a number of serious concerns, including Israel's discriminatory and illegal policies towards the Syrian population; the continued deployment of landmines and the presence of Israeli army bases in and around Syrian residential and civilian areas; the construction and expansion of settlements in the occupied Syrian Golan; the forcing of a new curriculum and education system on Syrians; and recent statements by Israel that it exercises sovereignty over the occupied Syrian Golan.<sup>40</sup>

91. Representations were made that discriminatory land, housing and development policies by Israel have meant that existing Syrian residential areas are densely populated, as horizontal expansion on surrounding land has not been allowed by the Israeli authorities. It was mentioned that Israel seeks to expropriate land owned by the Syrian population by declaring it as green areas, vital areas for public benefit or State land, in order to prevent the Syrian population from using it for construction, farming, grazing or other purposes. These policies, it was alleged, not only have an adverse effect on available housing, they also severely inhibit the improvement of road and sewerage systems, the construction of educational, health and cultural institutions and the establishment of infrastructure for industrial areas for the benefit of the Syrian population.

92. Civil society organizations alleged that, for many years now, Israel had used vast areas of land in the occupied Syrian Golan for military training and bases, leaving behind substantial numbers of landmines, which sometimes resulted in the loss of innocent civilian lives. The Committee heard that numerous landmines had been laid in and around Syrian villages under the pretext of security.

93. The Committee heard that, since the occupation of the Syrian Golan, a new curriculum and school system had been forced on the Syrian population. It was alleged that these changes in curriculum sought to "diminish" Syrian identity and

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<sup>39</sup> See "The Ministry of National Infrastructure, Energy and Water Resources has authorized the sale of 0.25-0.4 BCM a year", *Globes*, 3 March 2016. Available from [www.globes.co.il/en/article-israeli-govt-to-allow-gas-exports-from-leviathan-to-gaza-1001108009](http://www.globes.co.il/en/article-israeli-govt-to-allow-gas-exports-from-leviathan-to-gaza-1001108009).

<sup>40</sup> See <http://mfa.gov.il/MFA/PressRoom/2016/Pages/Cabinet-communicue-17-April-2016.aspx>.

culture as well as the civilization and history of the local community. Furthermore, it was alleged that the Israeli curriculum did not currently facilitate Arab cultural activities and that the Syrian population had little say in how its educational institutions are run and what Syrian children are taught.

94. According to information received by the Committee, Israel continues to explore and exploit natural oil resources from the occupied Syrian Golan through Afek, an Israeli subsidiary of the United States-based company, Genie Energy, as previously reported by the Committee (see [A/70/406](#), para. 25).

## **VI. Recommendations**

95. **The Special Committee calls upon the Government of Israel:**

(a) **To implement all prior recommendations contained in the reports of the Special Committee to the General Assembly, and to facilitate access by the Special Committee to enter the Occupied Palestinian Territory;**

(b) **To end its occupation of the West Bank, including East Jerusalem and Gaza, as well as the occupied Syrian Golan, in compliance with Security Council resolutions 242 (1967) and 497 (1981);**

(c) **To lift the illegal land and sea blockade imposed on Gaza for the past nine years and open up opportunities for trade and increasing movement of Palestinians between Gaza and the West Bank;**

(d) **To cease all settlement activity and construction of the separation wall in the occupied West Bank, including East Jerusalem, which contravenes international law and undermines the right of self-determination of the Palestinian people;**

(e) **To immediately stop demolitions pending the introduction of a planning and zoning regime that fully complies with international law and the rights of the Palestinian people. All Palestinians in Area C, including Palestine refugees, must have access to a fair and participatory planning and zoning system that is designed to advance the interests and address the needs of the protected population;**

(f) **To take all measures to prevent violence perpetrated by settlers, including attacks or harassment against Palestinians and their property, contributing to the creation of an unsustainable living environment, and ensure that such incidents are investigated and those responsible held accountable for the crimes committed;**

(g) **To take all necessary precautionary measures to ensure that civilians are not harmed during military incursions into and around Palestine refugee camps, including by planning and conducting such operations in a manner that safeguards human life and the safety of the protected population and ensuring that Israeli security forces act proportionally and with restraint in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(h) **To rescind all demolition, eviction and seizure orders that are likely to lead to the forcible transfer of Bedouin communities in the occupied West**

**Bank, which affects their pastoralist lifestyle, leading to the breakdown of their traditional economies and damaging their distinct social fabric;**

**(i) To facilitate access to medical treatment for injured Palestinians in the Occupied Palestinian Territory;**

**(j) To systematically investigate all cases of rampant and excessive use of force that have led to death or serious injury;**

**(k) To conduct a prompt, thorough, transparent and independent investigation into all cases of alleged extrajudicial executions and ensure that those responsible are brought to justice;**

**(l) To ensure the protection necessary for the Palestinian civilian population and human rights defenders engaged in the promotion of human rights issues affecting the Occupied Palestinian Territory and allow them to carry out their work freely and without fear of attacks and harassment;**

**(m) To fully investigate attacks and threats against human rights defenders and ensure that those responsible are held accountable;**

**(n) To release the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible in order to bring dignified closure in accordance with their religious beliefs and traditions;**

**(o) To end the practice of punitive demolitions of Palestinian homes in the occupied West Bank and East Jerusalem, which is inhumane, has no deterrent effect and constitutes a form of collective punishment prohibited under international law;**

**(p) To enable Palestinians and other Arabs to develop and exploit their oil and natural gas reserves, including in offshore locations within the territories occupied since 1967, and halt the exploitation of Palestinian resources.**

**96. The Special Committee also calls upon the international community:**

**(a) To ensure that financial pledges made by donor countries in Cairo for the reconstruction of Gaza are honoured and urgently disbursed so that the humanitarian situation is eased;**

**(b) To use its influence to end the blockade of Gaza, which has a significant detrimental effect on Palestinians;**

**(c) To review national policies, legislation, regulations and enforcement measures in relation to business activity to ensure that they effectively serve to prevent and address the heightened risk of human rights abuses in conflict-affected areas;**

**(d) To ensure that corporations respect human rights and cease to fund or enter into commercial transactions with organizations and bodies involved in settlements or exploitation of natural resources in the occupied Palestinian and Syrian territories;**

**(e) To give effect to its legal obligations, as contained in the 2004 advisory opinion of the International Court of Justice, on the wall;**

(f) **To address Israel's long track record of non-cooperation with the United Nations, in particular regarding the implementation of resolutions of the General Assembly and the Security Council and mechanisms established by the Assembly and its subsidiary bodies.**

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# Advance Unedited Version

Distr.: General  
22 October 2020

Original: English

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## Seventy-fifth session

Item 72 (c) of the provisional agenda \*

**Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives**

### **Situation of human rights in the Palestinian territories occupied since 1967\*\***

#### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, S. Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

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\* A/75/150.

\*\* The present report was submitted after the deadline in order to reflect the most recent developments.

## **Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967**

### *Summary*

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, S. Michael Lynk, submits his fifth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations agencies. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza and is the second report focusing on accountability related issues.

## **I. Introduction**

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission as identified by the Rapporteur in conversations and meetings with civil society. The report then presents a detailed analysis of latest human rights concerns in the Occupied Palestinian Territory with a specific focus on accountability.

2. The Special Rapporteur would like to highlight once again that, despite his repeated requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights, and reminds Israel that he is ready and willing to engage. In addition, the Rapporteur continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. Israel's pattern of non-cooperation with the mandate is a serious concern.

3. The Special Rapporteur was not able to travel to the region, including Amman, Jordan, due to travel restrictions in connection with the spread of COVID-19. However, he was able to engage actively with members of civil society and other United Nations Agencies and collect important information on the topic most notable through submissions.

4. In the present report, the Special Rapporteur focuses on two issues. First, the report reviews the accountability responsibilities of the United Nations Security Council in ensuring that its decisions and directions on the Israeli occupation are obeyed. It then assesses the accountability responsibilities of private corporations operating in, or benefiting from, directly or indirectly, the Israeli settlements and the Israeli occupation.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli, and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfill his mandate, but to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged.

## **II. The Current Human Rights Situation**

### **A. The impact of Covid-19**

7. The spread of the COVID-19 pandemic in the occupied Palestinian territory has accentuated some of the existing negative and longstanding negative repercussions of Israeli occupation. In some respects, it has exposed further the structural deficiencies in vital sectors, particularly the health sector in the West Bank and Gaza, as a result of Israeli practices on the ground. It has also clearly demonstrated that, during a serious health crisis, one that crosses borders and communities, a two-tier occupation regime reinforces unequal rights, particularly the right to adequate health. Despite existing conditions on the ground, in the initial phase of the pandemic, specifically in the months of March and April, duty bearers applied strict preventive measures that have effectively curbed the spread of the virus. Some coordination, although short lived, was noted then between the Palestinian authority and

Israel.<sup>1</sup> However, an exponential increase in cases has been observed since late June, when the total number of confirmed cases was only around 2765.<sup>2</sup> By 13 October, the total number of confirmed cases had increased markedly and reached 52,292 in the West Bank and 4,175 in Gaza.

8. This exponential increase has significantly strained an already weakened and overstretched health sector, particularly in Gaza. This additional strain was further compounded by the suspension of security coordination between the Palestinian authority and Israel on 19 May, which came in the aftermath of Israel's announcement of its planned annexation of parts of the West Bank and the Jordan Valley.<sup>3</sup> As a consequence, this has significantly affected Palestinians' access to health care, generally reduced humanitarian assistance and significantly reduced the Palestinian Authority's monthly revenues by more than 80%, severely limiting its capacity to pay its employees particularly health personnel. Israel has withheld the Palestinian Authority's tax revenues numerous times in the past. Since December, those revenues have been withheld again. In his briefing to the Security Council, the UN Special Coordinator for the Middle East peace Process noted that "I am also concerned that we are far below the level of coordination that existed in the beginning of the year, when the first wave of the virus hit. This situation could have serious repercussions on the ability to control its spread and its impact on people's lives".<sup>4</sup>

9. Beyond the impact of this suspension, existing measures directly resulting from facts on the ground that Israel, the occupying power, has imposed significantly reduced access to Palestinians' health care and to humanitarian assistance. These include a vast settlement infrastructure with associated security zones and bypass roads, the separation wall, zoning policies and an extensive network of fixed and mobile checkpoints that effectively dissect the West Bank into separate, fragmented and disconnected areas. In terms of accessing proper healthcare -- including access to more equipped and specialized hospitals -- Palestinians continue to face movement restrictions within the West Bank but also when attempting to receive treatment in East Jerusalem. Moreover, delays continue to be reported in terms of receiving vital medical equipment including testing kits and other necessary equipment for prevention.<sup>5</sup>

10. Continued Israeli control over law enforcement, planning and reconstruction in Area C, constituting more than 60% of the occupied West Bank, has also hampered efforts to combat the pandemic. Palestinians living in Area C, currently estimated to be around 300,000, face additional complications in accessing proper health care. On 21 July, Israeli authorities destroyed a building structure in Hebron that was intended to deal with cases of COVID-19 and relieve pressure from other hospitals. It was alleged that the new structure lacked the proper permit as it was built in the H2 zone (Area C) requiring a building permit from Israeli authorities thus purportedly violating Israel's sovereignty.<sup>6</sup> Palestinian are thus prevented from taking initiatives of their own to curb the spread of the virus while in many cases being offered no alternatives by Israeli relevant authorities. Attempts to coordinate entry of Palestinian Police in the Hebron H2 area to reinforce prevention measures with Palestinians living there have so far failed. In East Jerusalem, similar dynamics could be

<sup>1</sup> <https://www.un.org/press/en/2020/sc14167.doc.htm>.

<sup>2</sup> WHO:<https://app.powerbi.com/view?r=eyJrIjojODJlYWM1YTEtNDAxZS00OTFILThkZjktNDA1ODY2OGQ3NGJkIiwidCI6ImY2MTBjMGI3LWJkMjQtNGIzOS04MTBiLTNkYzI4MGFmYjU5MCIslmMiOjh9>.

<sup>3</sup> <https://reliefweb.int/report/occupied-palestinian-territory/end-palestinian-authority-coordination-israel-response>.

<sup>4</sup> [https://unsco.unmissions.org/sites/default/files/security\\_council\\_briefing\\_-\\_21\\_july\\_2020\\_0.pdf](https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_21_july_2020_0.pdf).

<sup>5</sup> <https://mondoweiss.net/2020/09/palestinians-faces-consistent-testing-kit-shortages-during-covid-19/>.

<sup>6</sup> <https://www.middleeasteye.net/news/israel-demolish-palestinian-coronavirus-test-centre-hebron>.

observed. In April, Israeli Security Forces raided a Covid-19 testing clinic in the Palestinian neighbourhood of Silwan under the pretext that it was run, and was supported, by the Palestinian Authority.<sup>7</sup> While rates of infection were markedly increasing during that period, Palestinians in East Jerusalem lacked adequate access to medical facilities, services and testing kits. The lack of aggregated data by Israel on cases is also hampering efforts to combat the pandemic. Since then, Israeli authorities opened another centre in the neighbourhood. With the recent spike in cases, there remains severe restrictions on the operations of health care professionals in East Jerusalem as health development efforts continue to be undermined by the occupying power.

11. In another worrying development, there was an increase in rates of infection among Palestinian detainees in Israeli detention centers, including one reported case of a child.<sup>8</sup> In April, the Special Rapporteur had called for the release of the most vulnerable detainees, including children, women, older persons and those with pre-existing conditions. The increase in infections amongst Palestinian detainees again highlights the critical need to release Palestinian political prisoners or find alternative arrangements for detention to ensure their safety.

12. As rates of infections augment significantly in the Occupied Palestinian Territory, the impact of structural issues resulting directly from occupation and Israeli practices will continue to be increasingly felt. The complex set of measures applied to different areas by the occupying power, often resulting in discriminatory practices, is bound to compound the impact of occupation especially under such a serious health crisis. Even in the midst of a serious health pandemic, the demolition of Palestinian homes and instances of excessive use of force continue to be recorded and, in some cases, have increased. It is imperative that Israel, as the occupying power, and in light of the currently alarming rates of Covid-19, reverse these practices, and allow for the better protection of Palestinians and the improved access to health care services. Absent such measures, health conditions for Palestinians, already suffering the scourge of occupation, are bound to worsen.

## **B. Israel's planned annexation and illegal settlement expansion**

13. As part of a unity deal, on 20 April, between Israeli Prime Minister Benjamin Netanyahu and the leader of the Blue and White party Benn Gantz agreed to formally initiate a process to annex parts of the West Bank and the Jordan Valley.<sup>9</sup> The planned annexation would have affected a third of the West Bank if implemented. The Special Rapporteur stressed that besides leading to a “cascade of human rights violations”, any annexation, even if partial, would be a serious breach of international law, the UN Charter and would set a dangerous precedent for the rules-based international order.<sup>10</sup> The High Commissioner for Human Rights, Michelle Bachelet, also stated on 29 June that annexation was illegal and that would have disastrous consequences not only for Palestinians but Israel itself.<sup>11</sup>

14. While formal annexation plans appear to have been delayed for the time being, it is imperative to stress that Israel's *de facto* annexation of Palestinian territory is ongoing and

<sup>7</sup> <https://www.middleeastmonitor.com/20200416-israel-closes-coronavirus-testing-centre-in-occupied-east-jerusalem/>.

<sup>8</sup> [https://www.dci-palestine.org/palestinian\\_child\\_detainee\\_tests\\_positive\\_for\\_coronavirus\\_in\\_israeli\\_prison](https://www.dci-palestine.org/palestinian_child_detainee_tests_positive_for_coronavirus_in_israeli_prison).

<sup>9</sup> <https://www.amnesty.or,g/en/latest/news/2020/07/israelopt-10-things-you-need-to-know-about-annexation/>.

<sup>10</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25857&LangID=E>.

<sup>11</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26009&LangID=E>.

has intensified in 2020, most notably through illegal settlement expansion. This year alone, Israel has approved or advanced more than 12,150 settlement homes, making it the single highest rates on record and since 2012, when such figures started to be recorded by Peace Now.<sup>12</sup> More than 5000 of these housing units were approved in mid-October alone. Settlements and settlement construction are illegal under international law and they are one of the major obstacles to peace. Concurrently, demolitions of Palestinian-owned structures has increased significantly over the past year. In 2020 alone, more than 560 structures were destroyed leading to the displacement of 747 Palestinians.<sup>13</sup> The Special Rapporteur stresses that, while it was important to counter the Israeli formal annexation plans, it was also imperative counter all measures on the ground that amount to *de facto* annexation, which Israel advances in the plain sight of the international community, and which lead to serious breaches of the human rights of Palestinians on a daily basis.

### C. Gaza

15. The Israeli-imposed land, sea and air blockade of Gaza has now entered its fourteenth year with no end in sight. As a result, Gaza's two million residents, including around one million children, continue to endure a grave and worsening humanitarian crisis at multiple levels. Gazans have had virtually all their human rights undermined under the weight of the blockade as they continue to face lack of access to adequate housing, education, water and sanitation., Food insecurity is endemic. Gaza bears one of the world's highest unemployment rates (estimated to be around 45%), with poverty levels that exceeded 53% as of late 2019.<sup>14</sup> Gaza's economy is flat on its back, with the GDP growth virtually at zero in 2019 and with an export sector that has nearly expired as a result of the closure and severe restrictions.<sup>15</sup>

16. Gaza students continue to lack adequate education infrastructure and the tools for distance learning, especially under the current pandemic. More than 575,000 children and teenagers lack access to computer equipment, reliable power supply and internet.<sup>16</sup> It is estimated that only 30% of Gaza households have internet, while internet networks crash more than ten times an hour on average.<sup>17</sup> Despite its availability for more than 15 years, Gaza still lacks 3G networks, which significantly slows down data upload times. As part of its comprehensive blockade, Israel prevents the entry of equipment needed for advanced data networks infrastructure. With pre-existing limitations on networks and confinement measures, Gaza students face insurmountable difficulties to learning and to one of the only gateways they have to the outside world. All of this undermines their fundamental right to education.

17. Gaza's health-care system is at the verge of total collapse, which would cascade into a full-blown humanitarian catastrophe. After the first community transmissions in Gaza were detected on 25 August, confirmed cases increased exponentially, putting significant strain on an already battered health care system.<sup>18</sup> As of 14 October, there were 4,285 confirmed cases in Gaza, a marked increase from 1 July, when there were only 11 cases. Strict preventive measures have been implemented by the *de facto* authorities including through the imposition

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<sup>12</sup> <https://www.aljazeera.com/news/2020/10/15/israels-settlement-approvals-hit-record-high-watchdog>.

<sup>13</sup> <https://www.ochaopt.org/data/demolition>.

<sup>14</sup> <https://reliefweb.int/report/occupied-palestinian-territory/increase-gaza-s-unemployment-rate-2019>.

<sup>15</sup> UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 5 August 2020, TD/B/67/5, para. 2 and para 13.

<sup>16</sup> <https://gisha.org/en-blog/2020/10/13/remote-learning/>.

<sup>17</sup> <http://pngoportal.org/en/3049.html>.

<sup>18</sup> <https://www.aljazeera.com/news/2020/8/25/gaza-in-lockdown-after-first-covid-19-community-transmission>.

of full and partial curfews and the establishment of quarantine centres. Such measures did mitigate the impact and the spread of the virus but they could not remedy the fundamental structural deficiencies in the healthcare sector caused by the blockade.

18. Prohibiting or severely restricting the entry of vital and dual use materials –those that Israel considers could be used for both military and civilian purposes, including cement and steel -- chronic power shortages and the contamination of more than 90% of Gaza’s drinkable water supply, have debilitated the work of hospitals even before the onset of the current pandemic. Current statistics are extremely disconcerting: it is estimated there are only 93 ventilators and 110 beds in Gaza’s intensive care units to cover a population of two million.<sup>19</sup> As of the end of September, WHO estimated that 47% of essential drugs were at zero stock level, with less than a month supply jeopardizing the lives of more than 350 oncology patients and causing the suspension of more than 13,000 elective surgeries. More than 50% of primary health care staff in Gaza have been re-assigned to support the COVID-19 response gravely affecting an appropriate response and treatment of other non-COVID-19 related illnesses. The Special Rapporteur had specifically warned in early September that “Should the Covid-19 pandemic take root in Gaza, the consequences would likely be very serious”.<sup>20</sup>

19. Faced with few alternatives for treatment, Palestinians in Gaza, especially those with critical health conditions, continue to experience arbitrary delays and denials of Israeli-issued exit permits needed for essential and often life-saving healthcare outside of Gaza. The suspension of security coordination between the Palestinian Authority and Israel in May 2020, in the context of announced annexation plans by Israel in the West Bank, has further complicated and delayed the process of exit permit applications. Since September 2020, the World Health Organization has been operating a coordination mechanism to support Palestinian patients to apply for Israeli exit permits in order to mitigate the impact of the coordination suspension.<sup>21</sup> The Special Rapporteur reiterates that Israel as the occupying Power has the primary responsibility to ensure respect, protection and fulfilment of the right to health of Palestinians in Gaza to the full extent of their actual control, while the Palestinian Authority and the de-facto authorities in Gaza also have responsibilities to the extent of their effective control over the population.

20. The Israeli-imposed blockade on Gaza contravenes international law, specifically Article 33 of the *Fourth Geneva Convention*, and amounts to the collective punishment of the entire civilian population in Gaza. The Special Rapporteur has recently stated that “Gaza is on the verge of becoming unlivable. There is no comparable situation in the world where a substantial population has endured such a permanent lockdown, largely unable to travel or trade, and controlled by an occupying power in breach of its solemn international human rights and humanitarian obligations. Our international standards of dignity and morality do not allow such experiments in human despair”.<sup>22</sup> The High Commissioner also noted on 14 September in her global update that “The blockade, which contravenes international law, has conclusively failed to deliver security or peace for Israelis and Palestinians, and should urgently be lifted”.<sup>23</sup> More than ever and after fourteen years, Israel’s security rationale for the blockade has been undermined by the reality on the ground demonstrating that Gaza’s civilian population continues to suffer the brunt of this blockade.

21. The latest asymmetrical escalation of hostilities between Israel and armed groups in Gaza, which ended with a mediated ceasefire in late August, demonstrates that instability will remain unless the fundamental human rights of Palestinians are achieved and protected.

<sup>19</sup> <https://www.icrc.org/en/document/icrc-donates-vital-intensive-care-equipment-gaza..>

<sup>20</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E>.

<sup>21</sup> <https://www.ochaopt.org/content/covid-19-emergency-situation-report-18>.

<sup>22</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E>.

<sup>23</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226>.

Short-term solutions will only serve to deepen the humanitarian crisis as a result of the blockade and increase the frustration of a population already living in extremely dire conditions. The Palestinians in Gaza urgently require immediate steps to ease the impact of the blockade. The Special Rapporteur calls for a specific set of measures including the reconstruction of the Gaza seaport, the building of new power, water and sewage treatment plants and allowing the entry of much larger quantities of construction materials, and freedom of movement for Gazans. The crisis in Gaza is human-made and only through the exercise of concerted political will by those with authority can a full-blown humanitarian catastrophe be averted.

#### **D. Children**

22. The daily lives of Palestinian children continue to be especially negatively impacted by the continuation of occupation and the exposure of children to violence. According to the report of the Secretary-General on children and armed conflict, in 2019, 32 Palestinian children (29 boys, 3 girls) and 1 Israeli girl were killed in the occupied West Bank, including East Jerusalem. Most of the Palestinian children's casualties were attributed to Israeli forces and mostly caused by live ammunition or air-strikes. In the same year, 1 539 Palestinian children (1 460 boys, 79 girls) and 8 Israeli children (5 boys, 3 girls) were maimed.<sup>24</sup> In the report, the Secretary-General urged Israel to end excessive use of force against children and ensure accountability for cases of killing and maiming of children. He urged Palestinian armed groups to ensure children's safety, including preventing them from being exposed to violence or instrumentalizing children for political purposes.<sup>25</sup>

23. Palestinian children's access to healthcare continues to be severely affected. The intricate system of movement restrictions in the case of West Bank, including East Jerusalem, and the 14-year blockade of Gaza by Israel, has resulted in serious challenges in access to health care facilities and specialized medical treatment for children. In Gaza, children continue to face denial or delay in access to healthcare facilities or specialized treatment outside of the Strip.

24. The Special Rapporteur also continues to be seriously concerned about reports of ill-treatment of children during arrest, interrogation or detention. In 2019, the United Nations received testimonies of children who reported breaches of due-process and ill-treatment by Israeli forces in the context of detention, including physical violence<sup>26</sup> Children held in Israeli detention report patterns of ill-treatment, such as the use of blindfolds, hand ties or leg ties, denial of food and water, or access to toilets. Children also report being denied access to lawyers or parent during interrogation, compelling them to sign documents in Hebrew, which many of the children do not understand and not being adequately informed about their rights.<sup>27</sup> Israeli practices and policies thus continue to prioritize punishment and criminalization of Palestinian children instead of their rehabilitation.

#### **E. The Palestinian Authority and the de-facto authorities in Gaza**

25. There continues to be reports of cases of arbitrary arrest and detention by the de-facto authorities in Gaza, particularly of journalist, human rights and political activists. Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place

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<sup>24</sup> A/74/845, S/2020/525, paras. 85 and 86.

<sup>25</sup> A/74/845, S/2020/525, paras. 91 and 92.

<sup>26</sup> A/74/845, S/2020/525, para 84.

<sup>27</sup> A/75/336, para. 20.

particularly in the context of reporting on the socio-economic impact of the COVID-19 pandemic. There are also concerning reports of excessive use of force against those who violate curfews in relation to imposed preventive measures.

26. During the Covid-19 crisis, it has been reported that the Palestinian Authority has released some prisoners in order to try to contain the pandemic. However, a number of arrests by Palestinian Security Forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian Authority or for expressing opposing political views.<sup>28</sup> Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

### III. Accountability, Impunity and the Responsibility of the International Community

27. Accountability – the institutional check on the exercise of public and private power on behalf of the common good – is the indispensable component of the rule of law. When used purposively and effectively, accountability entrenches fairness and equality, it promotes healing and resolution, it delivers justice to victims and perpetrators alike, it alleviates conflicts and prevents others from igniting, and it sews together the ten thousand threads of accommodation which nurture social trust.

28. Without accountability, the best designed systems of law and human governance will wither for lack of enforceability and respect. Without accountability, the possibility of political reconciliation, let alone its flourishing, is unattainable. And without accountability, social wounds metastasize, leaving unchecked retaliation, rather than measured restitution, as the likely response to the injustices of the past and present. As the UN Office of the High Commission for Human Rights has noted: “Lack of the rule of law and accountability for human rights violations leads to failures of justice and impunity for crimes, conflict over unaddressed grievances, and oppressive unaccountable rule”.<sup>29</sup>

29. The accountability principle applies to all stakeholders, public and private, who have the capacity, through their authority or power, to affect the common good. Kofi Annan, the former Secretary General of the United Nations, endorsed this broad application of the principle in a report to the UN Security Council in 2004: “[The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private...are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”.<sup>30</sup>

30. The breadth of this principle ensures that not only must those who are violating the norms of international human rights and humanitarian norms end their transgressions and be held accountable, but – equally as important – those who have the individual and collective capacity to influence the behaviour of these perpetrators are also accountable to utilize, to the extent possible, their weight to meaningfully sanction and end these breaches and crimes.

31. The international supervision of the 53-year-old Israeli occupation of Palestine illustrates that, between international law and accountability, there is an enormous gap between promise and performance. The tragic paradox is that there has been no other conflict

<sup>28</sup> <https://www.amnesty.org/en/latest/news/2020/05/palestine-end-arbitrary-detention-of-critics-in-west-bank-and-gaza/>.

<sup>29</sup> <https://bangkok.ohchr.org/rule-of-law-accountability/>.

<sup>30</sup> UN Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, Report to the Security Council, 23 August 2004, UN Doc. S/2004/616, par. 6.

in the modern world to which the United Nations has contributed so decisively to the development of international law in such a large number of significant areas – providing depth and breadth to the rights of refugees, the application and meaning of belligerent occupation, the strict prohibition against the annexation of occupied territory, the legal status of civilian settlements in occupied lands, and the centrality of the right of self-determination, among others – while delivering such a paucity of actual protections to the occupation’s many victims.<sup>31</sup>

32. The United Nations and other authoritative international institutions have spoken, often with lucidity and incisiveness, about the incompatibility of the Israeli occupation with international law and basic rights-based principles. On a number of occasions, they have warned Israel about its defiance of, and non-compliance with, Security Council, General Assembly and Human Rights Council resolutions. But rarely have they actually taken steps to hold Israel accountable – through effective counter-measures and sanctions – for its obstructive policies and practices concerning the occupation.

33. The purpose of this call for consequential accountability is plainly obvious: Israel has been operating a largely cost-free occupation for decades, with every available indicator – whether it is the unrelenting growth in the settlement population, the confiscation of more and more Palestinian public and private lands for settlements and the Israeli military, the repeated proclamations by Israeli political leaders that the occupied lands are Israeli by right, and the refusal by Israel to acknowledge that its rule over the Palestinian Territory is governed by the laws of occupation – pointing to an unremitting occupation. Carmi Gillon, the former head of the Israeli Shin Bet (the country’s internal security unit) has recently observed, with regret, that: “The status quo is good for Israel, because Israel gets all it wants without paying a price”.<sup>32</sup>

34. Israel is a rational actor, and it understands that, if the incentives to thicken its occupation are high and the deterrents from the international community are virtually non-existent, it can continue to devour the territory meant for a Palestinian state unimpeded. If impunity continues to be indulged and even rewarded by the international community, then it is magical thinking to expect an acquisitive occupying power would do anything else but further expand its settlement enterprise, prepare even more assiduously for a future *de jure* annexation claim, doom the Palestinians to a future without hope, and write the obituary for the two-state solution.

35. The Special Rapporteur’s October 2019 report on accountability focused on the responsibilities of the international community.<sup>33</sup> This current report addresses the accountability responsibilities of two other important and influential actors in the context of the occupation: the United Nations Security Council and private corporations. The Security Council is the custodian for ensuring international peace and security, and it has the authority to impose international sanctions and other actions to protect international law when peace and security are threatened. Private corporations play a significant role in sustaining the economic viability of the illegal Israeli settlements, thereby inextricably entangling businesses in the abusive human rights record of the occupation.

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<sup>31</sup> S. Akram et al (eds.) *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Routledge, 2011).

<sup>32</sup> <https://www.haaretz.com/middle-east-news/palestinians/.premium-the-palestinians-got-screwed-they-are-now-a-non-issue-1.8968748>.

<sup>33</sup> A/74/507.

## A. The United Nations Security Council and the Israeli Occupation

### Introduction

36. Over the past five decades, the United Nations Security Council has repeatedly and unambiguously endorsed three fundamental principles with respect to the Israeli occupation of the Palestinian Territory (the West Bank, including East Jerusalem, and Gaza). First, Israel is the occupying power, the *Fourth Geneva Convention of 1949* applies in full, and Israel is required to fulfil all of its obligations under the *Convention*.<sup>34</sup> Second, the acquisition of territory by force or war is inadmissible.<sup>35</sup> And third, the creation and expansion of the Israeli settlements is a serious violation of the absolute prohibition under international law respecting the transfer by the occupying power of parts of its civilian population into the occupied territory.<sup>36</sup> All three of these principles have been expressly re-affirmed by the Security Council through Resolution 2334 in December 2016.<sup>37</sup> These three principles are among the most settled and widely-accepted tenets in modern international law.

37. At no time have any of these three principles been accepted or applied by Israel. The Security Council has spoken, at times sharply, about Israel's defiance, but it has not imposed any consequences in the face of Israel's ongoing obstructiveness. There is no other grave international human rights situation, and no other insubordinate state actor, in the world today with which the Security Council has spoken about in such quantity and with such critical clarity, but acted with such passivity.<sup>38</sup> And yet, even as Israel has deepened its obstinacy in recent years, the Security Council has not only failed to act, it no longer even speaks on the issue with the regularity it had before: since January 2009, the Security Council has adopted only two resolutions critical of the Israeli occupation,<sup>39</sup> even as human rights conditions on the ground have progressively worsened.

### *Principle 1: Fourth Geneva Convention*

38. The *Fourth Geneva Convention* was enacted in the aftermath of the Second World War to offer broad protections to civilians caught in war, the most vulnerable people in any armed conflict. Regarding the applicability of the *Convention*, Israel has argued – virtually alone in the world – that it does not apply to the Palestinian Territory, and therefore that the Territory is not occupied. This is because, in its view, no other state had a valid sovereign claim to these lands when it captured them in 1967.<sup>40</sup> The Security Council has consistently repudiated this stance, confirming in at least 22 resolutions since 1967 that the *Convention* applies in full to the Israeli occupation, most recently in 2016.<sup>41</sup> On various occasions, the Security Council has “strongly deplored” Israel's continued refusal to comply with previous resolutions directing it to abide by the *Convention*,<sup>42</sup> demanded that Israel “immediately and

<sup>34</sup> The Security Council first referred to the applicability of the *Fourth Geneva Convention* to the Israeli occupation in Resolution 237 (14 June 1967), within a week of the end of the June 1967 war.

<sup>35</sup> UNSC Resolution 242 (22 November 1967).

<sup>36</sup> UNSC Resolution 446 (22 March 1979).

<sup>37</sup> UNSC Resolution 2334 (23 December 2016).

<sup>38</sup> Kofi Annan, in his memoirs, observed that: “...the [Security] Council's aggressive stance against the Syrian presence in Lebanon stood in stark contrast to its passivity regarding Israel's occupation of Arab lands...the perception of double standards in the Middle East undermined the United Nations”, *Interventions*, with N. Mousavizadeh (Penguin, 2012), p. 298.

<sup>39</sup> UNSC Resolutions 1860 (8 January 2009) and 2334.

<sup>40</sup> <https://mfa.gov.il/MFA/MFA-Archive/2003/Pages/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We.aspx>.

<sup>41</sup> See generally UNSC Resolutions 446 and 2334.

<sup>42</sup> UNSC Resolution 476 (30 June 1980).

scrupulously” comply with the *Convention*,<sup>43</sup> and noted that, in the event of non-compliance, it would examine “practical ways and means” to secure Israel’s “full implementation” of prior resolutions on the application of the *Convention*.<sup>44</sup>

39. Twice in 1980 – after 13 years of occupation – the Security Council affirmed the “overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”.<sup>45</sup> Yet, in 2020 – with the Israeli occupation now four times as prolonged as it was in 1980 – the occupation has exponentially deepened and thickened,<sup>46</sup> Israel has rejected the applicability of the *Fourth Geneva Convention* since the very beginning of the occupation,<sup>47</sup> and both the United Nations and many respected human rights organizations have determined that Israel has repeatedly breached a number of the guaranteed protections enshrined in the *Convention*.<sup>48</sup>

*Principle 2: The Annexation of Occupied Territory*

40. The annexation of occupied territory by an occupying power is not only strictly prohibited by international law,<sup>49</sup> it is now deemed to be a crime of aggression under the *Rome Statute of the International Criminal Court*.<sup>50</sup> In the context of the Israeli occupation, the Security Council has expressly endorsed the principle of the inadmissibility of the acquisition of territory by war, force and/or military conquest on at least 11 occasions.<sup>51</sup> With respect to Israel’s two-stage annexation of East Jerusalem (in June 1967 by a Cabinet decision, and June 1980 by the Knesset), the Security Council has repeatedly stated that East Jerusalem remains occupied, and that Israel’s proclamation of sovereignty is “null and void”, it is “a flagrant violation of the *Fourth Geneva Convention*”, and it has “no legal validity”.<sup>52</sup>

41. In the face of Israel’s persistent refusal to unwind its annexation of East Jerusalem, the Security Council has “strongly deplored” Israel’s contravention of UN resolutions, it has “urgently” called upon it to “rescind all such measures”, and it has demanded that Israel “desist forthwith” from any further action to alter the status of Jerusalem.<sup>53</sup> On other occasions, the Council has confirmed “in the strongest terms” that the annexation is “totally invalid”, and deplored “the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council”.<sup>54</sup>

<sup>43</sup> UNSC Resolution 592 (8 December 1986).

<sup>44</sup> UNSC Resolution 478 (20 August 1980).

<sup>45</sup> UNSC Resolutions 471 (5 June 1980) and 476.

<sup>46</sup> A. Imseis, “Negotiating the Illegal” (2020), *European Journal of International Law* (forthcoming); M. Sfar, *The Wall and the Gate* (Metropolitan Books, 2018).

<sup>47</sup> T. Meron, “The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War” (2017) 111:2 *American Journal of International Law* 357.

<sup>48</sup> A/HRC/43/67. As well, see the Israel/Palestine country pages for Amnesty International (<https://www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/>) and Human Rights Watch (<https://www.hrw.org/middle-east/north-africa/israel/palestine>).

<sup>49</sup> International Court of Justice, *Wall Advisory Opinion* (2004), at para. 87, where the Court stated that the principal “No territorial acquisition resulting from the threat or use of force shall be recognized as legal” has now achieved the status of customary international law.

<sup>50</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, Article 8 bis, 2(a): “Any of the following acts...qualify as an act of aggression: (a)...any annexation by the use of force of the territory of another State or part thereof”.

<sup>51</sup> See UNSC Resolution 2334: “Reaffirming the inadmissibility of the acquisition of territory by force”.

<sup>52</sup> United Nations Security Council Resolutions 471, 476 and 478.

<sup>53</sup> UNSC Resolutions 252 (21 May 1968), 476 and 478.

<sup>54</sup> UNSC Resolutions 267 (3 July 1969). Also see Resolutions 298 (25 September 1971), and 478.

42. In reply, Israel has continued to intensify its annexation of East Jerusalem through the creation and expansion of 12 civilian settlements, the presence of 215,000 Jewish settlers, the construction of a wall separating East Jerusalem from the West Bank, and solidifying the political and infrastructure integration of East and West Jerusalem.<sup>55</sup> No evidence has ever been forthcoming on Israel's part that it has begun to comply, or intends to comply, with any of the Security Council's directions on East Jerusalem, with the Israeli Prime Minister proclaiming in February 2020 that the government had successfully accomplished its annexation of East Jerusalem in the face of great international opposition.<sup>56</sup>

*Principle 3: The Israeli Settlements*

43. International law has strictly forbidden an occupying power from attempting to demographically transform an occupied territory through the implantation of its civilian population.<sup>57</sup> The purpose of this prohibition is to preserve the indigenous population's right of self-determination,<sup>58</sup> to halt an avaricious occupying power from advancing an impermissible annexation claim through territorial colonialization,<sup>59</sup> and to avert the immense human suffering which inevitably follows the process of settler implantation.<sup>60</sup> Since 2002, settler implantation has been determined to be a war crime under the *Rome Statute*.<sup>61</sup>

44. Beginning in 1979, the UN Security Council has stated on at least six occasions that Israel's establishment of civilian settlements in occupied territory has "no legal validity" and, more vividly, is a "flagrant violation under international law".<sup>62</sup> In 1980, the Council "strongly deplored" Israel's non-cooperation and its rejection of prior resolutions on settler implantation.<sup>63</sup> In 2016, the Council determined that Israel's settlement enterprise was gravely imperilling what remained of the two-state solution, and demanded that Israel "immediately and completely cease all settlement activities".<sup>64</sup> Yet, by 2020, Israel has created approximately 250 thriving settlements, with more than 650,000 settlers in East Jerusalem and the West Bank, and it has continued to approve record numbers of new settlement housing unit over the past year.<sup>65</sup> In his 14 quarterly reports to the Security Council

<sup>55</sup> M. Margalit, *The City of Jerusalem: The Israeli Occupation and Municipal Subjugation of Palestinian Jerusalem* (Sussex University Press, 2020).

<sup>56</sup> O. Liebermann & A. Carey, "As election looms, Netanyahu announces new construction in East Jerusalem" (CNN, 20 February 2020) "We did this then in the face of strong international opposition. We overcame every obstacle and we did it, and see what we have done in Jerusalem," Netanyahu said. "... We are connecting all parts of the united Jerusalem, the rebuilt Jerusalem. It is a source of great pride and is great news for the entire people of Israel".

<sup>57</sup> *Fourth Geneva Convention*, 75 UNTS 287, Article 49, para. 6.

<sup>58</sup> United Nations Economic and Social Council, E/CN.4/Sub.2/1993/17, at para. 202: "Policies and practices of population transfer may be aimed specifically at denying a meaningful implementation of the right to self-determination, for instance, by altering the relevant unit of self-determination through demographic manipulation, or policies which have that effect".

<sup>59</sup> See the International Committee of the Red Cross's 1958 commentary on Article 49, para. 6 of the *Fourth Geneva Convention*, accessed at: <http://www.icrc.org/ihl.nsf/COM/380-600056> ?OpenDocument.

<sup>60</sup> United Nations Economic and Social Council, E/CN.4/Sub.2/1997/23, at para. 16: "The range of rights violated by population transfer and the implantation of settlers places this phenomenon in the category of mass violations of human rights".

<sup>61</sup> *Supra*, note 50, Article 8(2)(b)(viii).

<sup>62</sup> UNSC Resolutions 446 and 465 (1 March 1980).

<sup>63</sup> UNSC Resolutions 465 and 471.

<sup>64</sup> UNSC Resolution 2334.

<sup>65</sup> Peace Now "4,948 Settlement Units Advanced at October 2020 Higher Planning Council Sessions" (15 October 2020): "These approvals officially make 2020 the highest year on record in terms of units

since 2017 as to whether Israel has been implementing the clear direction in Resolution 2334 that it absolutely halt all of its settlement activities, the UN Special Coordinator for the Middle East Peace Process has reported, on each occasion, that Israel has taken no steps to satisfy this obligation.<sup>66</sup>

#### *The Security Council and Accountability*

45. Under the *Charter of the United Nations*, the Security Council has been given the responsibility of maintaining international peace and security.<sup>67</sup> With that responsibility comes the authority under Article 41<sup>68</sup> to apply a broad range of enforcement mechanisms, short of military action, in order to compel errant states and actors to cooperate with international law (such as the 1991 Iraqi invasion of Kuwait), to contain a perceived threat to international peace and security (such as regional nuclear proliferation), or to address the malign actions of specific international, national or sub-national actors (such as Da'esh, Al-Qaida and the Taliban).<sup>69</sup> Since 1966, the Security Council has established 30 sanctions regimes, and currently maintains 14 ongoing regimes. While Security Council sanctions have had a varied record in effectiveness and have been criticized on occasion for their adverse humanitarian impact,<sup>70</sup> the more recent history has demonstrated that – when applied with precision, purpose, unity and the flexibility to vary and escalate accountability measures – UN-led sanctions can produce meaningful changes in behaviour by states and other actors.<sup>71</sup>

46. Israel's defiance – the Security Council's term<sup>72</sup> – of the direction of the international community is a serious challenge to the rules-based international order. The resolutions and decisions of the Security Council, along with those of the General Assembly, are the bedrock of the international legal consensus on the Israeli occupation of Palestine. As a solemn condition in joining the United Nations, member states commit themselves to accepting and carrying out the decisions and directions of the Security Council.<sup>73</sup> If the rule of law matters, then so does accountability. If the Security Council is to speak with authority, then the disobedience of Council directions must have consequences.

47. Similarly, the Security Council's inertia in meaningfully responding to Israel's non-compliance with its resolutions and directions – particularly on the three fundamental principles it has so frequently endorsed – is also a body blow to the efficacy of international law.<sup>74</sup> In his memoirs, Kofi Annan was disturbed by Israel's "prolonged and sometimes brutal

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of settlement plans promoted since Peace Now began recording in 2012." Accessed at: <https://peacenow.org.il/en/4948-settlement-units-advanced-at-october-2020-higher-planning-council-sessions>.

<sup>66</sup> See, for example: N. Mladenov, "Security Council Briefing on the Situation in the Middle East" (29 September 2020, accessed at: [https://unsc.unmissions.org/sites/default/files/security\\_council\\_briefing\\_-\\_29\\_september\\_2020\\_2334\\_3.pdf](https://unsc.unmissions.org/sites/default/files/security_council_briefing_-_29_september_2020_2334_3.pdf)).

<sup>67</sup> *Charter of the United Nations*, Article 24(1).

<sup>68</sup> *Ibid*, Article 41.

<sup>69</sup> L. Van Den Herik, *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishers, 2017).

<sup>70</sup> J. Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge University Press, 2007).

<sup>71</sup> E. Carisch et al, *The Evolution of UN Sanctions: From a Tool of Warfare to a Tool of Peace, Security and Human Rights* (Springer, 2017).

<sup>72</sup> UNSC Resolutions 608 (14 January 1988), 636 (6 July 1989) and 641 (30 August 1989).

<sup>73</sup> *Charter of the United Nations*, Article 25.

<sup>74</sup> In 2020, retired American Ambassador Peter Mulrean observed that: "The [international community's] words were never matched by action, however, especially because the United States ensured through pressure on other countries and through the United Nations Security Council veto that Israel was never meaningfully punished by or even harshly criticized in that potentially

occupation”, and he lamented the timidity of the Security Council’s response: “Even when the Council took positions, it did not establish mechanisms to enforce its will”.<sup>75</sup> He also identified a leading source for the Council’s paralysis: the “unhealthy possessiveness of the Middle East peace process” by the United States.<sup>76</sup> Since 1973, the United States has cast 31 vetoes at the Security Council against draft resolutions critical of the Israeli occupation; in each case, it has been the only Council member casting a negative vote. No other permanent member of the Security Council has vetoed a Security Council resolution critical of the Israeli occupation.<sup>77</sup>

## B. Private Corporations and the Israeli Settlements

### Introduction

48. In 2011, the United Nations Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>78</sup> The UNGPs are a set of non-binding norms to influence corporate decision-making in integrating human rights principles into their daily business operations. The Principles are intended to apply to all commercial and corporate sectors, and to all geographic regions. They are part of a larger global initiative – including major statements by the International Committee of the Red Cross<sup>79</sup> and the Organization for Economic Development and Cooperation<sup>80</sup> – to mainstream a responsive and vibrant human rights culture within the corporate world. The UNGPs have set out three pillars as part of its “Protect, Respect and Remedy” framework to advance human rights practices and compliance:

- The duty of states to protect human rights, including against abuses by corporations;
- The corporate responsibility to respect human rights, including by acting with due diligence to avoid violating the rights of others; and
- The need for greater access to effective remedies for victims of business-related abuses.

49. The UNGPs are not law, and most international human rights treaties do not contain specific obligations respecting corporations.<sup>81</sup> Nonetheless, a number of states have extended criminal and/or civil liability to corporations domiciled within their jurisdictions through their domestic laws, many of which reflect international human rights standards.<sup>82</sup> Some states have also issued national guidance policies and advisories to corporations regarding their compliance with human rights standards internationally. The rich body of modern international human rights legal instruments – regarding labour rights, environmental rights and the rights of vulnerable groups such as minorities, women, children and persons with

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influential forum.” Accessed at: <https://www.justsecurity.org/69925/trumps-deal-of-the-century-is-bibis-dream-come-true/>.

<sup>75</sup> *Supra*, note 38, p. 256.

<sup>76</sup> *Ibid*, p. 290.

<sup>77</sup> <https://research.un.org/en/docs/sc/quick>.

<sup>78</sup> A/HRC/17/31.

<sup>79</sup> <https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>.

<sup>80</sup> <https://www.oecd.org/corporate/mne/responsible-business-conduct-matters.htm>.

<sup>81</sup> Note that there are advanced negotiations for a legally-binding international treaty on business and human rights: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG\\_RevisedDraft\\_LBI.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf).

<sup>82</sup> UNGPs, commentary on Principle 12.

disabilities, among other guarantees – is the North Star for directing corporations on how to satisfy their human rights responsibilities.

50. Among the relevant principles found in the UNGP with respect to corporate activity in the Israeli settlements and the occupation are the following:

- Principle 7: States should assist businesses which are involved in conflict-affected areas to identify, prevent and mitigate human rights risks, and should deny access to businesses involved in gross human rights abuses;
- Principle 11: Businesses should avoid infringing the human rights of others and should address human rights impacts with which they are involved;
- Principle 12: The responsibility to respect human rights refers to internationally recognized human rights, which would include the International Bill of Rights and fundamental labour standards, but would also encompass all other UN human rights instruments;
- Principle 13: The responsibility to respect human rights requires businesses to avoid causing or contributing to adverse human rights impacts, and to prevent or mitigate human rights impacts that are directly linked to their business relationships; and
- Principle 23: In all contexts, businesses should comply with all applicable internationally recognized human rights, and treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

51. In addition to international human rights law, businesses are also expected to incorporate the tenets of international humanitarian law (IHL) and international criminal law (ICL) in their operational responsibilities<sup>83</sup> IHL applies to conflict-affected areas and occupied territories, and requires that states and individuals adhere to the gold-standard humanitarian legal obligations found primarily in the *Geneva Conventions of 1949* and its legal offspring. While companies operating in a conflict-zone or in an occupation could contribute to the economic and social well-being of the affected population, its activities, conversely, could become complicit in the commission of human rights and humanitarian abuses or assisting the occupying power to sustain its alien rule once it has become apparent that it is governing in violation of the laws of occupation.

52. As for ICL, its focus is on individuals (rather than states or other institutional actors) who commit, instigate, order, plan or are complicit in prohibited activity under the *Rome Statute*, such as war crimes and crimes against humanity. Individual corporate decision-makers could be liable under ICL. Serious IHL and ICL issues can arise in occupations where the occupying power is engaged in the transfer of parts of its civilian population into the occupied territory. The UNGP require companies in conflict zones and occupations to employ an enhanced due diligence, or “heightened care”, to ensure that their operations are compliant with their legal responsibilities. However, there are some circumstances where no amount of enhanced due diligence will avoid corporate complicity in human rights violations in a conflict area or an occupation.

### **Corporations and the Israeli Settlements**

53. The Israeli settlements are a profound breach of international law, as determined by the leading deliberative and judicial organs of the United Nations, including the Security

<sup>83</sup> For valuable commentary, see: D. Hughes, *Differentiating the Corporation: Accountability and International Humanitarian Law*, 41(1) *Mich. J. Int’l L.* (2020); and M. Farah, *Business and Human Rights in Occupied Territory* (Al-Haq, 2019).

Council,<sup>84</sup> the General Assembly,<sup>85</sup> the Human Rights Council<sup>86</sup> and the International Court of Justice.<sup>87</sup> Other influential international bodies – including the European Union,<sup>88</sup> the International Committee of the Red Cross<sup>89</sup> and the High Contracting Parties to the *Fourth Geneva Convention*<sup>90</sup> – concur. More seriously, the settlements are a presumptive war crime under the *Rome Statute*.<sup>91</sup>

54. The disfiguring human rights consequences of the settlements upon the Palestinians in East Jerusalem and the West Bank are pervasive. The United Nations High Commissioner for Human Rights has determined that the human rights violations emanating from the settlements include land confiscation and alienation, settler violence, discriminatory planning laws, the appropriation of natural resources, home demolitions, forcible population transfer, labour exploitation, forced evictions and displacement, physical confinement, discriminatory law enforcement and the imposition of a two-tiered system of unequal political, social and economic rights based on ethnicity. Above all, the settlements serve the broader goal of the Israeli government of staking an impermissible sovereignty claim over parts of the occupied territory while simultaneously denying Palestinian self-determination.<sup>92</sup> The Israeli settlements, and the corresponding shrinking space for Palestinians, have created a “coercive environment” in the Occupied Palestinian Territory, according to the United Nations.<sup>93</sup>

55. The United Nations Conference on Trade and Development has found that the territorial restrictions imposed by the settlements – the separate road systems for settlers and Palestinians; the hundreds of road blocks, checkpoints and obstructions throughout the West Bank; settler violence; and regular area closures and curfews – have created a shattered economic space in the Occupied Territory. This has resulted in a highly dependent and captive Palestinian economy, mounting impoverishment, daily impositions and indignities, and an accelerating trend towards economic de-development.<sup>94</sup> In 2018, a leaked memo by EU diplomats in Jerusalem highlighted the “systematic legal discrimination” imposed by the Israeli occupation and its settlement enterprise against the Palestinian people.<sup>95</sup>

56. Corporate and business activities contribute significantly to the economic viability of the Israel settlement enterprise.<sup>96</sup> It is private corporations that, through tenders issued by the

<sup>84</sup> UNSC Resolution 2334.

<sup>85</sup> A/Res/71/97 (December 2016).

<sup>86</sup> A/HRC/43.L37 (22 June 2020).

<sup>87</sup> *Supra*, note 49, at para. 120.

<sup>88</sup> Council of the EU, *Council Conclusions on the Middle East Peace Process* (18 January 2016).

<sup>89</sup> P. Maurer, “Challenges to International Humanitarian Law: Israel’s Occupation Policy” (2012), 94 *International Review of the Red Cross* 1503.

<sup>90</sup> Conference of High Contracting Parties to the Fourth Geneva Convention, 17 December 2014, accessed at: <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>.

<sup>91</sup> G. Poissonier & E David, “Israeli Settlements in the West Bank: A War Crime?” (2020), 17 *La Revue des droits de l’homme*. Also see: <https://www.amnestyusa.org/lets-be-clear-israels-long-running-settlement-policy-constitutes-a-war-crime/>.

<sup>92</sup> UNHCHR, *Israeli Settlements in the Occupied Palestinian Territory* (30 January 2020), A/HRC/43/67. Also see UNHCR, *International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory* (31 January 2013), A/HRC/22/63.

<sup>93</sup> <https://www.un.org/unispal/document/ocha-2019-humanitarian-needs-overview/>.

<sup>94</sup> United Nations Conference on Trade and Development, *The Economic Costs of the Israeli Occupation for the Palestinian People: Cumulative Fiscal Costs* (Geneva, 2019).

<sup>95</sup> A. Rettman, “No EU cost for Israeli ‘apartheid’ in West Bank”, EUobserver, 1 February 2018.

<sup>96</sup> Paras. 52-54 are informed by the comprehensive overviews of the corporate dimensions of the Israeli settlement economy provided by Amnesty International, *Think Twice* (2019); Amnesty International, *Destination Occupation* (2019); M. Farah, *supra*, note (55); Profundo and 11.11.11, *Doing Business with the Occupation* (2018); Human Rights Watch, *Bankrolling Abuse* (2018); Human Rights Watch,

Israeli government agencies which administer the settlement enterprise, construct the settlements, and build and maintain the roads and utility infrastructure which services them. Businesses operating in the settlements and the industrial parks – in particular, manufacturing and service industries, and wineries – provide jobs and commercial activity that economically sustain the settlements, while paying taxes to settlement municipalities. Private security companies guard many of the settlements, while they and high-tech businesses supply surveillance and identification equipment. Banks and financial institutions facilitate the fiscal infrastructure to arrange residential mortgages and to lend capital to businesses operating in the settlements. Law firms offer legal services to the settlements, settlers and settlement businesses. Real estate firms coordinate the sale and purchase of residential and commercial properties in the settlements. Agricultural corporations grow a range of foodstuffs for domestic and export markets, utilizing large-scale farming and modern technology. Domestic and international tourism is an emerging sector for the settlements, along with hotels and accommodation rentals. Retail store chains operate in the settlements. Transportation companies link the settlements to each other and to communities within Israel. Extraction companies exploit the Occupied Territory's natural resources, including minerals and water. Equipment companies supply the heavy machinery needed to construct residential and commercial building structures. Waste management companies service both municipalities and industrial enterprises in the settlements. The construction and maintenance of the Separation Wall through occupied territory solidifies an illegal situation.

57. Many of the corporations and businesses supplying commercial services in, or to, the settlement economy are Israeli companies. However, a number of international corporations also contribute to, and profit from, the settlement economy. International banks and financial institutions underwrite loans to, or invest in, businesses with operations in the settlements. Other companies sell goods and services to the settlements, such as construction heavy machinery and solar power technology, or excavate non-renewable natural resources. Major international transportation companies have participated in the building of the Jerusalem light rail system (which connects a number of the illegal East Jerusalem settlements to West Jerusalem) and the high-speed rail connection between Tel Aviv and Jerusalem (which passes through parts of the occupied territory). Major international accommodation booking companies advertise housing rentals in the Israeli settlements. Israeli settlements goods and services, including manufactured goods, wines and foodstuffs, are exported in quantity to the international market.

58. Without this extensive corporate involvement, the settlements – the engine of the occupation – would be an unsustainable economic burden for the Israeli government. These businesses – domestic and international – benefit greatly from Israel's illegal confiscation of Palestinian land and natural resources, from Israel's discriminatory two-tier system of rights, benefits and opportunities between the settlements and Palestinian people, and from Palestinian impoverishment (and the resulting employment of low-cost Palestinian labour in the settlements) that is the inevitable consequence of a settlement implantation enterprise.<sup>97</sup> The question becomes: can companies become, or remain, involved with the Israeli settlements and still honour their human rights commitments?

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*Occupation, Inc.* (2016); and Diakonia, *The Unsettling Business of Settlement Business* (2015). Also see the work of Who Profits: <https://www.whoprofits.org/>.

<sup>97</sup> Y. Ronen, "Responsibility of Businesses involved in the Israeli Settlements in the West Bank", [https://www.researchgate.net/publication/314590025\\_Responsibility\\_of\\_Businesses\\_Involved\\_in\\_the\\_Israeli\\_Settlements\\_in\\_the\\_West\\_Bank](https://www.researchgate.net/publication/314590025_Responsibility_of_Businesses_Involved_in_the_Israeli_Settlements_in_the_West_Bank).

### Enhanced Due Diligence or Complete Corporate Abstinence?

59. In 2014, the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises issued a detailed statement on the implications of the UN Guiding Principles in the context of the Israeli settlements.<sup>98</sup> It pointed to the illegality of the settlements, and the wide ranges of human rights abuses associated with them. In its conclusion, the Working Group issued a cautionary yellow light to corporate involvement in the Israeli settlements, stating that:

“Business enterprises doing business, or seeking to do business, in or connected to the Israeli settlements in the OPT need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses; that they can effectively prevent or mitigate human rights risks; and are able to account for their efforts in this regard”.

60. In 2018, the UN Office of the High Commissioner for Human Rights (OHCHR) released an interim report regarding its progress towards creating a database of businesses involved in the Israeli settlements.<sup>99</sup> In its conclusion, the OHCHR expressed considerable doubt as to whether a company could engage commercially with the Israeli settlements and, at the same time, comply with its human rights responsibilities:

“...considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law”.

61. In 2019, Amnesty International published a substantive study on the human rights and legal implications of companies doing business with the Israeli settlements.<sup>100</sup> It concluded that, given their grave human rights consequences, only a complete red light abstinence would suffice:

“A company cannot meet its responsibility to respect human rights and the standards of international humanitarian law while doing business with the settlements. This is because the settlements have been established and developed in breach of the international law rules governing what states can and cannot do in a situation of military occupation. As such, they constitute war crimes and give rise to systematic, widespread and serious human rights violations”.

62. The Special Rapporteur takes the view that any form of corporate involvement – whether Israeli or international, whether direct or indirect, whether intentional or incidental – with the Israeli settlements is wholly incompatible with human rights obligations, with the UNGP and with any purposive definition of enhanced due diligence. Three reasons inform this view. First, the Israeli settlements are a flagrant violation and a grave breach of the *Fourth Geneva Convention* and a presumptive war crime under the *Rome Statute*. These are among the most serious of contraventions under international human rights, humanitarian and criminal law. Second, corporations and businesses operating in, or benefiting from, the settlements provide the indispensable economic oxygen for their growth. Whatever positive benefits are cited by companies in defending their engagement with the settlements – often, the employment of Palestinian labour, or the payment of local taxes<sup>101</sup> – are far outweighed on the human rights ledger by the scale of gross violations inherent in the settlement

<sup>98</sup> <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>.

<sup>99</sup> A/HRC/37/39, para. 41.

<sup>100</sup> *Supra*, note 96, p. 25.

<sup>101</sup> M. Abdullah & L de Leeuw, *Violations Set in Stone* (Somo & Al-Haq, 2020).

enterprise. And third, the settlements are the primary political instrument – the pervasive ‘facts on the ground’ – employed by the Israeli government to advance its *de facto* and *de jure* annexation claims and to deny Palestinian self-determination. Annexation is a crime of aggression<sup>102</sup> and self-determination is the *primus inter pares* of human rights.<sup>103</sup>

63. Under present conditions, the only form of corporate engagement in the Occupied Palestinian Territory which could comply with the human rights responsibilities of businesses would have to: (i) directly benefit the protected population under occupation, (ii) withhold any benefits to, or involvement with, the Israeli settlements, and (iii) contribute to the inherent sovereignty claim of the Palestinian people over their territory.

#### The UNHRC Database

64. In February 2020, the Office of the High Commissioner for Human Rights released the Database of business enterprises involved in certain activities related to the Israeli settlements,<sup>104</sup> pursuant to the request of the Human Rights Council in 2016.<sup>105</sup> Databases of business activities had been previously commissioned by the United Nations respecting other conflict zones, including the Democratic Republic of Congo<sup>106</sup> and Myanmar.<sup>107</sup> The Special Rapporteur welcomes the release of the Database, as it provides an important spotlight on corporate activity – both Israeli and international – in the settlements, and advances public and corporate understanding of the adverse human rights environment sustained by the settlements.<sup>108</sup> At the same time, the Special Rapporteur recognizes that the Database had a restrictive mandate (it did not seek to cover all businesses activity related to the settlements which may raise human rights concerns), it was interpreted narrowly (a number of companies with important supply relationships with the settlements and/or the occupation were not included) and it did not contain an adjudicative mechanism.<sup>109</sup> These concerns must be addressed while enhancing the Database’s ability to be a living tool.

## IV. Conclusions

65. In 1970, the Security Council was faced with an international crisis that has striking similarities to the Occupied Palestinian Territory: the prolonged rule of Apartheid South Africa over Namibia.<sup>110</sup> Like Palestine, Namibia was ruled through an UN-supervised trust relationship - in one case an occupation; in the other case, a mandate - by an alien power that was exploiting its position and advancing an illegal claim of sovereignty. Like Palestine, South Africa’s rule over Namibia was aided by the extensive presence of regional and international businesses. And like Palestine, the alien power in Namibia was defying the long-standing directions of the Security Council to end its abusive rule and open the path to

<sup>102</sup> *Supra*, note 50.

<sup>103</sup> Self-determination is the very first human right cited in both the *International Covenant on Economic Social and Cultural Rights* (1966) and the *International Covenant on Civil and Political Rights* (1966).

<sup>104</sup> A/HRC/43/71.

<sup>105</sup> A/HRC/31/36.

<sup>106</sup> S/2003/1027.

<sup>107</sup> A/HRC/42/CRP.3.

<sup>108</sup> V. Azarova, “Business and Human Rights in Occupied Territory” (2018) 3(2) *Business and Human Rights Journal* 187.

<sup>109</sup> <https://www.haaretz.com/israel-news/.premium-why-the-un-s-settlement-database-doesn-t-go-far-enough-1.8589282>.

<sup>110</sup> J. Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (Jacana Media, 2018).

independence. In response, the Security Council authorized a comprehensive set of sanctions and counter-measures to bring an end to South Africa's rule over Namibia. These accountability measures – found, among other places, in UNSC Resolution 283<sup>111</sup> and the International Court of Justice's 1971 *Advisory Opinion on Namibia*<sup>112</sup> – laid the basis for the international community's actions against South Africa's illegal rule and Namibia's eventual independence in 1990.

66. Without the comprehensive accountability measures developed and applied by the United Nations Security Council against South Africa, Namibia's independence would never have occurred when it did. And without the development and application of comprehensive accountability measures by the international community against the Israeli occupation, it will continue well into the future. This occupation will not die of old age. Nor will it crumble from pleas to respect the United Nations which do not promise the inevitability of adverse consequences if disobeyed. Rights under international law are self-evident, but they are not self-executing.

67. In 1980, the Council called upon all states “not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories” and for Israel “to end the prolonged occupation”.<sup>113</sup> Forty years later, it is well past time for the Council to lead the international community by drawing from its own precedents respecting Namibia and other modern sanctions regimes to honour its directions to end assistance to the settlements and to end the occupation. As the International Court of Justice stated in its *Namibia Advisory Opinion*:

“It would be an untenable interpretation to maintain that, once such a declaration had been made by the Security Council on behalf of member States, these Members would be free to act in disregard of such illegality or even to recognize violations of law resulting from it”.<sup>114</sup>

## V. Recommendations

**68. The Special Rapporteur recommends that the Government of Israel should fully comply with its obligations under international law and that it should completely end its 53 years of occupation with all deliberate speed and enable the realization of Palestinian self-determination.**

**69. The Rapporteur recommends that the United Nations Security Council, or, if it fails to act, the General Assembly under a Uniting for Peace resolution, adopt resolutions directing the following:**

**(a) Call upon all States maintaining diplomatic or consular relations with Israel to issue a formal declaration to the Government of Israel to the effect that they do not recognize any authority of Israel with regard to the Occupied Palestinian Territory, and that they consider Israel's continued presence in the Territory to be illegal;**

**(b) Request all States to refrain from any relations — including diplomatic, consular, trade and other agreements — with Israel implying any recognition of the**

<sup>111</sup> UNSC Resolution 283 (29 July 1970).

<sup>112</sup> *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia*, International Court of Justice (21 June 1971).

<sup>113</sup> UNSC Resolutions 465 and 471.

<sup>114</sup> *Supra*, note 112, p. 52.

authority of the Government of Israel over any part of the Occupied Palestinian Territory;

(c) Call upon all States to ensure that all corporate enterprises regulated by them cease any and all investment, commercial, operational and trade dealings of any sort with respect to the Israeli settlements, Israeli industrial enterprise zones or with companies regulated by the Government of Israel operating in the Occupied Palestinian Territory;

(d) Request all States to undertake without delay a detailed study and review of all bilateral treaties between themselves and Israel to identify whether these treaties contain provisions by which they might apply to the Israeli settlements in the Occupied Palestinian Territory;

(e) Call upon all States to discourage the promotion of tourism and emigration to the Israeli settlements;

(f) Call upon all States not to permit the entry of any goods and services produced in or originating from, in whole or in part, the Israeli settlements or Israeli-regulated commercial enterprises in the Occupied Palestinian Territory; and

(g) Request all States to report to the Secretary-General on measures they have taken on an annual basis in order to give effect to the provisions set forth by the Security Council or General Assembly.

70. The Rapporteur recommends that the United Nations Security Council should ensure that the Database becomes a living tool, that it clarifies and broadens its mandate, and that it provide the Database with sufficient resources so that its spotlight can properly identify the scope of all business involvement with the settlements and the occupation.

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# A Threshold Crossed

Israeli Authorities and the Crimes of Apartheid and Persecution



# **A Threshold Crossed**

**Israeli Authorities and the Crimes of Apartheid and Persecution**

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Printed in the United States of America

ISBN: 978-1-62313-900-1

Cover design by Rafael Jimenez

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APRIL 2021

ISBN: 978-1-62313-900-1

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# Map



Israel and the Israeli-occupied Palestinian Territory, made up of the West Bank, including East Jerusalem, and the Gaza Strip, as well as the Israeli-occupied Golan Heights.



## Summary

About 6.8 million Jewish Israelis and 6.8 million Palestinians live today between the Mediterranean Sea and Jordan River, an area encompassing Israel and the Occupied Palestinian Territory (OPT), the latter made up of the West Bank, including East Jerusalem, and the Gaza Strip. Throughout most of this area, Israel is the sole governing power; in the remainder, it exercises primary authority alongside limited Palestinian self-rule. Across these areas and in most aspects of life, Israeli authorities methodically privilege Jewish Israelis and discriminate against Palestinians. Laws, policies, and statements by leading Israeli officials make plain that the objective of maintaining Jewish Israeli control over demographics, political power, and land has long guided government policy. In pursuit of this goal, authorities have dispossessed, confined, forcibly separated, and subjugated Palestinians by virtue of their identity to varying degrees of intensity. In certain areas, as described in this report, these deprivations are so severe that they amount to the crimes against humanity of apartheid and persecution.

Several widely held assumptions, including that the occupation is temporary, that the “peace process” will soon bring an end to Israeli abuses, that Palestinians have meaningful control over their lives in the West Bank and Gaza, and that Israel is an egalitarian democracy inside its borders, have obscured the reality of Israel’s entrenched discriminatory rule over Palestinians. Israel has maintained military rule over some portion of the Palestinian population for all but six months of its 73-year history. It did so over the vast majority of Palestinians inside Israel from 1948 and until 1966. From 1967 until the present, it has militarily ruled over Palestinians in the OPT, excluding East Jerusalem. By contrast, it has since its founding governed all Jewish Israelis, including settlers in the OPT since the beginning of the occupation in 1967, under its more rights-respecting civil law.

For the past 54 years, Israeli authorities have facilitated the transfer of Jewish Israelis to the OPT and granted them a superior status under the law as compared to Palestinians living in the same territory when it comes to civil rights, access to land, and freedom to move, build, and confer residency rights to close relatives. While Palestinians have a limited degree of self-rule in parts of the OPT, Israel retains primary control over borders, airspace, the movement of people and goods, security, and the registry of the entire

population, which in turn dictates such matters as legal status and eligibility to receive identity cards.

A number of Israeli officials have stated clearly their intent to maintain this control in perpetuity and backed it up through their actions, including continued settlement expansion over the course of the decades-long “peace process.” Unilateral annexation of additional parts of the West Bank, which the government of Prime Minister Benjamin Netanyahu has vowed to carry out, would formalize the reality of systematic Israeli domination and oppression that has long prevailed without changing the reality that the entire West Bank is occupied territory under the international law of occupation, including East Jerusalem, which Israel unilaterally annexed in 1967.

International criminal law has developed two crimes against humanity for situations of systematic discrimination and repression: apartheid and persecution. Crimes against humanity stand among the most odious crimes in international law.

The international community has over the years detached the term apartheid from its original South African context, developed a universal legal prohibition against its practice, and recognized it as a crime against humanity with definitions provided in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (“Apartheid Convention”) and the 1998 Rome Statute of the International Criminal Court (ICC).

The crime against humanity of persecution, also set out in the Rome Statute, the intentional and severe deprivation of fundamental rights on racial, ethnic, and other grounds, grew out of the post-World War II trials and constitutes one of the most serious international crimes, of the same gravity as apartheid.

The State of Palestine is a state party to both the Rome Statute and the Apartheid Convention. In February 2021, the ICC ruled that it has jurisdiction over serious international crimes committed in the entirety of the OPT, including East Jerusalem, which would include the crimes against humanity of apartheid or persecution committed in that territory. In March 2021, the ICC Office of Prosecutor announced the opening of a formal investigation into the situation in Palestine.

The term apartheid has increasingly been used in relation to Israel and the OPT, but usually in a descriptive or comparative, non-legal sense, and often to warn that the situation is heading in the wrong direction. In particular, Israeli, Palestinian, US, and European officials, prominent media commentators, and others have asserted that, if Israel's policies and practices towards Palestinians continued along the same trajectory, the situation, at least in the West Bank, would become tantamount to apartheid. <sup>1</sup> Some have claimed that the current reality amounts to apartheid. <sup>2</sup> Few, however, have

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<sup>1</sup> See, for example, "In 1976 interview, Rabin likens settler ideologues to 'cancer,' warns of 'apartheid'," *Times of Israel*, September 25, 2015, <https://www.timesofisrael.com/in-1976-interview-rabin-likens-settlements-to-cancer-warns-of-apartheid/> (accessed June 4, 2020); M.S., "Ehud Barak breaks the apartheid barrier," *The Economist*, February 15, 2010, <https://www.economist.com/democracy-in-america/2010/02/15/ehud-barak-breaks-the-apartheid-barrier> (accessed June 4, 2020); Rory McCarthy, "Israel Risks Apartheid-like Struggle If Two-state Solution Fails, Says Olmert," *The Guardian*, November 30, 2007, <https://www.theguardian.com/world/2007/nov/30/israel> (accessed June 4, 2020); Zehava Galon (@zehavagalon), April 18, 2021, Twitter, <https://twitter.com/zehavagalon/status/1251391524157435904?lang=en>, (accessed July 13, 2020); "Abbas tells UN it's responsible for ending Israeli 'apartheid,'" *Times of Israel*, September 20, 2017, <https://www.timesofisrael.com/abbas-tells-un-its-responsible-for-ending-israeli-apartheid/> (accessed July 5, 2020); Jimmy Carter, "Israel, Palestine, Peace and Apartheid," *The Guardian*, December 12, 2006, <https://www.theguardian.com/commentisfree/2006/dec/12/israel.politicsphilosophyandsociety> (accessed June 4, 2020); Peter Beaumont, "Israel Risks Becoming Apartheid State If Peace Talks Fail, Says John Kerry," *The Guardian*, April 29, 2014, <https://www.theguardian.com/world/2014/apr/28/israel-apartheid-state-peace-talks-john-kerry> (accessed June 4, 2020); Alon Liel, "Trump's Plan for Palestine Looks a Lot Like Apartheid," *Foreign Policy*, February 27, 2020, <https://foreignpolicy.com/2020/02/27/trumps-plan-for-palestine-looks-a-lot-like-apartheid/> (accessed June 4, 2020); "Binyamin Netanyahu: A Parable of Modern Populism," *The Economist*, March 30, 2019, <https://www.economist.com/leaders/2019/03/30/binyamin-netanyahu-a-parable-of-modern-populism?frsc=dg%7Ce> (accessed June 4, 2020); Editorial Board, "Mr. Netanyahu's Next Test," *New York Times*, April 10, 2019, <https://www.nytimes.com/2019/04/10/opinion/editorials/israel-election-netanyahu-trump.html?smid=nytcore-ios-share> (accessed June 4, 2020); Ishaan Tharoor, "Netanyahu Sees a Path to Victory. Critics See Apartheid," *Washington Post*, April 8, 2019, [https://www.washingtonpost.com/world/2019/04/08/netanyahu-sees-path-victory-critics-see-apartheid/?noredirect=on&utm\\_term=.5de80e23a864](https://www.washingtonpost.com/world/2019/04/08/netanyahu-sees-path-victory-critics-see-apartheid/?noredirect=on&utm_term=.5de80e23a864) (accessed June 4, 2020); "Civil Administration Advances 1,936 Settlement Units," Peace Now press release, January 6, 2020, <https://peacenow.org.il/en/civil-administration-advances-1936-settlement-units> (accessed June 4, 2020); "Grave Concern About US Plan to Resolve Israel-Palestine Conflict," *The Guardian*, February 27, 2020, <https://www.theguardian.com/world/2020/feb/27/grave-concern-about-us-plan-to-resolve-israel-palestine-conflict> (accessed June 4, 2020); "Trump Plan Normalizes Israel's Apartheid Regime in West Bank, Calls for Annexation and Forced Transfer of 260,000 Palestinian Citizens of Israel," Adalah press release, January 30, 2020, <https://www.adalah.org/en/content/view/9900> (accessed June 4, 2020); Daniel Sokatch, "The Democratic Pushback to Annexation," New Israel Fund blog, January 30, 2020, <https://www.nif.org/blog/we-are-the-democratic-pushback-to-annexation/> (accessed June 4, 2020); Gadi Taub, "The Results Are In, and Peace Lost," *New York Times*, January 29, 2003, <https://www.nytimes.com/2003/01/29/opinion/the-results-are-in-and-peace-lost.html> (accessed June 4, 2020); Thomas L. Friedman, "Campus Hypocrisy," *New York Times*, October 16, 2002, <https://www.nytimes.com/2002/10/16/opinion/campus-hypocrisy.html> (accessed June 4, 2020).

<sup>2</sup> See, for example, Nathan Thrall, "The Separate Regimes Delusion," *London Review of Books*, Vol. 43, No. 2, January 21, 2021, <https://lrb.co.uk/the-paper/v43/no2/nathan-thrall/the-separate-regimes-delusion> (accessed January 19, 2021); "A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid," B'Tselem, January 12, 2021, [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid) (accessed January 19, 2021).

conducted a detailed legal analysis based on the international crimes of apartheid or persecution.<sup>3</sup>

In this report, Human Rights Watch examines the extent to which that threshold has already been crossed in certain of the areas where Israeli authorities exercise control.

## Definitions of Apartheid and Persecution

The prohibition of institutionalized discrimination, especially on grounds of race or ethnicity, constitutes one of the fundamental elements of international law. Most states have agreed to treat the worst forms of such discrimination, that is, persecution and apartheid, as crimes against humanity, and have given the ICC the power to prosecute these crimes when national authorities are unable or unwilling to pursue them. Crimes against humanity consist of specific criminal acts committed as part of a widespread or systematic attack, or acts committed pursuant to a state or organizational policy, directed against a civilian population.

The Apartheid Convention defines the crime against humanity of apartheid as “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.” The Rome Statute of the ICC adopts a similar definition: “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.” The Rome Statute does not further define what constitutes an “institutionalized regime.”

The crime of apartheid under the Apartheid Convention and Rome Statute consists of three primary elements: an intent to maintain a system of domination by one racial group over

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<sup>3</sup> Those who have done so include, “ESCWA Launches Report on Israeli Practices Towards the Palestinian People and the Question of Apartheid,” UN Economic and Social Commission for Western Asia (ESCWA) press release, March 15, 2017, <https://www.unescwa.org/news/escwa-launches-report-israeli-practices-towards-palestinian-people-and-question-apartheid> (accessed June 4, 2020) (Report no longer available online; copy on file with HRW); “Palestinian, Regional and International Groups Submit Report on Israeli Apartheid to UN Committee on the Elimination of Racial Discrimination,” Al-Haq press release, November 12, 2019, <https://www.alhaq.org/advocacy/16183.html> (accessed January 19, 2021); Yesh Din, “The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion,” July 9, 2020, <https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/> (accessed August 12, 2020).

another; systematic oppression by one racial group over another; and one or more *inhumane acts*, as defined, carried out on a widespread or systematic basis pursuant to those policies.

Among the inhumane acts identified in either the Convention or the Rome Statute are “forcible transfer,” “expropriation of landed property,” “creation of separate reserves and ghettos,” and denial of the “the right to leave and to return to their country, [and] the right to a nationality.”

The Rome Statute identifies the crime against humanity of persecution as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity,” including on racial, national, or ethnic grounds. Customary international law identifies the crime of persecution as consisting of two primary elements: (1) severe abuses of fundamental rights committed on a widespread or systematic basis, and (2) with discriminatory intent.

Few courts have heard cases involving the crime of persecution and none the crime of apartheid, resulting in a lack of case law around the meanings of key terms in their definitions. As described in the report, international criminal courts have over the last two decades evaluated group identity based on the context and construction by local actors, as opposed to earlier approaches focused on hereditary physical traits. In international human rights law, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), race and racial discrimination have been broadly interpreted to include distinctions based on descent, and national or ethnic origin, among other categories.

## **Application to Israel’s Policies towards Palestinians**

Two primary groups live today in Israel and the OPT: Jewish Israelis and Palestinians. One primary sovereign, the Israeli government, rules over them.

### *Intent to Maintain Domination*

A stated aim of the Israeli government is to ensure that Jewish Israelis maintain domination across Israel and the OPT. The Knesset in 2018 passed a law with constitutional status affirming Israel as the “nation-state of the Jewish people,” declaring

that within that territory, the right to self-determination “is unique to the Jewish people,” and establishing “Jewish settlement” as a national value. To sustain Jewish Israeli control, Israeli authorities have adopted policies aimed at mitigating what they have openly described as a demographic “threat” that Palestinians pose. Those policies include limiting the population and political power of Palestinians, granting the right to vote only to Palestinians who live within the borders of Israel as they existed from 1948 to June 1967, and limiting the ability of Palestinians to move to Israel from the OPT and from anywhere else to Israel or the OPT. Other steps are taken to ensure Jewish domination, including a state policy of “separation” of Palestinians between the West Bank and Gaza, which prevents the movement of people and goods within the OPT, and “Judaization” of areas with significant Palestinian populations, including Jerusalem as well as the Galilee and the Negev in Israel. This policy, which aims to maximize Jewish Israeli control over land, concentrates the majority of Palestinians who live outside Israel’s major, predominantly Jewish cities into dense, under-served enclaves and restricts their access to land and housing, while nurturing the growth of nearby Jewish communities.

### *Systematic Oppression and Institutional Discrimination*

To implement the goal of domination, the Israeli government institutionally discriminates against Palestinians. The intensity of that discrimination varies according to different rules established by the Israeli government in Israel, on the one hand, and different parts of the OPT, on the other, where the most severe form takes place.

In the OPT, which Israel has recognized as a single territory encompassing the West Bank and Gaza, Israeli authorities treat Palestinians separately and unequally as compared to Jewish Israeli settlers. In the occupied West Bank, Israel subjects Palestinians to draconian military law and enforces segregation, largely prohibiting Palestinians from entering settlements. In the besieged Gaza Strip, Israel imposes a generalized closure, sharply restricting the movement of people and goods—policies that Gaza’s other neighbor, Egypt, often does little to alleviate. In annexed East Jerusalem, which Israel considers part of its sovereign territory but remains occupied territory under international law, Israel provides the vast majority of the hundreds of thousands of Palestinians living there with a legal status that weakens their residency rights by conditioning them on the individual’s connections to the city, among other factors. This level of discrimination amounts to systematic oppression.

In Israel, which the vast majority of nations consider being the area defined by its pre-1967 borders, the two tiered-citizenship structure and bifurcation of nationality and citizenship result in Palestinian citizens having a status inferior to Jewish citizens by law. While Palestinians in Israel, unlike those in the OPT, have the right to vote and stand for Israeli elections, these rights do not empower them to overcome the institutional discrimination they face from the same Israeli government, including widespread restrictions on accessing land confiscated from them, home demolitions, and effective prohibitions on family reunification.

The fragmentation of the Palestinian population, in part deliberately engineered through Israeli restrictions on movement and residency, furthers the goal of domination and helps obscure the reality of the same Israeli government repressing the same Palestinian population group, to varying degrees in different areas, for the benefit of the same Jewish Israeli dominant group.

### *Inhumane Acts and Other Abuses of Fundamental Rights*

Pursuant to these policies, Israeli authorities have carried out a range of inhumane acts in the OPT. Those include sweeping restrictions on the movement of 4.7 million Palestinians there; the confiscation of much of their land; the imposition of harsh conditions, including categorical denial of building permits in large parts of the West Bank, which has led thousands of Palestinians to leave their homes under conditions that amount to forcible transfer; the denial of residency rights to hundreds of thousands of Palestinians and their relatives, largely for being abroad when the occupation began in 1967, or for long periods during the first few decades of the occupation, or as a result of the effective freeze on family reunification over the last two decades; and the suspension of basic civil rights, such as freedom of assembly and association, depriving Palestinians of the opportunity to have a voice in a wide range of affairs that most affect their daily lives and futures. Many of these abuses, including categorical denials of building permits, mass residency revocations or restrictions, and large-scale land confiscations, have no legitimate security justifications; others, such as the extent of restrictions on movement and civil rights, fail any reasonable balancing test between security concerns and the severity of the underlying rights abuse.

Since the founding of the state of Israel, the government also has systematically discriminated against and violated the rights of Palestinians inside the state's pre-1967 borders, including by refusing to allow Palestinians access to the millions of dunams of land (1000 dunams equals 100 hectares, about 250 acres or 1 square kilometer) that were confiscated from them. In one region—the Negev—these policies make it virtually impossible for tens of thousands of Palestinians to live lawfully in the communities they have lived in for decades. In addition, Israeli authorities refuse to permit the more than 700,000 Palestinians who fled or were expelled in 1948, and their descendants, to return to Israel or the OPT, and impose blanket restrictions on legal residency, which block many Palestinian spouses and families from living together in Israel.

## Report Findings

This report examines Israeli policies and practices towards Palestinians in the OPT and Israel and compares them to the treatment of Jewish Israelis living in the same territories. It is not an exhaustive evaluation of all types of international human rights and humanitarian law violations. Rather, it surveys consequential Israeli government practices and policies that violate the basic rights of Palestinians and whose purpose is to ensure the domination of Jewish Israelis, and assesses them against the definitions of the crimes against humanity of apartheid and persecution.

The report draws on years of research and documentation by Human Rights Watch and other rights organizations, including fieldwork conducted for this report. Human Rights Watch also reviewed Israeli laws, government planning documents, statements by officials, and land records. This evidentiary record was then analyzed under the legal standards for the crimes of apartheid and persecution. Human Rights Watch also wrote in July 2020 to Israeli Prime Minister Benjamin Netanyahu, soliciting the government's perspectives on the issues covered, but, as of publication, had not received a response.

The report does not set out to compare Israel with South Africa under apartheid or to determine whether Israel is an “apartheid state”—a concept that is not defined in international law. Rather, the report assesses whether specific acts and policies carried out by Israeli authorities today amount in particular areas to the crimes of apartheid and persecution as defined under international law.

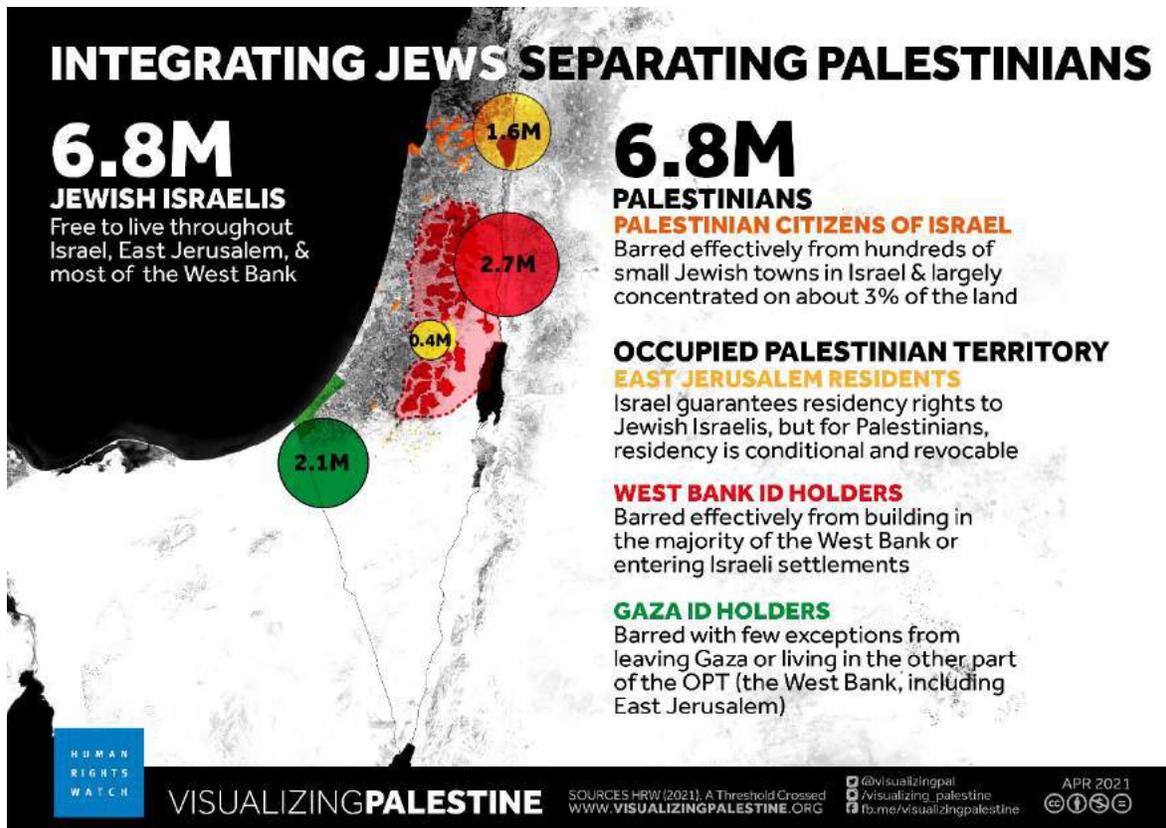
Each of the report's three main substantive chapters explores Israel's rule over Palestinians: the dynamics of its rule and discrimination, looking in turn at Israel and the OPT, the particular rights abuses that it commits there, and some of the objectives that motivate these policies. It does so in terms of the primary elements of the crimes of apartheid and persecution, as outlined above. Human Rights Watch evaluates the dynamics of Israeli rule in each of these areas, keeping in mind the different legal frameworks that apply in the OPT and Israel, which are the two legally recognized territorial entities, each with a different status under international law. While noting significant factual differences among subregions in each of these two territories, the report does not make separate subregional determinations.

On the basis of its research, Human Rights Watch concludes that the Israeli government has demonstrated an intent to maintain the domination of Jewish Israelis over Palestinians across Israel and the OPT. In the OPT, including East Jerusalem, that intent has been coupled with systematic oppression of Palestinians and inhumane acts committed against them. When these three elements occur together, they amount to the crime of apartheid.

Israeli officials have also committed the crime against humanity of persecution. This finding is based on the discriminatory intent behind Israel's treatment of Palestinians and the grave abuses carried out in the OPT that include the widespread confiscation of privately owned land, the effective prohibition on building or living in many areas, the mass denial of residency rights, and sweeping, decades-long restrictions on the freedom of movement and basic civil rights. Such policies and practices intentionally and severely deprive millions of Palestinians of key fundamental rights, including to residency, private property, and access to land, services, and resources, on a widespread and systematic basis by virtue of their identity as Palestinians.

## **Seeking Maximal Land with Minimal Palestinians**

Israeli policy has sought to engineer and maximize the number of Jews, as well as the land available to them, in Israel and the portions of the OPT coveted by the Israeli government for Jewish settlement. At the same time, by restricting the residency rights of Palestinians, Israeli policy seeks to minimize the number of Palestinians and the land available to them in those areas. The level of repression is most severe in the OPT, although often less severe aspects of similar policies can be found within Israel.



In the West Bank, authorities have confiscated more than 2 million dunams of land from Palestinians, making up more than one-third of the West Bank, including tens of thousands of dunams that they acknowledge are privately owned by Palestinians. One common tactic they have used is to declare territory, including privately-owned Palestinian land, as “state land.” The Israeli group Peace Now estimates that the Israeli government has designated about 1.4 million dunams of land, or about a quarter of the West Bank, as state land. The group has also found that more than 30 percent of the land used for settlements is acknowledged by the Israeli government as having been privately owned by Palestinians. Of the more than 675,000 dunams of state land that Israeli authorities have allocated for use by third parties in the West Bank, they have earmarked more than 99 percent for use by Israeli civilians, according to government data. Land grabs for settlements and the infrastructure that primarily serves settlers effectively concentrate Palestinians in the West Bank, according to B’Tselem, into “165 non-contiguous ‘territorial islands.’”

Israeli authorities have also made it virtually impossible in practice for Palestinians in Area C, the roughly 60 percent of the West Bank that the Oslo Accords placed under full Israeli control, as well as those in East Jerusalem, to obtain building permits. In Area C, for example, authorities approved less than 1.5 percent of applications by Palestinians to build between 2016 and 2018—21 in total—a figure 100 times smaller than the number of demolition orders it issued in the same period, according to official data. Israeli authorities have razed thousands of Palestinian properties in these areas for lacking a permit, leaving thousands of families displaced. By contrast, according to Peace Now, Israeli authorities began construction on more than 23,696 housing units between 2009 and 2020 in Israeli settlements in Area C. Transfer of an occupying power’s civilian population to an occupied territory violates the Fourth Geneva Convention.

These policies grow out of longstanding Israeli government plans. For example, the 1980 Drobles Plan, which guided the government’s settlement policy in the West Bank at the time and built on prior plans, called for authorities to “settle the land between the [Arab] minority population centers and their surroundings,” noting that doing so would make it “hard for Palestinians to create territorial contiguity and political unity” and “remove any trace of doubt about our intention to control Judea and Samaria forever.”

In Jerusalem, the government’s plan for the municipality, including both the west and occupied east of the city, sets the goal of “maintaining a solid Jewish majority in the city” and a target demographic “ratio of 70% Jews and 30% Arabs”—later adjusted to a 60:40 ratio after authorities acknowledged that “this goal is not attainable” in light of “the demographic trend.”

The Israeli government has also carried out discriminatory seizures of land inside Israel. Authorities have seized through different mechanisms at least 4.5 million dunams of land from Palestinians, according to historians, constituting 65 to 75 percent of all land owned by Palestinians before 1948 and 40 to 60 percent of the land that belonged to Palestinians who remained after 1948 and became citizens of Israel. Authorities in the early years of the state declared land belonging to displaced Palestinians as “absentee property” or “closed military zones,” then took it over, converted it to state land, and built Jewish communities there. Authorities continue to block Palestinian citizen landowners from accessing land that was confiscated from them. A 2003 government-commissioned report found that “the expropriation activities were clearly and explicitly harnessed to the interests of the Jewish

majority” and that state lands, which constitute 93 percent of all land in Israel, effectively serve the objective of “Jewish settlement.” Since 1948, the government has authorized the creation of more than 900 “Jewish localities” in Israel, but it has allowed only a handful of government-planned townships and villages for Palestinians, created largely to concentrate previously displaced Bedouin communities living in the Negev.

Land confiscations and other discriminatory land policies in Israel hem in Palestinian municipalities inside Israel, denying them opportunities for natural expansion enjoyed by Jewish municipalities. The vast majority of Palestinian citizens, who make up around 19 percent of the Israeli population, live in these municipalities, which have an estimated jurisdiction over less than 3 percent of all land in Israel. While Palestinians in Israel can move freely, and some live in “mixed cities,” such as Haifa, Tel Aviv-Jaffa, and Acre, Israeli law permits small towns to exclude prospective residents based on their asserted incompatibility with the town’s “social-cultural fabric.” According to a study by a professor at Technion-Israel Institute of Technology in Haifa, there are more than 900 small Jewish towns, including *kibbutzim*, across Israel that can restrict who lives there. None of them have any Palestinians living among them.

In the Negev in Israel, Israeli authorities have refused to legally recognize 35 Palestinian Bedouin communities, making it impossible for their 90,000 or so residents to live lawfully in the communities they have lived in for decades. Instead, authorities have sought to concentrate Bedouin communities in larger recognized townships in order, as expressed in governmental plans and statements by officials, to maximize the land available for Jewish communities. Israeli law considers all buildings in these unrecognized villages to be illegal, and authorities have refused to connect most to the national electricity or water grids or to provide even basic infrastructure such as paved roads or sewage systems. The communities do not appear on official maps, most have no educational facilities, and residents live under constant threat of having their homes demolished. Israeli authorities demolished more than 10,000 Bedouin homes in the Negev between 2013 and 2019, according to government data. They razed one unrecognized village that challenged the expropriation of its lands, al-Araqib, 185 times.

Authorities have implemented these policies pursuant to government plans since the early years of the state that called for restricting Bedouin communities in order to secure land suitable for settling Jews. Several months before becoming prime minister in December

2000, Ariel Sharon declared that Bedouins in the Negev “are gnawing at the country’s land reserves,” which he described as “a demographic phenomenon.” As prime minister, Sharon went on to pursue a multi-billion-dollar plan that transparently sought to boost the Jewish population in the Negev and Galilee regions of Israel, areas that have significant Palestinian populations. His deputy prime minister, Shimon Peres, later described the plan as a “battle for the future for the Jewish people.”

Sharon’s push to Judaize the Negev, as well as the Galilee, developed against the backdrop of the government’s decision to withdraw Jewish settlers from Gaza. After ending Jewish settlement there, Israel began to treat Gaza effectively as a territorial jurisdiction whose population it could consider as outside the demographic calculus of Jews and Palestinians who live in Israel and in the vast majority of the OPT—the West Bank including East Jerusalem—that Israel intends to retain. Israeli officials at the time acknowledged the demographic objectives behind the move. Amid the push to withdraw settlers from Gaza, Sharon said in an August 2005 address to Israelis, “Gaza cannot be held onto forever. Over one million Palestinians live there and they double their numbers with every generation.” Peres said the same month, “We are disengaging from Gaza because of demography.”

Despite withdrawing its settlers and ground troops, Israel has remained in critical ways the supreme power in Gaza, dominating through other means and hence maintaining its legal obligations as an occupying power, as the International Committee of the Red Cross (ICRC) and the United Nations (UN), among others, have determined. Most significantly, Israel bans Palestinians living there (with only narrow exceptions) from leaving through the Erez Passenger Crossing it controls and instituted a formal “policy of separation” between Gaza and the West Bank, despite Israel having recognized within the framework of the Oslo Accords these two parts of the OPT as collectively forming a “single territorial unit.” The generalized travel ban, which has remained in place since 2007 and reduced travel out of Gaza to a fraction of what it was two decades ago, is not based on an individualized security assessment and fails any reasonable test of balancing security concerns against the right to freedom of movement for over two million people.

Authorities have also sharply restricted the entry and exit of goods to and from Gaza, which, alongside Egypt often shutting its border, effectively seals it off from the outside world. These restrictions have contributed to limiting access to basic services, devastating the economy, and making 80 percent of the population reliant on humanitarian aid.

Families in Gaza in recent years have had to make do without centrally provided electricity for between 12 and 20 hours per day, depending on the period. Water is also critically scarce; the UN considers more than 96 percent of the water supply in Gaza “unfit for human consumption.”

Within the West Bank as well, Israeli authorities prohibit Palestinian ID holders from entering areas such as East Jerusalem, lands beyond the separation barrier, and areas controlled by settlements and the army, unless they secure difficult-to-obtain permits. They have also erected nearly 600 permanent obstacles, many between Palestinian communities, that disrupt daily life for Palestinians. In sharp contrast, Israeli authorities allow Jewish settlers in the West Bank to move freely within the majority of the West Bank under its exclusive control, as well as to and from Israel, on roads built to facilitate their commutes and integrate them into every facet of Israeli life.

Demographic considerations factor centrally in Israel’s separation policy between Gaza and the West Bank. In particular, in the rare cases when they allow movement between the two parts of the OPT, Israeli authorities permit it predominantly in the direction of Gaza, thereby facilitating population flow away from the area where Israel actively promotes Jewish settlement. The Israeli army’s official policy states that while a West Bank resident can apply “for permanent resettlement in the Gaza Strip for any purpose that is considered humanitarian (usually family reunification),” Gaza residents can settle in the West Bank only “in the rarest cases,” usually related to family reunification. In these cases, authorities are mandated to aim to resettle the couple in Gaza. Official data shows that Israel did not approve a single Gaza resident to resettle in the West Bank, outside of a handful who filed Supreme Court petitions between 2009 and March 2017, while permitting several dozen West Bank residents to relocate to Gaza on the condition that they sign a pledge not to return to the West Bank.

Beyond the closure policy, Israeli authorities have often used oppressive and indiscriminate means during hostilities and protests in Gaza. Since 2008, the Israeli army has launched three large-scale military offensives in Gaza in the context of hostilities with armed Palestinian groups. As described in the report, those offensives have included apparently deliberate attacks on civilians and civilian infrastructure and killed well over 2,000 civilians. In addition, Israeli forces have regularly fired on Palestinian demonstrators and others who have approached fences separating Gaza and Israel in circumstances

when they did not pose an imminent threat to life, killing 214 demonstrators in 2018 and 2019 alone and maiming thousands. These practices stem from a decades-long pattern of using excessive and vastly disproportionate force to quell protests and disturbances, at great cost to civilians. Despite the frequency of such incidents over the years, Israeli authorities have failed to develop law enforcement tactics that comport with international human rights norms.

## **Discriminatory Restrictions on Residency and Nationality**

Palestinians face discriminatory restrictions on their rights to residency and nationality to varying degrees in the OPT and Israel. Israeli authorities have used their control over the population registry in the West Bank and Gaza—the list of Palestinians they consider lawful residents for purposes of issuing legal status and identity cards—to deny residency to hundreds of thousands of Palestinians. Israeli authorities refused to register at least 270,000 Palestinians who were outside the West Bank and Gaza when the occupation began in 1967 and revoked the residency of nearly 250,000, mostly for being abroad for too long between 1967 and 1994. Since 2000, Israeli authorities have largely refused to process family reunification applications or requests for address changes by Palestinians in the West Bank and Gaza. The freeze effectively bars Palestinians from acquiring legal status for spouses or relatives not already registered and makes illegal, according to the Israeli army, the presence in the West Bank of thousands of Gaza residents who arrived on temporary permits and now live there, since they effectively cannot change their address to one in the West Bank. These restrictions have the effect of limiting the Palestinian population in the West Bank.

Authorities regularly deny entry into the West Bank to non-registered Palestinians who had lived in the West Bank but left temporarily (to study, work, marry, or for other reasons) and to their non-registered spouses and other family members.

When Israel annexed East Jerusalem in 1967, it applied its 1952 Law of Entry to Palestinians who lived there and designated them as “permanent residents,” the same status afforded to a non-Jewish foreigner who moves to Israel. The Interior Ministry has revoked this status from at least 14,701 Palestinians since 1967, mostly for failing to prove a “center of life” in the city. A path to Israeli citizenship exists, but few apply and most who did in recent years were not granted citizenship. By contrast, Jewish Israelis in Jerusalem,

including settlers in East Jerusalem, are citizens who do not have to prove connections to the city to maintain their status.

Inside Israel, Israel's Proclamation of Independence affirms the "complete equality" of all residents, but a two-track citizenship structure contradicts that vow and effectively regards Jews and Palestinians separately and unequally. Israel's 1952 Citizenship Law contains a separate track exclusively for Jews to obtain automatic citizenship. That law grows out of the 1950 Law of Return which guarantees Jewish citizens of other countries the right to settle in Israel. By contrast, the track for Palestinians conditions citizenship on proving residency before 1948 in the territory that became Israel, inclusion in the population registry as of 1952, and a continuous presence in Israel or legal entry in the period between 1948 and 1952. Authorities have used this language to deny residency rights to the more than 700,000 Palestinians who fled or were expelled in 1948 and their descendants, who today number more than 5.7 million. This law creates a reality where a Jewish citizen of any other country who has never been to Israel can move there and automatically gain citizenship, while a Palestinian expelled from his home and languishing for more than 70 years in a refugee camp in a nearby country, cannot.

The 1952 Citizenship Law also authorizes granting citizenship based on naturalization. However, in 2003, the Knesset passed the Citizenship and Entry into Israel Law (Temporary Order), which bars granting Israeli citizenship or long-term legal status to Palestinians from the West Bank and Gaza who marry Israeli citizens or residents. With few exceptions, this law, renewed every year since and upheld by the Israeli Supreme Court, denies both Jewish and Palestinian citizens and residents of Israel who choose to marry Palestinians the right to live with their partner in Israel. This restriction, based solely on the spouse's identity as a Palestinian from the West Bank or Gaza, notably does not apply when Israelis marry non-Jewish spouses of most other foreign nationalities. They can receive immediate status and, after several years, apply for citizenship.

Commenting on a 2005 renewal of the law, the prime minister at the time, Ariel Sharon, said: "There's no need to hide behind security arguments. There's a need for the existence of a Jewish state." Benjamin Netanyahu, who was then the finance minister, said during discussions at the time: "Instead of making it easier for Palestinians who want to get citizenship, we should make the process much more difficult, in order to guarantee Israel's security and a Jewish majority in Israel." In March 2019, this time as prime minister,

Netanyahu declared, “Israel is not a state of all its citizens,” but rather “the nation-state of the Jewish people and only them.”

International human rights law gives broad latitude to governments in setting their immigration policies. There is nothing in international law to bar Israel from promoting Jewish immigration. Jewish Israelis, many of whom historically migrated to Mandatory Palestine or later to Israel to escape anti-Semitic persecution in different parts of the world, are entitled to protection of their safety and fundamental rights. However, that latitude does not give a state the prerogative to discriminate against people who already live in that country, including with respect to rights concerning family reunification, and against people who have a right to return to the country. Palestinians are also entitled to protection of their safety and fundamental rights.

## **Israeli Justifications of Policies and Practices**

Israeli authorities justify many of the policies documented in this report as responses to Palestinian anti-Israeli violence. Many policies, though, like the denial of building permits in Area C, East Jerusalem, and the Negev in Israel, residency revocations for Jerusalemites, or expropriation of privately owned land and discriminatory allocation of state lands, have no legitimate security justification. Others, including the Citizenship and Entry into Israel Law and freeze of the OPT population registry, use security as a pretext to advance demographic objectives.

Israeli authorities do face legitimate security challenges in Israel and the OPT. However, restrictions that do not seek to balance human rights such as freedom of movement against legitimate security concerns by, for example, conducting individualized security assessments rather than barring the entire population of Gaza from leaving with only rare exceptions, go far beyond what international law permits. Even where security forms part of the motivation behind a particular policy, that does not give Israel a *carte blanche* to violate human rights en masse. Legitimate security concerns can be present among policies that amount to apartheid, just as they can be present in a policy that sanctions the use of excessive force or torture.

Officials sometimes claim that measures taken in the OPT are temporary and would be rescinded in the context of a peace agreement. From former Prime Minister Levi Eshkol, of

the Labor Party, declaring in July 1967 that “I see only a quasi-independent region [for Palestinians], because the security and land are in Israeli hands,” to Netanyahu of the Likud in July 2019 stating that “Israeli military and security forces will continue to rule the entire territory, up to the Jordan [River],” a range of officials have made clear their intent to maintain overriding control over the West Bank in perpetuity, regardless of what arrangements are in place to govern Palestinians. Their actions and policies further dispel the notion that Israeli authorities consider the occupation temporary, including the continuing of land confiscation, the building of the separation barrier in a way that accommodated anticipated growth of settlements, the seamless integration of the settlements’ sewage system, communication networks, electrical grids, water infrastructure and a matrix of roads with Israel proper, as well as a growing body of laws applicable to West Bank Israeli settlers but not Palestinians. The possibility that a future Israeli leader might forge a deal with Palestinians that dismantles the discriminatory system and ends systematic repression does not negate the intent of current officials to maintain the current system, nor the current reality of apartheid and persecution.

## Recommendations

The Israeli government should dismantle all forms of systematic domination and oppression that privilege Jewish Israelis and systematically repress Palestinians, and end the persecution of Palestinians. In particular, authorities should end discriminatory policies and practices with regards to citizenship and residency rights, civil rights, freedom of movement, allocation of land and resources, access to water, electricity, and other services, and granting of building permits.

The findings that the crimes of apartheid and persecution are being committed do not deny the reality of Israeli occupation or erase Israel’s obligations under the law of occupation, any more than would a finding that other crimes against humanity or war crimes have been carried out. As such, Israeli authorities should cease building settlements and dismantle existing ones and otherwise provide Palestinians in the West Bank and Gaza with full respect of their human rights, using as a benchmark the rights that it grants Israeli citizens, as well as the protections that international humanitarian law grants them.

The Palestinian Authority (PA) should end forms of security coordination with the Israeli army that contribute to facilitating the crimes against humanity of apartheid and persecution.

The finding of crimes against humanity should prompt the international community to reevaluate its approach to Israel and Palestine. The US, which for decades has largely failed to press the Israeli government to end its systematic repression of Palestinians, has in some instances in recent years signaled its support for serious abuses such as the building of settlements in the occupied West Bank. Many European and other states have built close ties with Israel, while supporting the “peace process,” building the capacity of the PA, and distancing themselves from and sometimes criticizing specific abusive Israeli practices in the OPT. This approach, which overlooks the deeply entrenched nature of Israeli discrimination and repression of Palestinians there, minimizes serious human rights abuses by treating them as temporary symptoms of the occupation that the “peace process” will soon cure. It has enabled states to resist the sort of accountability that a situation of this gravity warrants, allowing apartheid to metastasize and consolidate. After 54 years, states should stop assessing the situation through the prism of what might happen should the languishing peace process one day be revived and focus instead on the longstanding reality on the ground that shows no signs of abating.

Crimes against humanity can serve as the basis for individual criminal liability in international fora, as well as in domestic courts outside of Israel and the OPT under the principle of universal jurisdiction.

In light of the decades-long failure by Israeli authorities to rein in serious abuses, the International Criminal Court’s Office of the Prosecutor should investigate and prosecute individuals credibly implicated in the crimes against humanity of apartheid or persecution. The ICC has jurisdiction over, and the prosecutor has opened an investigation into, serious crimes committed in the OPT. In addition, all governments should investigate and prosecute those credibly implicated in these crimes, under the principle of universal jurisdiction and in accordance with national laws.

Beyond criminality, Human Rights Watch calls on states to establish through the UN an international commission of inquiry to investigate systematic discrimination and repression based on group identity in the OPT and Israel. The inquiry should be mandated to establish and analyze the facts; identify those responsible for serious crimes, including apartheid and persecution, with a view to ensuring that the perpetrators are held

accountable; as well as collect and preserve evidence related to abuses for future use by credible judicial institutions.

States should also establish through the UN a position of UN global envoy for the crimes of persecution and apartheid with a mandate to mobilize international action to end persecution and apartheid worldwide.

States should issue statements expressing concern about Israel's practice of apartheid and persecution. They should vet agreements, cooperation schemes, and all forms of trade and dealing with Israel to screen for those directly contributing to the commission of the crimes of apartheid and persecution against Palestinians, mitigate the human rights impacts, and, where not possible, end the activities and funding found to facilitate these serious crimes.

The implications of the findings of this report for businesses are complex and beyond the scope of this report. At a minimum, businesses should cease activities that directly contribute to the commission of the crimes of apartheid and persecution. Companies should assess whether their goods or services contribute to the commission of the crimes of apartheid and persecution, such as equipment used in the unlawful demolition of Palestinian homes, and cease providing goods and services that will likely be used for such purposes, in accordance with the UN Guiding Principles on Business and Human Rights.

States should impose individual sanctions, including travel bans and asset freezes, against officials and individuals responsible for the continued commission of these serious crimes and condition arms sales and military and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution.

The international community has for too long explained away and turned a blind eye to the increasingly transparent reality on the ground. Every day a person is born in Gaza into an open-air prison, in the West Bank without civil rights, in Israel with an inferior status by law, and in neighboring countries effectively condemned to lifelong refugee status, like their parents and grandparents before them, solely because they are Palestinian and not Jewish. A future rooted in the freedom, equality, and dignity of all people living in Israel and the OPT will remain elusive so long as Israel's abusive practices against Palestinians persist.

## Methodology

This report focuses on Israel’s treatment of Palestinians in the Occupied Palestinian Territory (OPT) and in Israel. It is not a comprehensive examination of all repressive policies, practices, and other facets of institutional discrimination. It also does not account for all human rights abuses in these areas, including rights abuses committed by Palestinian authorities or armed groups, which Human Rights Watch has covered extensively elsewhere.<sup>4</sup> Rather, it examines discriminatory policies, laws, and regulations that privilege Jewish Israelis to the detriment of Palestinians.

While the report evaluates whether specific Israeli policies and practices amount to the crimes against humanity of apartheid and persecution, it does not delve into the potential criminal liability of particular Israeli officials.

This report is based primarily on years of documentation carried out by Human Rights Watch, as well as by Israeli, Palestinian, and international human rights groups. Human Rights Watch also reviewed Israeli laws, government planning documents, statements by officials, land records, and legal standards governing the crimes of apartheid and persecution. The report includes several case studies, based on 40 interviews with affected persons, current and former officials, lawyers, and NGO representatives, as well as on-site visits, all conducted by Human Rights Watch in 2019 and 2020. Some interviews took place at locations in the OPT and Israel, but, in part due to movement restrictions imposed during the COVID-19 pandemic, many were conducted by phone.

Human Rights Watch conducted most of the interviews that are included in this report individually, in Arabic or English. We conducted them with the consent of those being interviewed and told each of the interviewees how Human Rights Watch would use the information provided.

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<sup>4</sup> Human Rights Watch, *Two Authorities, One Way, Zero Dissent* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/10/23/two-authorities-one-way-zero-dissent/arbitrary-arrest-and-torture-under>; “Gaza: Unlawful Attacks in May Fighting,” Human Rights Watch news release, June 12, 2019, <https://www.hrw.org/news/2019/06/12/gaza-unlawful-attacks-may-fighting>.

Human Rights Watch is withholding names of some interviewees for their security, giving them instead pseudonyms, which are noted at first mention between quotation marks.

Human Rights Watch also wrote to Israeli Prime Minister Benjamin Netanyahu on July 20, 2020, soliciting the government's perspectives generally on the issues covered. A copy of the letter is included in the appendix of this report. The Prime Minister's Office confirmed receipt by phone on August 6 and by email on August 12, but, as of publication, had not responded.

## I. Background

More than 700,000 Palestinians fled or were expelled from their homes and more than 400 Palestinian villages were destroyed in events around the establishment of the Israeli state in 1948.<sup>5</sup> Between 1949 and 1966, Israeli authorities placed most of the Palestinians who remained within the borders of the new state under military rule, confining them to dozens of enclaves, requiring them to obtain permits to leave their enclaves, and severely restricting their rights.<sup>6</sup>

In June 1967, Israel seized control of the West Bank, including East Jerusalem, from Jordan and the Gaza Strip from Egypt, which make up the Occupied Palestinian Territory (OPT), as well as the Golan Heights from Syria, and the Sinai Peninsula from Egypt, following an armed conflict known as the Six-Day War.

Israeli authorities have since retained control over the OPT. In the occupied West Bank, the Israeli army has militarily ruled over Palestinians living there, except in East Jerusalem, which Israel unilaterally annexed in 1967. Annexation does not change East Jerusalem's status as occupied territory under international law. Throughout the West Bank, Israel has facilitated the building of Israeli-only settlements. The Fourth Geneva Convention, which applies to military occupations, prohibits the transfer of an occupying power's civilian

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<sup>5</sup> Zochrot, "Mapping the Destruction," Eitan Bronstein Aparicio, March 2013, <https://zochrot.org/en/article/54783> (accessed May 7, 2020); Zochrot, "al-Nakba," <https://zochrot.org/en/contentAccordion/nakba> (accessed May 7, 2020); "Palestine Refugees," United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), <https://www.unrwa.org/palestine-refugees> (accessed May 7, 2020).

<sup>6</sup> Nimer Sultany, "The Legal Structures of Subordination: The Palestinian Minority and Israeli Law," December 2013, available at <https://ssrn.com/abstract=2365177> (accessed September 17, 2020), pp. 202, 223, later published in *Israel and Its Palestinian Citizens: Ethnic Privileges in the Jewish State*, eds. Nadim N. Rouhana and Sahar S. Huneidi (Cambridge University Press, 2016); Adam Raz, "When Israel Placed Arabs in Ghettos Fenced by Barbed Wire," *Haaretz*, May 27, 2020, <https://www.haaretz.com/israel-news/.premium-when-israel-placed-arabs-in-ghettos-fenced-by-barbed-wire-1.8877340> (accessed June 1, 2020); Adam Raz, "How Israel Tormented Arabs in Its First Decades – and Tried to Cover it Up," *Haaretz*, January 9, 2021, <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-how-israel-tormented-arabs-in-its-first-decades-and-tried-to-cover-it-up-1.9433728> (accessed January 12, 2021).

population to an occupied territory.<sup>7</sup> In the occupied Gaza Strip, Israel withdrew its ground troops in 2005, but continues to exert substantial control through other means.

Israel also unilaterally annexed the Golan Heights in 1981, though it also remains an occupied territory under international law. Israel ended its occupation of the Sinai Peninsula as a result of the 1978 Camp David Accords with Egypt.

In 1993 and 1995, the Israeli government and the Palestine Liberation Organization (PLO) signed the Oslo Accords, which created the Palestinian Authority (PA) to manage some Palestinian affairs in parts of the OPT for a transitional period, not exceeding five years, until the parties forged a permanent status agreement.<sup>8</sup> The Oslo Accords, supplemented by later agreements, divided the West Bank largely into three distinct regions: Area A, where the PA would manage full security and civil affairs, Area B, where the PA would manage civil affairs and Israel would have security control, and Area C, under the exclusive control of Israel. Area A largely incorporates the major Palestinian city centers, Area B the majority of towns and many villages, and Area C the remaining 60 percent of the West Bank.<sup>9</sup> The Oslo Accords, though, did not end the occupation in any part of the OPT.

The parties did not reach a final status agreement by 2000 and have not in the two decades since, despite off and on negotiations primarily mediated by the US. The West Bank remains primarily divided between Areas A, B, and C, with Israel retaining overall principal control and the PA managing some affairs in Areas A and B. In Gaza, Hamas has effectively governed since seizing control in June 2007 following months of clashes between the Palestinian political parties Fatah and Hamas and more than a year of political uncertainty after Hamas won a plurality of seats in PA elections.<sup>10</sup> In January

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<sup>7</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950, art. 49.6; Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> arts. 8(2)(b)(viii) and 8(2)(a)(vii).

<sup>8</sup> The Israeli-Palestinian Interim Agreement (Oslo II), September 28, 1995, <http://www.acpr.org.il/publications/books/44-Zero-isr-pal-interim-agreement.pdf> (accessed January 30, 2020), preamble; The Israeli-Palestinian Interim Agreement (Oslo I), September 13, 1993, <http://www.acpr.org.il/publications/books/43-Zero-oslo-agreement.pdf> (accessed January 30, 2020).

<sup>9</sup> Oslo II. A separate arrangement governs dynamics within the West Bank city of Hebron.

<sup>10</sup> For more information, refer to Human Rights Watch, *Internal Fight: Palestinian Abuses in Gaza and the West Bank* (New York: Human Rights Watch, 2008), <https://www.hrw.org/report/2008/07/29/internal-fight/palestinian-abuses-gaza-and-west-bank>.

2020, the Trump Administration presented its “Peace to Prosperity” plan, which envisions permanent Israeli domination over the entire territory and formal annexation of settlements, the Jordan Valley, and other parts of Area C.<sup>11</sup> It also calls for a Palestinian state, but sets conditions that make its realization nearly impossible.

The decades-long “peace process” has neither significantly improved the human rights situation on the ground nor altered the reality of overall Israeli control across Israel and the OPT. Instead, the peace process is regularly cited to oppose efforts for rights-based international action or accountability,<sup>12</sup> and as cover for Israel’s entrenched discriminatory rule over Palestinians in the OPT.<sup>13</sup>

In recent years, Israeli officials have vowed to unilaterally annex additional parts of the West Bank,<sup>14</sup> and the coalition agreement that led to the formation of an Israeli government in May 2020 established a process to bring annexation for governmental approval.<sup>15</sup> In August, Prime Minister Netanyahu said that Israel would delay the move following an agreement with the United Arab Emirates, but noted that “there is no change to my plan to extend sovereignty” over the West Bank.<sup>16</sup> Annexation would not change the reality of Israeli occupation or the protections due to Palestinians as an occupied population under international humanitarian law.

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<sup>11</sup> United States Government, White House, “Peace to Prosperity,” January 2020, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf> (accessed March 17, 2021); Nathan Thrall, “Trump’s Middle East Peace Plan Exposes the Ugly Truth,” *New York Times*, January 29, 2020, <https://www.nytimes.com/2020/01/29/opinion/trump-peace-plan.html> (accessed May 7, 2020).

<sup>12</sup> See, for example, Lisa Lambert, “U.S. Rejects U.N. Database of Companies in Israeli-controlled Territories: Pompeo,” *Reuters*, February 13, 2020, <https://reut.rs/2WCdUvw> (accessed May 7, 2020).

<sup>13</sup> See Sari Bashi (Human Rights Watch), “Don’t Count States, Respect Rights in Israel/Palestine,” commentary, *World Policy Institute*, March 1, 2017, <https://www.hrw.org/news/2017/03/01/dont-count-states-respect-rights-israel/palestine>.

<sup>14</sup> Noa Landau, Jack Khoury, and Chaim Levinson, “Gantz Vows to Annex Jordan Valley; Netanyahu Wants Sovereignty ‘Without Exception,’” *Haaretz*, January 21, 2020, <https://www.haaretz.com/israel-news/elections/.premium-gantz-calls-for-jordan-valley-annexation-hopes-trump-releases-peace-plan-soon-1.8432081> (accessed June 1, 2020).

<sup>15</sup> Oliver Holmes, “Netanyahu Takes Office in Deal that Could See West Bank Annexation,” *The Guardian*, May 17, 2020, <https://www.theguardian.com/world/2020/may/17/netanyahu-takes-office-in-deal-that-could-see-west-bank-annexation> (accessed August 15, 2020).

<sup>16</sup> “Netanyahu Says West Bank Annexation Plans Still ‘On the Table,’” *Al Jazeera English*, August 13, 2020, <https://www.aljazeera.com/news/2020/08/netanyahu-west-bank-annexation-plans-table-200813183431066.html> (accessed September 17, 2020); Benjamin Netanyahu (@netanyahu), August 13, 2020, Twitter, <https://twitter.com/netanyahu/status/1293967614113447936?lang=he> (accessed December 24, 2020).

Although the mechanics and intensity of the abuses differ between the OPT and Israel, the same power, the government of the state of Israel, has primary control across both. That authority governs all Jewish Israelis in Israel and the OPT under a single body of laws (Israeli civil law) and, to ensure their domination, structurally discriminates against Palestinians and represses them to varying degrees across different areas on issues such as security of legal status and access to land and resources, as the report documents. Across Israel and the OPT, Israel grants Jewish Israelis privileges denied to Palestinians and deprives Palestinians of fundamental rights on account of their being Palestinian.

While the role of different Israeli state entities varies in different parts of the OPT—with the army, for example, primarily administering the West Bank and exerting control from outside the territory in Gaza, whereas the same civil authorities that govern in Israel also rule over East Jerusalem—they all operate under the direction of the Israeli government headed by the prime minister. Every Israeli government since 1967 has pursued or maintained abusive policies in the OPT. In the West Bank, at least ten government ministries directly fund projects to serve settlements, and a Settlement Affairs Ministry was formed in May 2020.<sup>17</sup> The Knesset has also passed laws and formed committees that apply exclusively there.<sup>18</sup> The Israeli Supreme Court serves as the court of last resort for Israeli actions in both Israel and the OPT and has ruled on major cases that have determined policies in both territories.<sup>19</sup> Quasi-state bodies, such as the World Zionist

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<sup>17</sup> “Surplus Spending on Settlements Tops NIS 1 Billion,” Peace Now press release, December 3, 2019, <https://peacenow.org.il/en/surplus-spending-on-settlements-tops-nis-1-billion> (accessed June 13, 2020); Chaim Levinson and Jonathan Lis, “After Year of Deadlock and Days of Delays, Knesset Swears in New Israeli Government,” *Haaretz*, May 17, 2020, <https://www.haaretz.com/israel-news/elections/.premium-israel-s-biggest-government-set-to-be-sworn-in-this-is-what-it-would-look-like-1.8845810> (accessed June 13, 2020).

<sup>18</sup> See, for example, Law for the Regulation of Settlement in Judea and Samaria; The Israeli Supreme Court struck down the law in June 2020, but not based on fact that it legislates activities in the West Bank. Also see Hagar Shezaf, “Israel’s High Court Strikes Down West Bank Land-grab Law as ‘Unconstitutional,’” *Haaretz*, June 9, 2020, <https://www.haaretz.com/israel-news/.premium-israel-s-high-court-strikes-down-west-bank-land-grab-law-as-unconstitutional-1.8908929> (accessed June 10, 2020). Also see, Knesset, “Foreign Affairs and Defense Committee,” [https://www.knesset.gov.il/committees/eng/committee\\_eng.asp?c\\_id=4](https://www.knesset.gov.il/committees/eng/committee_eng.asp?c_id=4) (accessed June 13, 2020). The Foreign Affairs and Defense Committee includes a “Subcommittee for Civil and Security Issues in Judea and Samaria,” a reference to the West Bank.

<sup>19</sup> For cases relating to issues in the West Bank and Gaza, see, for example, *Yesh Din et al. v. IDF Chief of Staff*, High Court of Justice (HCJ) 3003/18, 3250/18 (2018), available at <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts%5C18%5C030%5C030%5Cko8&fileName=18030030.Ko8&type=4> (accessed June 10, 2020); B’Tselem, HCJ Ruling on Khan al-Ahmar (unofficial translation), 3287/16 (2018), [https://www.btselem.org/sites/default/files/2018-06/20180524\\_hcj\\_ruling\\_3287\\_16\\_khan\\_al\\_ahmar\\_eng.pdf](https://www.btselem.org/sites/default/files/2018-06/20180524_hcj_ruling_3287_16_khan_al_ahmar_eng.pdf) (accessed June 10, 2020).

Organization (WZO) and the Jewish National Fund (JNF), have also supported activities in both the OPT and Israel. <sup>20</sup>

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<sup>20</sup> Peace Now, "KKL-JNF and Its Role in Settlement Expansion," April 2020, <https://peacenow.org.il/en/settler-national-fund-keren-kayemeth-leisraels-acquisition-of-west-bank-land> (accessed June 10, 2020); Peace Now, "Unraveling the Mechanism Behind Illegal Outposts," report excerpt, January 2017, [http://peacenow.org.il/wp-content/uploads/2018/06/The\\_Combina\\_Settlement\\_Division\\_chapter\\_ENG.pdf](http://peacenow.org.il/wp-content/uploads/2018/06/The_Combina_Settlement_Division_chapter_ENG.pdf) (accessed June 10, 2020). See Intent to Maintain Domination section.

## II. The Crimes Against Humanity of Apartheid and Persecution

The prohibition of crimes against humanity is among the most fundamental in international criminal law. The concept, which dates back more than one hundred years and became clearly part of international criminal law in the 1945 Charter of the International Military Tribunal that created the court that prosecuted members of the leadership of Nazi Germany in Nuremberg, refers to a small number of the most serious crimes under international law.<sup>21</sup>

The 1998 Rome Statute of the International Criminal Court, which came into force in 2002, sets out 11 crimes that can amount to a crime against humanity when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>22</sup> The statute defines “attack” as a “course of action involving the multiple commission of acts... pursuant to or in furtherance of a State or organizational policy.” “Widespread” refers to the scale of the acts or number of victims,<sup>23</sup> whereas “systematic” indicates a “pattern or methodological plan.”<sup>24</sup> Crimes against humanity can be committed during peace or armed conflict.

The Explanatory Memorandum of the Rome Statute explains that crimes against humanity “are particularly odious offenses in that they constitute a serious attack on human dignity

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<sup>21</sup> Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law* (2nd edition, Oxford University Press; 2008), pp. 101, 104.

<sup>22</sup> Rome Statute, art. 7(1).

<sup>23</sup> The International Criminal Tribunal for Rwanda (ICTR) defined “widespread” as “massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims,” see *Prosecutor v. Akayesu*, ICTR, Case No. ICTR-96-4-T, Judgement (Trial Chamber I), September 2, 1998, <https://unictr.irmct.org/sites/unictr.org/files/case-documents/ict96-4/trial-judgements/en/980902.pdf>, para. 579; Also see *Prosecutor v. Kordic and Cerkez*, International Criminal Tribunal for the former Yugoslavia (ICTY), Case No. IT-92-14/2, Judgement (Trial Chamber III), February 26, 2001, para. 179; *Prosecutor v. Kayishema and Ruzindana*, ICTR, Case No. ICTR-95-1-T, Judgement (Trial Chamber II), May 21, 1999, para. 123.

<sup>24</sup> *Prosecutor v. Dusko Tadic*, ICTY, Case No. IT-94-1-T, Opinion and Judgement (Trial Chamber), May 7, 1997, para. 648. In *Prosecutor v. Kunarac, Kovac and Vukovic*, the Appeals Chamber stated that “patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of [a] systematic occurrence.” *Prosecutor v. Kunarac, Kovac and Vukovic*, ICTY, Case No. IT-96-23 and IT-96-23-1A, Judgement (Appeals Chamber), June 12, 2002, para. 94.

or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority.”<sup>25</sup>

Among the 11 distinct crimes against humanity are the crimes of apartheid and persecution. There is no hierarchy among crimes against humanity; they are of the same gravity and lead to the same consequences under the Rome Statute.

The State of Palestine acceded to the Rome Statute in 2015.<sup>26</sup> It filed a declaration that gives the International Criminal Court jurisdiction over crimes in the Rome Statute, including the crimes against humanity of apartheid and persecution that are alleged to have been committed in the OPT since June 13, 2014.<sup>27</sup>

## Apartheid

### *General Prohibition*

Apartheid, a term originally coined in relation to specific practices in South Africa, has developed over the past half-century into a universal legal term incorporated in international treaties, numerous UN resolutions, and the domestic law of many countries

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<sup>25</sup> Guy Horton, “Dying Alive: A Legal Assessment of Human Rights Violations in Burma,” April 2005, available at <https://www.scribd.com/document/153881707/Dying-Alive-Human-Rights-Report-by-Guy-Horton-2005> (accessed March 17, 2021), p. 201.

<sup>26</sup> “ICC Welcomes Palestine as a New State Party,” ICC press release, April 1, 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1103&ln=en> (accessed July 15, 2020).

<sup>27</sup> “Palestine Declares Acceptance of ICC jurisdiction Since 13 June 2014,” ICC press release, January 5, 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1080&ln=en> (accessed July 15, 2020).

to refer to a particularly severe system of institutional discrimination and systematic oppression.<sup>28</sup> Apartheid is prohibited as a matter of customary international law.<sup>29</sup>

According to the International Law Commission (ILC), the prohibition against apartheid represents a peremptory norm of international law.<sup>30</sup> The ILC describes apartheid as “a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being,” noting its prohibition in a range of legal instruments within states and “general agreement among Governments as to the peremptory character” of the prohibition.<sup>31</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which has 182 states parties,<sup>32</sup> including Israel and Palestine, declares 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>33</sup>

### *International Criminal Law*

Beyond its mere prohibition, apartheid has also been recognized as a crime against humanity for more than 50 years. The 1968 Convention on the Non-Applicability of

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<sup>28</sup> See, for example, International Committee of the Red Cross (ICRC), Customary IHL Database, “Practice Relating to Rule 88. Non-Discrimination,” Section E. Apartheid, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule88\\_sectione](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule88_sectione) (accessed May 12, 2020); John Dugard and John Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” *European Journal of International Law*, Vol. 24, Issue 3 (2013), <https://academic.oup.com/ejil/article/24/3/867/481600> (accessed May 12, 2020), pp. 878-880; United Nations General Assembly (UNGA), 21st session, The Policies of Apartheid of the Government of the Republic of South Africa, A/RES/2202 (XXI), December 16, 1966, [https://undocs.org/en/A/RES/2202\(XXI\)](https://undocs.org/en/A/RES/2202(XXI)) (accessed May 12, 2020); United Nations Security Council (UNSC), Resolution 556, October 23, 1984, [https://undocs.org/S/RES/556\(1984\)](https://undocs.org/S/RES/556(1984)) (accessed May 12, 2020).

<sup>29</sup> See Paul Eden, “The Practices of Apartheid as a War Crime: A Critical Analysis,” *Yearbook of International Humanitarian Law*, January 2015, pp. 17-18.

<sup>30</sup> UN, International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts,” adopted November 2001, Supplement No. 10, U.N. Doc A/56/10, [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) (accessed May 12, 2020), p. 112.

<sup>31</sup> *Ibid.*

<sup>32</sup> UN Treaty Collection, Status of Treaties, ICERD, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en) (accessed March 29, 2021).

<sup>33</sup> ICERD, adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, <https://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf> (accessed May 12, 2020), art. 3.

Statutory Limitations to War Crimes declared that crimes against humanity included “inhuman acts resulting from the policy of apartheid.”<sup>34</sup>

In 1973, the UN General Assembly adopted a specific convention on apartheid, the Convention on the Suppression and Punishment of the Crime of Apartheid (“Apartheid Convention”), declaring it to constitute a crime against humanity.<sup>35</sup> The Apartheid Convention, which came into force in 1976 and has 109 states parties, including the state of Palestine but not Israel, states:

The term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practiced 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...**<sup>36</sup>

The Apartheid Convention then identifies a number of “inhuman acts” that, when committed for the purpose of domination and systematic oppression, make up the crime of apartheid, including:

- (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**

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<sup>34</sup> Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted November 26, 1968, U.N. Doc. A/RES/2391(XXIII), entered into force November 11, 1970, <https://bit.ly/3dF2yoU> (accessed May 12, 2020). The State of Palestine acceded to this treaty in 2015.

<sup>35</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention), G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976, <https://bit.ly/2SYp5oE> (accessed May 12, 2020). The State of Palestine acceded to this convention in 2014. Emphasis added.

<sup>36</sup> Apartheid Convention, art. II, Emphasis added. ‘Southern Africa’ refers not only to South Africa, but also Rhodesia (now Zimbabwe), Namibia (then controlled by South Africa) and the Portuguese colonies of Mozambique and Angola.

rights and freedoms, including the right to work, the right to form recognised 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.** <sup>37</sup>

The 1977 Additional Protocol I to the Geneva Conventions, with 174 states parties, identifies “practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination” as a grave breach of the treaty. <sup>38</sup>

The Rome Statute of 1998, which has 123 states parties, identifies apartheid as a crime against humanity, defining it as:

**Inhumane acts** of a character similar to those referred to in paragraph 1, 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>39</sup>

In setting out what constitutes inhumane acts, the statute lists a series of crimes against humanity, including “deportation or forcible transfer,” “persecution,” and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury

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<sup>37</sup> Ibid.

<sup>38</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 85(4)(c), <https://bit.ly/3dBq7aL> (accessed May 12, 2020). The State of Palestine acceded to the Additional Protocol I in 2014.

<sup>39</sup> Rome Statute, art. (7)(2)(h), Emphasis added.

to body or to mental or physical health.”<sup>40</sup> To amount to apartheid, these acts must take place in the context of an institutionalized regime of systematic domination and oppression and committed with the intention of maintaining that regime.<sup>41</sup>

The International Law Commission also included the crime of apartheid in its draft proposed treaty on Crimes Against Humanity, incorporating the Rome Statute definition of the crime.<sup>42</sup>

**THE CRIME OF APARTHEID**

The 1998 Rome Statute to the International Criminal Court and 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid define apartheid as a **crime against humanity** consisting of three main elements:

- 1 AN INTENT TO MAINTAIN DOMINATION BY ONE RACIAL GROUP OVER ANOTHER**
- 2 A CONTEXT OF SYSTEMATIC OPPRESSION BY ONE RACIAL GROUP OVER ANOTHER**
- 3 INHUMANE ACTS**

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<sup>40</sup> Rome Statute, art. (7)(1)(d)(h)(k). Persecution defined below.

<sup>41</sup> For list of elements that the ICC has identified as making up the crime of apartheid, see ICC, “Elements of Crimes,” 2011, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/o/ElementsOfCrimesEng.pdf>

<sup>42</sup> UN International Law Commission, “Draft Articles on Prevention and Punishment of Crimes Against Humanity,” 2019, [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/7\\_7\\_2019.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf) (accessed July 21, 2020).

## *Definition of Key Terms*

No court has to date heard a case involving the crime of apartheid and therefore interpreted the meaning of the following terms as set out in the Apartheid Convention and Rome Statute definitions of the crime of apartheid:

Racial Group: Both the Apartheid Convention and Rome Statute use the term “racial group,” but neither defines it.<sup>43</sup> The development of the Apartheid Convention against the backdrop of events in southern Africa in the 1970s, as referenced in the text of the Convention, as well as the non-inclusion of other categories beyond race, and the rejection of proposals by some states to expand the treaty’s scope, could lead to a narrower interpretation focused on divisions based on skin color.<sup>44</sup> While discussion of the meaning of “racial group” during the drafting of the Rome Statute appears to have been minimal,<sup>45</sup> its inclusion in the definition of apartheid, after the end of apartheid in South Africa and when international human rights law had clearly defined racial discrimination to include differences of ethnicity, descent, and national origin, indicates that “racial group” within the Rome Statute reflects, and would likely be interpreted by courts to reflect, a broader conception of race.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was adopted in 1965 and came into legal force in 1969, defines “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>46</sup> The Committee on the Elimination of All Forms of Racial Discrimination (CERD), the UN body charged with monitoring the implementation of the ICERD, has

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<sup>43</sup> Christoph Barthe, Otto Triffterer and Kai Ambos, eds., “The Rome Statute of the International Criminal Court: A Commentary,” *Journal of International Criminal Justice*, Volume 16, Issue 3, July 2018, 663–668, <https://academic.oup.com/jicj/article-abstract/16/3/663/5113153?redirectedFrom=fulltext> (accessed July 15, 2020), pp. 284-285.

<sup>44</sup> UNGA, “Elimination of All Forms of Racial Discrimination: Draft Convention on the Suppression and Punishment of the Crime of Apartheid,” Note of the Secretary-General, U.N. Doc. A\_8768 (1972), <https://digitallibrary.un.org/record/756549?ln=en> (accessed May 12, 2020).

<sup>45</sup> Barthe, Triffterer and Ambos, “The Rome Statute of the International Criminal Court: A Commentary,” pp. 284-285.

<sup>46</sup> CERD, art. 1(1).

consistently found that members of racial and ethnic groups, as well as groups defined based on descent or their national origin, face racial discrimination.<sup>47</sup> Rather than treat race as constituting only genetic traits, Human Rights Watch uses this broader definition.

No international criminal case has ruled on the definition of “racial group” in the context of the crime against humanity of apartheid. But international criminal courts, in the context of more recent genocide cases, have addressed the meaning of “national, ethnical, racial or religious group” in the definition of that crime in part by evaluating group identity based on context and the construction of local actors, in particular the perpetrators, as opposed to earlier approaches that focused on hereditary physical traits. The International Criminal Tribunal for Rwanda (ICTR) held that the assessment of whether a particular group may be considered as protected from the crime of genocide “will proceed on a case-by-case basis, taking into account both the evidence proffered and the political, social and cultural context.”<sup>48</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) also found that determinations should be “made on a case-by-case basis, consulting both objective and subjective criteria.” The court, in particular, held that national, ethnic, racial or religious groups should be identified “by using as a criterion the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics.”<sup>49</sup> The ICTY held in a 1999 case that “to attempt to define a national, ethnical or racial group today using objective and scientifically irreproachable criteria would be a perilous exercise.”<sup>50</sup>

An understanding of “racial group” in line with ICERD’s conception of “racial discrimination” and international criminal courts’ “subjective approach” to determining

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<sup>47</sup> See, for example, Ion Diaconu, “Definition-Summary: Racial discrimination- approaches and trends,” <https://www.ohchr.org/Documents/Issues/Racism/IWG/Session8/IonDiaconu.doc> (accessed March 19, 2021). In a definition of “racial discrimination” broadly reflective of CERD’s approach, a CERD member notes that ICERD “is, essentially, about groups of people discriminated against on the ground of a social stratification, of an inherited status.”

<sup>48</sup> *Prosecutor v. Akayesu*, para. 514.

<sup>49</sup> *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T, Judgment (Trial Chamber I), January 17, 2005, para. 667, [https://www.icty.org/x/cases/blagojevic\\_jokic/tjug/en/bla-050117e.pdf](https://www.icty.org/x/cases/blagojevic_jokic/tjug/en/bla-050117e.pdf) (accessed May 12, 2020).

<sup>50</sup> *Prosecutor v. Jelusic*, Case No. IT-95-10, Trial Judgment, December 14, 1999, para. 70, <https://www.icty.org/x/cases/jelusic/tjug/en/jel-tj991214e.pdf> (accessed March 27, 2021).

racial and other groups mirrors the evolution in how the social sciences understand race and gives coherence to the meaning of race across international law. <sup>51</sup>

Israeli law has also interpreted race broadly, not limiting it to skin color. The Israeli Penal Code defines racism, in the context of the crime of “incitement to racism,” as “persecution, humiliation, degradation, a display of enmity, hostility or violence, or causing violence against a public or parts of the population, all because of their color, racial affiliation or national ethnic origin.” <sup>52</sup> Under Article 7A of Israel’s Basic Law: The Knesset—1958, which bars candidates from running for office if they engage in “incitement,” <sup>53</sup> Israel’s Supreme Court has barred candidates, such as from the Jewish Power (Otzma Yehudit) party, from running for office based on vitriolic comments made about Palestinians. <sup>54</sup>

While it is beyond the scope of this report to analyze the group identities of Jewish Israelis or Palestinians, it is clear that in the local context, Jewish Israelis and Palestinians are regarded as separate identity groups that fall within the broad understanding of “racial group” under international human rights law. The 1950 Law of Return, which guarantees Jews the right to immigrate to Israel and gain citizenship, defines “Jew” to include “a person who was born of a Jewish mother,” embracing a descent-based, as opposed to a purely religious, classification. <sup>55</sup> Many in Israel characterize the virulently anti-Palestinian

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<sup>51</sup> See, for example, Michael Banton, *The Idea of Race*, 2019 (first published 1977), <https://www.taylorfrancis.com/books/mono/10.4324/9780429311703/idea-race-michael-banton> (accessed March 27, 2021).

<sup>52</sup> Organisation for Economic Co-operation and Development (OECD), “All Amendments to A90,” Penal Law 5737-1977, Sixth Edition, <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf> (accessed March 20, 2021).

<sup>53</sup> Knesset, Basic Law: The Knesset – 1958, [https://www.knesset.gov.il/laws/special/eng/basic2\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic2_eng.htm) (accessed June 1, 2020).

<sup>54</sup> Jacob Magid, “Supreme Court Bans Extreme-right Gopstein and Marzel from Elections,” *Times of Israel*, August 26, 2019, <https://www.timesofisrael.com/supreme-court-bans-extreme-right-gopstein-and-marzel-from-election-race/> (accessed March 20, 2021); “Israeli Court Bars ‘racist’ Candidates from September Poll,” *France 24*, August 26, 2019, <https://www.france24.com/en/20190826-israeli-court-bars-racist-candidates-from-september-poll> (accessed March 20, 2021).

<sup>55</sup> Israel Ministry of Foreign Affairs (MFA), Law of Return 5710-1950, July 5, 1950, <https://mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx> (accessed June 1, 2020).

positions of the Jewish Power party, and before that the Kach Party, as “racist.”<sup>56</sup> Prominent Israelis also labeled as “racist” or “race-baiting” a warning that Netanyahu issued to his supporters on election day 2015 that “Arab voters are coming out in droves to the polls.”<sup>57</sup>

Meanwhile, on account of their identity, Palestinians face discrimination and repression, as this report makes clear. Palestinians have deep cultural, political, economic, social, and family ties across Israel, the West Bank, including East Jerusalem, and the Gaza Strip. For much of the modern era, Palestinians moved freely across these areas, which constituted mandatory Palestine, under British administration, in the post-World War I era. The Palestine Liberation Organization Charter defines Palestinians as “those Arab nationals who, until 1947, normally resided in Palestine,” emphasizing that the identity is “transmitted from parents to children.”<sup>58</sup> Even within Israel where both Jews and Palestinians are citizens, authorities classify Jews and Palestinians as belonging to different “nationalities.”<sup>59</sup>

CERD found in its latest review of Israel’s record under ICERD in December 2019 that Palestinians in Israel and the OPT constitute a minority group deserving of protection

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<sup>56</sup> Dror Liba, “Otzma Yehudit’s history of racism and provocation,” *Ynet News*, February 21, 2019, <https://www.ynetnews.com/articles/0,7340,L-5467651,00.html> (accessed March 20, 2021); “AIPAC to Boycott ‘Racist and Reprehensible’ Kahanist Party Wooed by Netanyahu,” *Times of Israel*, February 22, 2019, <https://www.timesofisrael.com/major-us-jewish-groups-slam-racist-and-reprehensible-extremist-israeli-party/> (accessed March 20, 2021).

<sup>57</sup> “P.M. Netanyahu Facebook video ‘Right Wing Gov’t in Danger Arabs Voting in Droves,’” March 17, 2015, *Haaretz* video clip, YouTube, [https://www.youtube.com/watch?v=ERC6hi\\_F9LA](https://www.youtube.com/watch?v=ERC6hi_F9LA) (accessed March 20, 2021); Chemi Shalev, “With Race-baiting Rabble-rousers Like Netanyahu, Who Needs BDS?” *Haaretz*, November 18, 2019, <https://www.haaretz.com/israel-news/.premium-netanyahu-israel-bds-1.8135895> (accessed March 20, 2021); Oliver Holmes and Sufian Taha, “‘He’s Using His Last Bullet’: Israeli Arabs Condemn Netanyahu Comments,” *The Guardian*, March 11, 2019, <https://www.theguardian.com/world/2019/mar/11/hes-using-his-last-bullet-israeli-arabs-condemn-netanyahu-comments> (accessed March 20, 2021); Noa Landau, “Netanyahu’s Incitement Against Arabs in 2015 Proved a Big Success in Israel’s 2019 Election,” *Haaretz*, April 10, 2019, <https://www.haaretz.com/israel-news/elections/.premium-netanyahu-s-incitement-against-arabs-in-2015-proved-a-big-success-in-israel-s-2019-e-1.7107278> (accessed March 20, 2021).

<sup>58</sup> Economic Cooperation Foundation (ECF), “Amended Palestinian National Charter (1968) – English,” January 17, 1970, [https://content.ecf.org.il/files/M00477\\_PalestinianNationalConvenantEnglish.pdf](https://content.ecf.org.il/files/M00477_PalestinianNationalConvenantEnglish.pdf) (accessed June 13, 2020), arts. 4, 5.

<sup>59</sup> See Systematic Oppression and Institutional Discrimination section.

against “all policies and practices of racial segregation and apartheid” in comparison to Jewish communities.<sup>60</sup>

Institutionalized Regime: This term, incorporated into the Rome Statute but not the Apartheid Convention, appears to have originated in a proposal from the US delegation during the drafting to limit the application of the crime of apartheid to states and exclude non-state groups.<sup>61</sup> Alongside the term “systematic,” which appears in both the Apartheid Convention and Rome Statute, the term “regime” underscores the existence of formal organization and structure, and more than isolated discriminatory policies or acts.<sup>62</sup> The system can cover entire states or more limited geographic areas, depending on the allocation of power, unity of authority, or differing oppressive laws, policies, and institutions, among other factors.

Domination: This term, which lacks a clear definition in law, appears in context to refer to an intent by one group to maintain heightened control over another, which can involve control over key levers of political power, land, and resources. The reference is found in both the Rome Statute and Apartheid Convention.

The focus on domination, as opposed to formal sovereignty, also indicates that the crime of apartheid can be carried out by authorities outside its own territory and with respect to non-citizens.<sup>63</sup> A finding that authorities of one state have committed the crime of apartheid in an external territory would no more undermine the formal sovereignty the

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<sup>60</sup> UN Committee on the Elimination of Racial Discrimination, “Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel,” CERD/C/ISR/CO/17-19, December 12, 2019, [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT\\_CERD\\_COC\\_ISR\\_40809\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_COC_ISR_40809_E.pdf) (accessed June 13, 2020), p. 23.

<sup>61</sup> Timothy L.H. McCormack, “Crimes Against Humanity,” in Dominic McGoldrick, Peter Rowe and Eric Donnelly, eds., *The Permanent International Criminal Court: Legal and Policy Issues* (Oxford: Hart Publishing: 2004) pp. 198-199.

<sup>62</sup> Scholars have debated how broadly to define the term. See, for example, Ariel Bultz, “Redefining Apartheid in International Criminal Law,” *Criminal Law Forum* 24, 205–233 (2013), <https://link.springer.com/article/10.1007/s10609-012-9193-1> (accessed May 14, 2020) arguing for a narrow interpretation, excluding non-state groups; also see Carola Lingaas, “The Crime against Humanity of Apartheid in a Post-Apartheid World,” *Oslo Law Review* (2015), [https://www.idunn.no/oslo\\_law\\_review/2015/02/the\\_crime\\_against\\_humanity\\_of\\_apartheid\\_in\\_a\\_post-apartheid](https://www.idunn.no/oslo_law_review/2015/02/the_crime_against_humanity_of_apartheid_in_a_post-apartheid) (accessed May 14, 2020) arguing for a more broad interpretation.

<sup>63</sup> In a 1971 advisory opinion declaring South Africa’s rule in Namibia illegal, the International Court of Justice noted its “application of the policy of apartheid” there. *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia*, International Court of Justice (ICJ), June 21, 1971, available at: <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf> (accessed May 14, 2020), p. 63.

other state enjoys or detract from the factual reality of occupation than would a finding that other crimes against humanity or war crimes had been carried out there. <sup>64</sup>

Systematic Oppression: This term, also without a clear definition in law, appears to refer to the methods used to carry out an intent to maintain domination. The reference in the Apartheid Convention to “policies and practices of racial discrimination as practiced in southern Africa” indicates that oppression must reach a high degree of intensity to meet the requisite threshold for the crime. <sup>65</sup>

## Persecution

The crime of persecution traces back to the 1945 International Military Tribunal in Nuremberg. The tribunal’s charter recognizes “persecutions on political, racial or religious grounds” as crimes against humanity. <sup>66</sup>

The Rome Statute also identifies persecution as a crime against humanity, defining it as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” <sup>67</sup> The statute broadened the scope of the crime to encompass “any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law.” <sup>68</sup> The statute limits the

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<sup>64</sup> See, for example, Miles Jackson, “Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law,” Diakonia International Humanitarian Law Center, March 23, 2021, <https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/expert-opinions/apartheid-and-occupation---expert-opinion---miles-jackson.pdf> (accessed March 27, 2021).

<sup>65</sup> Apartheid Convention, art. II.

<sup>66</sup> UN, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (“London Agreement”), August 8, 1945, 82 U.N.T.C. 280, available at: [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2\\_Charter%20of%20IMT%201945.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf) (accessed May 14, 2020), art. 6(c).

<sup>67</sup> Rome Statute art. 7(2)(g).

<sup>68</sup> Rome Statute art. 7(1)(h).

crime to applying only “in connection with” other crimes identified under it. <sup>69</sup> The customary international law definition of persecution, though, includes no such limitation. <sup>70</sup>

International criminal lawyer Antonio Cassese, who served as a judge in the leading ICTY case that examined persecution within international criminal law (*Prosecutor v. Kupreskic*), identified the crime against humanity of persecution as a crime under customary international law. <sup>71</sup> He defined persecution under customary international law as referring to acts that a) result in egregious or grave violations of fundamental human rights, b) are part of a widespread or systematic practice, and c) are committed with discriminatory intent. <sup>72</sup>

Neither the Rome Statute nor customary international law clearly set the threshold of what constitutes a violation that is sufficiently “severe” or “egregious.” Human Rights Watch recognizes that many human rights violations cause serious harm. However, for the determination of whether the crime against humanity of persecution has been committed, Human Rights Watch requires the most serious forms of violations before the requirements of “severe” or “egregious” can be met.

## Legal Consequences of Finding Crimes Against Humanity

The commission of crimes against humanity can serve as the basis for individual criminal liability not only in the domestic courts of the perpetrator country but also in international courts and tribunals, as well as in domestic courts outside the country in question under the principle of universal jurisdiction. Individual criminal liability extends beyond those who carry out the acts to those who order, assist, facilitate, aid, and abet the offense. Under the principle of command responsibility, military, and civilian officials up to the top of the chain of command can be held criminally responsible for crimes committed by their subordinates when they knew or should have known that such crimes were being committed but failed to take reasonable measures to prevent the crimes or punish those responsible.

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<sup>69</sup> Ibid.

<sup>70</sup> *Prosecutor v. Kupreskic et al.* Case No. IT-95-16-T, International Criminal Tribunal for the former Yugoslavia (ICTY), January 14, 2000, available at: <https://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf> (accessed May 14, 2020), paras 580-581.

<sup>71</sup> Cassese and Gaeta, *Cassese's International Criminal Law* (2008), p. 125.

<sup>72</sup> Ibid.

In December 2019, ICC Prosecutor Fatou Bensouda concluded a nearly five-year preliminary inquiry into the Palestine situation and determined that “all the statutory criteria” to proceed with a formal investigation of alleged serious crimes by Israelis and Palestinians had been met. The prosecutor found a “reasonable basis” to believe that war crimes had been committed by Israeli and Palestinian authorities but did not reference any crimes against humanity.<sup>73</sup> Although the prosecutor did not require formal judicial authorization to move forward with a formal investigation, she nonetheless sought a ruling from the court’s judges on the ICC’s territorial jurisdiction before proceeding.<sup>74</sup>

In February 2021, the court ruled that it had jurisdiction over crimes committed in the OPT, including East Jerusalem, confirming Palestine’s status as a state party to the Rome Statute able to confer that jurisdiction.<sup>75</sup> This jurisdiction would include the ability to prosecute the crimes against humanity of apartheid and persecution. In March 2021, the Office of the Prosecutor announced the opening of a formal investigation into the situation in Palestine.<sup>76</sup>

Israel signed the Rome Statute in 2000, but did not ratify it and said in August 2002 that it did not intend to do so.<sup>77</sup> However, the ICC has jurisdiction to investigate and prosecute any person, including those of Israeli nationality, where there is evidence that they are criminally responsible for the commission of the crimes against humanity of persecution or apartheid within any state that has ratified the Rome Statute, where the relevant criteria

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<sup>73</sup> ICC, Pre-Trial Chamber I, “Situation in the State of Palestine,” January 22, 2020, No. ICC-01/18, [https://www.icc-cpi.int/CourtRecords/CR2020\\_00161.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_00161.PDF) (accessed August 16, 2020), paras. 94-96.

<sup>74</sup> “Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction,” ICC press release, December 20, 2019, <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine> (accessed May 14, 2020).

<sup>75</sup> ICC, Pre-Trial Chamber I, “Situation in the State of Palestine,” February 5, 2021, No. ICC-01/18, [https://www.icc-cpi.int/CourtRecords/CR2021\\_01165.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_01165.PDF) (accessed February 5, 2021); “Israel/Palestine: ICC Judges Open Door for Formal Probe,” Human Rights Watch news release, February 6, 2021, <https://www.hrw.org/news/2021/02/06/israel/palestine-icc-judges-open-door-formal-probe>.

<sup>76</sup> “Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine,” ICC press release, March 3, 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine> (accessed March 26, 2021).

<sup>77</sup> UN Treaty Collection, Status of Treaties, Rome Statute, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en) (accessed July 21, 2020); Israel MFA, “Israel and the International Criminal Court,” MFA archive, June 30, 2002, <https://mfa.gov.il/MFA/MFA-Archive/2002/Pages/Israel%20and%20the%20International%20Criminal%20Court.aspx> (accessed July 21, 2020).

are met. That includes Palestine, allowing for the prosecution of crimes that Israeli nationals commit in the OPT.

The Apartheid Convention also calls on states parties to prosecute those who commit the crime and over whom they have jurisdiction, as well as to take other measures aimed at “prevention, suppression and punishment” of the crime of apartheid.<sup>78</sup>

Israeli law criminalizes crimes against humanity, including persecution but not apartheid, only in the context of crimes committed in Nazi Germany.<sup>79</sup> Palestinian law does not criminalize crimes against humanity.

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<sup>78</sup> Apartheid Convention arts. IV-X.

<sup>79</sup> Israel MFA, Nazis and Nazi Collaborators (Punishment Law) 5710-1950, August 1, 1950, available at: <https://bit.ly/2Lys2kd> (accessed May 14, 2020); Michael Sfard, Yesh Din legal advisor, email to Human Rights Watch, April 27, 2020. Israeli prosecutors charged and courts convicted Nazi officials Adolf Eichmann and John Demjanjuk of persecution, among other crimes. “The Trial of Adolf Eichmann – Proceedings: The 15 Charges,” Remember.org, n.d., <https://remember.org/eichmann/charges> (accessed August 16, 2020); Israel MFA, “The Demjanjuk Appeal,” July 29, 1993, <https://mfa.gov.il/mfa/aboutisrael/state/law/pages/the%20demjanjuk%20appeal%20-%202029-jul-93.aspx> (accessed August 16, 2020).

### **III. Intent to Maintain Domination**

Israeli government policy has long sought to engineer and maintain a Jewish majority in Israel and maximize Jewish Israeli control over land in Israel and the OPT. Laws, planning documents, and statements by officials demonstrate that the pursuit of domination by Jewish Israelis over Palestinians, in particular over demographics and land, guides government policy, and actions to this day.

This chapter will show that this objective amounts to an intent to maintain domination by one group over another. When inhumane acts are carried out in the context of systematic oppression pursuant to that intent to maintain domination, the crime against humanity of apartheid is committed.

Discriminatory intent, when it gives rise to severe abuses of fundamental rights, also makes up the crime against humanity of persecution.

To analyze the motivations behind Israeli policies towards Palestinians today, which developed over many years with much of the architecture established in the early years of the state and the occupation, this chapter considers materials that in some cases date back decades. This does not implicate every official cited in seeking to dominate Palestinians. In fact, some Israeli officials and parties advocated positions that, if implemented, could have avoided such policies.

Israeli authorities justify some of these policies in the name of security, but, as this chapter shows, they often use security as a justification to advance demographic objectives. In other cases, officials advocate for policies to safeguard Israel's identity as a Jewish state. Israel can, like any other state, seek to promote a particular identity, but that does not include a license to violate fundamental rights. Not all policies designed to promote Judaization constitute rights abuses. Particular policies can, though, provide evidence of a discriminatory intent or purpose to maintain domination by Jewish Israelis.

Even policies designed to fulfill legitimate security objectives must comply with international law. As this chapter will show, Israeli authorities have pursued many policies

in ways that manifest a discriminatory intent to systematically dominate Palestinians. The legitimate objective of ensuring security does not negate an illegitimate intent to dominate or discriminate that is inherent in these policies.

## Demographics

Demographic considerations, in particular the quest for a strong Jewish majority, have long underlined Israeli government policy. The key declarative line of Israel’s Proclamation of Independence proclaims the “establishment of a Jewish state in Eretz-Israel.”<sup>80</sup> The proclamation largely narrates the history of the Jewish people and twice in the short document underscores the centrality of Jewish immigration. While the proclamation does commit itself to “complete equality of social and political rights to all its inhabitants,” it presents the newly established state as belonging to the Jewish people, describing Israel as “their state.”

Israel’s Basic Laws, which have constitutional status in the absence of a full constitution, re-enforce that the state is Jewish, rather than belonging to all its citizens. The Basic Law: The Knesset—1958, for example, declares that no candidate can run for the Knesset if they expressly or implicitly endorse “negation of the existence of the State of Israel as a Jewish and democratic state.”<sup>81</sup> The Basic Law: Human Dignity and Liberty sets out its purpose as to “establish... the values of the state of Israel as a Jewish and democratic state.”

The Basic Law: Israel—The Nation-State of the Jewish People (“Nation-State Law”) passed in 2018, in effect affirms the supremacy of the “Jewish” over the “democratic” character of the state. The Nation-State Law sets out amid its “basic principles” that Israel is “the nation state of the Jewish people” and that the “exercise of the right to national self-determination in the state of Israel is unique to the Jewish people.” Article 7 further states that “the State views the development of Jewish settlement as a national value and shall act to encourage and promote its establishment and strengthening.”<sup>82</sup> Unlike Israel’s Proclamation of Independence, the Nation-State Law contains no language about equality.

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<sup>80</sup> Knesset, “Proclamation of Independence,” [https://www.knesset.gov.il/docs/eng/megilat\\_eng.htm](https://www.knesset.gov.il/docs/eng/megilat_eng.htm) (accessed June 1, 2020).

<sup>81</sup> Knesset, Basic Law: The Knesset – 1958.

<sup>82</sup> Knesset, Basic Law: Israel - The Nation State of The Jewish People, unofficial translation, <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf> (accessed June 1, 2020).

A Knesset legal advisor said he sought to include “mention of the issue of equality and the issue of the state belonging to all citizens, [but] the committee chose not to make this into a law.”<sup>83</sup> In June 2018, several Knesset members sought to introduce a bill to define Israel as a state of all its citizens, but the Knesset presidium disqualified it before it could be discussed since it “seeks to deny Israel’s existence as the state of the Jewish people,” the Knesset legal advisor said.<sup>84</sup>

Israel’s occupation of the OPT in 1967 amplified Israeli concerns about demographics. Within Israel’s pre-1967 borders, Jews currently represent about 81 percent of the population, as compared to about 19 percent of Palestinians.<sup>85</sup> But, when combining all of the OPT with Israel, Jews and Palestinians are in rough parity. And even when restricting the calculus to Israel and the West Bank, the part of the OPT that Israeli authorities covet for Jewish settlement, and excluding Gaza’s significant Palestinian population, the Jewish majority stands at 59 percent compared to 41 percent Palestinians. Many of the practices outlined in this report can be traced to the Israeli government’s desire to maintain Jewish control while retaining the West Bank, including East Jerusalem, which adds 3.1 million Palestinians to the land it controls, in addition to the 1.6 million who reside in Israel.<sup>86</sup>

Statements by Israeli prime ministers and other senior officials highlight the extent to which the intent to maintain demographic control has guided policymaking. Prime Minister Benjamin Netanyahu, in a March 10, 2019, post on the social media platform Instagram, stated, “Israel is not a state of all its citizens,” but rather “the nation-state of the Jewish

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<sup>83</sup> Session 19 of the Joint Committee of the Knesset Committee and the Constitution, Law and Justice Committee, the 20th Knesset (16.7.2018, at 02:06), as cited in Adalah petition to Israeli Supreme Court against the Nation-State Law, HCJ 5866/18, [https://www.adalah.org/uploads/uploads/Jewish\\_Nation\\_State\\_Law\\_Petition\\_English\\_Final\\_October\\_2018.pdf](https://www.adalah.org/uploads/uploads/Jewish_Nation_State_Law_Petition_English_Final_October_2018.pdf) (accessed June 1, 2020), p. 11; also see “Joint committee approves Jewish nation-state law for first reading,” (Hebrew), Knesset press release, March 13, 2018, <https://main.knesset.gov.il/News/PressReleases/pages/press13.03.18.aspx> (accessed July 15, 2020).

<sup>84</sup> Jonathan Lis, “Knesset Council Bans Bill to Define Israel as State for All Its Citizens,” *Haaretz*, June 4, 2018 <https://bit.ly/2Melt6S> (accessed June 1, 2020).

<sup>85</sup> Israel Central Bureau of Statistics (CBS), “Localities (1) and Population, By District, Sub-District, Religion and Population Group,” (Hebrew and English), September 15, 2020, [https://www.cbs.gov.il/he/publications/doclib/2020/2.shnatonpopulation/sto2\\_16x.pdf](https://www.cbs.gov.il/he/publications/doclib/2020/2.shnatonpopulation/sto2_16x.pdf) (accessed January 11, 2021). The Israel CBS includes in its figures all residents of the Golan Heights and East Jerusalem, as well as Israeli settlers in the West Bank. Excluding these groups, Palestinian citizens amount to about 19 percent of the population. Including settlers and excluding only Palestinian residents of occupied East Jerusalem and Syrians in the occupied Golan Heights drops the percentage of Palestinian citizens to about 18 percent.

<sup>86</sup> For sourcing on population figures, see Systematic Oppression and Institutional Discrimination section.

people and only them.”<sup>87</sup> In December 2003, in between terms as prime minister, Netanyahu said at a conference that “if there is a demographic problem, and there is, it is with the Israeli Arabs who will remain Israeli citizens,” noting the need to balance policies that strive to integrate “Israel’s Arabs” with ensuring they do not reach 35-40 percent of the population.<sup>88</sup> He warned that “if their numbers will reach 35-40 percent of the country, then the Jewish state will be annulled.”<sup>89</sup> He also stated that the separation barrier, ostensibly erected to enhance Israel’s security, would also help to prevent a “demographic spillover” of Palestinians from the West Bank.<sup>90</sup>

Demographic-driven policymaking extends beyond Prime Minister Netanyahu. Even Israeli leaders who supported Israel’s withdrawal from a greater portion of the West Bank than others did often make demographics—the need for Israel to preserve a Jewish majority—one of their central arguments. Netanyahu’s predecessor, Ehud Olmert, said in 2003, three years before he became prime minister, that “the demographic issue” would “dictate the solution we must adopt” and that the “formula for the parameters of a unilateral solution are: to maximize the number of Jews; to minimize the number of Palestinians.”<sup>91</sup> His predecessor, Ariel Sharon, as prime minister, said in a 2002 Knesset debate that while Palestinian citizens had “rights in the land,” “all rights over the land of Israel are Jewish rights.”<sup>92</sup> His predecessor Ehud Barak, when he was prime minister, equated a “Muslim majority” with “destruction of Israel as a Jewish state.”<sup>93</sup> His predecessor as prime minister, Shimon Peres, while serving as president in 2012 said that “Israeli settlements in [parts of the West Bank] densely populated with Arabs...can lead to a threatening

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<sup>87</sup> Benjamin Netanyahu, @b.netanyahu, March 10, 2019, Instagram, [https://www.instagram.com/p/BuoUzTABMNI/?utm\\_source=ig\\_embed](https://www.instagram.com/p/BuoUzTABMNI/?utm_source=ig_embed) (accessed June 1, 2020).

<sup>88</sup> Gideon Alon and Aluf Benn, “Netanyahu: Israel’s Arabs Are the Real Demographic Threat,” *Haaretz*, December 18, 2003, <https://www.haaretz.com/1.4802179> (accessed June 1, 2020).

<sup>89</sup> The Associated Press and Aluf Benn, “MKs Slam Netanyahu’s Remarks about Israeli Arabs,” *Haaretz*, December 17, 2003, <https://www.haaretz.com/1.4789108> (accessed January 3, 2021).

Alon and Benn, “Netanyahu: Israel’s Arabs Are the Real Demographic Threat,” *Haaretz*.

<sup>91</sup> David Landau, ‘Maximum Jews, Minimum Palestinians,’ *Haaretz*, n.d., <https://www.haaretz.com/1.4759973> (accessed June 1, 2020).

<sup>92</sup> Jonathan Cook, *Blood and Religion: The Unmasking of the Jewish and Democratic State* (London: Pluto Press: 2006), p. 16.

<sup>93</sup> Benny Morris, “Camp David and After: An Exchange (1. An Interview with Ehud Barak),” *The New York Review of Books*, June 13, 2002, <https://www.nybooks.com/articles/2002/06/13/camp-david-and-after-an-exchange-1-an-interview-wi/> (accessed June 1, 2020).

demographic change” and “places a Jewish majority in the state of Israel at risk.”<sup>94</sup> His predecessor as prime minister, Yitzhak Rabin, said that “the red line for Arabs is 20% of the population, that must not be gone over,” explaining that “I want to preserve the Jewish character of the state of Israel.”<sup>95</sup>

While states are sometimes associated with a religious or ethnic identity, a states’ prerogative to define its own identity and promote it is not unlimited; it is not a license to violate the fundamental rights of others. Laws and policies adopted by the Israeli government to preserve a Jewish majority have afforded benefits to Jews at the expense of the fundamental rights of Palestinians. Most significantly in demonstrating Israel’s demographic goals is the 1950 Law of Return. It guarantees Jewish citizens of other countries the right to settle in Israel, and its 1952 Citizenship Law entitles them to citizenship.<sup>96</sup> The same Citizenship Law, by contrast, denies Palestinian refugees and their descendants, 5.7 million of whom were registered as of February 2021 with the United Nations Relief and Works Agency (UNRWA),<sup>97</sup> the ability to enter and live in areas where they or their families once lived and have maintained links to. The right to live in Israel or the OPT is guaranteed to them under international human rights law, alongside the options of integration in place or resettlement elsewhere.<sup>98</sup> These policies create a reality where a Jewish citizen of any other country who has never been to Israel can move there or to a West Bank settlement and automatically gain citizenship, while a Palestinian refugee expelled from his home and languishing for more than 70 years in a refugee camp in a nearby country cannot move to either Israel or the OPT.

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<sup>94</sup> Tovah Lazaroff, “Peres: Settlement Building Threatens Jewish State,” *Jerusalem Post*, July 10, 2012, <https://www.jpost.com/Diplomacy-and-Politics/Peres-Settlement-building-threatens-Jewish-state> (accessed June 1, 2020).

<sup>95</sup> Rhoda Ann Kanaaneh, *Birth of the Nation: Strategies of Palestinian Women in Israel* (California: University of California Press; 2002), p. 50.

<sup>96</sup> Israel MFA, Law of Return 5710-1950. The law allows the Israeli government to deny this right to Jews “engaged in an activity directed against the Jewish people” or “likely to endanger public health or the security of the state.”

<sup>97</sup> “UNRWA appeals for US\$1.5 billion to support Palestine refugees in 2021,” UNRWA press release, February 11, 2021, <https://bit.ly/37B9gNK> (accessed February 23, 2021).

<sup>98</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section; Letter from Human Rights Watch to Prime Minister Ehud Barak, “Human Rights Watch Urges Attention to Future of Palestinian Refugees,” New York, December 21, 2000, <https://www.hrw.org/news/2000/12/21/human-rights-watch-urges-attention-future-palestinian-refugees>; Human Rights Watch Policy on the Right of Return, <https://www.hrw.org/legacy/campaigns/israel/return/>; UN, “Refugees,” <https://www.un.org/en/global-issues/refugees> (accessed June 1, 2020). (“Under international law and the principle of family unity, the children of refugees and their descendants are also considered refugees until a durable solution is found. Both UNRWA and UNHCR recognize descendants as refugees on this basis, a practice that has been widely accepted by the international community, including both donors and refugee hosting countries.”).

# BORN UNEQUAL ABROAD

HANNAH



**JEWISH AMERICAN**  
BORN IN THE U.S.



LEILA

**PALESTINIAN REFUGEE**  
BORN IN LEBANON

## CAN I VISIT ISRAEL & THE OCCUPIED PALESTINIAN TERRITORY?

**YES**

You can visit Israel and most of the West Bank, and you'll find programs that may help fund your trip

**NO**

You are barred from entry to Israel, the West Bank or Gaza

## CAN I MOVE THERE?

**YES**

Because you're Jewish, the 1950 Law of Return guarantees your right to live in Israel. Plus, you'll get a free flight and a bunch of perks if you do so

**NO**

As a Palestinian refugee, you're barred from returning and denied residency rights, even if you have family living there

## CAN I BECOME AN ISRAELI CITIZEN?

**YES**

The 1952 Citizenship Law entitles you to automatic citizenship, even if you've never set foot in Israel before

**NO**

You are ineligible if your family became refugees between 1947 and 1949, even if they had lived there for generations before

## CAN I PASS ON MY LEGAL STATUS TO MY SPOUSE IN ISRAEL OR THE OPT?

**YES**

Upon becoming a citizen, you can pass along legal status and even citizenship to your spouse (except if they're Palestinian from the OPT or from several Arab countries)

**NO**

You have no legal status and cannot gain one, even by marrying a citizen or resident of Israel

HUMAN  
RIGHTS  
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The Citizenship and Entry into Israel Law (Temporary Order)—2003, which prohibits Palestinians from the West Bank and Gaza with few exceptions from obtaining citizenship or permanent residency in Israel and East Jerusalem further reflects a desire to maintain demographic control. <sup>99</sup> Ariel Sharon, commenting in 2005 when he was prime minister on the renewal of the temporary law, said, “There’s no need to hide behind security arguments. There’s a need for the existence of a Jewish state.” <sup>100</sup> He later added that authorities had “a correct and important intention of Israel being a Jewish state with a massive Jewish majority” and that “we must do everything so that this state remains a Jewish state in the future.” <sup>101</sup> Giora Eiland, national security advisor at the time, who served on a committee in 2005 examining immigration policies, conceded that “the Citizenship Law is the way to overcome the demographic demon.” <sup>102</sup> Then-finance minister Benjamin Netanyahu put it more directly during discussions over renewing the law: “Instead of making it easier for Palestinians who want to get citizenship, we should make the process much more difficult, in order to guarantee Israel’s security and a Jewish majority in Israel.” <sup>103</sup> Eli Yishai, while serving as minister of interior affairs, said in 2012 that approving a larger number of family unification applications from the West Bank would constitute “national suicide.” <sup>104</sup>

In practice, the Interior Ministry’s policies and practices have long aimed at ensuring Jewish Israeli demographic control. In 2004, The Association for Civil Rights in Israel (ACRI) released a report finding that the Israeli Interior Ministry’s population registry systematically denies applications by Palestinians and other non-Jews for residency, family reunification, or granting status to children “only because they are non-Jews.” The

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<sup>99</sup> “Israel: Revoke Discriminatory Law,” Letter from Human Rights Watch to Knesset Members on renewal of “Citizenship and Entry into Israel Law,” July 19, 2004, <https://www.hrw.org/news/2004/07/19/israel-revoke-discriminatory-law>.

<sup>100</sup> Aluf Benn and Yuval Yoaz, “PM Backs Temporary Law Enforcing Tougher Citizenship Regulations,” *Haaretz*, April 4, 2003, [https://www.haaretz.com/1.4786928?&ts=\\_1583843846133](https://www.haaretz.com/1.4786928?&ts=_1583843846133) (accessed June 1, 2020).

<sup>101</sup> Aluf Benn, “PM Defends Tighter Immigration Laws,” *Haaretz*, May 23, 2005, <https://www.haaretz.com/1.4845852> (accessed June 1, 2020).

<sup>102</sup> Yuval Yoaz, “Eiland Proposes Citizenship Limitations for Palestinians,” *Haaretz*, March 3, 2005, <https://www.haaretz.com/1.4760697> (accessed June 1, 2020).

<sup>103</sup> Gideon Alon, “Cabinet Okays Limits on Citizenship for Palestinians,” *Haaretz*, May 16, 2005, <https://www.haaretz.com/1.4685395> (accessed June 1, 2020).

<sup>104</sup> Batsheva Sobelman, “Israeli High Court Upholds Controversial Citizenship Law,” *Los Angeles Times*, January 12, 2012, [https://latimesblogs.latimes.com/world\\_now/2012/01/israel-passes-laws-restricting-arabs-asylum-seekers.html](https://latimesblogs.latimes.com/world_now/2012/01/israel-passes-laws-restricting-arabs-asylum-seekers.html) (accessed June 1, 2020).

registry, which ACRI charges “views itself as defender of the Jewish character of the state,” subjects applicants to “organized and methodical bureaucratic harassment” in order to “wear down applicants whose requests the Ministry of Interior does not want to grant,” a policy that particularly harms Palestinians. <sup>105</sup> The Interior Ministry continues to erect bureaucratic hurdles, in particular for Palestinians in East Jerusalem. <sup>106</sup> At the same time, authorities and quasi-state institutions have for years actively sought to boost Jewish immigration to Israel. <sup>107</sup>

Israeli authorities have also since 1967 effectively controlled the population registry in the West Bank and Gaza Strip, recording every Palestinian birth, marriage, divorce, address change, and death. Between 1967 and 1994, they struck from it hundreds of thousands of Palestinians, as Human Rights Watch has documented. <sup>108</sup> The Israeli army has used residency status to control the ability of Palestinians to reside in, move within, and travel abroad from the West Bank, as well as to travel from Gaza to Israel and the West Bank. <sup>109</sup> These restrictions are implemented in so sweeping a fashion that it is difficult to see them as motivated primarily by security – rather than demographic – considerations. <sup>110</sup>

Some Israeli laws provide benefits on the basis of criteria other than nationality, but the purpose remains privileging Jews over Palestinians. These laws often are not discriminatory on their face, using proxies to mask discriminatory intent, even as in some cases officials extoll the demographic logic. For example, in 2002, the Israeli Knesset cut

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<sup>105</sup> Relly Sa'ar, “ACRI Slams Interior Min. for Human Rights Violations,” *Haaretz*, December 6, 2004, <https://www.haaretz.com/1.4778973> (accessed June 1, 2020).

<sup>106</sup> Nir Hasson, “Israel Seeks to Block All East Jerusalem Family Reunification Hearings Over 'Workload',” *Haaretz*, May 1, 2019, <https://bit.ly/3chovBP> (accessed June 1, 2020).

<sup>107</sup> See, for example, Judy Maltz, “Israel Unveils New Incentives to Lure French Jews,” *Haaretz*, March 18, 2014, <https://www.haaretz.com/jewish/.premium-new-incentives-for-french-olim-1.5335566> (accessed July 13, 2020); “Move to Israel,” Jewish Agency for Israel, <https://www.jewishagency.org/aliyah/> (accessed July 13, 2020).

<sup>108</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section; Human Rights Watch, “*Forget About Him, He's Not Here*,” *Israel's Control of Palestinian Residency in the West Bank and Gaza* (New York: Human Rights Watch: 2018) <https://www.hrw.org/sites/default/files/reports/ipto212webwcover.pdf>; Israeli rights groups B'Tselem and HaMoked also found it “likely that political and demographic reasons dictated this policy.” B'Tselem and HaMoked, “Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories,” June 2006, [https://www.btselem.org/sites/default/files/sites/default/files2/publication/200607\\_perpetual\\_limbo\\_eng.pdf](https://www.btselem.org/sites/default/files/sites/default/files2/publication/200607_perpetual_limbo_eng.pdf) (accessed June 1, 2020)

<sup>109</sup> *Ibid.*

<sup>110</sup> “Israel: End Restrictions on Palestinian Residency,” Human Rights Watch news release, February 5, 2012, <https://www.hrw.org/news/2012/02/05/israel-end-restrictions-palestinian-residency>.

by four percent the child allowance for all Israeli families, but 24 percent for children whose parents had not served in the army. <sup>111</sup> The overwhelming majority of Palestinians do not serve in the army. While this law also affects those Orthodox Jews who do not serve in the army, they are eligible for extra subsidies, including educational supplements, not available to Palestinians. <sup>112</sup>

Statements by Israeli officials at the time make clear the discriminatory intent behind this move. Reporting on 2003 and 2004 statistics that showed a drop in the Israeli birthrate, primarily driven by a decline among Palestinian citizens of Israel, *Haaretz* in January 2005 attributed to the Finance Ministry the view that “the drop of birthrate is a clear result of the cutbacks in child support allocations over the past two years.” *Haaretz* quotes a senior Finance Ministry official, who asked to be unnamed, citing the “internal demographic threat” and expressing concern over “the high birthrate of the Arabs, and especially the Negev Bedouin.” The official said that “we are reversing the graph, to defend the Jewish majority in the country,” and warned, according to *Haaretz*, that reinstating the allowance would lead to the state having to support large families in places like the Negev, which would have the effect of undermining the Jewish majority. <sup>113</sup>

While at times striking down discriminatory state policies, the Israeli Supreme Court has endorsed demographics-driven decision-making. For example, in a prominent 2000 case declaring that the state could not discriminate directly on the basis of religion and nationality in allocating state land, Supreme Court President Aharon Barak highlighted the favored legal status of Jewish Israelis when it came to acquiring residency. He wrote that “it is true, members of the Jewish nation were granted a special key to enter (see the Law of Return-5710-1950), but once a person has lawfully entered the home, he enjoys equal rights with all other household members.” <sup>114</sup> Israel has long used its control over the “house” to maintain a solid Jewish majority, at the expense of Palestinians. Citing another well-known opinion by Barak, Asher Grunis, then deputy president of the Supreme Court

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<sup>111</sup> “Israel: Cuts in Child Allowance Discriminate Against Palestinian Arab Citizens,” Human Rights Watch news release, June 6, 2002, <https://www.hrw.org/news/2002/06/06/israel-cuts-child-allowance-discriminate-against-palestinian-arab>.

<sup>112</sup> *Ibid.*

<sup>113</sup> Nehemia Shtrasler and Ruth Sinai, “Arab Birthrate Drops for First Time in Years,” *Haaretz*, January 24, 2005, <https://www.haaretz.com/1.4711279> (accessed June 1, 2020).

<sup>114</sup> *Ka’adan et al. v. Israel Land Administration et al.*, HCJ 6698/95, Judgment (Hebrew), March 8, 2000, <http://www.hamoked.org.il/files/2011/4240.pdf> (accessed July 14, 2020), p. 20.

and later president, rejected in 2012 a constitutional challenge to the discriminatory aspects of the 2003 Israel Citizenship and Entry Law, writing, “Human rights are not a prescription for national suicide.” <sup>115</sup>

## Control Over Land

Alongside demographic control, Israeli authorities have sought to ensure Jewish control over the land and natural resources in Israel and the OPT. Israeli authorities have largely pursued the goals of demographic and land domination in parallel, seeking to maximize the land available for Jewish communities and largely confine Palestinians to dense population centers.

In February 1948, Ben Gurion, then chairperson of the Jewish Agency before becoming prime minister, reported the night after visiting Lifta, <sup>116</sup> a Palestinian village in the suburbs of Jerusalem whose residents fled or were expelled from their homes:

When you enter the city through Lifta and Romema, through Mahaneh Yehuda, King George Street and Me’ah She’arim –there are no Arabs. One hundred percent Jews... What happened in Jerusalem and in Haifa—can happen in large parts of the country. If we persist it is quite possible that in the next six or eight months there will be considerable changes in the country, very considerable and to our advantage. There will certainly be considerable changes in the demographic composition of the country. <sup>117</sup>

Israel’s seizure of thousands of dunams of land from Palestinians in 1948 and in subsequent decades in Israel and the OPT have aimed to serve the exclusive interest of Jewish Israelis. Reflecting just on the situation inside Israel, a 2003 Israeli government-commissioned report found that “the expropriation activities were clearly and explicitly

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<sup>115</sup> *MK Zahava Galon - Meretz-Yahad et al. v. Attorney General et al.*, HCJ 466/07, 5030/07, Judgement (Hebrew), January 11, 2012, <http://www.hamoked.org.il/files/2012/115060.pdf> (accessed July 14, 2020); Hagai El-Ad, “Citizenship Law prefers discrimination over human rights,” *+972 Magazine*, January 24, 2012, <https://www.972mag.com/citizenship-law-compels-us-to-protect-human-rights-from-rule-of-law/33723/> (accessed June 1, 2020).

<sup>116</sup> Zochrot, “Lifta,” <https://zochrot.org/en/village/49239> (accessed June 1, 2020).

<sup>117</sup> Gershon Rivlin and Elhanan Oren, eds., *The War of Independence: Ben-Gurion’s Diary* (Tel Aviv: Ministry of Defense:1986), 2010-11; Also quoted in Noura Erakat, *Justice for Some* (Stanford, CA: Stanford University Press: 2019) p. 48. Also quoted in Ben-Gurion, War Diary, Vol. 1, entry dated February 7, 1948, p. 210-211.

harnessed to the interests of the Jewish majority, and the land was transferred to entities such as the Jewish National Fund (JNF), which according to its own definition serves Jewish settlement, or the Israel Land Administration, which, judging from its administration patterns, served a similar objective.”<sup>118</sup> The Israel Land Administration manages and allocates 93 percent of the land in Israel,<sup>119</sup> meaning this government-commission report found that the state uses the overwhelming majority of land in Israel to serve only one community, Jewish Israelis.

Semi-governmental bodies like the JNF, Jewish Agency, and WZO that serve the Jewish community and no other constituency, play central roles in this effort. A 1953 Knesset law endows JNF, or Keren Kayemeth LeIsrael in Hebrew, with governmental authorities,<sup>120</sup> and Israel’s Basic Law: Israel Lands (1960) notes that ownership over its land “shall not be transferred either by sale or in any other manner.”<sup>121</sup> JNF owns 13 percent of Israeli land, which the Israel Land Authority (ILA) manages. JNF makes up nearly half the governing board of the ILA, which controls 93 percent of the land in Israel.<sup>122</sup>

The explicit mandate of the JNF is to develop and lease land for Jews and not any other segment of the population. Under the terms of its Memorandum and Articles of Association, the JNF acquires property “for the purpose of settling Jews on such lands and properties.”<sup>123</sup> In a 2004 court filing, the JNF made clear that it “is not a public body that works for the benefit of all citizens of the state. The loyalty of JNF is given to the Jewish people and only to them is the JNF obligated.”<sup>124</sup> The JNF long interpreted its mandate as

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<sup>118</sup> Or Commission, Chapter I, “Before October Events: Background, Factors, Predicting Events and Police Readiness. Section A - Escalation processes in the Arab sector in light of the outbreak of riots,” (Hebrew), August 2003, <http://uri.mitkadem.co.il/vaadat-or/vaadat-or-part1.html> (accessed June 10, 2020).

<sup>119</sup> Israel Land Authority, “About Us,” <https://land.gov.il/en/Pages/AboutUs.aspx> (accessed June 1, 2020).

<sup>120</sup> Keren Kayemeth LeIsrael Law, 5714-1953 (1953), available at <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/05-Jewish-National-Fund-Law-1953.pdf> (accessed June 1, 2020).

<sup>121</sup> Knesset, Basic Law: Israel Lands (1960), <https://bit.ly/3dmvHyb> (accessed June 1, 2020).

<sup>122</sup> Israel Land Authority, “About Us.”

<sup>123</sup> Adalah, “Excerpts from the Jewish National Fund’s Response to H.C. 9205/04 and H.C. 9010/04,” December 9, 2004, <https://www.adalah.org/uploads/oldfiles/eng/publications/makan/hc9010.pdf> (accessed June 1, 2020).

<sup>124</sup> *The Arab Center for Alternative Planning v. Israel Land Administration* (HCJ 9010/04), *Adalah, et. al. v. The Israel Land Administration, et. al.* (HCJ 9205/04), Jewish National Fund response (Hebrew), December 9, 2004, <https://www.adalah.org/uploads/oldfiles/admin/Downloads/SPics/7468850.pdf> (accessed July 14, 2020), p. 38.

allowing it to block Palestinians from purchasing, renting, or building on their lands.<sup>125</sup> Following a lawsuit brought by rights groups though, Israeli authorities have allowed non-Jews to use JNF land on condition that, if sold to them, the ILA will compensate JNF with land of equal value elsewhere.<sup>126</sup> *Haaretz*, though, has reported that Palestinians have faced “red tape” far exceeding what Jews face when purchasing JNF land, delaying registration by years or more.<sup>127</sup>

JNF leaders have also said they have pursued similar policies in the West Bank since 1967.<sup>128</sup> The Israeli group Peace Now has documented at least 65,000 dunams of land in the West Bank that the JNF has purchased since 1967 for settlements.<sup>129</sup> In February 2021, JNF’s leadership and board approved changing its policies to allow it to expand its purchase of land in the West Bank for settlements.<sup>130</sup>

Israeli law also affords semi-governmental status to the World Zionist Organization (WZO) and the Jewish Agency. A 1952 law establishes the organizations, then a single entity, as “the authorised agent” of the state “for the development and settlement of the country” and “absorption of immigrants from the Diaspora.”<sup>131</sup> The Jewish Agency, whose self-described “historic mandate is to bring Jews home to Israel,” says it helped

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<sup>125</sup> See, for example, Keren Kayemeth LeIsrael- Jewish National Fund (KKL-JNF), “Jewish People Land,” <https://www.kkl-jnf.org/about-kl-jnf/kl-jnf-id/jewish-people-land/> (accessed June 1, 2020).

<sup>126</sup> Amiram Barkat and Yuval Yoaz, “AG Mazuz Rules JNF Land Can Now Be Sold to Arabs,” *Haaretz*, January 27, 2005, <https://www.haaretz.com/1.4715337> (accessed June 1, 2020); “Without Making Principal Changes, Israel Allows Arab Citizens to Bid for Jewish National Fund-Controlled Land,” Adalah press release, February 1, 2016, <https://www.adalah.org/en/content/view/8777> (accessed June 1, 2020).

<sup>127</sup> Jack Khoury, “Israeli Arabs Face Red Tape When Leasing JNF Land,” *Haaretz*, December 23, 2013, <https://www.haaretz.com/.premium-red-tape-for-arabs-facing-jnf-1.5302727> (accessed June 1, 2020).

<sup>128</sup> Kann News (@kann\_news), February 16, 2021, Twitter, [https://twitter.com/kann\\_news/status/1361540814497808385](https://twitter.com/kann_news/status/1361540814497808385) (Hebrew), (accessed February 21, 2021).

<sup>129</sup> “KKL-JNF and Its Role in Settlement Expansion,” Peace Now press release, February 4, 2020, <https://peacenow.org.il/en/settler-national-fund-keren-kayemeth-leisraels-acquisition-of-west-bank-land> (accessed June 1, 2020).

<sup>130</sup> Hagar Shezaf and Hagai Amit, “Jewish National Fund Leadership Okays Plan to Expand West Bank Settlements,” *Haaretz*, February 17, 2021, <https://www.haaretz.com/israel-news/.premium-jewish-national-fund-okays-plan-to-expand-west-bank-settlements-1.9538161> (accessed February 21, 2021); Jacob Magid, “KKL-JNF Board Advances Controversial \$11.5 Million Purchase of West Bank Land.” *Times of Israel*, February 25, 2021, [timesofisrael.com/kl-jnf-board-advances-controversial-11-5-million-purchase-of-west-bank-land/](https://www.timesofisrael.com/kl-jnf-board-advances-controversial-11-5-million-purchase-of-west-bank-land/) (accessed March 7, 2021).

<sup>131</sup> World Zionist Organization (WZO)- Jewish Agency (Status) Law, 5713-1952, available at <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf> (accessed June 1, 2020).

more than 30,000 Jews in 2018 and more than 250,000 in the last decade immigrate to Israel. <sup>132</sup> The WZO, founded in 1897 with a mission that includes “[p]romoting the settlement of Jewish farmers, artisans and tradesmen in Palestine,” <sup>133</sup> has played a central role in the settlement enterprise since the early days of the occupation. <sup>134</sup> Israeli authorities authorize the WZO to establish settlements and settlers who purchase homes in settlements often sign contracts with the WZO instead of obtaining full title to the property. <sup>135</sup> Authorities have directly allocated nearly a third of all “state land,” which often includes lands unlawfully seized from Palestinians, in the West Bank, excluding East Jerusalem, to the WZO, primarily for use in settlements. <sup>136</sup>

The WZO’s Settlement Division, operating under the direct control of the Israeli government, established most settlements and manages the allocation of land for settlements with the stated purpose to “establish and strengthen Jewish settlement in the country’s periphery through strengthening the hold on state lands given to it by the government.” <sup>137</sup> The government provides the division with its entire budget, which amounted to 441.6 million Israeli New Shekel (NIS) (US\$132.60 million) between 2009-

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<sup>132</sup> Jewish Agency for Israel, *2018 Yearly Impact*, <https://content.jewishagency.org/bp/#/folder/3272897/92727581> (accessed June 1, 2020); Jewish Agency for Israel, “Who we are,” <https://www.jewishagency.org/who-we-are/> (accessed June 1, 2020).

<sup>133</sup> WZO, “Mission Statement,” <https://www.wzo.org.il/Mission-Statement> (accessed June 1, 2020).

<sup>134</sup> Settlement Watch - Peace Now, “Unraveling the Mechanism Behind Illegal Outposts,” 2017, <http://peacenow.org.il/wp-content/uploads/2017/03/unraveling-the-mechanism-behind-illegal-outposts-full-report-1.pdf> (accessed June 1, 2020); “Preliminary Approval for Settlement Division Bill,” Peace Now press release, June 13, 2018, <https://peacenow.org.il/en/preliminary-approval-settlement-division-bill> (accessed June 1, 2020).

<sup>135</sup> Human Rights Watch, *Separate and Unequal: Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories* (New York: Human Rights Watch, 2010), [https://www.hrw.org/sites/default/files/reports/iopt1210webwcover\\_o.pdf](https://www.hrw.org/sites/default/files/reports/iopt1210webwcover_o.pdf), p. 35; “Preliminary Approval for Settlement Division Bill,” Peace Now press release, June 13, 2018, <https://peacenow.org.il/en/preliminary-approval-settlement-division-bill> (accessed June 1, 2020).

<sup>136</sup> ACRI, “Information Sheet – Allocation of State Land in OPT,” <https://law.acri.org.il/en/2013/04/23/info-sheet-state-land-opt/> (accessed June 1, 2020); Chaim Levinson, “Just 0.7% of land in the West Bank has been allocated to Palestinians, Israel admits,” *Haaretz*, March 28, 2013, <https://www.haaretz.com/.premium-w-bank-jews-get-39-palestinians-1-1.5235879> (accessed June 1, 2020).

<sup>137</sup> WZO Settlement Division website, <http://www.hityashvut.org.il/> (accessed June 1, 2020); Yotam Berger, “Israeli Settlement Agency’s Activity Still Shrouded in Mystery After Yearlong Probe,” *Haaretz*, March 28, 2017, <https://www.haaretz.com/israel-news/.premium-prime-minister-s-office-report-on-settlements-is-now-months-overdue-1.5454070> (accessed June 1, 2020).

18. <sup>138</sup> Since the early 2000s, the WZO has played a more active role as well in the Negev and the Galilee; the Israeli newspaper *Haaretz* has described them as “the government’s executive arm for construction in the West Bank, as well as in the Negev and the Galilee.” <sup>139</sup>

Israeli authorities have pursued an explicit policy of ensuring Jewish control over geographic areas with strategic importance where there are concentrations of Palestinians across Israel and the OPT. Judaization of these areas contributed to facilitating Israeli government control over Palestinian population centers, dividing communities, and blocking the establishment of larger, contiguous Palestinian municipal areas in locations that Israeli authorities covet or consider particularly strategic. This strategy also contributes to generally diluting the Palestinian population in some areas and pushing them into crowded population centers.

### *Israel (Galilee and Negev)*

In Israel, authorities maintain a policy to Judaize the Galilee and Negev regions, one pursued in coordination with the JNF, the Jewish Agency, and the WZO. These areas account for nearly two-thirds of the land in Israel, <sup>140</sup> and encompass much of the Palestinian population. <sup>141</sup> The Israeli government has a ministry focused on the “development” of the Galilee and the Negev, has invested significantly in these areas, and has considered it a major government priority for much of the past two decades. <sup>142</sup> In 2004, the Sharon government unveiled a cross-sectional plan estimated to cost 16.8 NIS billion (\$5 billion) that aimed to “increase the number of residents in the Negev to 1.5

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<sup>138</sup> “Surplus Spending on Settlements Tops NIS 1 Billion,” Peace Now press release, March 12, 2019, <https://peacenow.org.il/en/surplus-spending-on-settlements-tops-nis-1-billion> (accessed June 1, 2020). The exchange rate for the US dollar is 3.33 NIS, as calculated on March 29, 2021.

<sup>139</sup> Yotam Berger, “Overstepping Authority, State Body Advances Illegal Israeli Settlement Construction in West Bank,” *Haaretz*, March 9, 2017, <https://www.haaretz.com/israel-news/.premium-overstepping-authority-state-body-advances-illegal-settlement-construction-1.5446620> (accessed June 1, 2020).

<sup>140</sup> Sikkuy, “Development of the Negev and Galilee – For Jews Only?” Policy Paper, July 2005, <http://www.sikkuy.org.il/wp-content/uploads/2020/07/Negev-Galilee-23.08-2.pdf> (accessed July 14, 2020).

<sup>141</sup> Israel CBS, “Arab population by Natural Region 2018,” [https://www.cbs.gov.il/he/publications/doclib/2019/2.shnatonpopulation/02\\_06e.pdf](https://www.cbs.gov.il/he/publications/doclib/2019/2.shnatonpopulation/02_06e.pdf) (accessed June 1, 2020).

<sup>142</sup> The Ministry for the Development of the Periphery, the Negev and the Galilee, “About us” (Hebrew), <http://negev-galil.gov.il/About/Pages/About2.aspx> (accessed June 1, 2020).

million and in the Galilee to 1.1 million by 2010.”<sup>143</sup> *Haaretz* described efforts to develop these areas as possibly the “largest settlement effort inside the Green Line in the last 25 years.”<sup>144</sup>

While Israeli authorities use non-discriminatory language of seeking to “develop” or “populate” these regions, the Israeli rights group Sikkuy wrote in 2005 that “it is clear to everyone that the plan is intended for Jewish residents.”<sup>145</sup> The Negev plan, for example, defined the ideal new residents as a “strong population,” including “families with high income” who work in central Israel, an area that has a much higher proportion of Jews to Palestinians and who will continue to commute to their old jobs.<sup>146</sup> Authorities also offered a 90 percent discount on the leasing fees for Negev properties to soldiers who had served for at least one year, an offer that would attract mainly Jews since Bedouins are exempt from military service and only a small percentage volunteer to serve in the army.<sup>147</sup> Shimon Peres, then deputy prime minister, described the development of the Negev and the Galilee as a “battle for the future of the Jewish people.”<sup>148</sup> The Jewish Agency has said that it sought to guarantee a “Zionist majority” in the Negev and the Galilee, launching its own programs in these areas “to get around the problem that the government must act on behalf of all citizens of the state of Israel while the WZO is entitled to act for the sake of the Jewish people.”<sup>149</sup> The government approved the WZO establishing settlements in these areas.<sup>150</sup>

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<sup>143</sup> Dror Marmor, “Emergency Plan to Save the Negev and the Galilee,” (Hebrew), *NRG Maariv*, November 17, 2004, <https://www.makorishon.co.il/nrg/online/1/ART/822/341.html> (accessed July 20, 2020).

<sup>144</sup> Zafir Rinat and *Haaretz* correspondent, “PMO Issues Rush Order for 30 New Towns in Negev, Galilee,” *Haaretz*, July 20, 2003, <https://www.haaretz.com/1.5347089> (accessed June 1, 2020).

<sup>145</sup> Sikkuy, “Development of the Negev and Galilee – For Jews Only?”

<sup>146</sup> Shlomo Swirski, “Current Plans for Developing the Negev: A Critical Perspective,” Adva Center, Information on Equality and Social Justice in Israel, January 2007, <http://adva.org/wp-content/uploads/2014/09/AdvaNegevJanuary2007.pdf> (accessed June 1, 2020).

<sup>147</sup> Akiva Eldar, “People and Politics / Come Settle in the Negev,” *Haaretz*, June 1, 2004, <https://www.haaretz.com/1.4684341> (accessed June 1, 2020); “Army drive aims to boost number of Bedouin soldiers,” *Times of Israel*, October 15, 2019, <https://www.timesofisrael.com/army-drive-aims-to-boost-number-of-bedouin-soldiers/> (accessed June 1, 2020).

<sup>148</sup> Ori Nir, “Peres Asking U.S. Jewry To Push Aid For Galilee,” *Forward*, August 5, 2005, <https://forward.com/news/2500/peres-asking-us-jewry-to-push-aid-for-galilee/> (accessed June 1, 2020).

<sup>149</sup> Yair Sheleg, “Jewish Agency Readies Plan to Foster a Zionist Majority,” *Haaretz*, October 28, 2002, <https://www.haaretz.com/1.5147008> (accessed June 1, 2020).

<sup>150</sup> Ibid.; Nimrod Bousso, “Israel to Allocate \$35m to World Zionist Organization’s Settlement Division,” *Haaretz*, October 23, 2014, <https://www.haaretz.com/.premium-what-will-wzo-do-with-nis-130m-1.5318862> (accessed June 1, 2020).

In December 2007, Minister for the Development of the Negev and Galilee Jacob Edery, reflecting on new demographic data, said, “We have to do everything we can to boost Jewish population in the Galilee.”<sup>151</sup> In 2011, the Israeli Knesset passed a law permitting towns in the Negev and Galilee with up to 400 households to maintain admissions committees that can reject applicants from living there for being “not suitable for the social life of the community” or for incompatibility with the “social-cultural fabric.”<sup>152</sup> The law’s sponsors openly spoke about how the law would facilitate the creation and maintenance of Jewish-only communities.<sup>153</sup> In June 2019, then Transportation Minister Bezalel Smotrich said that “I intend to Judaize the Galilee” and “lay down a network of roads, to complete a revolution, so that hundreds of thousands of Jews will come to live in the Galilee.”<sup>154</sup> The month before, the JNF announced its aim to bring 1.5 million residents to the Negev and Galilee by 2040.<sup>155</sup>

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<sup>151</sup> Ofer Petersburg, “Jewish population in Galilee declining,” *Ynet News*, December 12, 2007, <https://www.ynetnews.com/articles/0,7340,L-3481768,00.html> (accessed June 1, 2020).

<sup>152</sup> Adalah, Law to Amend the Cooperative Societies Ordinance (No. 8), 5771-2011, unofficial translation, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/12-Admissions-Committees-Law-2011.pdf> (accessed June 10, 2020); “Israel: New Laws Marginalize Palestinian Arab Citizens,” Human Rights Watch news release, March 30, 2011, <https://www.hrw.org/news/2011/03/30/israel-new-laws-marginalize-palestinian-arab-citizens>.

<sup>153</sup> One of the law’s sponsors, David Rotem of the Yisrael Beiteinu (Israel Our Home) party, told the Knesset in December 2009 that such a law would allow towns to be “established by people who want to live with other Jews.” In a radio interview that month, Rotem said the law would codify screening procedures so that Jewish Israelis could “establish a place where everybody is an army veteran, a Yeshiva alumni, or something of that sort.” Another sponsor, Yisrael Hasson of the Kadima party, said in December 2010 that “the bill reflects the Knesset’s commitment to work to preserve the ability to realize the Zionist dream in practice in the state of Israel” through “population dispersal” which the government had begun “thirty years ago ... [with] a string of small communities in the Galilee and Negev.” He added, “realization of these goals obliged us as legislators to ensure the existence of a screening mechanism for applicants to these communities.” See “Israel: New Laws Marginalize Palestinian Arab Citizens,” Human Rights Watch news release, March 30, 2011.

<sup>154</sup> “Transportation minister: ‘I intend to Judaize the Galilee,’” *World Israel News*, June 20, 2019, <https://worldisraelnews.com/transportation-minister-i-intend-to-judaize-the-galilee/> (accessed June 1, 2020).

<sup>155</sup> Alan Rosenbaum, “Building the Galilee and Negev with KKL and JNF,” *Jerusalem Post*, June 17, 2019, <https://www.jpost.com/israel-news/building-the-galilee-and-negev-with-klk-and-jnf-592719> (accessed June 1, 2020).

# INTENT TO DOMINATE

**1. GALILEE**

**“Intend to Judaize the Galilee**  
Bezalel Smotrich, 2019  
 Former Transportation Minister of Israel

Decades of land grabs and discriminatory planning hem in Palestinian local authorities, while nurturing the growth of neighboring Jewish communities

**2. WEST BANK**

**“We are the ones dictating security rules ... they will remain Palestinian subjects**  
Benjamin Netanyahu, 2020  
 Prime Minister of Israel

Government plans for decades have sought to hold maximum territory for Jewish settlement and box Palestinians into dense enclaves

**3. JERUSALEM**

**“I am worried about... Arab growth within and around Jerusalem**  
Teddy Kollek, 1984  
 Former Mayor of Jerusalem

Jerusalem Outline Plan 2000 sets a goal of “maintaining a solid Jewish majority in the city” and sets a target demographic ratio of 60% Jewish to 40% Palestinian

**4. GAZA**

**“We are disengaging from Gaza due to demography**  
Shimon Peres, 2005  
 Former Prime Minister of Israel

Israeli policy seeks to isolate Gaza from the West Bank and effectively remove its 2+ million inhabitants from the demographic balance sheet, resulting in a Jewish majority across the rest of OPT and Israel

**5. NEGÉV**

**“They [the Bedouin population] are gnawing at the country’s land reserves**  
Ariel Sharon, 2000  
 Former Prime Minister of Israel

Israel refuses to recognize 35 Palestinian Bedouin villages with 90,000 or so residents, and regularly demolishes Bedouin homes to make land available for Jewish settlement

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The government’s historic policies towards these areas provide further context for determining the intent behind its current policies. The plan to Judaize the Galilee, a region largely slated to fall within the “Arab State” in the 1947 UN Partition Plan, dates back to the 1950s when it emerged as part of a strategy to consolidate Israeli control of the area.<sup>156</sup> A senior Israeli official at the time wrote that the Palestinian presence in these areas threatened Israeli control, worrying that Palestinians would “invade all areas we neglect, strike footholds and establish new roots.”<sup>157</sup> Ben Gurion told the Knesset that Israel’s imposition of military rule over most Palestinians in Israel at the

<sup>156</sup> Geremy Forman, “Military Rule, Political Manipulation, and Jewish Settlement: Israeli Mechanisms for Controlling Nazareth in the 1950s,” *Journal of Israeli History*, 25:2 (2006), <https://www.tandfonline.com/doi/abs/10.1080/13531040600810292> (accessed June 1, 2020) p. 335-359; Sabri Jiryis, “The Land Question in Israel.” *MERIP Reports*, no. 47 (1976): 5-26, [https://www.jstor.org/stable/3011382?read-now=1&seq=15#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/3011382?read-now=1&seq=15#page_scan_tab_contents) (accessed June 1, 2020).

<sup>157</sup> Forman, “Military Rule,” p. 348.

time aimed “to protect the right to Jewish settlement in all parts of the state.”<sup>158</sup> The plan to Judaize the Galilee focused initially on creating and sustaining Jewish communities such as Nazareth Illit (Hebrew for ‘Upper Nazareth’) in 1957, while limiting the growth of nearby Palestinian communities.<sup>159</sup>

The Israeli newspaper Al HaMishmar in 1976 published a leaked government document drafted by Yisrael Koenig, then northern district commissioner of the Interior Ministry.<sup>160</sup> The memo, entitled “Top Secret: Memorandum-Proposal Handling the Arabs of Israel,” lays out the demographic situation in the area, showing that Jews maintain a slight demographic majority but will be overtaken in a few years if birthrates continue at current rates. It then recommends that authorities “expand and deepen Jewish settlement in areas where the contiguity of the Arab population is prominent, and where they number considerably more than the Jewish population; [and] examine the possibility of diluting existing Arab population concentrations.” While officials condemned the plan and said it had not been acted on,<sup>161</sup> Koenig remained in his role for more than a decade after the memo’s publication, a leaked 1995 map by a regional planning committee echoed similar objectives, and elements of the strategy bear resemblance to policies that have been carried out since.<sup>162</sup>

In the Negev region, some officials immediately after 1948 called for forcibly relocating the 11,000 of the original 65,000-95,000 Palestinian Bedouins who had not been forced to flee

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<sup>158</sup> As quoted in Orna Ben-Naftali, Michael Sfard, and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge University Press: 2018), <https://bit.ly/2ZVvBW> (accessed June 1, 2020), p. 307.

<sup>159</sup> See Nazareth case study in Systematic Oppression and Inhumane Acts and Other Abuses of Fundamental Rights sections. Forman, “Military Rule,” p. 348.

<sup>160</sup> The Koenig Report, “Top Secret: Memorandum-Proposal-Handling the Arabs of Israel,” *Journal of Palestine Studies*, Vol. 6, No. 1 (Autumn, 1976), <https://palestina-komitee.nl/wp-content/uploads/2017/11/68-Koenig-Report-Colonization-West-Bank-Gaza-March-30-1976.pdf> (accessed June 1, 2020), pp. 190-200.

<sup>161</sup> Jewish Telegraphic Agency (JTA) archives, “Allon Denounces Koenig Report,” September 15, 1976, <https://www.jta.org/1976/09/15/archive/allon-denounces-koenig-report> (accessed June 1, 2020).

<sup>162</sup> Ahmad Hamdi, *Al-Ittihad*, June 9, 1995, article on file with Human Rights Watch. The plan calls for increasing the number of Jews in the Galilee, noting that “large sections of the Galilee have a Jewish minority,” in order to solve “the problem of Arab territorial continuity.”

to surrounding areas. <sup>163</sup> The government, though, adopted a plan supported by Yigal Allon, commander of the southern front and military governor of the Negev, that allowed Bedouin communities to remain, but concentrated them in a circumscribed area in order to remove them from key Negev routes and secure the land for settling Jews and building army bases. <sup>164</sup> Concentrating Palestinian Bedouin communities on limited pieces of territory remains at the heart of Israeli government plans for the Negev.

The strategy of maximizing Jewish settlement alongside suppression of the Palestinian population continues. In the Negev, for example, Sharon in December 2000, just before becoming prime minister and pursuing the development of the Negev as a principal goal, wrote:

In the Negev, we face a serious problem: About 900,000 dunams of government land are not in our hands, but in the hands of the Bedouin population. I, as a resident of the Negev, see this problem every day. It is, essentially, a demographic phenomenon... Out of weakness, perhaps also lack of awareness about the issue, we, as a country, are doing nothing to confront this situation... The Bedouin are grabbing new territory. They are gnawing away at the country's land reserves, and no one is doing anything significant about it. <sup>165</sup>

In July 2009, Israel's Housing Minister Ariel Atias warned against "the spread" of Palestinian communities, warning that, "if we go on like we have until now, we will lose the

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<sup>163</sup> Officials including then-Israeli army Southern Army Commander and later chief of staff Moshe Dayan, chairman of the JNF's Land Division Yosef Weitz, and Foreign Minister and later Prime Minister Moshe Sharett. Human Rights Watch, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages* (New York: Human Rights Watch: 2008), <https://www.hrw.org/reports/2008/iopt0308/iopt0308webwcover.pdf>, pp. 12-13; Yael Hasson and Shlomo Swirski, *Invisible Citizens: Israel Government Policy Toward the Negev Bedouin* (Tel Aviv: Adva Center: 2006), available at [https://www.academia.edu/28809288/INVISIBLE\\_CITIZENS\\_Israel\\_Government\\_Policy\\_Toward\\_the\\_Negev\\_Bedouin](https://www.academia.edu/28809288/INVISIBLE_CITIZENS_Israel_Government_Policy_Toward_the_Negev_Bedouin) (accessed June 1, 2020), p. 16.

<sup>164</sup> *Ibid.*

<sup>165</sup> Ariel Sharon, "Land as an Economic Tool for Developing Infrastructure and Significantly Reducing Social Gaps," *Land*, December 2000, quoted in Thabet Abu-Ras, "Land Disputes in Israel: The Case of the Bedouin of the Naqab," *Adalah* newsletter, Vol. 24 (April 2006), <https://www.adalah.org/uploads/oldfiles/newsletter/eng/apro6/ar2.pdf> (accessed June 1, 2020). See Inhumane Acts and Other Abuses of Fundamental Rights section for more on Israeli policies in the Negev.

Galilee.”<sup>166</sup> Later that year, Deputy Foreign Minister Danny Ayalon said “we are losing the Negev and the Galilee,” noting that “in many places there is no contiguous Jewish presence” and that “the focus for today is to Judaize the Negev and the Galilee.”<sup>167</sup>

### *Jerusalem*

The Israeli government’s formal policy for Jerusalem, including both west and the occupied east, is to pursue “maintaining a solid Jewish majority in the city,” as stated in the government’s plan for the municipality (“Jerusalem Outline Plan 2000”), and limiting the number of Palestinian residents. Concern with demographics in Jerusalem dates back to the early days of the state but accelerated with Israel’s unilateral annexation of occupied East Jerusalem and parts of surrounding villages in 1967. Annexation expanded the boundaries of the city that Israeli authorities consider the country’s capital, but also brought more Palestinians into an area that authorities treat as part of its sovereign territory. To mitigate the demographic effect of this move, authorities granted Palestinians from East Jerusalem permanent residency rather than an easy path to citizenship and instituted other policies aimed to foster and maintain a Jewish demographic majority in the city.

Following annexation, Israeli officials set a target “ratio of 70% Jews and 30% Arab,” although planners later acknowledged that “this goal is not attainable” in light of “the demographic trend” and adjusted it to a 60-40 percent target.<sup>168</sup> Within Palestinian communities, the plan, by its own terms, “enables a densification of the rural villages and densification and thickening of the existing urban neighborhoods.”<sup>169</sup>

When delineating Jerusalem’s municipal boundaries in 1967, authorities primarily focused on, as the Israeli rights group B’Tselem puts it, “demographic concerns, chief among them to leave out densely populated Palestinian areas in order to ensure a Jewish majority in Jerusalem.”<sup>170</sup> Israel, in total, added 72 square kilometers, including land that belonged to

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<sup>166</sup> Guy Lieberman, “Housing Minister: Spread of Arab Population Must Be Stopped,” *Haaretz*, July 2, 2009, <https://www.haaretz.com/1.5072677> (accessed June 1, 2020).

<sup>167</sup> Hana Levi Julian and Yoni Kempinski, “Strengthen the Jewish Periphery,” *Israel National News*, December 22, 2009, <http://www.israelnationalnews.com/News/News.aspx/135143> (accessed June 1, 2020).

<sup>168</sup> Jerusalem Outline Plan 2000 on file with HRW.

<sup>169</sup> *Ibid.*

<sup>170</sup> “East Jerusalem,” B’Tselem, updated January 27, 2019, <https://www.btselem.org/jerusalem> (accessed June 1, 2020).

28 surrounding West Bank villages, to the Jerusalem municipality. Former Deputy Mayor of Jerusalem Meron Benvenisti wrote that Jerusalem’s “absurd” borders “derived from the aspiration to include ‘a maximum of land with a minimum of Arabs.’” <sup>171</sup>

Israeli officials, soon after taking control of East Jerusalem in 1967, confiscated land and established several settlements, including Ramat Eshkol, Ma’alot Dafna, Givat HaMivtar, and French Hill, to establish a “bolt,” in the parlance of the Israeli government, connecting West Jerusalem and Mount Scopus, which was effectively a Jewish island encircled by East Jerusalem before 1967. <sup>172</sup> Israeli authorities also confiscated land to establish other settlements, including Ramot Alon and Gilo, to create a “ring,” as they described it, around the center of Jerusalem and, as one academic writes, “thus preventing any prospect for a continuity of Arab neighborhoods.” <sup>173</sup> The establishment of a “bolt” and “ring” around Jerusalem, which authorities continued to fortify through the expansion of settlements in subsequent years, aimed at bolstering Israeli Jewish control over the city. <sup>174</sup>

The newly-annexed area included 66,000 Palestinian residents, 24 percent of the new municipality’s population. A government commission set up in late 1972 to evaluate Israeli policy in Jerusalem recommended the government strive to maintain the “ratio of Jews to Arabs that existed at the end of 1972,” or 73.5 percent Jewish Israeli and 26.5 Palestinian. <sup>175</sup> The government adopted this recommendation and subsequent governments have reaffirmed it. <sup>176</sup> When formulating Israel’s first municipal plan for Jerusalem in 1975, Israel Kimhi, then director of planning policy at the Interior Ministry, said, “One of the cornerstones in the planning of Jerusalem is the demographic question,”

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<sup>171</sup> Meron Benvenisti, *Intimate Enemies: Jews and Arabs in a Shared Land* (University of California Press: 1995), <https://bit.ly/zyVZmiF> (accessed June 4, 2020), p. 53. See also Meron Benvenisti, “Why Does Jerusalem No Longer exist?” (Hebrew), *Haaretz*, May 29, 2011, <https://www.haaretz.co.il/news/education/1.1175494> (accessed June 1, 2020).

<sup>172</sup> Ami Pedahzur, *The Triumph of Israel's Radical Right* (Oxford University Press: 2008), <https://bit.ly/3cxh8GQ> (accessed June 1, 2020).

<sup>173</sup> *Ibid.*

<sup>174</sup> Ir Amim, “Displaced in Their Own City: The Impact of Israeli Policy in East Jerusalem on the Palestinian Neighborhoods of the City Beyond the Separation Barrier,” June 2015, [https://www.ir-amim.org.il/sites/default/files/akurim\\_ENG\\_for%20web\\_o.pdf](https://www.ir-amim.org.il/sites/default/files/akurim_ENG_for%20web_o.pdf), p. 9 (accessed June 1, 2020),

<sup>175</sup> Bimkom – Planners for Planning Rights, “Trapped by Planning: Israeli Policy, Planning, and Development in the Palestinian Neighborhoods of East Jerusalem,” 2014, <http://bimkom.org/eng/wp-content/uploads/TrappedbyPlanning.pdf> (accessed June 1, 2020), p. 18.

<sup>176</sup> *Ibid.*, p. 18-19.

noting that governmental policy toward “the growth of the city and the preservation of the demographic balance” would serve as “one of the yardsticks for the success of the solidification of Jerusalem’s status as the capital of Israel.”<sup>177</sup>

Teddy Kollek, the mayor of Jerusalem from 1965 to 1993, said in a January 1982 meeting of the Jerusalem municipality that “I am looking after the Jewish majority... that is why we are here, to take care of that” and in a June 1984 meeting that “like all of us here, it seems to me, I am worried about the balance of power and Arab growth within and around Jerusalem,” according to minutes of the meetings reviewed by B’Tselem.<sup>178</sup> In a 1990 interview with an Israeli newspaper, Kollek said:

For Jewish Jerusalem, I did something in the past twenty-five years. For East Jerusalem? Nothing! What did I do? Nothing. Sidewalks? Nothing. Cultural institutions? Not one. Yes, we installed a sewerage system for them and improved the water supply. Do you know why? Do you think it was for their good, for their welfare? Forget it! There were some cases of cholera there, and the Jews were afraid that they would catch it, so we installed sewerage and a water system against cholera.<sup>179</sup>

The Israeli government’s decision to apply the 1952 Law of Entry to Palestinians from East Jerusalem, the law applicable to foreigners who enter Israel and want to reside there, and offer them permanent residency, instead of automatic citizenship, further demonstrates the extent to which demography dictates Israeli policy in Jerusalem.<sup>180</sup> The Jerusalem 2000 Outline Plan makes clear that “the continued proportional growth of the Arab population in Jerusalem is bound to reduce the ratio of the Jewish population in the future” and that, in order to prevent “the continued proportional growth of the Palestinian population in Jerusalem in comparison with the Jewish population [or] even worse, from taking place, we will need far-reaching changes in our approach to the key variables influencing the

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<sup>177</sup> Ibid., p. 19.

<sup>178</sup> Quoted in B’Tselem, “A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem,” January 1997, [https://www.btselem.org/sites/default/files/publications/199505\\_policy\\_of\\_discrimination\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/199505_policy_of_discrimination_eng.pdf) (accessed August 16, 2020), pp. 44-45.

<sup>179</sup> Ibid., p. 54.

<sup>180</sup> Entry into Israel Law, 5712-1952, (unofficial translation), HaMoked - Center for the Defence of the Individual, [http://www.hamoked.org/files/2011/2240\\_eng.pdf](http://www.hamoked.org/files/2011/2240_eng.pdf) (accessed June 1, 2020).

balance of immigration and gaps in birthrate, variables that ultimately determine the demographic balance.”<sup>181</sup>

### *West Bank*

The Israeli government has pursued the same formulation in the West Bank as in Israel and East Jerusalem: maximum control over the land, largely for the benefit of Jews. While governments have at times differed on what arrangements should govern Palestinians living in the West Bank, the objectives and reality on the ground have remained largely consistent over successive governments. On July 7, 1967, exactly one month after the Israeli army occupied the West Bank, Israel’s then-Prime Minister Levi Eshkol of the Labor Party said, “The security and the land are in Israeli hands.”<sup>182</sup> In a party meeting that year, Eshkol clarified that authorities “covet the dowry, not the bride,”<sup>183</sup> an apparent reference to wanting the West Bank without the Palestinians who live there. Fifty-two years later, on July 10, 2019, Prime Minister Netanyahu of the Likud said, “Israeli military and security forces will continue to rule the entire territory, up to the Jordan [River].”<sup>184</sup> He added on May 28, 2020, that “we are the ones dictating security rules over the entire territory,” describing West Bank Palestinians as “subjects.”<sup>185</sup>

The current map of the West Bank reflects decades of shifting Israeli governmental plans for the territory. Israel’s earliest plans for the West Bank, including an unofficial plan initially drafted in July 1967 by then-Labor Minister Yigal Allon, envisioned Israeli control over the Jordan Valley and other parts of the West Bank. In an essay he published in 1976 in *Foreign Affairs* explaining the plan, Allon insisted on the necessity of “absolute Israeli control over the strategic zone to the east of the dense Arab population, concentrated as it

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<sup>181</sup> As quoted in Bimkom, “Trapped by Planning,” p. 21.

<sup>182</sup> Reuven Pedatzur, “The ‘Jordanian Option,’ the Plan That Refuses to Die,” *Haaretz*, July 25, 2007, <https://www.haaretz.com/1.4954947> (accessed June 1, 2020).

<sup>183</sup> Ben-Naftali, Sfar and Viterbo, *The ABC of the OPT*, p. 519.

<sup>184</sup> Yotam Berger and Noa Landau, “At West Bank Event, Netanyahu Promises No More Settlers, Arabs Will Be Evicted,” *Haaretz*, July 10, 2019, <https://www.haaretz.com/israel-news/.premium-at-west-bank-event-netanyahu-promises-no-more-settlers-arabs-will-be-evicted-1.7490113> (accessed June 1, 2020).

<sup>185</sup> “Netanyahu Says Palestinians in Jordan Valley Won’t Get Citizenship After Annexation,” *Haaretz*, May 28, 2020, <https://www.haaretz.com/israel-news/.premium-netanyahu-says-palestinians-in-jordan-valley-won-t-get-citizenship-after-annexation-1.8879420> (accessed June 1, 2020).

is on the crest of the hills and westward.”<sup>186</sup> The plan, retaining Israel’s control over the Jordan Valley and of the corridor around Jerusalem, effectively divided Palestinians in the West Bank into three enclaves: one in the north from Jenin to Ramallah, one in the south including Hebron and Bethlehem, and one in the east around Jericho.<sup>187</sup>

Allon’s logic focused on the strategic and security importance of Israeli control of the West Bank, but in justifying the need for control without formally annexing territory with large Palestinian populations, references the aim “to preserve [Israel’s] Jewish character.”<sup>188</sup> Allon certainly appeared motivated by a desire to safeguard the security of Israel and its citizens, as have subsequent officials. Some regard the settlement enterprise as vital for security.<sup>189</sup> Whatever the motive, it is unacceptable to pursue this aim through a strategy of seeking to dominate Palestinians, maintaining a discriminatory system, and engaging in tactics that either have an insufficient security justification or otherwise violate international law. An intent to ensure security neither negates an intent to dominate, nor grants a *carte blanche* to undertake policies that go beyond what international law permits. While security grounds can justify a range of restrictive measures under international humanitarian and human rights law, a strategy that seeks to promote security by ensuring the demographic advantage of one group of people through discrimination or oppression has no basis under international law.

Subsequent Israeli policies built on the Allon plan. In October 1977, the Israeli government formally adopted a plan produced by Ariel Sharon, then both the chairperson of the Ministerial Committee for Settlement Affairs and agriculture minister, that expanded on the Allon Plan by strengthening Israeli control in the western West Bank, to the east of the Green Line.<sup>190</sup> The plan called for creating rings of “security zones” in order to, as former Israeli official and analyst Shaul Arieli put it, “prevent the Palestinian population from

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<sup>186</sup> See Yigal Allon, “Israel: The Case for Defensible Borders,” *Foreign Affairs*, October 1976, [http://www.foreignaffairs.com/articles/26601/yigal-allon/israel-the-case-for-defensible-borders\\_\(accessed July 10, 2020\).](http://www.foreignaffairs.com/articles/26601/yigal-allon/israel-the-case-for-defensible-borders_(accessed July 10, 2020).)

<sup>187</sup> Economic Cooperation Foundation (ECF), “Allon Plan - English Text,” [https://ecf.org.il/media\\_items/532](https://ecf.org.il/media_items/532)

<sup>188</sup> See Allon, “Israel: The Case for Defensible Borders,” *Foreign Affairs*.

<sup>189</sup> Idith Zertal and Akiva Eldar, *Lords of the Land: The War for Israel's Settlements in the Occupied Territories, 1967-2007* (Nation Books, 2009), p. 287.

<sup>190</sup> Shaul Arieli, “Messianism Meets Reality: The Israeli Settlement Project in Judea and Samaria: Vision or Illusion, 1967-2016,” November 2017, <https://www.shaularieli.com/wp-content/uploads/2019/07/messianism-meets-reality.pdf> (accessed June 1, 2020).

seeping into Israel; to create a Jewish barrier between Israeli Arabs in the Wadi Ara and the ‘Small Triangle’ area [areas in central Israel near the Green Line]; and to control key hilltops overlooking the coastal plain.”<sup>191</sup> In November 1978, Israel’s Coordinator of Government Activities in the Territories (COGAT), Avraham Orly, said in a statement to the Supreme Court that settlements “are used mostly [in times of calm] for a show of presence and control over essential areas, for observation and the like.”<sup>192</sup>

The “Master Plan for the Development of Settlements in Judea and Samaria 1979-1983,” a 1980 plan formulated by the World Zionist Organization’s Settlement Division, the body charged with establishing settlements and fully funded by the government and operating directly under its control, built on the prior schemes. The “Drobls Plan” as it was known, named after its author and head of the Settlement Division, Matityahu Drobls, called for Israeli authorities “to settle the land between the [Arab] minority population centers and their surroundings,” noting that doing so would make it “hard for Palestinians to create territorial contiguity and political unity.” The plan further noted that any autonomy granted to Palestinians, as set out in the Camp David Accords between Egypt and Israel of the late 1970s, did “not apply to the territories but rather to the Arab population alone” and that “there cannot be any shadow of a doubt about our intention to maintain perpetual control over the territory of Judea and Samaria.”<sup>193</sup> It adds that “the best and most effective way to remove any trace of doubt about our intention to control Judea and Samaria forever is through accelerated surge of settlements in these areas,” in particular to “create the widest possible spread” of settlements and “establish additional settlements next to every existing settlement.”<sup>194</sup>

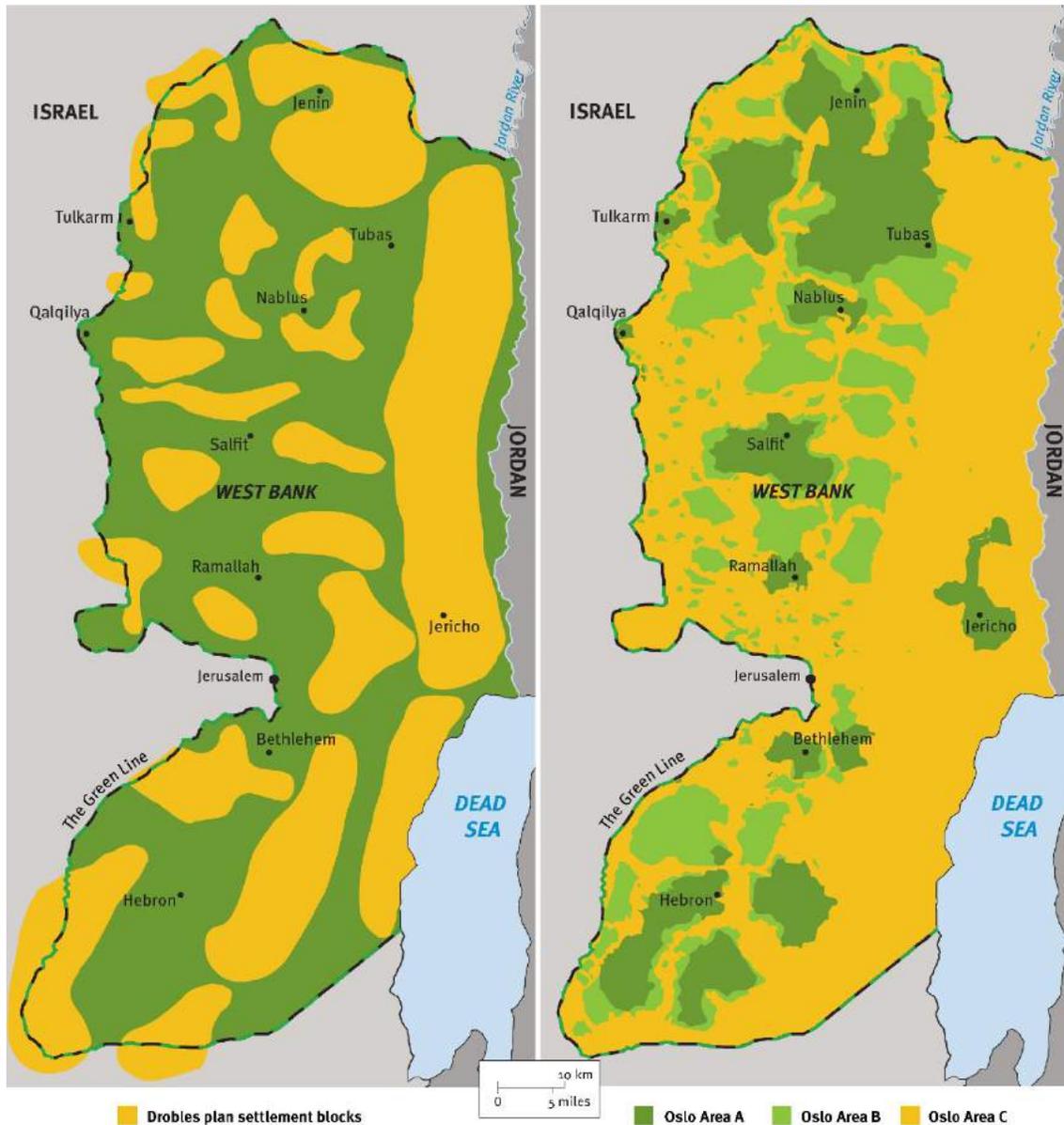
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<sup>191</sup> Ibid.

<sup>192</sup> *Suleiman Taufiq Ayub et al. v. The Minister of Defense* Case, HCJ 606, 610/78, quoted in Sfard, *The Wall and the Gate*, p. 158; Case judgement available at: [http://www.hamoked.org/files/2016/3860\\_eng.pdf](http://www.hamoked.org/files/2016/3860_eng.pdf) (accessed July 16, 2020), p. 9.

<sup>193</sup> As quoted in Yehuda Shaul, “Trump’s Middle East Peace Plan Isn’t New. It Plagiarized a 40-Year-Old Israeli Initiative,” *Foreign Policy*, February 11, 2020, <https://foreignpolicy.com/2020/02/11/trump-middle-east-peace-plan-isnt-new-israeli-palestinian-drobls/> (accessed June 1, 2020).

<sup>194</sup> “Settlement in Judea and Samaria — Strategy, Policy and Plans” (Hebrew), WZO Settlement Division, September 1980, available at <https://www.scribd.com/document/446583312/Drobls> (accessed June 1, 2020).



The maps compare the parts of the occupied West Bank that should be prioritized for settlement development under the 1980 Drobls Plan, which guided the Israeli government’s settlement policy at the time, and the division of the territory under the Oslo Accords of the 1990s between areas where Israel maintains full control (Area C) and where Palestinian authorities manage some affairs (Areas A and B). (c) 2021 Mike King/New York Review of Books.

In a July 1981 meeting of the Ministerial Committee for Settlement Affairs, Sharon justified designating additional land in the West Bank as firing zones by citing the “spreading of Arab villagers” in the South Hebron Hills, according to minutes of the meeting found in the

Israeli State Archives by the Akevot Institute for Israeli-Palestinian Conflict Research. <sup>195</sup> Sharon added that “we have an interest in expanding and enlarging the shooting zones there, in order to keep these areas, which are so vital, in our hands.” <sup>196</sup>

In 1985, defense minister at the time Yitzhak Rabin said that “there will be no development [for Palestinians in the OPT] initiated by the Israeli Government, and no permits will be given for expanding agriculture or industry [there], which may compete with the State of Israel.” <sup>197</sup>

A 1997 strategic plan by the WZO Settlement Division specified a series of additional measures to further cement Israeli rule over the West Bank. It called for expanding “settlement zones” to include military sites, nature reserves, archaeological sites, and adjacent state land, joining them with “topographically high points overlooking settlements, traffic arteries, and infrastructure corridors” to establish “contiguous stretches of land” under Israel’s control. It highlighted several areas of strategic importance, including around Jerusalem, in the northwest West Bank, in the Jordan Valley, in the South Hebron Hills, and the northern edge of the West Bank, for which Israel should remain in control to “serve as buffer zones” and provide settlers “with a completely normal Israeli life in all ways.” It further designates “three strategic lateral corridors,” or strategic roads to run east-west across the West Bank, to serve as the “backbone” connecting the various settlements, “prevent uncontrolled Arab building,” and preserve “balance between the size of the Israeli and Arab populations.” <sup>198</sup>

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<sup>195</sup> Government Secretariat, “Meeting minutes of the Joint Settlement Committee for the Government and the World Zionist Organization” (Hebrew), July 12, 1981, available at <https://bit.ly/3gPubpK> (accessed August 11, 2020); Ofer Aderet, “40-Year-Old Document Reveals Ariel Sharon’s Plan to Evict 1,000 Palestinians from Their Homes,” *Haaretz*, August 9, 2020, <https://www.haaretz.com/israel-news/.premium-40-year-old-document-reveals-ariel-sharon-s-plan-to-expel-1-000-palestinians-1.9057519> (accessed August 10, 2020).

<sup>196</sup> *Ibid.*

<sup>197</sup> *The Scarcity of Water, Emerging Legal and Policy Responses*, International Environmental Law and Policy Series (Kluwer Law International: 1997), Edward H. P. Brans, Esdier J. de Haan, André Nollkaemper, and Jan Rinzema (eds.), <https://bit.ly/2CvpSAI> (accessed June 24, 2020) pp. 146-147; UNCTAD, “Recent Economic Developments in the Occupied Palestinian Territories,” TD/B/II.2, June 30, 1986, [https://unctad.org/meetings/en/SessionalDocuments/tddb1102\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/tddb1102_en.pdf) (accessed June 24, 2020).

<sup>198</sup> WZO– Settlement Division, “Settlement Arrays in Judea and Samaria: Update – 1997” (Hebrew), June 1997, plan on file with Human Rights Watch.

In 2001, shortly after his election as prime minister, Sharon said, “It’s not by accident that the settlements are located where they are,” so that “come what may, we have to hold the western security area, which is adjacent to the Green Line, and the eastern security area along the Jordan River and the roads linking the two. And Jerusalem, of course. And the hill aquifer.”<sup>199</sup>

In 2014, Member of Knesset (MK) Yariv Levin, appointed the following year as Israel’s minister of *aliyah* (Jewish Immigration) and integration, said, “The correct policy, from the point of view of Israeli interests regarding our political ability at the moment, is to combine the attempt to hold the maximum amount of territory and apply sovereignty over the maximum amount of territory while keeping the Arab population within it to a minimum. The situation already exists in Area C, which is under our control – there are little more than fifty thousand Arabs.”<sup>200</sup> In February 2021, Avi Naim, who served as director-general for Israel’s Ministry for Settlement Affairs between July and October 2020, underscored the government’s objective to “prevent Palestinian territorial continuity” and “keep control of land reserves in Judea and Samaria”.<sup>201</sup>

Israeli authorities have taken a variety of steps to limit the numbers of Palestinians in the West Bank, including denying residency rights to Palestinians for being abroad when the occupation began in 1967, or for long periods during the first few decades of the occupation; imposing an effective freeze on family reunification over the past two decades; and largely restricting movement from Gaza to the West Bank, as described in a subsequent chapter of this report.<sup>202</sup> Palestinian residents of Area C face an additional obstacle in the authorities’ systematic refusal to grant them permits to build.<sup>203</sup>

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<sup>199</sup> Frontline, “Israel’s Next War?” (chronology), Public Broadcasting Service (PBS), April 5, 2005, <https://www.pbs.org/wgbh/pages/frontline/shows/israel/cron/> (accessed June 1, 2020). ‘Hill Aquifer’ a reference to the Western Aquifer Basin, the most productive section of the Mountain Aquifer. See Systematic Oppression section, p. 26.

<sup>200</sup> “Prepare the Constitutional Ground for the Application of Sovereignty,” *Sovereignty* journal, Issue 1, January 2014, <http://ribonut.co.il/images/Ribonut%202%20English.pdf> (accessed June 1, 2020), p. 7.

<sup>201</sup> Oded Shalom and Elisha Ben-Kimon “The Hague Price,” (Hebrew), *Ynet News*, February 11, 2021, <https://www.yediot.co.il/articles/0,7340,L-5885532,00.html> (accessed March 23, 2021).

<sup>202</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>203</sup> Ibid.

While officials have sometimes maintained that measures taken in the occupied West Bank are temporary, the government's actions and policies over more than a half-century make clear the intent to maintain their control over the West Bank in perpetuity. For example, while the Israeli government formally declared that it built the separation barrier in the early 2000s "to reduce the entry of terrorists from Judea and Samaria to carry out terror attacks in Israel," <sup>204</sup> senior Israeli officials have openly spoken about the barrier facilitating the takeover of land. <sup>205</sup> B'Tselem and Bimkom– Planners for Planning Rights documented how the route largely aimed to incorporate settlement blocs, while minimizing the number of Palestinians included. <sup>206</sup> The Israeli government itself conceded in court proceedings that the expansion plans of settlements factored into its considerations around the route of the barrier, which does not follow the Green Line but rather incorporates on the "Israeli side" thousands of dunams of land. <sup>207</sup>

Beyond the land grabs, authorities have entirely integrated the settlements' sewage system, communication and road networks, and electrical grids and water infrastructure with Israel proper. In December 2017, the attorney general issued guidelines requiring that all government-sponsored bills specify their application to settlers or otherwise justify why they do not. <sup>208</sup> In recent years, the Knesset has passed a growing number of laws that apply specifically to the West Bank, including a law allowing authorities to retroactively expropriate private Palestinian land on which settlements have been built, a law that transfers petitions brought against state policy to an administrative court instead of the Supreme Court and a law that brings universities in settlements under Israel's Council for

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<sup>204</sup> Israel Cabinet Decision 2077, 23 June 2002, Section B.3, as quoted in B'Tselem and Bimkom, "Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank," December 2005, [https://www.un.org/unispal/wp-content/uploads/2005/12/a40e88b2cb1c35b3852570ed00577efe\\_report.pdf](https://www.un.org/unispal/wp-content/uploads/2005/12/a40e88b2cb1c35b3852570ed00577efe_report.pdf) (accessed June 1, 2020), p. 7, footnote 3.

<sup>205</sup> See, for example, Yuval Yoaz, "Justice Minister: West Bank Fence Is Future Border," *Haaretz*, December 1, 2005, <https://www.haaretz.com/1.4884365> (accessed June 1, 2020); Donald Macintyre, "Sharon 'sees wall as Israel's new border,'" *The Independent*, December 2, 2005, <https://www.independent.co.uk/news/world/middle-east/sharon-sees-wall-as-israels-new-border-517787.html> (accessed June 1, 2020).

<sup>206</sup> B'Tselem and Bimkom, "Under the Guise of Security."

<sup>207</sup> *Head of the 'Azzun Local Council et al. v. Government of Israel et al.*, HCJ 2732/05, Response of the State, Section 17 as cited in B'Tselem and Bimkom, "Under the Guise of Security."

<sup>208</sup> Revital Hovel, "New Laws Should Also Consider Settlers in West Bank, Says Israeli Attorney General," *Haaretz*, December 31, 2017, <https://www.haaretz.com/israel-news/.premium-new-draft-laws-must-also-consider-settlers-in-west-bank-says-israeli-ag-1.5630121> (accessed August 28, 2020); ACRI, "Direct Legislation of the 20th Knesset Imposed on the West Bank," [http://docs.wixstatic.com/ugd/01368b\\_13c3a58d52ad4ba9a45455985ddb30e.pdf](http://docs.wixstatic.com/ugd/01368b_13c3a58d52ad4ba9a45455985ddb30e.pdf), p. 3.

Higher Education. <sup>209</sup> Whether or not the Israeli government formally annexes additional parts of the West Bank, as Israel's two largest parties for most of 2019 and 2020, Likud and Blue and White, both vowed to do during the three rounds of Israeli elections between April 2019 and March 2020, <sup>210</sup> it has long dominated these areas.

### *Gaza Strip*

From 1967 until the early 2000s, Israeli policy towards the occupied Gaza Strip mirrored its approach to the West Bank, maximizing control over the land, privileging the more than 7,500 settlers who lived there, <sup>211</sup> and subjugating the Palestinians of Gaza. <sup>212</sup> The Israeli government's withdrawal of its settler population from Gaza in 2005 reflected not a departure from the objective of demographic and land control in the OPT, but rather a recalibration in light of the large Palestinian population inhabiting a small strip of land and the burden of securing a tiny Jewish settler community there. It marked a shift to focus on ensuring Jewish demographic control over the areas it hopes to retain permanently—namely, Israel and much, if not all, of the West Bank, including East Jerusalem. Withdrawal effectively took the large Palestinian population there off Israel's demographic balance sheet and allowed Israeli authorities to consolidate a solid Jewish majority in their books across Israel and the remainder of the OPT that they intended to retain, while maintaining control of Gaza via other means.

Israeli officials at the time acknowledged the demographic objectives behind the move. On August 15, 2005, the day the Israeli government set as a deadline for settlers to voluntarily leave Gaza, Prime Minister Sharon said in an evening address to Israelis, "Gaza cannot be held onto forever. Over one million Palestinians live there, and they double their numbers

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<sup>209</sup> "Annexation Legislation Database," Yesh Din, <https://www.yesh-din.org/en/legislation/> (accessed June 1, 2020).

<sup>210</sup> Noa Landau, Jack Khoury and Chaim Levinson, "Gantz Vows to Annex Jordan Valley; Netanyahu Wants Sovereignty 'Without Exception'," *Haaretz*, January 21, 2020, <https://www.haaretz.com/israel-news/elections/.premium-gantz-calls-for-jordan-valley-annexation-hopes-trump-releases-peace-plan-soon-1.8432081> (accessed June 1, 2020).

<sup>211</sup> Israel CBS, "Localities (1) And Population, By Municipal Status And District (2)," 2004, [https://www.cbs.gov.il/he/publications/doclib/2004/2.%20shnaton%20population/sto2\\_13.pdf](https://www.cbs.gov.il/he/publications/doclib/2004/2.%20shnaton%20population/sto2_13.pdf) (accessed June 1, 2020).

<sup>212</sup> In proposing settlements in the Gaza Strip, Yigal Alon, then-head of the ministerial committee on settlements, said in June 1968 that "these settlements are of supreme importance to the political future of the Gaza Strip, because the split south of Gaza City. There is great security importance in a Jewish presence in the heart of Gaza." Doron Rosenblum, "A Brief Anthology of Blindness and Vision," *Haaretz*, February 11, 2004, [haaretz.com/1.4714175](https://www.haaretz.com/1.4714175) (accessed June 1, 2020).

with every generation.”<sup>213</sup> The same month, then-Deputy Prime Minister Shimon Peres said, “We are disengaging from Gaza because of demography.”<sup>214</sup>

Authorities, in fact, explicitly said that they wanted to redirect the resources that went into the settler community in Gaza to strengthening Jewish Israeli control over parts of Israel and the West Bank. The early 2000s push, for example, to Judaize the Galilee and the Negev came as Israeli authorities were putting in motion their plans to withdraw from Gaza. *Haaretz* quoted an advisor to Prime Minister Sharon at the time as saying that Sharon “reached the conclusion that following the enormous investment in settling the territories, it is now necessary to settle the Galilee and the Negev.”<sup>215</sup>

Following Hamas’s wresting control of the Gaza Strip from the PA in 2007, the Israeli government, which had a practice of security cooperation with the PA but hostile relations with Hamas, announced restrictions on the movement of people and goods into and out of Gaza. It declared Gaza “hostile territory” and took a range of measures aimed at, among other things, weakening the economy.<sup>216</sup> As a central part of their policy, Israeli authorities have enforced what they call “a policy of separation” between Gaza and the West Bank, which they say serves “both security and political goals.”<sup>217</sup> In March 2019, the *Jerusalem*

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<sup>213</sup> “Israeli Disengagement from Gaza,” *Cable-Satellite Public Affairs Network (C-Span)*, August 15, 2005, <https://www.c-span.org/video/?188483-1/israeli-disengagement-gaza> (accessed June 1, 2020).

<sup>214</sup> “Sharon Maintains Control in Face of Demographic Shift,” *The Irish Times*, August 20, 2005, <https://www.irishtimes.com/opinion/sharon-maintains-control-in-face-of-demographic-shift-1.482484> (accessed June 1, 2020).

<sup>215</sup> Zafir Rinat and *Haaretz* correspondent, “PMO Issues Rush Order for 30 New Towns in Negev, Galilee,” *Haaretz*, July 20, 2003, <https://www.haaretz.com/1.5347089> (accessed June 1, 2020).

<sup>216</sup> Israel MFA, “Security Cabinet Declares Gaza Hostile Territory,” September 19, 2007, <http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx> (accessed March 30, 2020). On the policy to restrict movement in order to weaken the economy in Gaza, see *Albassioni v. Prime Minister*, HCJ 9132/07, State Submission, November 2, 2007, para. 44 (Hebrew), [http://gisha.org/UserFiles/File/Legal%20Documents\\_/fuel%20and%20electricity\\_oct\\_07/state\\_response\\_2\\_11\\_07.pdf](http://gisha.org/UserFiles/File/Legal%20Documents_/fuel%20and%20electricity_oct_07/state_response_2_11_07.pdf) (accessed August 4, 2016).

<sup>217</sup> Gisha, “Area G: From Separation to Annexation,” June 2020, [https://gisha.org/UserFiles/File/publications/Area\\_G/From\\_Separation\\_to\\_Annexation\\_2020\\_EN.pdf](https://gisha.org/UserFiles/File/publications/Area_G/From_Separation_to_Annexation_2020_EN.pdf) (accessed June 30, 2020); “Gisha Petition Against Israel’s Refusal to Allow a Woman to Return from Gaza to the West Bank with Her Children,” Preliminary Response by the State (Hebrew) (November 14, 2019), <https://gisha.org/UserFiles/File/LegalDocuments/54868-19/3.pdf> (accessed June 25, 2020). “Granting the requested remedy to the petitioner (as in, accepting the petition, or giving the petitioner the option of returning to Judea and Samaria)

*Post* reported that Netanyahu justified allowing funding from Qatar to enter Gaza to support Hamas authorities in order to maintain the divide between Fatah and Hamas and thereby the separation between the West Bank and Gaza. <sup>218</sup>

Demographics factor centrally in Israel's separation policy. Israeli policy since 2000 has created what Israeli rights groups have called a "one-way permit" from the West Bank to Gaza, whereby, in the rare cases where authorities permit Palestinians to transit between Gaza and the West Bank, they permit it only exclusively in the direction of Gaza. <sup>219</sup> The army's "Procedure for Settlement in the Gaza Strip by Residents of Judea and Samaria," published in 2018, states that "[i]n 2006, a decision was made to introduce a policy of separation between the Judea and Samaria Area and the Gaza Strip in light of Hamas' rise to power in the Gaza Strip. The policy currently in effect is aimed at reducing travel between the areas." The document, though, notes that "a resident of Judea and Samaria may file an application for permanent settlement in the Gaza Strip for any purpose that is considered humanitarian (usually family unification)." It then clarifies that "as settlement of Gaza residents in the Judea and Samaria Area is possible only in the rarest cases... the need to allow the family to be maintained in the Gaza Strip arises." <sup>220</sup>

Its guidelines for Gaza residents seeking to settle in the West Bank, published in a separate Israeli army document, re-enforce the same policy. It sets out that "for all practical purposes entry of residents of Gaza into the Judea and Samaria Area shall only be allowed in the most exceptional humanitarian cases." It notes that the deputy defense minister "established that in every case involving the settlement of Gaza residents in the Judea and Samaria Area one should adopt the most restrictive policy" and "clarified that a

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would fundamentally undermine the policy of separation and of reducing movement between the areas, as outlined by the government;" and "The policy on travel between the State of Israel and the Gaza Strip, including the separation policy pertaining to travel between the Gaza Strip and the Judea and Samaria Area, has been developed according to various security and state policy considerations," *Tzafia Raduan and Others v Minister of Defense*, HCJ 5911/17 Preliminary Response by the State (25 July 2017), <http://gisha.org/UserFiles/File/LegalDocuments/5911-17/state.response.pdf> (accessed June 25, 2020).

<sup>218</sup> Lahav Harkov, "Netanyahu: Money to Hamas part of strategy to keep Palestinians divided," *Jerusalem Post*, March 12, 2019, <https://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-Money-to-Hamas-part-of-strategy-to-keep-Palestinians-divided-583082> (accessed June 1, 2020).

<sup>219</sup> See B'Tselem and HaMoked, "Separated Entities: Israel Divides Palestinian Population of West bank and Gaza Strip," September 2008, [https://www.btselem.org/download/200809\\_separated\\_entities\\_eng.pdf](https://www.btselem.org/download/200809_separated_entities_eng.pdf) (accessed December 20, 2011).

<sup>220</sup> Israel Coordinator of Government Activities in the Territories (COGAT), "Procedure For Settlement In The Gaza Strip By Residents Of Judea And Samaria Area," (Hebrew) May 2018, <https://bit.ly/3cxcg4f> (accessed June 1, 2020).

family relationship, in and of itself, does not qualify as a humanitarian reason that would justify settlement by Gaza residents in the Judea and Samaria Area.”<sup>221</sup>

Gisha found, based on information obtained from the Israeli army via Freedom of Information requests, that between 2009 and March 2017, the Israeli army had approved only six applications for Gaza residents to reside in the West Bank, in each case following the filing of a petition to Israel’s Supreme Court. Four of the six cases involved children who had no one to care for them in Gaza.<sup>222</sup> By contrast, between January 2011 and August 2014, the army approved 58 applications for West Bank residents to relocate to Gaza on the condition they sign a pledge never to return to the West Bank.<sup>223</sup> In addition, between 2004 and 2017, the Israeli army removed back to Gaza more than 130 Palestinians from Gaza living in the West Bank without a valid Israeli-issued permit, but apparently none in the other direction.<sup>224</sup>

These policies pressure Palestinians to leave the part of the OPT that authorities covet for Jewish settlement—the West Bank—for the Gaza Strip, and join the more than 2 million Palestinians who are effectively off the demographic balance sheet in the lands where Jews reside. Without Gaza, the demographic ratio of Jews to Palestinians between the river and the sea shifts from about 50-50 to a 59-41 Jewish majority.

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<sup>221</sup> COGAT, “Procedure for handling Applications by Gaza Strip Residents for settlement in the Judea and Samaria Area,” (Hebrew) July 2013, <https://bit.ly/2Y3C4zZ> (accessed June 1, 2020).

<sup>222</sup> “In Response to Freedom of Information Application Filed by Gisha, COGAT Confirms: Only One Application Processed Under the ‘settlement procedure’ in the Past Year,” Gisha press release, March 21, 2017, <https://gisha.org/legal/6404> (accessed June 1, 2020).

<sup>223</sup> “The military’s response to an inquiry by HaMoked and Gisha,” HaMoked, March 30, 2015, <http://www.hamoked.org/Document.aspx?dID=Updates1510> (accessed June 1, 2020).

<sup>224</sup> Human Rights Watch, “*Forget About Him*,” p. 9; “Military Data Reveals: Sharp Rise in the Number of People Deported by the Military from their West Bank Homes to the Gaza Strip, due to Their Out of Date Addresses in the Israeli Copy of the Population Registry,” HaMoked press release, December 20, 2017, <http://www.hamoked.org/Document.aspx?dID=Updates1942> (accessed June 1, 2020). Also see B’Tselem and HaMoked, “One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan,” March 2005, [http://www.btselem.org/publications/summaries/200503\\_gaza\\_prison](http://www.btselem.org/publications/summaries/200503_gaza_prison), p. 20. (accessed January 23, 2012).

In addition, Israeli officials have at times encouraged the emigration of Palestinians from Gaza out of the OPT altogether. <sup>225</sup> In August 2019, a senior official apparently close to Netanyahu told Israeli journalists that authorities were actively promoting the emigration of Palestinians from Gaza and would cover the emigration costs and even allow Palestinians to use an Israeli airfield to leave for their new host countries. <sup>226</sup>

## Fragmentation

The fragmentation of Palestinian populations, in part deliberately created through the separation policy between the West Bank and Gaza, the restrictions on movement between East Jerusalem and the rest of the OPT, and the range of restrictions on residency rights, serves as another tool of ensuring domination. In particular, fragmentation divides populations and facilitates the demographic engineering that is key to preserving political control by Jewish Israelis, and further frays political and social ties among Palestinians, thereby weakening resistance to Israeli rule. <sup>227</sup>

## Conclusion

The pursuit by Israeli authorities of the objective of maintaining Jewish Israeli control vis-a-vis Palestinians over demographics and land in Israel and the OPT amounts to a “purpose” or purposes “of establishing and maintaining domination by one racial group of persons

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<sup>225</sup> For example, the Israeli military government obtained lists from local Palestinian leaders (mukhtars) in Gaza of families that had been separated and offered to pay the remaining family members to leave Gaza. According to US diplomatic records from 1968, a teenage boy whose father had already left Gaza reported to the International Committee of the Red Cross that Israeli military agents offered to pay 500 liras if he left with his mother and siblings. In addition, the Israeli military encouraged emigration from Gaza by deciding that the standard of living in Gaza should be “reasonable” but only “close to that which existed before the occupation;” according to one document, this meant that Israel would not create new sources of income for refugees living in camps. Tom Segev, “The June 1967 War and the Refugee Problem,” *Journal of Palestine Studies*, Spring 2007 (v. 36 n.3), available at <http://prn.mcgill.ca/research/papers/segev.pdf> (accessed June 1, 2020).

<sup>226</sup> Raphael Ahren, “Israel Actively Pushing Palestinian Emigration from Gaza, Official says,” *Times of Israel*, August 19, 2019, <https://www.timesofisrael.com/israel-actively-pushing-palestinian-emigration-from-gaza-official-says/> (accessed June 1, 2020).

<sup>227</sup> Economic and Social Commission for Western Asia (ESCWA), “Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation,” E/ESCWA/ECRI/2017/1, March 2017, pp. 4, 38. (Report no longer available online; copy on file with HRW); “Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports,” Al Haq et al., November 10, 2019, p. 15-18, available at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT\\_CERD\\_NGO\\_ISR\\_39700\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_39700_E.pdf) (accessed February 9, 2021); “Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians,” Al Haq, February 2019, [https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/images/stories/PDF/Family\\_Unification\\_14%20February%20\(1\).pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/Family_Unification_14%20February%20(1).pdf) (accessed February 9, 2021).

over any other racial group of persons,” as set out in the Apartheid Convention.<sup>228</sup> It also rises to an “intention” or intentions “of maintaining that regime [or regimes of systematic oppression and domination],” as set out in the Rome Statute definition of apartheid,<sup>229</sup> and a discriminatory intent or intents, as part of the customary international law definition of persecution. These policies, practices, and statements collectively establish a discriminatory intent by Israeli authorities to maintain systematic domination by Jewish Israelis over Palestinians.

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<sup>228</sup> Apartheid Convention, art II.

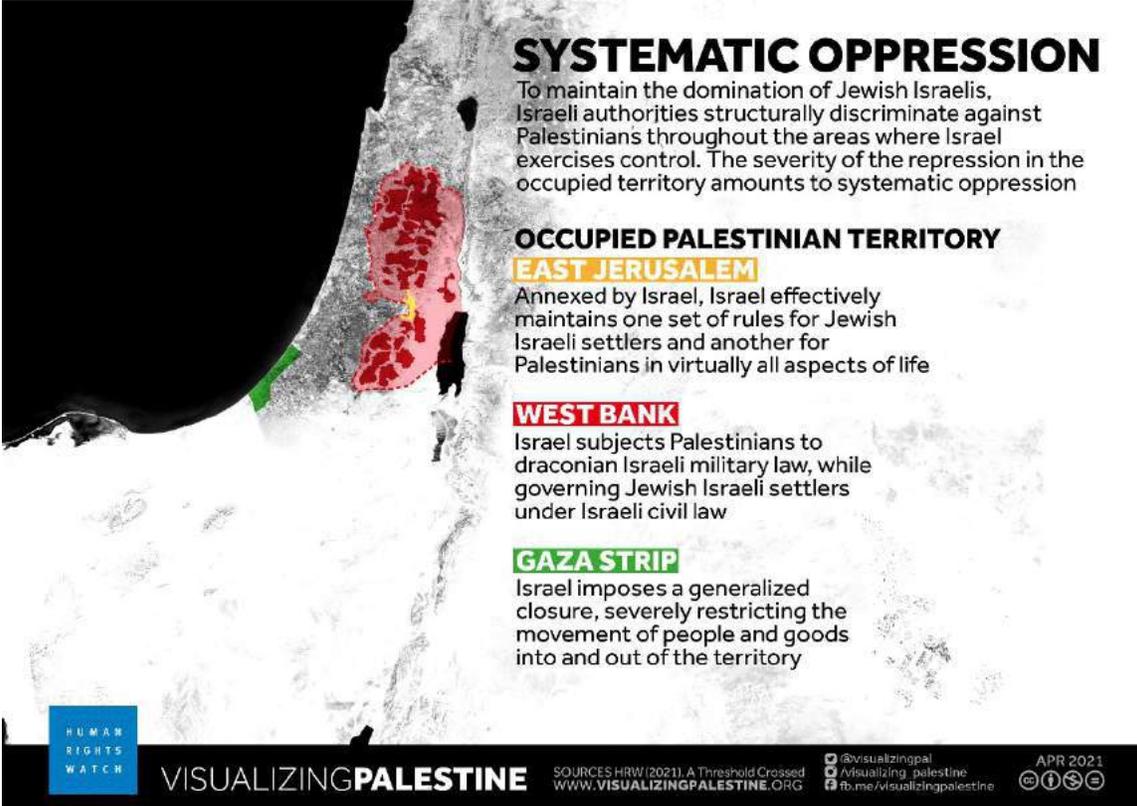
<sup>229</sup> Rome Statute, art 7(2)(h).

## IV. Systematic Oppression and Institutional Discrimination

The definition of the crime of apartheid under both the Apartheid Convention and Rome Statute requires, in addition to the intent to dominate, systematic oppression, along with the commission of inhumane acts.

As just outlined, the Israeli government pursues policies and practices in the OPT and Israel that demonstrate its intent to maintain domination of Jewish Israelis over Palestinians. However, the severity and means used vary according to location.

In the OPT, Israel methodically subjugates the more than 5 million Palestinians living there. This chapter will show that these abusive policies are of such intensity that they amount to “systematic oppression” for the purpose of the crime of apartheid.



**SYSTEMATIC OPPRESSION**  
To maintain the domination of Jewish Israelis, Israeli authorities structurally discriminate against Palestinians throughout the areas where Israel exercises control. The severity of the repression in the occupied territory amounts to systematic oppression

**OCCUPIED PALESTINIAN TERRITORY**

**EAST JERUSALEM**  
Annexed by Israel, Israel effectively maintains one set of rules for Jewish Israeli settlers and another for Palestinians in virtually all aspects of life

**WEST BANK**  
Israel subjects Palestinians to draconian Israeli military law, while governing Jewish Israeli settlers under Israeli civil law

**GAZA STRIP**  
Israel imposes a generalized closure, severely restricting the movement of people and goods into and out of the territory

HUMAN RIGHTS WATCH  
VISUALIZING PALESTINE  
SOURCES HRW (2021). A Threshold Crossed  
WWW.VISUALIZINGPALESTINE.ORG  
@visualizingpal  
/visualizing\_palestine  
fb.me/visualizingpalestine  
APR 2021

Inside Israel's pre-1967 borders, Palestinians hold citizenship, the right to vote and free movement, and encounter less severe policies and practices, but still face institutional discrimination and other abuses.

By contrast to the differences in the treatment of Palestinians, Israeli authorities grant all Jewish Israelis the same rights and privileges regardless of which side of the Green Line they live on. The effect, to varying degrees, is to privilege them over Palestinians in most aspects of life, including with legal status, access to land and freedom to build, and allocation of resources and services.

## Systematic Oppression in the OPT

### *West Bank*

Since they seized the West Bank on June 7, 1967, Israeli authorities have ruled over the entire territory. That day, the army issued a proclamation establishing that its West Bank area commander has “all legislative, executive and judicial powers” over the occupied territory.<sup>230</sup> Since then, the army has issued hundreds of military orders governing many aspects of everyday life, including regulating freedom of movement and access to land and natural resources, except for in East Jerusalem, which Israel unilaterally annexed in 1967 and has governed under its civil law.<sup>231</sup> Israeli authorities have exclusive control over Area C, comprising about 60 percent of the West Bank. Following its establishment in 1994, the PA has managed some affairs in Areas A and B, which comprise the remaining 40 percent, namely, education, health care, and other civil affairs. Israeli authorities, however, greatly restrict its powers even in Areas A and B and retain primary control across the West Bank over many aspects of the lives of Palestinians, including over borders, control of natural resources, airspace, movement of people and goods, security, and the population registry.

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<sup>230</sup> Military Proclamation No. 2 Concerning Regulation of Authority and the Judiciary (West Bank), June 7, 1967, published in Jerusalem Media & Communication Center (JMCC), *Israeli Military Orders in the Occupied Palestinian West Bank 1967-1992*, Second Edition (East Jerusalem, 1995) p. 1.

<sup>231</sup> “Status of Palestinian Territories and Palestinian Society under Israeli Occupation,” The Applied Research Institute of Jerusalem (ARIJ), <https://www.arij.org/atlas40/chapter2.2.html> (accessed October 27, 2019).

Since 1967, Israeli authorities have established more than 280 settlements in the West Bank, including 138 they formally recognize, and 150 “outposts”—settlements without formal authorization, but where authorities provide infrastructure, basic services, and security—in the West Bank, as well as 12 settlements in East Jerusalem and several settlement enclaves inside Palestinian neighborhoods in parts of East Jerusalem and Hebron. <sup>232</sup> Authorities have done so in violation of the Fourth Geneva Convention’s prohibition against the transfer of an occupying power’s civilian population to occupied territory. <sup>233</sup> Israeli authorities bar Palestinians in the West Bank from entering settlements, except as laborers bearing special permits, <sup>234</sup> and nearly all settlers are Jewish Israelis.

Israeli authorities treat the more than 441,000 Israeli settlers and 2.7 million Palestinians who reside in the West Bank, excluding East Jerusalem, under distinct bodies of law. <sup>235</sup> They also treat the two population groups unequally on a range of issues, including protection of civil and political rights; methods of law enforcement; freedom of movement; freedom to build; and access to water, electricity, infrastructure, and other resources and services.

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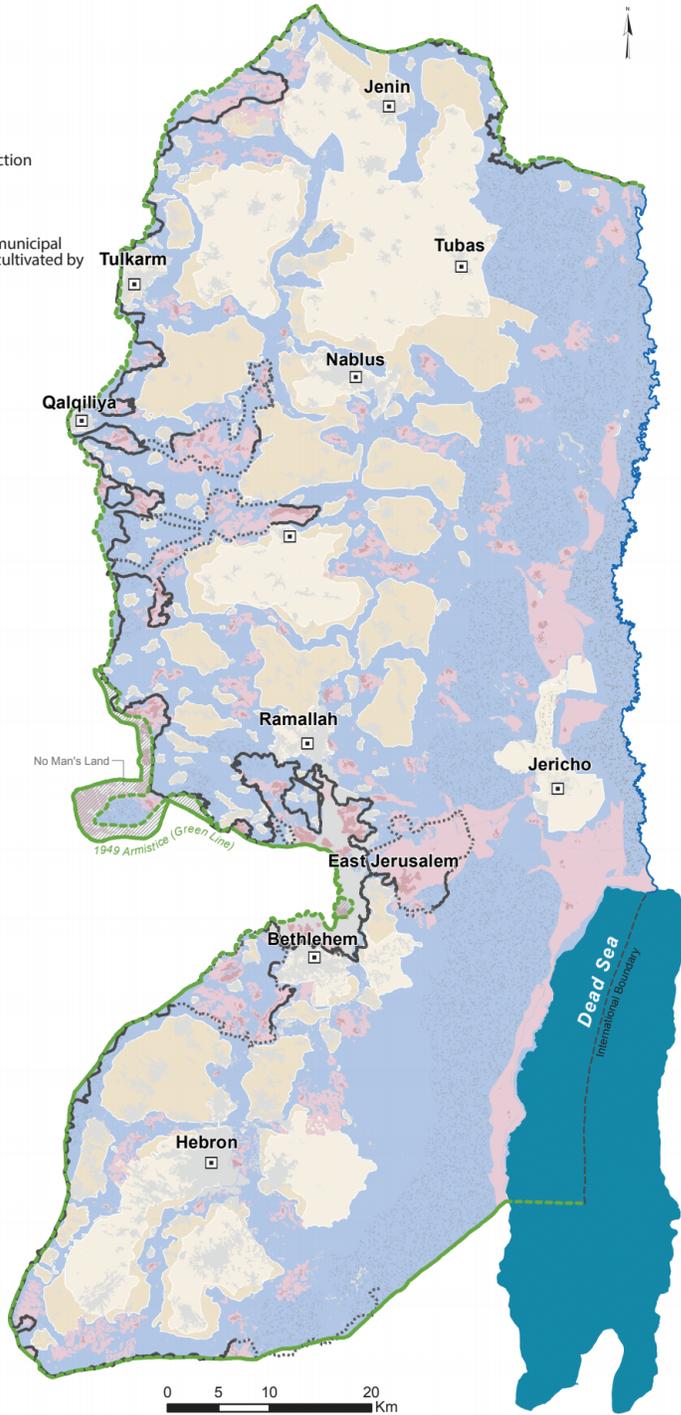
<sup>232</sup> B’Tselem and Kerem Navot, “This Is Ours – And This, Too: Israel’s Settlement Policy in the West Bank,” March 2021, [https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/a76eb4\\_ce24a5c07d134e3191887acff5aabd84.pdf](https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/a76eb4_ce24a5c07d134e3191887acff5aabd84.pdf) (accessed March 23, 2021); “Settlements,” B’Tselem, updated January 16, 2019, <https://www.btselem.org/settlements> (accessed November 1, 2020). Also see, “Settlement Watch: Data,” Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/population> (accessed May 21, 2020).

<sup>233</sup> Fourth Geneva Convention, art. 49.

<sup>234</sup> “Order Concerning Security Directives (Judea and Samaria)” (Hebrew), No. 378, 1970, Declaration Concerning Closure of an Area (Israeli Settlements), June 6, 2002, [https://www.nevo.co.il/law\\_word/Law70/zava-0199.pdf](https://www.nevo.co.il/law_word/Law70/zava-0199.pdf) (accessed May 3, 2020). The order was first issued in 1995 and then re-issued in 2002.

<sup>235</sup> Israel CBS, “Localities (1) and Population, By District, Sub-District, Religion and Population Group, September 15, 2020. The West Bank population figure excludes East Jerusalem residents living within the Israeli-administrated Jerusalem municipality. It subtracts the Israel CBS figure for the Palestinian population in Jerusalem from the total population figures for the West Bank, including East Jerusalem, released by the Palestinian Central Bureau of Statistics (PCBS). See PCBS, “Palestinians at the end of 2020,” (Arabic), December 2020, <http://www.pcbs.gov.ps/Downloads/book2546.pdf> (accessed March 22, 2021). Such a calculation may undercount the actual West Bank population. It yields a figure of about 95,000 Palestinians living in parts of Jerusalem beyond the Israeli-administrated municipality, whereas the PCBS in May 2020 estimated the figure to be around 162,000. See “Dr. Awad Presents a Brief on Palestinians at the End of 2020,” PCBS press release, December 31, 2020 <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3896> (accessed March 22, 2021).

- Palestinian Community
- International Border
- Green Line
- Barrier**
- Constructed / Under Construction
- Planned
- Israeli Closed Military Area
- Israeli settlement outer limit, municipal boundary, outposts and land cultivated by settlers
- Oslo Agreement**
- Area A
- Area B
- Area C
- "Wye River" Nature Reserves



Israeli settlements and other restrictions effectively concentrate Palestinians in the occupied West Bank into clusters of enclaves. © 2020 UN OCHA

## Legal Status

Palestinians and Jewish Israelis living in the West Bank hold different legal statuses. Palestinians hold identity cards and passports that permit them to reside and work in the West Bank but that do not convey citizenship or nationality.<sup>236</sup> Only Palestinians registered in the Israeli-controlled population registry are eligible to receive an identity card or passport. Israeli authorities have refused to register, or denied residency to, hundreds of thousands of West Bank Palestinians on the grounds that they were either outside the territory when the occupation began in 1967 or spent time abroad between 1967 and 1994.<sup>237</sup> By contrast, Jewish Israelis living in the West Bank are Israeli citizens who cannot lose that status no matter how many years they spend abroad.

Palestinians and settlers enjoy vastly different levels of freedom of movement. Israeli authorities bar West Bank Palestinians from entering large sections of the West Bank itself unless they have a difficult-to-obtain, time-limited permit. These sections include East Jerusalem and nearby villages that Israel annexed in 1967, the “seam zone” between the separation barrier and the Green Line, settlements, and areas authorities deem “closed military zones.”<sup>238</sup> The separation barrier, slicing in some places through populated Palestinian areas, restricts movement and cuts off many Palestinians from their agricultural lands, while forcing 11,000 Palestinians living in the seam zone, who are barred from entering Israel, to cross the separation barrier to access their own property and some basic services.<sup>239</sup> Palestinians also face nearly 600 permanent obstacles to movement, such as checkpoints and roadblocks, located inside the West Bank rather than

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<sup>236</sup> Human Rights Watch, “*Forget About Him.*”

<sup>237</sup> The census that provided the basis for the initial entries into the population registry excluded at least 270,000 Palestinians from the West Bank and Gaza who had been living there before 1967, but were absent during the census, either because they had fled during the 1967 war or were abroad for study, work or other reasons. In addition, authorities canceled the residency of 130,000 West Bank Palestinians between 1967 and 1994, generally for being outside the West Bank for more than three years. See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>238</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>239</sup> “Israel: Military Choking Palestinian Village, Planning Tourist Site,” Human Rights Watch news release, February 4, 2014, <https://www.hrw.org/news/2014/02/04/israel-military-choking-palestinian-village-planning-tourist-site>; see also Tovah Lazaroff, “Palestinians Petition Court to Reroute 6 KM of Security Barrier,” *Jerusalem Post*, June 7, 2020, <https://www.jpost.com/israel-news/palestinians-petition-court-to-reroute-6-km-of-security-barrier-630665> (accessed June 8, 2020).

along the Green Line separating it from Israel. <sup>240</sup> Security forces at checkpoints have the authority to turn back Palestinians without reason or, as often is the case, turn a short commute into an hours-long, humiliating journey. In contrast, Israeli authorities permit Israeli settlers, residents, and visitors, along with foreign tourists, largely unfettered freedom of movement throughout the West Bank, including into the seam zone and many closed military zones, but excluding Palestinian population centers, and into East Jerusalem and Israel. <sup>241</sup>

Israel ostensibly built the separation barrier for security purposes, starting in 2002 during the second *Intifada*. However, officials have acknowledged that it chose its path, 85 percent of which lies inside the West Bank and protrudes up to 22 kilometers beyond the Green Line, <sup>242</sup> to accommodate the growth needs of settlements, <sup>243</sup> and to maintain the fabric of life of Israeli settlers. <sup>244</sup>

Israeli authorities apply in parallel different bodies of laws to Palestinians and Jewish Israelis. The Israeli army governs the West Bank under military law, which incorporates laws that existed in the West Bank prior to the beginning of the occupation. While governing Palestinians under military law, the Israeli army has issued military orders that stipulate that Israeli civil and administrative law shall apply to settlements, <sup>245</sup> a process

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<sup>240</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), “Longstanding Access Restrictions Continue to Undermine the Living Conditions of West Bank Palestinians,” *The Monthly Humanitarian Bulletin*, March-May 2020, <https://www.ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living-conditions-west-bank-palestinians> (accessed June 10, 2020).

<sup>241</sup> Human Rights Watch, *Separate and Unequal*.

<sup>242</sup> OCHA, “Over 700 road obstacles control Palestinian movement within the West Bank,” October 8, 2018, <https://www.ochaopt.org/content/over-700-road-obstacles-control-palestinian-movement-within-west-bank> (accessed July 3, 2020); UNGA, “Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories,” A/62/360, September 24, 2007, <https://www.adalah.org/uploads/oldfiles/eng/intlo7/un-Israeli-HR-Practices-07.pdf> (accessed July 13, 2020), para. 28.

<sup>243</sup> *Head of the ‘Azzun Local Council et al. v. Government of Israel et al.*, HCJ 2732/05, Response of the State, Section 17 as cited in B’Tselem and Bimkom, “Under The Guise Of Security.”

<sup>244</sup> Bimkom, “Between Fences: The Enclaves Created by the Separation Barrier,” October 2006, <http://bimkom.org/eng/wp-content/uploads/Between-Fences.pdf> (accessed May 21, 2020), p. VI.

<sup>245</sup> “Order Concerning the Administration of Local Councils,” Israeli Military Order No. 892, 1980, available at <http://www.geocities.ws/savepalestinenow/israelmilitaryorders/fulltext/moo892.htm> (accessed May 21, 2020); “Order Concerning the Administration of Local Councils,” Israeli Military Order No. 892, 1980, available at

that Israeli human rights lawyer Michael Sfard describes as “pipelining,” allowing Israeli authorities to “exercise powers in the settlements without annexing them de jure.”<sup>246</sup> In recent years, pursuant to guidelines set by the attorney general in December 2017 requiring that all government-sponsored bills specify that they apply to settlers in the West Bank or otherwise justify why not, several pieces of Knesset legislation directly state that they apply to settlers in the West Bank.<sup>247</sup>

Israeli authorities also maintain parallel criminal justice systems for settlers and Palestinians in the West Bank, excluding East Jerusalem. Israeli authorities try Palestinians charged with crimes in military courts, where they face a conviction rate of nearly 100 percent.<sup>248</sup> By contrast, authorities have passed regulations that extend Israeli criminal law on a personal basis to settlers, and grant Israeli courts jurisdiction over them, while authorities have followed a longstanding policy not to prosecute Jewish settlers in military courts.<sup>249</sup> The Association for Civil Rights in Israel (ACRI) found in a 2014 report that “since the 1980s, all Israeli citizens brought to trial before the military courts were Arab citizens and residents of Israel.”<sup>250</sup>

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<http://www.geocities.ws/savepalestinew/israelmilitaryorders/fulltext/moo892.htm> (accessed May 21, 2020); The Association for Civil Rights in Israel (ACRI), “One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank,” October 2014, <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf> (accessed May 21, 2020).

<sup>246</sup> Michael Sfard, *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights* (New York, Metropolitan Books: 2018), p.126. Sfard represented Human Rights Watch in a challenge of a deportation order against one of its employees working in Israel and the OPT.

<sup>247</sup> ACRI, “Direct Legislation of the 20th Knesset Imposed on the West Bank: Legislative Initiatives to Promote Annexation and Weaken the Laws of Occupation,” October 2018, [http://docs.wixstatic.com/ugd/01368b\\_13c3a58d52ad4ba9a45455985ddbf30e.pdf](http://docs.wixstatic.com/ugd/01368b_13c3a58d52ad4ba9a45455985ddbf30e.pdf) (accessed June 1, 2020); “Annexation Legislation Database,” Yesh Din, <https://www.yesh-din.org/en/legislation/> (accessed June 1, 2020).

<sup>248</sup> Chaim Levinson, “Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns,” *Haaretz*, November 29, 2011, <https://www.haaretz.com/1.5214377> (accessed January 31, 2018); B’Tselem, “Presumed Guilty: Remand in Custody by Military Courts in the West Bank,” June 2015, [https://www.btselem.org/sites/default/files/sites/default/files2/201506\\_presumed\\_guilty\\_eng.pdf](https://www.btselem.org/sites/default/files/sites/default/files2/201506_presumed_guilty_eng.pdf) (accessed June 1, 2020).

<sup>249</sup> ACRI, “One Rule, Two Legal Systems,” p. 16.

<sup>250</sup> *Ibid.*, p. 37.

The application of dual bodies of laws has created a reality where two people live in the same territory, but only one enjoys robust rights protection. <sup>251</sup> Settlers, for example, enjoy freedom of speech, which Israeli law restricts only if there is “a near certainty” that it would “seriously jeopardize” vital security interests. <sup>252</sup> Palestinians, meanwhile, can face up to ten years in prison for attempting to influence public opinion in a manner that “may” harm public peace or public order. <sup>253</sup> Palestinians can also be jailed for participating in a gathering of more than ten people without a permit on an issue “that could be construed as political,” <sup>254</sup> while settlers can demonstrate without a permit unless it involves more than 50 people, takes place outdoors and involves “political speeches and statements.” <sup>255</sup> Authorities can deny a permit to settlers for such a gathering only when they can show a “near certainty” of harm to public security, public order, or the rights of others. <sup>256</sup>

Discrimination also pervades every aspect of the criminal law and detention system. Conducting a search of a settler requires a warrant or meeting very restrictive conditions, none of which apply to searching a West Bank Palestinian. <sup>257</sup> Israeli law requires detainees be brought before a judge within 24 hours—although that period can be extended to 48 hours in exceptional cases and up to 96 hours when authorized in extraordinary cases—while military law permits holding Palestinians for up to eight days

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<sup>251</sup> Human Rights Watch, *Born Without Civil Rights: Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank* (New York: Human Rights Watch, 2019) <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>.

<sup>252</sup> Abraham Ben-Zvi, “The Limits of Israel’s Democracy in the Shadow of Security,” *Taiwan Journal of Democracy*, Vol. 1 No.2 (2005), pp. 8-9.

<sup>253</sup> Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (Military Order No. 1651), 5770-2009, available at [http://www.hamoked.org/files/2017/1055\\_eng.pdf](http://www.hamoked.org/files/2017/1055_eng.pdf) (accessed October 25, 2019), adopted November 2009, entered into force May 2, 2010, art. 251.

<sup>254</sup> Order No. 101 – Order Regarding Prohibition of Incitement and Hostile Propaganda Actions, August 1967, arts. 1, 3, 10, as amended by Order No. 718 (1977), Order No. 938 (1981), Order No. 1079 (1983), and Order No. 1423 (1995), available at <https://bit.ly/2DfDfTOA> (accessed October 25, 2019).

<sup>255</sup> “Pocket Guide: The Right to Demonstrate,” ACRI et al., 2015, <https://bit.ly/2ohIVrD> (accessed July 2, 2019).

<sup>256</sup> B’Tselem, “The Right to Demonstrate in the Occupied Territories,” July 2010, <https://bit.ly/2FlztTr> (accessed June 30, 2019).

<sup>257</sup> ACRI, “One Rule, Two Legal Systems.”

before they must see a judge—and in their case a military judge.<sup>258</sup> Authorities can renew detention for longer periods and have a much wider latitude to keep Palestinians in pretrial detention or during proceedings, compared to the standards applicable to Israeli civilians, including settlers.<sup>259</sup> Authorities can also deny Palestinians access to counsel for twice as long as to settlers—up to 96 hours for regular offenses and 60 days for “security offenses,” as compared to 48 hours and 21 days for settlers.<sup>260</sup>

The laws governing children in detention also discriminate between Israelis and West Bank Palestinians. Israeli civil law protects children against nighttime arrests, provides the right to have a parent present during interrogations, and limits the amount of time children may be detained before being able to consult a lawyer and to be presented before a justice.<sup>261</sup> In law and in practice, Palestinian children in the West Bank enjoy far fewer protections—Israeli forces regularly arrest children during nighttime raids, interrogate them without a guardian present, and hold those as young as 12 in lengthy pretrial detention.<sup>262</sup> ACRI found in 2017, based on government data from 2015, that authorities kept 72 percent of Palestinian children from the West Bank in custody until the end of proceedings, but only 17.9 percent of children in Israel.<sup>263</sup>

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<sup>258</sup> *The Association for Civil Rights in Israel et al v the Commander of the IDF Forces in the West Bank*, Petition demanding equal initial detention periods for Palestinians and Israelis, HCJ 4057/10, May 26, 2010, <https://www.yesh-din.org/en/petition-demanding-equal-initial-detention-periods-palestinians-israelis/> (accessed June 1, 2020); ACRI, “One Rule, Two Legal Systems,” p. 40.

<sup>259</sup> ACRI, “One Rule, Two Legal Systems,” pp. 44-52.

<sup>260</sup> *Ibid.*

<sup>261</sup> B’Tselem, “Caution: Children Ahead: The Illegal Behavior of the Police toward Minors in Silwan Suspected of Stone Throwing,” December 2010, [https://www.btselem.org/download/201012\\_caution\\_children\\_ahead\\_eng.pdf](https://www.btselem.org/download/201012_caution_children_ahead_eng.pdf) (accessed June 1, 2020).

<sup>262</sup> United Nations Children’s Fund (UNICEF), “Children in Israeli Military Detention Observations and Recommendations,” February 2013, [https://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf) (accessed June 4, 2020); Military Court Watch, “Comparative graph - Issues of concern,” updated June 1, 2020, <http://www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWwzbOopT3K> (accessed June 4, 2020); Defense for Children International – Palestine, “No Way to Treat a Child: Palestinian Children in the Israeli Military Detention System,” April 2016, <https://bit.ly/2zRaVbt> (accessed June 4, 2020).

<sup>263</sup> ACRI, “Arrest and Detention of Palestinian Minors in the Occupied Territories: 2015 Facts and Figures,” March 2017, <https://law.acri.org.il/en/2017/03/30/arrest-and-detention-of-palestinian-minors-in-the-occupied-territories-2015-facts-and-figures/> (accessed July 21, 2020).

# BORN UNEQUAL WEST BANK

ILAN



**JEWISH CITIZEN OF ISRAEL  
BORN IN AN ISRAELI  
SETTLEMENT**

**CAN I HOP IN MY CAR AND DRIVE TO JERUSALEM?**

**YES**

You can do so on roads designed to bypass Palestinian communities and facilitate your commute

**IF I'M ARRESTED, WILL I GET A FAIR TRIAL?**

**YES**

You'll be tried in Israeli civil courts with full due process rights

**DO I HAVE THE RIGHT TO FREE SPEECH AND RIGHT TO PROTEST?**

**YES**

Only speech with "near certainty" to "seriously jeopardize" vital security can be restricted. You can protest without fear of state repression

**CAN I BUILD A HOME?**

**YES**

Israel has allocated large swaths of the West Bank to settlements, where plans have been approved to build thousands of homes



MARIAM

**PALESTINIAN ID HOLDER  
BORN IN A PALESTINIAN  
VILLAGE (AREA C)**

**NO**

You need a rarely issued Israeli permit that's generally time limited. Even with a permit, you'll face checkpoints where you're likely to experience delays and humiliation

**NO**

You'll be tried in an Israeli military court with a near 100% conviction rate, or possibly even held in administrative detention without trial or charge, based on secret evidence

**NO**

Military orders restrict your right to free speech and right to protest. If you violate these vaguely worded orders, you could face up to 10 years in prison

**NO**

Because you live in the 60% of the West Bank that is under exclusive Israeli control (Area C), it's virtually impossible. You may be more likely to have your home demolished than get a permit to build

HUMAN  
RIGHTS  
WATCH

VISUALIZING PALESTINE

The individuals depicted above are fictional representations for illustrative purposes only  
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/visualizing\_palestine  
fb.me/visualizingpalestine

APR 2021  
CC BY NC ND

Israeli authorities have incarcerated hundreds of thousands of Palestinians for what it deems “security offenses” since 1967,<sup>264</sup> including hundreds at virtually any given time held in administrative detention based on secret evidence without charge or trial for renewable periods that can extend for multiple years.<sup>265</sup> As of April 2021, according to the Israeli Prison Services, authorities held 4,323 Palestinians from the West Bank, not including East Jerusalem, in custody for “security offenses,” including 426 in administrative detention.<sup>266</sup> Israel jails most Palestinian prisoners from the OPT inside Israel, even though transferring residents from occupied territory violates international humanitarian law, and complicates the process of family visits to them.<sup>267</sup> By contrast, Israeli authorities, as of March 1, 2021, held no Jewish Israelis for “security offenses” and, over nearly 54 years of occupation, have held not more than a handful of Jewish Israelis in total in administrative detention.<sup>268</sup>

Israeli authorities have for decades mistreated and tortured Palestinian detainees, using tactics rarely utilized against Jewish detainees.<sup>269</sup> A September 1999 Israeli Supreme Court ruling forbidding several torture tactics led to a significant reduction in the number

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<sup>264</sup> Addameer, Shadow Report for Consideration Regarding Israel’s Fourth Periodic Report to the UN Human Rights Committee, International Covenant on Civil and Political Rights (ICCPR), September 2014, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18199\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18199_E.pdf) (accessed July 21, 2020).

<sup>265</sup> “4323 ‘Security’ Inmates are Held in Prisons inside Israel,” HaMoked, April 2021, <http://www.hamoked.org/Prisoners.aspx> (accessed April 5, 2021). ; Addameer, “On Administrative Detention,” July 2017, [http://www.addameer.org/israeli\\_military\\_judicial\\_system/administrative\\_detention](http://www.addameer.org/israeli_military_judicial_system/administrative_detention) (accessed June 4, 2020).

<sup>266</sup> Israeli Prison Services figures on file with Human Rights Watch.

<sup>267</sup> “Israel: Rules Curtail Gaza Family Visits to Prisoners,” Human Rights Watch news release, July 31, 2016, <https://www.hrw.org/news/2016/08/01/israel-rules-curtail-gaza-family-visits-prisoners>.

<sup>268</sup> HaMoked, “4323 ‘Security’ Inmates are Held in Prisons inside Israel,” April 2021, <http://www.hamoked.org/Prisoners.aspx> (accessed April 5, 2021); Yonah Jeremy Bob, “Analysis: Administrative detention is not the same for Jewish and Palestinian terrorists,” *Jerusalem Post*, May 19, 2016, <https://www.jpost.com/arab-israeli-conflict/analysis-administrative-detention-is-not-the-same-for-jewish-and-palestinian-terrorists-454360> (accessed June 4, 2020).

<sup>269</sup> Human Rights Watch, *Torture and Ill-Treatment: Israel’s Interrogation of Palestinians from the Occupied Territories* (New York: Human Rights Watch, 1994) <https://www.hrw.org/legacy/reports/1994/israel/>; International Rehabilitation Council for Torture Victims (IRCT), “Torture in Israel,” Country Factsheet, June 2015, [http://stoptorture.org.il/wp-content/uploads/2015/11/CF\\_Israel\\_Final-2.pdf](http://stoptorture.org.il/wp-content/uploads/2015/11/CF_Israel_Final-2.pdf) (accessed July 3, 2020); Sfar, *The Wall and the Gate*, p. 253-254 (noting that Israeli authorities approved use of torture on a group of Jewish Israelis in the 1970s and, in 2015, on several Jewish Israelis accused of murdering a Palestinian family).

of people tortured, but has not stopped the practice. <sup>270</sup> About 1,300 complaints of torture against Israeli authorities have been filed with Israel's Justice Ministry between 2001 and June 2020, which have resulted in one criminal investigation and zero prosecutions. <sup>271</sup> The Israeli rights group Public Committee Against Torture (PCATI) reported in June 2019 that, of the more than 100 complaints of alleged torture it filed over the last five years at the hands of Israel's internal security service, Shin Bet, 31 percent involved physical violence, 40 percent painful and prolonged shackling or use of stress positions, 66 percent sleep deprivation, 61 percent threats, and 27 percent sexual harassment and humiliation. <sup>272</sup> Security forces also routinely use unnecessary force against children during arrests, which often take place in the middle of the night, and physically abuse them in custody. <sup>273</sup>

Security forces also frequently raid populated Palestinian areas in the West Bank, even Area A, where Israeli authorities ostensibly charged the PA with fully managing civil and security affairs. Israeli forces routinely use excessive force, including live ammunition, against Palestinian demonstrators, rock-throwers, suspected assailants, and others in policing situations when lesser means could have been deployed. <sup>274</sup> Between January 19, 2009, and January 31, 2021, Israeli security forces killed 449 Palestinians in the West Bank, according to B'Tselem. <sup>275</sup> Many thousands more have been grievously wounded. <sup>276</sup>

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<sup>270</sup> The Public Committee Against Torture in Israel (PCATI), "Milestones in the Struggle Against Torture in Israel," <http://stoptorture.org.il/frequently-asked-questions/milestones-in-the-struggle-against-torture-in-israel/?lang=en> (accessed June 4, 2020).

<sup>271</sup> PCATI, "Torture in Israel 2020: Situation Report," June 26, 2020, [http://stoptorture.org.il/wp-content/uploads/2020/06/%D7%90%D7%A0%D7%92%D7%9C%D7%99%D7%AA-%D7%9C%D7%90%D7%99%D7%A0%D7%98%D7%A8%D7%A0%D7%98.pdf?fbclid=IwAR3ls7GvEAEEO9Ss9cN8fw1Ld44pZ\\_p9cZHyQsBiD-s9xMWivDwfXlzAAsU](http://stoptorture.org.il/wp-content/uploads/2020/06/%D7%90%D7%A0%D7%92%D7%9C%D7%99%D7%AA-%D7%9C%D7%90%D7%99%D7%A0%D7%98%D7%A8%D7%A0%D7%98.pdf?fbclid=IwAR3ls7GvEAEEO9Ss9cN8fw1Ld44pZ_p9cZHyQsBiD-s9xMWivDwfXlzAAsU) (accessed July 14, 2020).

<sup>272</sup> PCATI, "Torture in Israel 2019: Situation Report," June 29, 2019, <http://stoptorture.org.il/2927/?lang=en> (accessed April 9, 2020).

<sup>273</sup> Human Rights Watch, *Submission by Human Rights Watch to the Committee on the Rights of the Child on the State of Palestine*, March 20, 2019, <https://www.hrw.org/news/2019/03/20/submission-committee-rights-child-state-palestine>.

<sup>274</sup> See, for example, "Israel/Palestine: Some Officials Backing 'Shoot-to-Kill'," Human Rights Watch news release, January 2, 2017, <https://www.hrw.org/news/2017/01/02/israel/palestine-some-officials-backing-shoot-kill>.

<sup>275</sup> "Fatalities Since Operation Cast Lead," B'Tselem, January 19, 2009 - January 31, 2021, <https://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event> (accessed March 4, 2021).

<sup>276</sup> "Data on casualties," UN OCHA, <https://www.ochaopt.org/data/casualties> (accessed June 4, 2020).

Settlers, meanwhile, enjoy virtual impunity for criminal acts against Palestinians. Between 2005 and 2019, police closed 91 percent of the complaints tracked by the Israeli human rights group Yesh Din of reported settler violence against Palestinian persons and property without indicting anyone.<sup>277</sup> The army not only systematically fails to intervene, but, B'Tselem found, “they often provide the perpetrators escort and back-up. In some cases, they even join in on the attack.”<sup>278</sup>

## Land and Housing

Since 1967 Israeli authorities have confiscated more than two million dunams of Palestinian land in the West Bank, often to establish settlements and serve the needs of Jewish Israeli settlers. Israeli authorities have used several different legal instruments to confiscate land—as detailed in a later chapter of this report—among them designating land, including land privately owned by Palestinians, as “state land.”<sup>279</sup>

Israeli authorities have allocated 674,459 dunams of state land in the West Bank for Israeli civilian use, primarily settlements, according to figures from the Israeli Civil Administration obtained by Peace Now in June 2018.<sup>280</sup> This figure comprises 99.76 percent of the total state land that Israeli authorities have officially allocated for use by third parties. The remaining 0.24 percent, or about 1,600 dunams, went to Palestinians. Of this tiny fraction, 80 percent constituted “compensation” for lands taken for settlements and alternative land allocated after the forcible transfer of Palestinian Bedouins from the land on which they had lived. Authorities allocated the majority of this state land, 400,000 dunams in total, to the World Zionist Organization (WZO), according to data provided to the groups ACRI and Bimkom in March 2013.<sup>281</sup> The WZO’s Settlement Division defines its mission as

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<sup>277</sup> Yesh Din, “Law Enforcement on Israeli Civilians In The West Bank: Yesh Din Figures 2005-2019,” Datasheet, December 2019, <https://go.aws/37ocTCg> (accessed June 4, 2020).

<sup>278</sup> B'Tselem, “State-Backed Settler Violence,” November 11, 2017, [https://www.btselem.org/settler\\_violence](https://www.btselem.org/settler_violence) (accessed June 4, 2020).

<sup>279</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section for detailed account of the range of methods.

<sup>280</sup> Peace Now, “State Land Allocation in the West Bank — For Israelis Only,” July 17, 2018, <https://peacenow.org.il/en/state-land-allocation-west-bank-israelis> (accessed June 4, 2020).

<sup>281</sup> ACRI, “Information Sheet – Allocation of State Land in OPT,” updated April 12, 2013, <https://law.acri.org.il/en/2013/04/23/info-sheet-state-land-opt/> (accessed June 4, 2020).

to “establish and strengthen Jewish settlement in the country’s periphery through strengthening the hold on state lands given to it by the government.” <sup>282</sup>

Israeli authorities have made it virtually impossible for Palestinians to obtain building permits in Area C, the 60 percent of the West Bank under exclusive Israeli control. <sup>283</sup> For the 20-year period between 2000 and 2019, Israeli authorities approved only 245 building permits for Palestinians in Area C, less than 4 percent of the number of applications submitted. They issued 21 permits between 2016 and 2018, less than 1.5 percent of the applications submitted. <sup>284</sup> Between 2009 and 2020, Israeli authorities demolished 5,817 Palestinian-owned structures, including homes, in the West Bank, mostly for lacking a permit, according to the UN’s Office for the Coordination of Humanitarian Affairs (OCHA). <sup>285</sup> B’Tselem documented 1,533 Palestinian homes demolished by authorities in this period for lacking a permit, leaving 6,492 Palestinians displaced. <sup>286</sup> By contrast, Israeli authorities offer a range of incentives, including housing benefits, business subsidies (particularly in agriculture and industrial zones), budgetary perks, and tax breaks to encourage Jewish Israelis to move to settlements. <sup>287</sup> In doing so, they have steadily and unlawfully expanded Israeli settlements in the West Bank for decades. According to Peace Now, between 2009 and 2020, Israeli authorities began construction on more than 23,696 units in West Bank settlements, excluding East Jerusalem. <sup>288</sup>

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<sup>282</sup> WZO Settlement Division website, <http://www.hityashvut.org.il/> (Hebrew) (accessed June 1, 2020).

<sup>283</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section for more details.

<sup>284</sup> Hagar Shezaf, “Israel Rejects Over 98 Percent of Palestinian Building Permit Requests in West Bank’s Area C,” *Haaretz*, January 21, 2020, <https://bit.ly/2XX5TC4> (accessed June 4, 2020).

<sup>285</sup> “Data on Demolition and Displacement in the West Bank,” OCHA, <https://www.ochaopt.org/data/demolition> (accessed June 4, 2020).

<sup>286</sup> “Database on Fatalities and House Demolitions,” B’Tselem, <https://statistics.btselem.org/en/demolitions/pretext-unlawful-construction?stateSensor=%22west-bank%22&structureSensor=%22true%22&demoScopeSensor=%22false%22&dateSensor=%22123077160000%2C160945199000%22> (accessed March 27, 2021).

<sup>287</sup> B’Tselem and Kerem Navot, “This Is Ours – And This, Too,” p. 2.

<sup>288</sup> Peace Now, “Annual Settlement Report 2018: A Glance at 10 Years under Netanyahu,” May 14, 2019, <https://peacenow.org.il/en/annual-settlement-report-2018> (accessed June 1, 2020); Peace Now, “Settlement Construction Report 2019,” March 18, 2020, <https://peacenow.org.il/en/settlement-construction-report-2019> (accessed June 4, 2020); Peace Now, “From De Jure to De Facto Annexation – Construction in Settlements 2020,” April 13, 2021, <https://peacenow.org.il/en/settlement-construction-report-2020> (accessed April 20, 2021).

The World Bank estimated in 2013 that discriminatory Israeli restrictions in Area C cost the Palestinian economy \$3.4 billion per year.<sup>289</sup>

## Resources and Services

Israeli authorities retain primary control over resources and infrastructure and systematically privilege Jewish Israeli settlers over Palestinians in the provision of roads, water, electricity, health care, and other services. Even where Palestinians maintain a degree of autonomy within their enclaves, they rely on infrastructure projects, including roads, electricity towers, and water and sewage pipes that require Israeli-issued permits or that cross through Israeli-controlled Area C.

Israeli authorities built the main network of roads in the West Bank, often at considerable expense and on land expropriated from Palestinians, to bypass Palestinian populated areas and connect settlements to the Israeli road network, to other settlements, and to major metropolitan areas inside Israel.<sup>290</sup> According to B'Tselem, there are more than 40 kilometers of West Bank roads that authorities prohibit Palestinians from traveling on and another 19 kilometers of West Bank roads, not including in Hebron, on which Palestinian travel is restricted.<sup>291</sup> Israeli forces in Hebron prohibit Palestinians from walking on large sections of what used to be the central thoroughfare of the city as part of a policy of making those areas “sterile” of Palestinians, as per the parlance of the Israeli army.<sup>292</sup>

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<sup>289</sup> World Bank, “Palestinians Access to Area C Key to Economic Recovery and Sustainable Growth,” October 8, 2013, <https://www.worldbank.org/en/news/press-release/2013/10/07/palestinians-access-area-c-economic-recovery-sustainable-growth> (accessed June 4, 2020).

<sup>290</sup> “Restrictions on Movement,” B’Tselem, November 11, 2017, [https://www.btselem.org/freedom\\_of\\_movement](https://www.btselem.org/freedom_of_movement) (accessed June 4, 2020).

<sup>291</sup> “West Bank Roads on Which Israel Forbids Palestinian Vehicles,” B’Tselem, updated January 31, 2017, [https://www.btselem.org/freedom\\_of\\_movement/forbidden\\_roads](https://www.btselem.org/freedom_of_movement/forbidden_roads) (accessed June 4, 2020).

<sup>292</sup> “Hebron: Restrictions on Palestinian Movement,” B’Tselem, map, 2011, [https://www.btselem.org/sites/default/files/201108\\_hebron\\_map\\_eng.pdf](https://www.btselem.org/sites/default/files/201108_hebron_map_eng.pdf) (accessed June 4, 2020). Yehuda Shaul, “The Only Way to End the Violence in Hebron,” *+972 Magazine*, November 2, 2015, <https://www.972mag.com/the-only-way-to-end-the-violence-in-hebron/> (accessed June 4, 2020); Breaking the Silence, “Occupying Hebron: Soldiers’ Testimonies from Hebron 2011-2017,” 2018, <https://www.breakingthesilence.org.il/inside/wp-content/uploads/2018/11/OccupyingHebron-Eng.pdf> (accessed July 14, 2020); Monica Pinna, “Hebron’s Silent War: No Peace in Sight for Israelis and Palestinians” *Euronews*, October 5, 2019, [euronews.com/2019/05/09/daily-life-in-hebron-shows-why-west-bank-peace-is-far-away](https://www.euronews.com/2019/05/09/daily-life-in-hebron-shows-why-west-bank-peace-is-far-away) (accessed July 14, 2020).

To facilitate Palestinian travel between enclaves without using the bypass roads favored by settlers, Israeli authorities established a rudimentary secondary road network for Palestinians. These “fabric of life roads,” as the Israeli army refers to them, generally run alongside and underneath the “bypass roads” used by Israelis.<sup>293</sup> With gates at the entrances and exits to Palestinian enclaves, authorities can, at will, shut down the network and cut off traffic between different parts of the West Bank, creating what OCHA calls “an adaptable system of control.”<sup>294</sup>

Israeli authorities, for example, built in the 1980s a significant segment of Road 443 in the West Bank, in part on expropriated Palestinian land, to offer an alternative route for Israelis to commute between Jerusalem and Tel Aviv.<sup>295</sup> Some landowners challenged the confiscation, but the Supreme Court dismissed their petition, accepting the government’s position that it built the road, which also historically connected Ramallah to villages to its west, partly to serve the local Palestinian population.<sup>296</sup> In 2002, following attacks by Palestinians on Israeli vehicles during the second *Intifada*, Israeli authorities banned Palestinian vehicles from using the road for any purpose, with the then local Israeli army commander declaring, “I made Route 443 an Israelis-only road.”<sup>297</sup> In 2007 and 2008, they built “fabric of life” roads to make it easier for Palestinians to access Ramallah without using Road 443. After years of litigation by Israeli rights groups, the Israeli army in 2010 reopened the road to Palestinian traffic.

However, the army kept in place checkpoints at each of the junctions that provide access to Palestinian villages. They also maintained a checkpoint near Ofer prison, where soldiers

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<sup>293</sup> B’Tselem, “Ground to a Halt: Denial of Palestinians’ Freedom of Movement in the West Bank,” August 2007, [https://www.btselem.org/download/200708\\_ground\\_to\\_a\\_halt\\_eng.pdf](https://www.btselem.org/download/200708_ground_to_a_halt_eng.pdf) (accessed June 4, 2020), p. 87; “West Bank Movement and Access Update,” OCHA, May 2009, <https://www.un.org/unispal/document/auto-insert-203051/> (accessed June 4, 2020).

<sup>294</sup> OCHA, “Over 700 Road Obstacles Control Palestinian Movement Within the West Bank,” October 2018.

<sup>295</sup> B’Tselem, “Route 443 – West Bank road for Israelis only,” January 1, 2011, [https://www.btselem.org/freedom\\_of\\_movement/road\\_443](https://www.btselem.org/freedom_of_movement/road_443) (accessed June 4, 2020).

<sup>296</sup> *Ali Hussein Mahmoud Abu Safiya, Beit Sira Village Council Head et al., vs. Minister of Defense et al.*, HCJ 2150/07, Judgement, March 5, 2008, available at: [http://www.hamoked.org/files/2011/8865\\_eng.pdf](http://www.hamoked.org/files/2011/8865_eng.pdf) (accessed February 18, 2021) (In a concurring opinion, Supreme Court president Beinisch mentions apartheid, but asserts the comparison to Israeli policies is “inappropriate,” without offering a detailed explanation). ACRI, “Route 443: Fact Sheet and Timeline,” updated May 25, 2010, <https://law.acri.org.il/en/2010/05/25/route-443-fact-sheet-and-timeline/> (accessed June 4, 2020). The Israeli Supreme Court sits as the High Court of Justice when hearing cases on appeal.

<sup>297</sup> *Ibid.*; B’Tselem, “Route 443.”

turn back all Palestinians not holding permits heading eastbound, who are identifiable by West Bank license plates. This checkpoint prevents them from reaching an exit several hundred meters away that leads straight into Ramallah, a central hub for Palestinians in the West Bank. <sup>298</sup> So while Palestinian drivers from the West Bank can formally use a large section of Road 443, the checkpoints, by blocking access to Ramallah, render the road useless for most Palestinians. Palestinians from the villages near Road 443 instead rely on the “fabric of life” roads on which it takes them much longer to reach Ramallah or any destination beyond the several other small villages located alongside the road.

Israeli authorities also maintain primary control over water resources in the West Bank and allocate water in a discriminatory fashion to Palestinians. Two of Israel’s three major water resources run largely through the West Bank: the Jordan River and the Mountain Aquifer, which consists of three basins. The third, the Coastal Aquifer, runs along the coast of Israel and Gaza. <sup>299</sup> Military orders established in the first 18 months of the occupation in 1967 and 1968 granted the army full authority over water-related issues in the West Bank, <sup>300</sup> declared water resources state property, <sup>301</sup> and barred Palestinians from establishing or using water installations without a permit. <sup>302</sup> In 1982, Israeli authorities transferred ownership of water resources and supply from the Civil Administration to the national Israeli water company, Mekorot, while continuing to vest the Civil Administration with regulatory control. <sup>303</sup>

Israel has used its control over parts of the Mountain Aquifer in the West Bank to serve its own citizens and settlers, in contravention of international humanitarian law which prohibits occupiers from exploiting natural resources for its own economic benefit. While

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<sup>298</sup> B’Tselem, “Route 443.”

<sup>299</sup> Al Haq, “Water For One People Only: Discriminatory Access and ‘Water-Apartheid’ in the OPT,” 2013, <https://www.alhaq.org/publications/8073.html> (accessed June 4, 2020), p. 28-29.

<sup>300</sup> Military Order 92: Order Concerning Jurisdiction Over Water Regulations, August 15, 1967, published in Jerusalem Media & Communication Center (JMCC), *Israeli Military Orders in the Occupied Palestinian West Bank 1967-1992*, Second Edition (East Jerusalem, 1995), p. 14.

<sup>301</sup> Military Order 158: Order Concerning Amendment to Supervision Over Water Law, October 30, 1967, published in JMCC, *Israeli Military Orders*, p. 22.

<sup>302</sup> Military Order 291: Order Concerning Settlement of Disputes Over Land and Water, December 19, 1968, published in JMCC, *Israeli Military Orders*, p. 38.

<sup>303</sup> Stephen C. Lonergan and David B. Brooks, *Watershed: The Role of Fresh Water in the Israeli-Palestinian Conflict* (Ottawa: International Development Research Center: 1994), <https://bit.ly/37dQy4s> (accessed June 4, 2020).

80 percent of the Mountain Aquifer's water recharge area lies beneath the West Bank,<sup>304</sup> Israel directly extracts about 90 percent of the water that is withdrawn from the aquifer annually, leaving Palestinians only the remaining 10 percent or so to exploit directly.<sup>305</sup> In monopolizing this shared resource, Israeli authorities sharply restrict the ability of Palestinians to directly exploit their own natural resources and render them dependent on Israel for their water supply. For decades, authorities have denied Palestinians permits to drill new wells, in particular in the most productive Western Aquifer basins, or to rehabilitate existing ones. While the Oslo Accords of 1995 included provisions that promised to increase Palestinian access to water,<sup>306</sup> Palestinian extraction levels have largely remained at pre-Oslo levels while the population has increased.<sup>307</sup>

Despite the establishment of a "Joint Water Commission" (JWC) as part of the Oslo Accords, the World Bank in 2009 noted that Israel has retained "virtually all the power," including veto power, over the West Bank's water resources.<sup>308</sup> While approving virtually all requests for Israeli-proposed projects to serve settlers, the JWC has rejected many Palestinian-initiated projects, including all requests to drill in the Western Aquifer Basin.<sup>309</sup> Israelis are often permitted to drill deeper into the Aquifer, regularly develop internal settlement water networks without seeking JWC approval,<sup>310</sup> and can extract water without limit when it flows downstream into Israel without need for JWC approval, while

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<sup>304</sup> Frederick D. Gordon, *Freshwater Resources and Interstate Cooperation: Strategies to Mitigate an Environmental Risk* (State University of New York Press: 2009), <https://bit.ly/3dzBD6S> (accessed June 4, 2020).

<sup>305</sup> UN General Assembly, "Report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people," A/HRC/22/63, February 7, 2013, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf) (accessed June 16, 2020), para. 81.

<sup>306</sup> Israel MFA, "The Israeli-Palestinian Interim Agreement-Annex III," September 28, 1995, <https://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20iii.aspx#app-40> (accessed June 4, 2020).

<sup>307</sup> Al Haq, "Water for One People Only," pp. 36-38; World Bank, "West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development," April 2009, <http://documents1.worldbank.org/curated/en/775491468139782240/pdf/476570SRoP11511nsReport18Apr2009111.pdf> (accessed July 21, 2020), pp. 11-12.

<sup>308</sup> World Bank, "Assessment of Restrictions on Palestinian Water Sector Development," p. 51.

<sup>309</sup> *Ibid.*, p. ix, 34; Al Haq, "Water for One People Only," p. 42.

<sup>310</sup> Jan Selby, "Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee," *Water Alternatives* 6(1): 1-24 (2013), <http://www.water-alternatives.org/index.php/volume6/v6issue1/196-a6-1-1/file> (accessed June 25, 2020), pp. 11-12, 16-17.

Palestinians face strict extraction quotas. <sup>311</sup> The JWC did not meet between 2010 and 2016; during this period, according to government data received by ACRI, Israeli authorities permitted Palestinians to build two new water wells, while demolishing 11. <sup>312</sup>

In addition, Israeli authorities have almost entirely deprived Palestinians access to water from the Jordan River, the only major surface water resource in the West Bank, by diverting its flow upstream of the West Bank. <sup>313</sup>

Israeli policies in Area C further restrict Palestinian water access. The separation barrier, for example, separates Palestinians from more than 20 wells in the “seam zone,” between the barrier and the Green Line, limiting their ability to use these water sources, as well as cutting them off from about 70 percent of the Western Aquifer Basin. <sup>314</sup> Authorities have also denied permits for Palestinians to build water pipelines and demolished water infrastructure built without permits. <sup>315</sup> Between 2009 and July 2019, Israeli authorities demolished or seized 547 structures providing water and related sanitation services, including cisterns, water pipes, and mobile latrines, according to OCHA. <sup>316</sup>

These restrictions have made Palestinians dependent on purchasing water, in large part extracted from under their land, from Mekorot. A 2013 UN Fact-Finding report found that Mekorot supplies “almost half the water consumed by Palestinian communities” in the West Bank. <sup>317</sup> Palestinians in many cases pay more for water than Israelis, at times deriving from mark-ups in the price of the water sold to them, and in particular more than

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<sup>311</sup> Ibid.; World Bank, “Assessment of Restrictions on Palestinian Water Sector Development,” p. 34.

<sup>312</sup> ACRI, “Water Provision and Drillings in the West Bank 2010-2016,” June 5, 2018; <https://law.acri.org.il/en/2018/06/05/water-provision-and-drillings-in-the-west-bank-2010-2016/> (accessed June 25, 2020).

<sup>313</sup> Al Haq, “Water for One People Only,” pp. 23-25

<sup>314</sup> Ibid., p. 44; B’Tselem, “Arrested Development: The Long Term Impact of Israel’s Separation Barrier in the West Bank,” October 2012, [https://www.btselem.org/sites/default/files/sites/default/files2/201210\\_arrested\\_development\\_eng.pdf](https://www.btselem.org/sites/default/files/sites/default/files2/201210_arrested_development_eng.pdf) (accessed June 4, 2020), p. 66.

<sup>315</sup> See, for example, Emergency Water Sanitation and Hygiene group (EWASH), “Down the Drain: Israeli Restrictions on the WASH Sector in the Occupied Palestinian Territory and Their Impact on Vulnerable Communities,” March 2012, <https://bit.ly/2z9zYpD> (accessed June 4, 2020), p. 16.

<sup>316</sup> OCHA, “Humanitarian Needs Overview – OPT,” Humanitarian Programme Cycle 2020, December 2019, [https://www.ochaopt.org/sites/default/files/hno\\_2020-final.pdf](https://www.ochaopt.org/sites/default/files/hno_2020-final.pdf) (accessed June 4, 2020), p. 43.

<sup>317</sup> UNGA, “Report of the Independent International Factfinding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People,” A/HRC/22/63, para. 84.

settlers, for whom the WZO subsidizes purchases.<sup>318</sup> In addition, many Palestinian communities in Area C are not connected to the water network, despite Mekorot pipes in some cases running nearby, and depend on water transported by tanker trucks, significantly increasing its price and leading some families to spend up to 40 percent of their income on water.<sup>319</sup>

Israel's discriminatory water policies in the West Bank enable settlers to enjoy bountiful water, while some Palestinian communities lack sufficient water to provide for their basic needs. In 2017, Amnesty International documented how Israel's drilling in the Jordan Valley and prevention of local Palestinians from accessing some of their traditional water sources had reduced the supply of water available to them. These restrictions, among other factors, led some farmers to switch to crops that "are less water-intensive and also less profitable" or even to abandon growing crops themselves, with some going to work in nearby settlement farms with more plentiful water supply.<sup>320</sup> The World Bank in 2009 found that Israelis as a whole consume four times more water than Palestinians in the West Bank.<sup>321</sup> Estimates indicate that settlers in the West Bank on average use at least four times per capita the amount used by Palestinians living in the same territory.<sup>322</sup>

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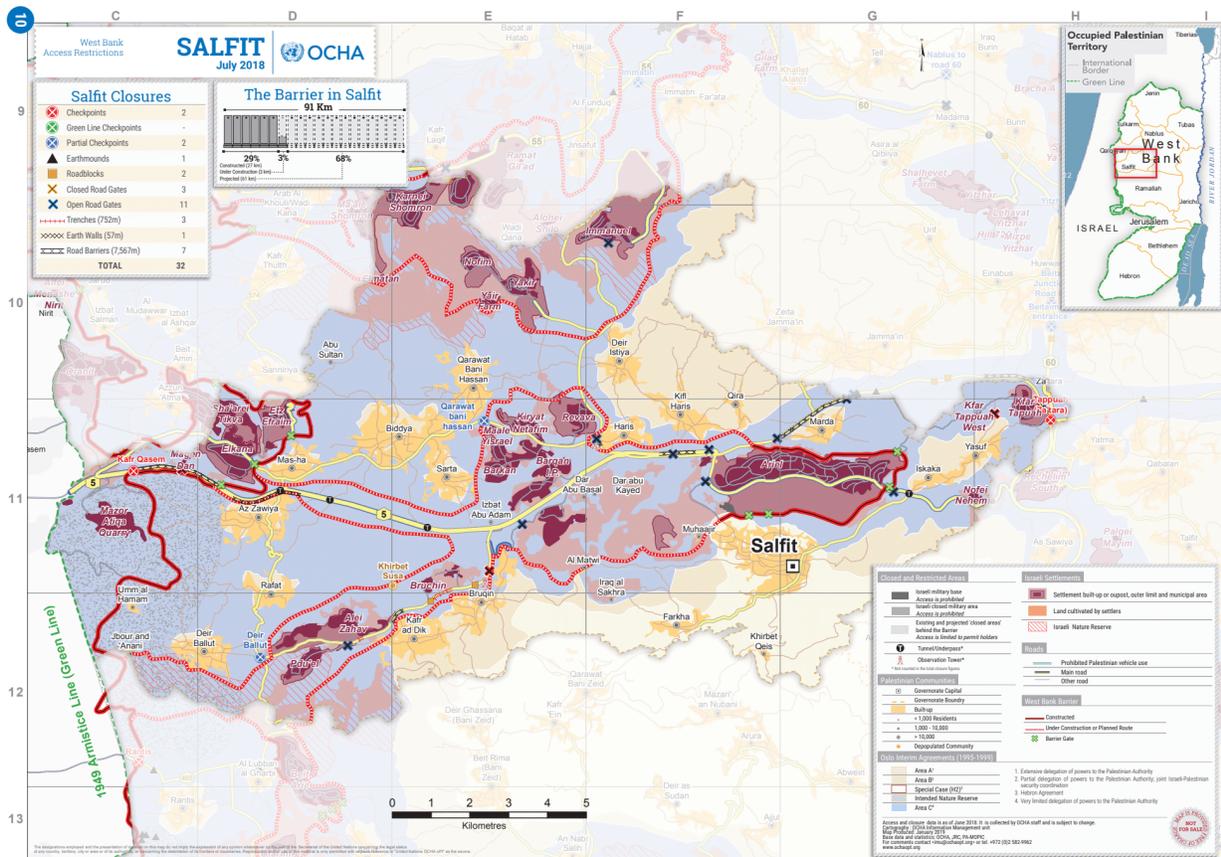
<sup>318</sup> Amir Ben-David, "Israel is Drying up," (Hebrew) post to *Zman Israel* (blog), *timesofisrael.com*, July 9, 2020, <https://www.zman.co.il/126897/> (accessed July 15, 2020); Alwyn R. Rouyer, "Between Desert Countries: The Political Economy of Water Under the Israeli Occupation of the Palestinian Territories and Beyond," in *Structural Flaws in the Middle East Peace Process: Historical Contexts*, ed. J. W. Wright Jr. (London: Palgrave Macmillan, 2002), pp. 56, 121-125.

<sup>319</sup> Amira Hass, "Just How Much Do Palestinians Rely on Israel for Water," *Haaretz*, February 13, 2014, <https://www.haaretz.com/.premium-do-palestinians-rely-on-israel-for-water-1.5321782> (accessed June 25, 2020); World Bank, "Assessment of Restrictions on Palestinian Water Sector Development," p. v-vi; Amnesty International, "The Occupation of Water," November 29, 2017, <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/> (accessed June 17, 2020);

<sup>320</sup> Amnesty International, "The Occupation of Water."

<sup>321</sup> World Bank, "Assessment of Restrictions on Palestinian Water Sector Development," p. 13.

<sup>322</sup> Amnesty International, "The Occupation of Water;" Al Haq, "Water for One People Only," p. 51; ARIJ, "Status of the Environment in the State of Palestine 2015," December 2015, [http://www.arij.org/files/arijadmin/2016/Final\\_SOER\\_2015\\_opt\\_r.pdf](http://www.arij.org/files/arijadmin/2016/Final_SOER_2015_opt_r.pdf) (accessed July 3, 2020) p. 77; Camilla Corradin, "Israel: Water as a Tool to Dominate Palestinians," *Al Jazeera*, June 23, 2016, <https://www.aljazeera.com/news/2016/06/israel-water-tool-dominate-palestinians-160619062531348.html> (accessed June 16, 2020).



Israeli settlements form a 22-kilometer corridor that creates a wedge through the center of the Palestinian governorate of Salfit in the occupied West Bank. (c) 2018 UN OCHA

### Case Study: Salfit Governorate

*The following case study details how Israeli authorities use oppressive means for the purpose of establishing domination over the Palestinian governorate of Salfit in the West Bank, abusing the rights of its residents to benefit Jewish Israeli settlers living nearby.*

Salfit is one of eleven Palestinian governorates in the West Bank. It has a population of 81,162 and encompasses a cluster of hilltops and valleys in the northwest West Bank.<sup>323</sup> Salfit’s fertile lands, location atop the West Bank basin with the greatest water reserves, high elevation, and proximity to Tel Aviv, a 30-minute drive away, has made the

<sup>323</sup> PCBS, “Palestinians at the end of 2020.”

governorate a strategic target for settlement activity.<sup>324</sup> Israeli authorities have seized significant parts of the land, building a cluster of settlements centered around the urban settlement of Ariel. The settlements form a 22-kilometer corridor that strikes a wedge in the center of the governorate, dividing Salfit’s Palestinians into three disconnected pockets of villages, and separating the town of Salfit, the governorate’s administrative and commercial center, from other villages to the north.<sup>325</sup> Residents of these communities face regular land confiscations, restricted access to agricultural land, movement restrictions, settler violence, and sewage run-offs from the nearby settlements.

The cluster of settlements grew out of a 1977 Israeli government plan formulated by Ariel Sharon, then agriculture minister and chairperson of the Ministerial Committee for Settlement Affairs, to fortify Israeli control in the western West Bank. As former Israeli official and analyst Shaul Arieli put it, the plan, in particular, sought to, “create a Jewish barrier” between Palestinian population centers and “control key hilltops overlooking the coastal plain [inside Israel].”<sup>326</sup>

A 1997 plan by the WZO’s Settlement Division highlights the “attractiveness” of this area, which it refers to as “western Samaria,” “as a residential area for people who are employed in the center of the country.”<sup>327</sup> Noting its “close proximity to centers of employment, services, and the existing culture of the coastal plain,” it describes how it offers a “valve” to “release the urban pressures of the coastal plain.”<sup>328</sup>

The plan also describes the strategic value of the road network it calls the “Trans-Samaria corridor.” The corridor consists primarily of Highway 5, which starts in northern Tel Aviv and runs east across the Green Line to Ariel, where it meets Road 505, which continues

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<sup>324</sup> PCBS, “Number of Settlers in the Israeli Settlements and Palestinian Population in the West Bank by Governorate, 2018,” [http://www.pcbs.gov.ps/Portals/\\_Rainbow/Documents/SETT4E-2018.html](http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/SETT4E-2018.html) (accessed June 4, 2020); B’Tselem, “Land Grab: Israel’s Settlement Policy in the West Bank,” May 2002, [https://www.btselem.org/download/200205\\_land\\_grab\\_eng.pdf](https://www.btselem.org/download/200205_land_grab_eng.pdf) (accessed March 30, 2020), p. 100.

<sup>325</sup> UN, “Salfit Access Restrictions – July 2018 – OCHA Map,” <https://www.un.org/unispal/document/salfit-access-restrictions-july-2018-ocha-map/> (accessed June 4, 2020).

<sup>326</sup> Shaul Arieli, “Messianism Meets Reality: The Israeli Settlement Project in Judea and Samaria: Vision or Illusion, 1967-2016,” November 2017, <https://www.shaularieli.com/wp-content/uploads/2019/07/messianism-meets-reality.pdf> (accessed June 1, 2020), p. 20.

<sup>327</sup> WZO “Settlement Arrays in Judea and Samaria: Update – 1997.”

<sup>328</sup> *Ibid.*

east, crossing the main central north-south artery, Road 60, and continuing to Road 90, which runs north-south through the Jordan Valley. The plan justifies the need for ‘lateral corridors’ like this in the West Bank to “prevent uncontrolled Arab building that is liable to cause the coastal plain to be cut off from the Jordan Valley and the fragmenting of Israeli settlement zones in Judea and Samaria.”<sup>329</sup> While Israeli settlers commute daily from Ariel to inside Israel without facing any major checkpoints, authorities have rendered a four-kilometer segment of the highway off-limits to Palestinian vehicles, according to B’Tselem.<sup>330</sup>

The cluster of settlements also lies above the most productive section of the Mountain Aquifer, the Western Aquifer Basin.<sup>331</sup> Israeli authorities though have effectively blocked Palestinians in Salfit from extracting water from the Aquifer, creating a water deficit in the governorate. With few other options, the Salfit governorate purchases the vast majority of its water from Mekorot.<sup>332</sup>

Twenty-four largely contiguous Israeli settlements and settlement zones, more than the number of Palestinian communities there, sprawl across the hilltops of the governorate.<sup>333</sup> Ariel, one of the more populous settlements in the West Bank with a population of 20,500,<sup>334</sup> lies at the eastern edge of the cluster of settlements. The settlement,

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<sup>329</sup> Ibid.

<sup>330</sup> “West Bank Roads on Which Israel forbids Palestinian Vehicles,” B’Tselem, updated January 31, 2017.

<sup>331</sup> Al Haq, “Water For One People Only,” pp. 25-27.

<sup>332</sup> In 2015, 90 percent of all available water in Salfit governorate was purchased from Mekorot. ARIJ, “Status of the Environment in the State of Palestine 2015,” p. 49. Also see PCBS, “Quantity of Water Supply for Domestic Sector, Water Consumed, Total Losses, Population and Daily Consumption per Capita in the West Bank by Governorate, 2018,” [http://www.pcbs.gov.ps/Portals/\\_Rainbow/Documents/water-Eg-2018.html](http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/water-Eg-2018.html) (accessed June 4, 2020); PCBS, “Water tables in Palestine, 2018” (Arabic), <https://bit.ly/2KNW7Mk> (accessed June 4, 2020). Residents of the Salfit governorate purchased 3.4 million cubic meters from Mekorot in 2018, while total domestic water use in the governorate, including commercial and industrial, but non-agricultural, stood at 4.4 million cubic meters of water that year.

<sup>333</sup> Human Rights Watch interview with Murad Samara, Bruqin municipality employee, February 18, 2020; Machsom Watch, “Salfit Checkpoint,” <https://machsomwatch.org/en/node/52634> (accessed June 4, 2020); Ylenia Gostoli, “Palestinians decry West Bank industrial zone expansion,” *Al Jazeera*, February 24, 2017, <https://www.aljazeera.com/indepth/features/2017/02/palestinians-decry-west-bank-industrial-zone-expansion-170206090749576.html> (accessed June 4, 2020).

<sup>334</sup> Israel CBS, “Population and Density Per Sq. Km. in Localities With 5,000 Residents and More On 31.12.2019(1),” September 15, 2020, [cbs.gov.il/he/publications/doclib/2020/2.shnatonpopulation/sto2\\_24.pdf](https://www.cbs.gov.il/he/publications/doclib/2020/2.shnatonpopulation/sto2_24.pdf) (accessed January 11, 2021); Maayana Miskin, “Ariel Named for Former PM,” *Israel National News*, July 13, 2009, <http://www.israelnationalnews.com/News/News.aspx/132385> (accessed June 4, 2020).

established in 1978 and with a municipal area (11,600 dunams) more than three times the size of its build-up area (3,500 dunams), <sup>335</sup> describes itself on its municipal website as a “blossoming city” that is “located in the heart of Israel.” <sup>336</sup> Palestinians in the West Bank can only enter Ariel, including Ariel University, which has about 16,000 students, roughly 3,000 of whom reside there, <sup>337</sup> with a difficult-to-obtain permit from the army. <sup>338</sup>

Israeli authorities have built three fences around Ariel since its establishment, in each case expanding the areas enclosed: the first in the 1980s, a second in 1993, and most recently the separation barrier in 2004. Israel confiscated some private land to build the barriers and, in other cases, effectively fenced off thousands more dunams from their Palestinian owners, who are now subject to a complex set of administrative restrictions on accessing their land. In 2004, the separation barrier around Ariel separated Palestinians in Salfit from 9,000 dunams (900 hectares) of their land – 3,500 dunams (350 hectares) belong to more than 200 farmers from Salfit, with the remainder belonging to residents from the nearby villages of Haris, Kifl Haris, Iskaka, Marda, and Qira. <sup>339</sup>

Human Rights Watch in 2014 and 2015 interviewed fourteen farmers from Salfit and the village of Marda, just north of Ariel, who own land that Israeli authorities either confiscated or restricted their access to in order to build settlements or fences or as a result of their construction. The farmers who maintained ownership of their land can access it only with prior permission of the Israeli army, which often only permits them to do so two or three times a year for a limited number of days. In each case, the farmers described how Israeli restrictions, including how often they could cultivate the land and what equipment they could use, drastically reduced the productivity of their harvest and even limited what crops they could grow. Two farmers stopped cultivating all or part of their land altogether, despite their fears that Israel may designate it as state land on the basis that Palestinians have not continuously cultivated it.” <sup>340</sup>

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<sup>335</sup> B’Tselem and Kerem Navot, “This Is Ours – And This, Too,” p. 55.

<sup>336</sup> “About Ariel,” Ariel Municipal Website, <https://www.ariel.muni.il/english/8/> (accessed September 1, 2020).

<sup>337</sup> B’Tselem and Kerem Navot, “This Is Ours – And This, Too,” p. 40.

<sup>338</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>339</sup> Human Rights Watch, *Occupation Inc.: How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights* (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations>.

<sup>340</sup> Ibid.



The Israeli settlement of Ariel between the Palestinian village of Marda (below) and Salfit (above) in the occupied West Bank. Satellite Image © 2021 Maxar Technologies. Source: Google Earth

A farmer from the village of Marda told Human Rights Watch in 2015 that his father owned more than 1,000 dunams, but he lost almost all of it over the years to Ariel. “They took it little by little,” he said. “In the beginning [in 1978 and 1979], they took 100 dunams and put caravans there. In the 1980s, they put a barbed wire fence around more land; they didn’t confiscate the land but declared it a closed military zone. Then they started building on it. Each time they would move the fence [to encompass more land], they would say it’s for security reasons.” The farmer said he filed a complaint each time to an Israeli military court, producing all the required evidence of ownership, yet he lost each of the cases. At the time, he said, only 60 dunams remained, 30 of which are behind the separation barrier built in 2004, and which the Israeli army only allows him access to twice a year. <sup>341</sup>

Northwest of the cluster of settlements around Ariel, the Palestinian village of Mas-ha has faced regular land confiscations since the 1970s. In 1978, the Israeli army seized land in Mas-ha for “military purposes.” <sup>342</sup> In subsequent years, they declared lands around Mas-ha “state land” and allocated it to establish the settlement of Elkana in large part on

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<sup>341</sup> Ibid.

<sup>342</sup> “Israeli Banks Profit from Settlements,” May 24, 2018, Human Rights Watch video clip, YouTube, [https://www.youtube.com/watch?v=\\_\\_HiXM\\_8Y94&feature=emb\\_logo](https://www.youtube.com/watch?v=__HiXM_8Y94&feature=emb_logo).

agricultural lands belonging to Mas-ha residents. <sup>343</sup> In 2002, authorities expropriated more land to build the separation barrier, cutting residents from some of their land. In 2018, Human Rights Watch interviewed the Aamer family, Mas-ha residents who own about 400-500 dunams of land about two kilometers from their house, but now located beyond the barrier and inside Elkana. A family member said that authorities confiscated some of their land and that they now need permits to access the remainder of it. The permits only allow them to enter through a designated gate that only opens twice a day, for 15-30 minutes each time. Reaching their land via the gate involves a two hour and 20 kilometer detour. <sup>344</sup>

Settlements wreak havoc on the daily life of residents in other ways. Two landowners from Bruqin, a village in an isolated pocket south of the cluster of settlements, told Human Rights Watch that soldiers have for the past 20 years blocked residents from accessing 100 dunams of land they own next to the settlement of Bruchin, southwest of Ariel. <sup>345</sup> Settlers have also placed mobile caravans on the land. One of the landowners, 60-year-old farmer Jamal Salameh, said he has since 2017 regularly sought, in vain, the Civil Administration's assistance to access this plot of land, where he has a well and used to grow wheat and barley. <sup>346</sup>

Salameh owns another small plot of land on the other side of Bruchin that he said settlers have attacked on multiple occasions, including in 2011 when they torched hundreds of olive trees that he planted in 1986, and at least four times in March and April 2020 amid the significant movement restrictions associated with the Covid-19 pandemic. "The army has handed the reins to the settlers. I haven't seen the army in this area for the past two years," he said, noting that other landowners from Bruqin have stopped even trying to access their land in this area due to the frequent settler attacks. He also recounted a 2016

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<sup>343</sup> Ibid.

<sup>344</sup> Human Rights Watch, *Bankrolling Abuse: Israeli Banks in West Bank Settlements* (New York: Human Rights Watch, 2018), [https://www.hrw.org/sites/default/files/report\\_pdf/israelo518\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/israelo518_web.pdf), pp. 24-25.

<sup>345</sup> Human Rights Watch phone interview with Murad Samara, Bruqin municipality employee and landowner, April 14, 2020 and Jamal Salameh, landowner, April 19, 2020.

<sup>346</sup> Human Rights Watch phone interview with Jamal Salameh, April 19, 2020.

incident where he said Mekorot cut down scores of his olive trees without prior notice, to build water pipes to serve the settlements. <sup>347</sup>

In the nearby village of Kufr ad-Dik, Fares ad-Dik and his family own a 4.5 dunam plot of land, which includes the archaeological site of Deir Samaan, that the settlements of Leshem and Alei Zahav gradually came to surround on three sides. In 2011, Israeli authorities closed the agricultural road that led to his plot of land without notice or explanation, he said. He told Human Rights Watch that the army permitted him to build another one at his own expense, but a year after he had done so at significant expense, they sealed off the new road with a gate. <sup>348</sup> This forces him to park his car on the main road and walk uphill 700 meters to reach his plot of land. Settlers also regularly trespass onto his land to swim in natural pools located there, during which time he said his family must “stay away” to avoid confrontation. In one incident in 2019, he said settlers uprooted 13 of their fig and olive trees.

Ad-Dik owns a second plot of land in the village that before 2010 took him five minutes by car to reach. In 2010, however, authorities began construction of the settlement of Leshem under the guise of expanding the nearby settlement of Alei Zahav, <sup>349</sup> which blocked the road to his land. Now he said reaching his land involves driving through two nearby villages and walking through a valley where sewage from nearby settlements flow, a journey that takes more than an hour. Due to the difficulty and length of the journey, he said his 70-year-old mother has not visited the property in seven years and he himself only goes once or twice a year. He added that, without being able to transport equipment, he has not been able to plant anything new there. The sewage, he said, leaves his property “surrounded by sewage” from three directions. <sup>350</sup>

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<sup>347</sup> Ibid.; Also see B’Tselem, “State-backed settler violence” Blog, March 2020, [https://www.btselem.org/settler\\_violence\\_updates?type=All&date\\_from=&date\\_to=&location=204109](https://www.btselem.org/settler_violence_updates?type=All&date_from=&date_to=&location=204109) (accessed June 4, 2020).

<sup>348</sup> Human Rights Watch phone interview with Fares ad-Dik, April 6, 2020.

<sup>349</sup> Ibid.; Alex Levac and Gideon Levy, “This Huge Settlement Will ‘Turn Palestinian Villages Into a Prison’,” *Haaretz*, June 5, 2015, <https://www.haaretz.com/israel-news/.premium-the-great-divide-1.5369333> (accessed July 22, 2020); Also see, Peace Now, “Annual Settlement Construction Report 2016: Stark increase in Settlement Construction,” May 2017, <http://peacenow.org.il/wp-content/uploads/2017/05/annual-construction-report-2016-1.pdf> (accessed June 4, 2020), p. 4.

<sup>350</sup> Human Rights Watch phone interview with Fares ad-Dik, April 6, 2020.

Across the governorate, raw sewage and untreated industrial chemical waste from settlements and industrial zones flows into residential areas and around water sources, two municipal officials and two residents told Human Rights Watch. <sup>351</sup> In a 2009 report, B'Tselem documented how Ariel's wastewater had since the mid-1990s flowed south towards the city of Salfit where it merged with Salfit's sewage and flows westward into Bruqin and Kufr ad-Dik. <sup>352</sup> The group documented how Ariel's wastewater plant ceased functioning altogether in 2008, after more than a decade of unheeded warnings by Israeli environmental authorities about the plant's condition. <sup>353</sup> It has remained dysfunctional since; <sup>354</sup> a 2016 Israeli government publication noted that its efficiency is "low" with "effluent channeled into irrigation and the Shilo river." <sup>355</sup> Salfit has sought for more than two decades to build a wastewater treatment plant, even securing funding for the project, but Israeli authorities continually frustrated their efforts, once claiming the location would be too close to Ariel, <sup>356</sup> and another time conditioning approval on agreeing to treat Ariel's wastewater, <sup>357</sup> a condition Palestinians often refuse since it would imply effective recognition of settlements. In 2019, though, the Salfit municipality obtained approval to

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<sup>351</sup> Human Rights Watch phone interviews with Murad Samara, February 18, 2020, Marwan Abdelrahman, head of Bruqin municipality, April 8, 2020, Fares ad-Dik, April 6, 2020, and Jerusalem Legal Aid and Human Rights Center field researcher, April 20, 2020; Also see Jaclynn Ashly, "Drowning in the waste of Israeli settlers," *Al Jazeera*, September 18, 2017, <https://www.aljazeera.com/indepth/features/2017/09/drowning-waste-israeli-settlers-170916120027885.html> (accessed June 4, 2020); Megan Giovannetti, "'They Just Die': Palestinian Village Choked by Israeli Settlement Dumpsite," *Middle East Eye*, July 24, 2019, <https://www.middleeasteye.net/news/palestinian-village-choked-toxic-dumpsite-israeli-industrial-settlements> (accessed June 4, 2020); Clare Maxwell, "West Bank Villagers Suffer from Sewer Politics," *The Electronic Intifada*, August 31, 2016, <https://electronicintifada.net/content/west-bank-villagers-suffer-sewer-politics/17811> (accessed June 4, 2020).

<sup>352</sup> B'Tselem, "Foul Play: Neglect of Wastewater Treatment in the West Bank," June 2009, [https://www.btselem.org/download/200906\\_foul\\_play\\_eng.pdf](https://www.btselem.org/download/200906_foul_play_eng.pdf) (accessed June 4, 2020), p. 31.  
<sup>353</sup> *Ibid.*

<sup>354</sup> Human Rights Watch field visit and interviews with two Bruqin municipality officials, February 18, 2020.

<sup>355</sup> Israel Nature and Parks Authority, Ministry of Environmental Protection and Israel Civil Administration, "Monitoring of the Judea and Samaria Rivers: Assessment of the situation based on the sampling findings in 2014 – 2015," (Hebrew) March 2016, <https://www.sviva.gov.il/infoservices/reservoirinfo/doclib2/publications/po801-p0900/po831.pdf> (accessed June 16, 2020), p. 31.

<sup>356</sup> B'Tselem, "Foul Play," p. 34.

<sup>357</sup> "Ariel Settlement Fact Sheet," B'Tselem, updated July 17, 2012, [https://www.btselem.org/settlements/20100830\\_facts\\_on\\_the\\_settlement\\_of\\_ariel](https://www.btselem.org/settlements/20100830_facts_on_the_settlement_of_ariel) (accessed June 4, 2020).

build a plant to treat its wastewater alone and began construction of the plant in November of that year. <sup>358</sup>

A report published by the United Nations International Children's Emergency Fund (UNICEF) and the Palestinian Hydrology Group in 2011 said that the Barkan Industrial Area settlement, near Ariel, “is notorious for flushing its leftover chemical waste onto Salfit villages.” <sup>359</sup> The report further states that “this chemical waste is thought to include petrochemicals, metals and plastic” and notes that “heavy toxic metals are linked to an endless list of conditions, from diarrhoea to diabetes, hyperkeratosis, organ failure and cancer.” <sup>360</sup> During the rainy season, according to B’Tselem, the sewage flows from Ariel downstream into springs and valleys, overflowing Salfit’s central pumping station. <sup>361</sup> A Bruqin municipality employee, Murad Samara, told Human Rights Watch that in al-Matwi valley, between Salfit and Bruqin, sewage from Ariel and Salfit flows through a valley where at least 50 families live. <sup>362</sup> People in the community worried that exposure to sewage and chemical waste was making people sick. May Barakat, a mother of four who lives in the valley, told Human Rights Watch that “the smell in the valley is deadly” and that her three-year-old daughter was diagnosed with leukemia two years ago. She said that she stopped allowing her children to play outside after one of them fell into the sewage several years prior. <sup>363</sup>

Another cluster of settlements runs through northern Salfit and juts deep into the neighboring governorate of Qalqilya. The separation barrier entirely encircles the city of Qalqilya, home to more than 55,000 people, <sup>364</sup> with only one access road in and out of the city, in order to, according to B’Tselem “create contiguity between Israel” and the

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<sup>358</sup> “Laying the cornerstone for a project that waited 25 years ... Minister Ghoneim: Despite Israeli obstacles, we are continuing to improve the water service” (Arabic), Palestine Water Authority press release, November 20, 2019, [http://www.pwa.ps/ar\\_page.aspx?id=527rVEa3111280557a527rVE](http://www.pwa.ps/ar_page.aspx?id=527rVEa3111280557a527rVE) (accessed July 12, 2020).

<sup>359</sup> UNICEF and the Palestinian Hydrology Group (PHG), Water, Sanitation and Hygiene Monitoring Program (WASH MP), “Water for Life,” June 2011, [https://www.unicef.org/oPt/WASH\\_MP\\_Final\\_Report\\_2009\\_\\_WP\\_21\\_June.pdf](https://www.unicef.org/oPt/WASH_MP_Final_Report_2009__WP_21_June.pdf) (accessed June 4, 2020), p. 39.

<sup>360</sup> *Ibid.*

<sup>361</sup> B’Tselem, “Foul Play,” p. 31.

<sup>362</sup> Human Rights Watch phone interview with Murad Samara, April 9, 2020.

<sup>363</sup> Human Rights Watch phone interview with May Barakat, April 7, 2020.

<sup>364</sup> Palestinian Central Bureau of Statistics (PCBS), “Estimated Mid-Year Population of Qalqiyah Governorate, 2017-2021” (Arabic), [http://www.pcbs.gov.ps/Portals/\\_Rainbow/Documents/QalqilyaA.html](http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/QalqilyaA.html) (accessed April 4, 2021).

settlements there. <sup>365</sup> They found that the barrier separates Qalqilya from half of its agricultural lands, about 2,500 dunams. <sup>366</sup>

### *East Jerusalem*

After seizing the West Bank in 1967, Israel unilaterally annexed 72 square kilometers, including the eastern part of Jerusalem and land that belonged to 28 surrounding West Bank villages, to the Jerusalem municipality. Human Rights Watch is not aware of any other country, with the recent exception of the United States under President Donald Trump, that recognizes Israel's annexation of East Jerusalem, which remains occupied territory under international law. <sup>367</sup>

As of September 2020, the Jerusalem municipality includes, according to Israel's Central Bureau of Statistics, 371,800 Palestinians and 563,200 Jewish Israelis. <sup>368</sup> The Jewish Israeli population includes more than 220,000 settlers living in occupied East Jerusalem. <sup>369</sup> In the city, Israel effectively maintains one set of rules for Jewish Israelis and another for Palestinians on virtually all aspects of everyday life.

### **Legal Status**

Israeli authorities designate Palestinians from East Jerusalem as “permanent residents,” the same status afforded to a foreigner who moves to Israel. <sup>370</sup> This precarious status derives from their physical presence in Jerusalem; the Interior Ministry has withdrawn it

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<sup>365</sup> B'Tselem, “Arrested Development,” p. 48.

<sup>366</sup> *Ibid.*, p. 53.

<sup>367</sup> In his statement recognizing Jerusalem as Israel's capital and indicating his plan to move the US Embassy there, President Trump said that the announcement did not constitute recognition of the city's boundaries: “Statement by President Trump on Jerusalem,” US Embassy and Consulates in Italy press release, December 6, 2017, <https://it.usembassy.gov/statement-president-trump-jerusalem-december-6-2017/> (accessed June 4, 2020). However, when announcing his “Peace to Prosperity” plan in January 2020, he said that “Jerusalem will stay united,” effectively recognizing the annexation. “President Donald J. Trump's Vision for Peace, Prosperity, and a Brighter Future for Israel and the Palestinian People,” White House press release, January 28, 2020, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-vision-peace-prosperity-brighter-future-israel-palestinian-people/> (accessed June 4, 2020).

<sup>368</sup> Israel CBS, “Population and Density Per Sq. Km. in Localities With 5,000 Residents and More On 31.12.2019(1).”

<sup>369</sup> “Settlements data – Jerusalem,” Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem> (accessed January 11, 2021).

<sup>370</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section for more information.

from at least 14,701 Palestinians since 1967, largely for failing to prove a “center of life” in Jerusalem. <sup>371</sup>

A path to citizenship exists for Palestinian Jerusalemite residents, but the vast majority have chosen not to pursue it, as it recognizes Israel, the occupying power, as the legitimate sovereign. Moreover, the vast majority of those who applied did not receive citizenship. <sup>372</sup> As permanent residents, Palestinian Jerusalemites who are not citizens can vote in municipal elections, but not in national Israeli elections. <sup>373</sup>

In contrast, Jewish Israelis from Jerusalem, including settlers in East Jerusalem, are Israeli citizens and do not have to prove that they maintain connections to the city in order to safeguard their legal status. Israeli authorities have not revoked the legal status of a single Jewish Israeli for failing to prove a “center of life” in Jerusalem. Jewish Israelis living in all parts of Jerusalem also vote in both municipal and national elections.

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<sup>371</sup> HaMoked, “Ministry of Interior Data: 18 East Jerusalem Palestinians Were Stripped of their Permanent Residency Status in 2020 as Part of Israel’s “Quiet Deportation” Policy; 10 of Them Women,” March 9, 2021, <http://www.hamoked.org/Document.aspx?dID=Updates2224> (accessed March 28, 2021). Those who lose their residency may petition the Interior Ministry to recover their status, during which time they can obtain a temporary status to remain in Jerusalem. Some Palestinians have succeeded in reinstating their status, but often after protracted legal and administrative processes that many cannot afford. “Israel: Jerusalem Palestinians Stripped of Status,” Human Rights Watch news release, August 8, 2017, <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>.

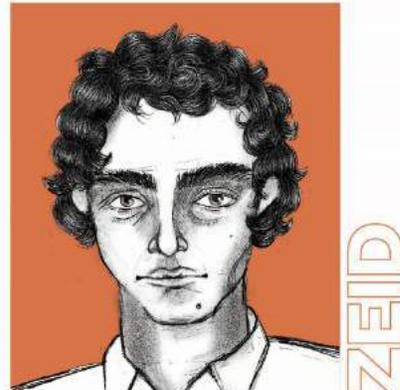
<sup>372</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section for more information.

<sup>373</sup> “Abbas Says No Elections Unless Palestinians in East Jerusalem Can Vote,” *Times of Israel*, December 19, 2019, <https://www.timesofisrael.com/abbas-says-no-elections-unless-palestinians-in-east-jerusalem-can-vote/> (accessed June 4, 2020).

# BORN UNEQUAL EAST JERUSALEM



**JEWISH CITIZEN OF ISRAEL**  
BORN IN EAST JERUSALEM  
(SETTLEMENT)



**PALESTINIAN RESIDENT**  
BORN IN EAST JERUSALEM

## IS MY LEGAL STATUS IN JERUSALEM SECURE?

**YES**

You're an Israeli citizen and it's government policy to maintain a Jewish majority in the city

**NO**

Just like foreigners who move to Israel, you're a resident, a conditional and revocable status. You can apply for citizenship, but you're unlikely to get it

## CAN I MOVE ABROAD FOR A FEW YEARS AND COME BACK?

**YES**

Whenever you decide to move back to Jerusalem, you'll be welcome

**MAYBE NOT**

You can leave, but if you stay away too long, your residency could be revoked, leaving you without legal status

## WILL I KEEP MY LEGAL STATUS IF I MOVE TO OTHER PARTS OF THE WEST BANK?

**YES**

You can move to an Israeli settlement in the West Bank. Your legal status is secure, regardless of where you live

**MAYBE NOT**

If Israeli authorities determine that you no longer "maintain a connection" to Jerusalem, you might lose your residency

## CAN I EASILY MOVE TO A NEW HOME IN EAST JERUSALEM?

**YES**

You should have no problem moving into a settlement

**MAYBE NOT**

It's virtually impossible to obtain a building permit, and built-up Palestinian areas are already overcrowded

HUMAN  
RIGHTS  
WATCH

VISUALIZING PALESTINE

The individuals depicted above are fictional representations for illustrative purposes only  
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APR 2021  
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While Palestinians and Jewish Jerusalemites are subject to the same criminal law, discrimination underlies policing in the city. Across Jerusalem, 77 percent of children arrested in 2018 were Palestinian, although Palestinians constitute less than 40 percent of Jerusalem's population. <sup>374</sup> B'Tselem observed that police violence "is part of Israel's policy...to ensure Jewish supremacy in the city." <sup>375</sup> For example, Israeli authorities arrested, according to B'Tselem, more than 850 Palestinians, mostly children, many of whom were beaten, from the neighborhood of Issawiya in East Jerusalem between April 2019 and April 2020. <sup>376</sup> B'Tselem described these arrests in Issawiya as part of "an ongoing campaign of abuse and collective punishment against its residents," <sup>377</sup> documenting how police forces regularly entered the neighborhood to "initiate 'friction'... block the narrow streets, fire stun grenades, tear gas and sponge rounds and arrest and beat residents." <sup>378</sup> The Israeli newspaper *Haaretz*, which has reported on near-daily raids, patrols, checkpoints, and ambushes in Issawiya, and described the policy as one of "collective punishment," <sup>379</sup> found that only a "tiny fraction" of those arrested have been charged with stone-throwing or other offenses. <sup>380</sup>

In addition, the separation barrier cuts through East Jerusalem, separating Palestinian communities in at least three ways. First, it places tens of thousands of Palestinian Jerusalemites living in areas such as Kufr Aqab and the Shuafat refugee camp on the West Bank side of the barrier, separating them from the rest of East Jerusalem. <sup>381</sup> Second, the

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<sup>374</sup> ACRI, "East Jerusalem: Facts and Figures 2019."

<sup>375</sup> "Abuse and Collective Punishment in al-'Esawiya, East Jerusalem," B'Tselem video clip, YouTube, [https://www.youtube.com/watch?time\\_continue=87&v=wsu394CrDSs&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=87&v=wsu394CrDSs&feature=emb_logo) (accessed July 22, 2020); Also see B'Tselem, "This is Jerusalem: Violence and Dispossession in al-'Esawiyah," May 2020, <https://bit.ly/2AL2gaA> (accessed June 4, 2020).

<sup>376</sup> *Ibid.*; Also see Nir Hasson, "Israel Arrests Hundreds of Palestinian Minors in Jerusalem, Violating Children's Rights," *Haaretz*, January 10, 2020, <https://www.haaretz.com/israel-news/.premium-israel-arrests-hundreds-of-palestinian-minors-in-jerusalem-violating-child-rig-1.8377280> (accessed June 4, 2020); ACRI, "Protections for Minors Suspected of Crimes? Not in Issawiya," January 12, 2020, [https://www.english.acri.org.il/post/\\_\\_\\_147](https://www.english.acri.org.il/post/___147) (accessed June 4, 2020).

<sup>377</sup> B'Tselem, "This is Jerusalem: Violence and Dispossession in al-'Esawiyah."

<sup>378</sup> "Abuse and Collective Punishment in al-'Esawiya, East Jerusalem," B'Tselem video clip, YouTube.

<sup>379</sup> Nir Hasson, "Police Step Up Raids, Arrests in Jerusalem's Isawiyah Despite Mounting Protests," *Haaretz*, November 26, 2019, <https://www.haaretz.com/middle-east-news/palestinians/.premium-police-step-up-raids-arrests-in-jerusalem-s-isawiyah-despite-mounting-protests-1.8185789> (accessed June 4, 2020); Nir Hasson, "Israel's Collective Punishing Exacts Price From This East Jerusalem Neighborhood," *Haaretz*, July 1, 2019, <https://www.haaretz.com/israel-news/.premium-israel-s-collective-punishing-exacts-price-from-this-east-jerusalem-neighborhood-1.7425731> (accessed June 4, 2020).

<sup>380</sup> Nir Hasson, "Police Step Up Raids, Arrests in Jerusalem's Isawiyah Despite Mounting Protests," *Haaretz*.

<sup>381</sup> See Case Study: Kufr Aqab section below.

barrier traps some West Bank Palestinians on the Jerusalem side, for example in Nabi Samuel. West Bank Palestinian residents of these areas are effectively forbidden from being anywhere on the Jerusalem side of the barrier outside their homes or communities and must cross a checkpoint to attend school or work or go to the grocery store or hospital. <sup>382</sup> Third, the barrier creates various fully encircled enclaves in the West Bank, for example in Bir Nabala, that are connected to other Palestinian communities only by “fabric of life” roads. <sup>383</sup>

### **Land and Housing**

Since 1967 Israeli authorities have expropriated from Palestinians nearly one-third of the land in East Jerusalem, comprising at least 23,378 dunams, largely for settlements. <sup>384</sup> As with the rest of the West Bank, Israeli authorities have since 1967 frozen the land registration process for Palestinians in East Jerusalem, while registering land in East Jerusalem settlements throughout the entire period. <sup>385</sup> The freeze puts the land of Palestinians who had not registered it by 1967 at risk of confiscation and also makes it difficult for them to obtain building permits. The Israeli rights group Ir Amim estimated in a 2015 report that half the land in East Jerusalem is not registered. <sup>386</sup>

Beyond formal state confiscation, discriminatory laws and policies enable settler and settler organizations to take possession of Palestinian homes, evict the Palestinian landowners, and transfer their property to Jewish owners in East Jerusalem neighborhoods. <sup>387</sup> They have done so based on a 1970 law that requires authorities to return to Jewish owners or their heirs property they owned in East Jerusalem prior to 1948

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<sup>382</sup> Al Haq, “Hidden in Plain Sight: The Village of Nabi Samwil,” June 13, 2018, <http://www.alhaq.org/advocacy/6186.html> (accessed June 4, 2020).

<sup>383</sup> “Welcome to Bir Nabala – a new video by B’Tselem,” B’Tselem press release, November 8, 2012, [btselem.org/press\\_releases/20121011\\_welcome\\_to\\_bir\\_nabala](http://www.btselem.org/press_releases/20121011_welcome_to_bir_nabala) (accessed June 4, 2020).

<sup>384</sup> “Statistics on Land Expropriaion [sic] in East Jerusalem,” B’Tselem, January 1, 2011, [https://www.btselem.org/jerusalem/land\\_expropriation\\_statistics](https://www.btselem.org/jerusalem/land_expropriation_statistics) (accessed June 2, 2020).

<sup>385</sup> Ir Amim, “Displaced in Their Own City,” p. 10.

<sup>386</sup> *Ibid.*

<sup>387</sup> “A 40-Person Palestinian Family Is about to Be Thrown Out of Its Home in Sheikh Jarrah for the Benefit of Settlers,” Peace Now press release, January 11, 2019, <https://peacenow.org.il/en/sabagh-family-sheikh-jarrah> (accessed June 4, 2020); “East Jerusalem Cleansing Continues: Israel Removes More Palestinian Families, Hands Over Their Homes to Settlers,” B’Tselem press release, March 11, 2019, [https://www.btselem.org/jerusalem/20190311\\_east\\_jerusalem\\_cleansing\\_continues](https://www.btselem.org/jerusalem/20190311_east_jerusalem_cleansing_continues) (accessed June 4, 2020).

and that was held by Jordanian authorities between 1948 and 1967.<sup>388</sup> By contrast, authorities have largely allowed the takeover of the land and homes of Palestinians in West Jerusalem who were expelled or fled as a result of the events of 1947-1949 and of Palestinians who were expelled or fled as a result of the onset of the Israeli occupation in 1967, by declaring it as “absentee property.”<sup>389</sup>

The Ateret Cohanim settler organization, for example, has filed dozens of eviction lawsuits against around 100 Palestinian families living in the Batn al-Hawa area of Silwan in East Jerusalem, claiming that their homes belonged to a Jewish property trust that had housed Yemeni Jews in the late 19<sup>th</sup> century.<sup>390</sup> Ateret Cohanim aims to create a Jewish neighborhood in the heart of Silwan, putting 700 Palestinians at risk of eviction.<sup>391</sup> Jerusalem magistrate courts ruled in favor of Ateret Cohanim in several of these suits in 2020, ordering the eviction of families who had lived there for decades.<sup>392</sup> In June 2020, a Jerusalem court ruled in favor of the Jewish National Fund (JNF) in an eviction proceeding that the group filed against a family of 18 from a building in Silwan that the family has lived

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<sup>388</sup> Norwegian Refugee Council (NRC), “The Absentee Property Law and its Application to East Jerusalem,” Legal Memo, February 2017, [https://www.nrc.no/globalassets/pdf/legal-opinions/absentee\\_law\\_memo.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf) (accessed June 4, 2020). While the law applies on its face to non-Jews, the NRC wrote in 2017 that “[i]n practice, [the law] was implemented only in the case of Jewish Israeli owners.”

<sup>389</sup> Ibid. The 1950 Absentees’ Property Law allowed the state to confiscate the land and homes of Palestinians not present on their property as of November 29, 1947. Israeli authorities long used that to apply to Palestinian homes in West Jerusalem. That, combined with the Law and Administration Procedures Act passed in 1970 by the Knesset, have empowered the Custodian of Absentee Property to determine whether East Jerusalem properties qualified as “absentee properties.” The Israeli government has permitted the application of the law to East Jerusalem for the most part since 1967.

<sup>390</sup> Nir Hasson, “East Jerusalem Palestinians Say Right-wing Group Using Land Trust to Displace Them,” *Haaretz*, June 4, 2020, [https://www.haaretz.com/middle-east-news/palestinians/.premium-east-jerusalem-palestinians-say-right-wing-group-using-land-trust-to-displace-them-1.8895928?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.haaretz.com/middle-east-news/palestinians/.premium-east-jerusalem-palestinians-say-right-wing-group-using-land-trust-to-displace-them-1.8895928?utm_source=dlvr.it&utm_medium=twitter) (accessed June 4, 2020).

<sup>391</sup> “Court Rules to Evict Palestinian Rajabi Family in Silwan because of Discriminatory Property Law,” Peace Now press release, January 20, 2020, <https://peacenow.org.il/en/the-court-ruled-to-evict-a-palestinian-family-from-its-home-in-silwan-because-the-property-was-owned-by-jews-before-1948> (accessed June 4, 2020); Nir Hasson, “The Judaization of an East Jerusalem Neighborhood Gains Steam,” *Haaretz*, November 2, 2015, <https://www.haaretz.com/israel-news/.premium-judaization-of-e-j-lem-quarter-gains-pace-1.5415648> (accessed June 4, 2020); “High Court of Justice Paves Way for Cleansing of Palestinians from Silwan,” B’Tselem press release, November 22, 2018, [https://www.btselem.org/press\\_releases/2018122\\_batan\\_al\\_hawa\\_ruling](https://www.btselem.org/press_releases/2018122_batan_al_hawa_ruling) (accessed June 4, 2020).

<sup>392</sup> Nir Hasson, “Court Okays Eviction of Palestinian Family Because Land Was Once Owned by Jews,” *Haaretz*, January 20, 2020, <https://www.haaretz.com/israel-news/.premium-court-okays-eviction-of-east-j-lem-family-because-their-land-was-once-owned-by-jews-1.8414592> (accessed June 4, 2020); Nir Hasson, “Court Orders Dozens of Palestinians Out of Jerusalem Homes to Make Way for Settlers,” *Haaretz*, September 15, 2020, <https://www.haaretz.com/israel-news/.premium-court-orders-dozens-of-palestinians-out-of-jerusalem-homes-to-make-way-for-settlers-1.9157320> (accessed September 15, 2020).

in since the 1950s. <sup>393</sup> These decisions have been appealed, and the evictions have not yet been carried out, as of March 2021. <sup>394</sup>

Israeli authorities have made it virtually impossible for Palestinians to obtain building permits in East Jerusalem, in particular outside built-up neighborhoods that make up less than 15 percent of East Jerusalem and 8.5 percent of the Jerusalem municipality. <sup>395</sup> According to Peace Now, “while the government has initiated planning, appropriation of land for construction, tenders for the construction of more than 55,000 housing units for Israelis in East Jerusalem since 1967, the Palestinians have seen government-initiated construction of only 600 housing units (in the 1970s).” <sup>396</sup> As a result, most Palestinian construction in East Jerusalem is based on private rather than state initiatives. Municipal planners between 1991 and 2018 approved only 9,536 building permits for Palestinians, while approving 48,201 in Jewish neighborhoods of Jerusalem, including 21,834 in settlements. <sup>397</sup>

Between 2009 and 2020, Israeli authorities demolished 1,434 structures in East Jerusalem, in more than 98 percent of the cases for lacking a permit, according to OCHA. <sup>398</sup> According to B’Tselem, authorities demolished 786 homes in East Jerusalem

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<sup>393</sup> Nir Hasson, “Israeli Court Clears the Way to Evict Palestinian Family from East Jerusalem Home,” *Haaretz*, July 1, 2020, <https://www.haaretz.com/israel-news/.premium-israeli-court-clears-the-way-to-evict-palestinian-family-from-east-jerusalem-home-1.8962453> (accessed July 1, 2020). Noam Sheizaf, “Despite Denials, JNF to Continue Eviction Effort of J’lem Palestinians,” *+972 Magazine*, November 28, 2011, <https://www.972mag.com/despite-denials-jnf-to-continue-eviction-effort-of-jerusalem-palestinians/28489/> (accessed June 4, 2020); “Following KKL-JNF Suit: Court Orders Sumarin Family to Evacuate Their Home in Silwan,” Peace Now press release, September 23, 2019, <https://peacenow.org.il/en/following-kkj-jnf-suit-court-orders-sumarin-family-to-evacuate-their-home-in-silwan> (accessed June 4, 2020).

<sup>394</sup> Human Rights Watch phone interview with Sumarin Family, September 16, 2020; Human Rights Watch phone interview with Rajabi family, September 17, 2020.

<sup>395</sup> “Planning Policy in the West Bank,” B’Tselem, updated February 6, 2019, [https://www.btselem.org/planning\\_and\\_building](https://www.btselem.org/planning_and_building) (accessed June 4, 2020); Ir Amim and Bimkom, “Deliberately Planned A Policy to Thwart Planning in the Palestinian Neighborhoods of Jerusalem,” February 2017, <http://www.ir-amim.org.il/sites/default/files/Deliberately%20Planned.pdf> (accessed June 4, 2020).

<sup>396</sup> “Jerusalem Municipal Data Reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem,” Peace Now press release, September 12, 2019, <https://peacenow.org.il/en/jerusalem-municipal-data-reveals-stark-israeli-palestinian-discrepancy-in-construction-permits-in-jerusalem> (accessed June 4, 2020).

<sup>397</sup> *Ibid.*

<sup>398</sup> “Data on Demolition and Destruction in the West Bank,” OCHA. According to OCHA, Israeli authorities demolished 1,237 of the structures for lacking a permit, 13 punitively and seven for “other reasons”.

during this period, leaving 2,561 Palestinians displaced.<sup>399</sup> By contrast, Israeli authorities almost never demolish the homes of Jewish Israelis in Jerusalem, even where there are building violations.<sup>400</sup>

## Resources and Services

Israeli authorities sharply discriminate in the provision of resources and services between Palestinians and Jewish Israelis in Jerusalem. While most Palestinian neighborhoods have poor infrastructure and inadequate health, recreation, and educational services and facilities, most predominantly Jewish neighborhoods have well-paved roads, numerous parks and playgrounds, adequate refuse collection, and sufficient places for children in schools.<sup>401</sup> In January 2016, the Jerusalem district court ordered the municipality to build more playgrounds in the Palestinian neighborhoods of Shuafat and Beit Hanina, after residents of those neighborhoods alleged that they only had two playgrounds to serve a combined population of 60,000, while nearby Jewish neighborhoods had a playground for every 1,000 residents.<sup>402</sup>

The Jerusalem municipality in 2013 allocated only 10.1 percent of its municipal budget for projects and spending in Palestinian neighborhoods, according to the Israeli rights group Ir Amim, despite Palestinians making up about 37 percent of the city's population at the time and paying taxes.<sup>403</sup> Ir Amim estimated in 2020 that Palestinians in East Jerusalem faced a shortage of 3,794 classrooms; while some shortages also existed in Jewish communities, in

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<sup>399</sup> "Database on Fatalities and House Demolitions," B'Tselem, <https://statistics.btselem.org/en/demolitions/pretext-unlawful-construction?stateSensor=%22east-jerusalem%22&structureSensor=%22true%22&demoScopeSensor=%22false%22&dateSensor=%221230771600000%2C1609451999000%22> (accessed March 27, 2021). This figure includes 145 demolitions carried out by owners in East Jerusalem in the face of demolition orders for lacking a permit. Three others sealed their homes in the face of a demolition order.

<sup>400</sup> Ir Amim, "A Layman's Guide to Home Demolitions," March 1, 2009, <https://www.ir-amim.org.il/en/report/layman%E2%80%99s-guide-home-demolitions> (accessed June 4, 2020), p. 8.

<sup>401</sup> Bimkom, "Survey of Palestinian Neighborhoods in East Jerusalem: Planning problems and opportunities," 2013, <http://bimkom.org/eng/wp-content/uploads/survey-of-the-Palestinian-neighborhoods-of-East-Jerusalem.pdf> (accessed June 4, 2020).

<sup>402</sup> Nir Hasson, "Jerusalem Must Plan Playgrounds for Palestinian Neighborhoods, Court Orders," *Haaretz*, January 10, 2016, <https://www.haaretz.com/israel-news/.premium-court-jerusalem-must-plan-playgrounds-for-palestinians-1.5388362> (accessed July 26, 2020).

<sup>403</sup> Ir Amim, "Jerusalem Municipality Budget Analysis for 2013: Share of Investment in East Jerusalem," December 30, 2014, [http://www.ir-amim.org.il/en/policy\\_papers/jerusalem-municipality-budget-analysis-2013-share-investment-east-jerusalem](http://www.ir-amim.org.il/en/policy_papers/jerusalem-municipality-budget-analysis-2013-share-investment-east-jerusalem) (accessed June 4, 2020).

particular Orthodox communities, the group estimated that, by the end of 2022, “the classroom shortage in Jerusalem will be confined to the Arab sector alone.”<sup>404</sup> In addition, only 44 percent of Palestinians in East Jerusalem are connected to the water grid “in an orderly and legal manner,” according to ACRI, leaving many residents with limited supply.<sup>405</sup>

The discriminatory allocation of resources contributes to the starkly different realities faced by Palestinians and Jewish Israelis in Jerusalem. Seventy-two percent of Palestinian families live below the poverty line, as compared to 26 percent of Jewish families.<sup>406</sup> Despite this, the Israeli government maintains six welfare offices, or offices that provide information to residents looking to receive government aid or other services, in Palestinian neighborhoods, but 19 in predominantly Jewish neighborhoods.<sup>407</sup> Thirty-two percent of Palestinian students in East Jerusalem do not complete 12 years of education, as compared to 1.5 percent of Jewish students in Jerusalem.<sup>408</sup>

### **Case Study: Kufr Aqab**

*The following case study details how Israeli authorities have discriminated against Palestinians living in Kufr Aqab on the outskirts of East Jerusalem mainly through building the separation barrier between it and the rest of the city in 2002 and then largely neglecting the needs of residents. The situation in Kufr Aqab differs from the more common policies and practices that institutionally discriminate against Palestinians of Jerusalem but represents a different method by which an oppressively discriminatory system results in rights abuses for Palestinians living in East Jerusalem.*

The separation barrier cuts off Kufr Aqab, a Palestinian town that largely falls at the northernmost edge of the boundaries of the Israeli-demarcated Jerusalem municipality,

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<sup>404</sup> Ir Amim, “The State of Education in East Jerusalem: Discrimination against the Backdrop of COVID-19,” September 2020, [https://www.ir-](https://www.ir-amim.org.il/sites/default/files/The%20State%20of%20Education%20in%20East%20Jerusalem%202020_Discrimination%20Against%20the%20Backdrop%20of%20COVID19.pdf)

[amim.org.il/sites/default/files/The%20State%20of%20Education%20in%20East%20Jerusalem%202020\\_Discrimination%20Against%20the%20Backdrop%20of%20COVID19.pdf](https://www.ir-amim.org.il/sites/default/files/The%20State%20of%20Education%20in%20East%20Jerusalem%202020_Discrimination%20Against%20the%20Backdrop%20of%20COVID19.pdf)(accessed March 31, 2021).

<sup>405</sup> ACRI, “East Jerusalem: Facts and Figures 2019”; Peter Beaumont, “Welcome to Shuafat, East Jerusalem: Where Water Comes Only After Dark,” *The Guardian*, April 14, 2014, <https://www.theguardian.com/world/2014/apr/14/welcome-shuafat-jerusalem-camp-water-palestinians-israel> (accessed June 4, 2020).

<sup>406</sup> ACRI, “East Jerusalem: Facts and Figures 2019.”

<sup>407</sup> Ibid.; Municipality of Jerusalem, “Social Services Offices,” <https://www.jerusalem.muni.il/en/residents/welfare-and-social-services-in-jerusalem/welfareoffices/>(accessed June 4, 2020).

<sup>408</sup> ACRI, “East Jerusalem: Facts and Figures 2019.”

from the rest of Jerusalem. In the nearly two decades since the erection of the barrier, Israeli authorities have effectively stopped governing in Kufr Aqab, failing to police, regulate construction, or in large part provide services to residents. The neglect and resulting lawlessness have effectively turned Kufr Aqab into a crowded slum and what one Israeli policy institute deemed “a kind of no man’s land.”<sup>409</sup>



The Palestinian area Kufr Aqab, which largely falls within the jurisdiction of the Israeli-governed Jerusalem municipality, is effectively cut off from the rest of the city because it lies on the West Bank side of the separation barrier. (c) 2018 AFP/Getty

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<sup>409</sup> Miriam Berger, “For Some Palestinians in Love, This Slum Is the Only Place to Live,” *Reuters*, November 9, 2017, <https://www.reuters.com/article/us-israel-palestinians-marriage/for-some-palestinians-in-love-this-slum-is-the-only-place-to-live-idUSKBN1D91oZ> (accessed June 4, 2020); Jerusalem Institute for Policy Research, “Kufr Aqab: Abstract,” 2018, [https://jerusalemite.org.il/wp-content/uploads/2019/07/PUB\\_Kfar-Akeb\\_English\\_abstract.pdf](https://jerusalemite.org.il/wp-content/uploads/2019/07/PUB_Kfar-Akeb_English_abstract.pdf) (accessed June 4, 2020).

After the 1967 war, Israel annexed most of Kufr Aqab, including the then Jerusalem airport and the neighborhoods of Samiramis and Zghayyar that have historically been a part of Kufr Aqab, and incorporated it, along with other West Bank villages and East Jerusalem, into the Jerusalem municipality, apparently to bring the airport under its control.<sup>410</sup> Annexation, though, split the town into two parts, with about 40 percent remaining outside the territory that Israel incorporated and today falling within Area C of the West Bank, where Israel maintains full civil and security control.<sup>411</sup> Kufr Aqab's municipal council formally serves the part of the town outside Jerusalem's municipal boundaries, but, in practice, also engages residents in the Jerusalem part. Neither Israeli nor Palestinian authorities maintain precise population figures for Kufr Aqab; estimates range between 70,000 and 100,000,<sup>412</sup> while Kufr Aqab's municipal council maintains that the actual figure is around 120,000.<sup>413</sup>

In the 1980s, Israeli authorities confiscated 1,415 dunams from Kufr Aqab as state land and allocated it to establish the settlement of Kochav Ya'akov, according to B'Tselem.<sup>414</sup> An official from the municipal council estimates that Kufr Aqab lost in total about a third of its

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<sup>410</sup> Meron Benvenisti, *Intimate Enemies: Jews and Arabs in a Shared Land* (University of California Press: 1995), <https://bit.ly/2yVZmiF> (accessed June 4, 2020), pp. 53-54; Nir Hasson, "Rivlin Says Warned in 1967 Against Extensive Annexation of Arab Neighborhoods in Jerusalem," *Haaretz*, December 27, 2015, <https://www.haaretz.com/israel-news/.premium-rivlin-warned-of-annexing-e-j-lem-1.5382574> (accessed June 4, 2020); Jerusalem Institute for Policy Research, "Residents, Not Citizens: Israeli Policy towards the Arabs in East Jerusalem, 1967-2017," 2017, [https://jerusalem-institute.org.il/wp-content/uploads/2019/05/PUB\\_%D7%AA%D7%95%D7%A9%D7%91%D7%95%D7%AA.pdf](https://jerusalem-institute.org.il/wp-content/uploads/2019/05/PUB_%D7%AA%D7%95%D7%A9%D7%91%D7%95%D7%AA.pdf) (accessed June 4, 2020), pp. 46, 53-54; Oren Ziv, "In Pictures: The airport That No One Takes Off from Anymore," (Hebrew), *Local Call*, April 18, 2020, <https://bit.ly/2MClz8C> (accessed June 4, 2020).

<sup>411</sup> Human Rights Watch phone interview with Munir Zghayyar, Kufr Aqab Residents Committee Chair, May 17, 2020.

<sup>412</sup> See, for example, Nir Hasson, "Israel Opens Vaccination Center at Checkpoint to Reach Palestinian East Jerusalem Residents," *Haaretz*, February 24, 2021, <https://www.haaretz.com/israel-news/israel-opens-vaccination-center-at-checkpoint-in-bid-to-reach-e-jerusalem-residents-1.9563857> (accessed February 24, 2021) (noting that Kufr Aqab has 100,000 residents, including 70,000 Israeli ID holders). The Jerusalem Institute for Policy Research estimated in 2018 that 61,500 people live in the part within the Jerusalem municipality, while another 10,000 live in the portion of Kufr Aqab outside the Jerusalem municipality. Jerusalem Institute for Policy Research, "Kufr Aqab: Abstract." ACRI also used a figure of 61,500 for Kufr Aqab's population in Jerusalem. ACRI, "East Jerusalem: Facts and Figures 2019." The Meir Amit Intelligence and Terrorism Information Center put the number of Jerusalem residents in Kufr Aqab at between 70,000 and 75,000, citing July 2020 data from the Jerusalem municipality. The Meir Amit Intelligence and Terrorism Information Center, "COVID-19 in the East Jerusalem Neighborhoods: The Exceptional Case of Kafr 'Aqab," August 3, 2020, [https://www.terrorism-info.org.il/app/uploads/2020/08/E\\_189\\_20.pdf](https://www.terrorism-info.org.il/app/uploads/2020/08/E_189_20.pdf) (accessed August 4, 2020), p. 2.

<sup>413</sup> Human Rights Watch phone interview with Kufr Aqab municipal council representative (name withheld), May 17, 2020.

<sup>414</sup> B'Tselem, "Under the Guise of Legality: Israel's Declarations of State Land in the West Bank," February 2012, [https://www.btselem.org/download/201203\\_under\\_the\\_guise\\_of\\_legality\\_eng.pdf](https://www.btselem.org/download/201203_under_the_guise_of_legality_eng.pdf) (accessed March 28, 2021).

land to Kochav Ya'akov.<sup>415</sup> In August 2009, settlers erected 12 structures on additional Kufr Aqab land that was privately owned by its residents. When the council head petitioned the Israeli Supreme Court to halt construction, the Israeli army declared the area a closed military zone, although it allowed settlers to remain, and several years later declared 224 dunams as state land, according to the Israeli rights group Yesh Din.<sup>416</sup> The Supreme Court in November 2020 rejected the residents' claim of land ownership and thereby their challenge to the state land designation.<sup>417</sup> In February 2020, Israel's Housing Ministry advanced a plan to build a settlement in the area where the Jerusalem airport once stood.<sup>418</sup>

In 2002, Israeli authorities, citing security reasons, built in the Jerusalem area a segment of the separation barrier more than 200 kilometers long. The Israeli rights group Ir Amim noted that its route "adds to Jerusalem the Jewish population that lives in the settlement blocs outside of the city's municipal area[,] in addition to a very large area of land outside them," while it "subtracts the Palestinian population that lives in those areas from Jerusalem."<sup>419</sup> Running between Kufr Aqab and the strip where the airport once was, in part on Kufr Aqab's land, the barrier separates residents from Jerusalem and over 500 dunams of the town's own agricultural lands, according to Kufr Aqab municipal council officials.<sup>420</sup> The barrier runs south to the Qalandiya checkpoint, the main crossing between Ramallah and Jerusalem, which Kufr Aqab residents, the majority of whom hold Jerusalem IDs, must cross to reach the rest of Jerusalem. With Ramallah to the north, the Qalandiya

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<sup>415</sup> Human Rights Watch phone interview with Kufr Aqab municipal council representative (name withheld), May 17, 2020. The ARIJ estimates that, in total, Israeli authorities confiscated 2,037 dunams of Kufr Aqab lands: ARIJ, "Kafr 'Aqab Village Profile," 2012, [http://proxy.arij.org/vprofile/jerusalem/pdfs/vprofile/Kafr%20'Aqab\\_EN.pdf](http://proxy.arij.org/vprofile/jerusalem/pdfs/vprofile/Kafr%20'Aqab_EN.pdf) (accessed June 4, 2020); "Kochav Ya'akov," Peace Now, <https://peacenow.org.il/en/settlements/settlement55-en> (accessed June 4, 2020).

<sup>416</sup> Yesh Din, "Petitions to Halt Construction of Illegal Structures Near the Settlement Kochav Yaakov and Annul the Declaration of Kafr Aqab Land as State Land," July 19, 2018, <https://www.yesh-din.org/en/petition-to-halt-construction-of-illegal-structures-by-the-settlement-of-kochav-yaakov-hcj-650509-barkat-et-al-v-the-minister-of-defense-et-al/> (accessed June 4, 2020); Michael Sfar, Yesh Din legal advisor, email to Human Rights Watch, May 8, 2020.

<sup>417</sup> Hagar Shezaf, "Top Court Green Lights Israel Land Claim in Ruling That Could Pave Way for Legalizing Outposts," *Haaretz*, December 1, 2020, <https://www.haaretz.com/israel-news/.premium-israeli-high-court-rejects-petition-against-declaring-west-bank-area-state-land-1.9338816> (accessed December 20, 2020).

<sup>418</sup> "Plan Advanced for a New Settlement in Atarot in the Heart of Palestinian East Jerusalem," Peace Now press release, February 18, 2020, <https://peacenow.org.il/en/plan-advanced-for-a-new-settlement-in-atarot-in-the-heart-of-palestinian-east-jerusalem> (accessed June 4, 2020).

<sup>419</sup> Ir Amim, "The Separation Barrier," <http://www.ir-amim.org.il/en/issue/separation-barrier> (accessed June 4, 2020).

<sup>420</sup> Human Rights Watch phone interviews with and Kufr Aqab municipal council representatives (names withheld), May 13 and May 17, 2020.

Refugee Camp and Kochav Ya'akov settlement to its east, and the checkpoint to the south, the completion of the separation barrier fully hemmed Kufur Aqab in. <sup>421</sup>



Kufur Aqab, a Palestinian area on the northernmost edge of the boundaries of the Israeli-demarcated Jerusalem municipality, is hemmed in, to the west by the separation barrier; to the south, the Qalandiya checkpoint that separates the cities of Ramallah and Jerusalem; to the east, Qalandiya Refugee Camp and the settlement of Kochav Ya'akov, built in part on Kufur Aqab land; and to the north, Ramallah. Satellite image courtesy of Planet Labs Inc. 2021

<sup>421</sup> Grassroots Jerusalem, "Kufur 'Aqab & Qalandia Refugee Camp," (map) 2015, [https://www.grassrootsalquds.net/sites/default/files/kufraqab\\_qalandiarefugeecamp\\_small-2\\_o.pdf](https://www.grassrootsalquds.net/sites/default/files/kufraqab_qalandiarefugeecamp_small-2_o.pdf) (accessed June 4, 2020).

Beyond physically separating Palestinians from one another, the building of the barrier coincided with the Israeli government's effective abandonment of governance and law enforcement over Kufr Aqab. Israeli authorities do not operate a police station in Kufr Aqab, <sup>422</sup> and, as acknowledged in a 2008 State Comptroller report, maintain "no police operations to enforce or maintain order" there. <sup>423</sup> Munir Zghayyar, chair of the Kufr Aqab Residents Committee, told Human Rights Watch that he is not aware of a single incident of Israeli police entering Kufr Aqab since 2001 and that, even when residents cross the checkpoint and go in-person to a police station, authorities often do not intervene. <sup>424</sup> The army, charged since 2006 with responsibility for security in Kufr Aqab, at times enters Kufr Aqab to carry out security operations and arrests, even though it defines the area as falling within Israel's sovereign territory and thus not under military rule. <sup>425</sup>

With the PA barred under the Oslo Accords from operating in Kufr Aqab, these policies create what OCHA has called "a security vacuum manifested in an increase in lawlessness, crime and drug trafficking," <sup>426</sup> and offer fertile ground for fugitives from the PA police. <sup>427</sup> Three Kufr Aqab residents told Human Rights Watch that they regularly hear gunfire, so much so that one resident's family grew "afraid to go on the balcony." <sup>428</sup> Another said, "I am always afraid—anything can happen and who am I supposed to turn to when it does?" <sup>429</sup> In the absence of law enforcement, Zghayyar, the Residents Committee chair, said some of the larger families living there have taken it upon themselves to adjudicate disputes. <sup>430</sup>

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<sup>422</sup> Jerusalem Institute for Policy Research, "Kufr Aqab: Abstract," p. 1.

<sup>423</sup> Cited in Ir Amim, "Displaced in Their Own City," p. 40.

<sup>424</sup> Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020.

<sup>425</sup> Ir Amim, "Displaced in Their Own City," p. 51; Jerusalem Institute for Policy Research, "Kufr Aqab: Abstract."

<sup>426</sup> OCHA, "East Jerusalem Palestinian Localities Behind the Barrier," August 10, 2016, <https://www.ochaopt.org/content/east-jerusalem-palestinian-localities-behind-barrier> (accessed June 4, 2020).

<sup>427</sup> Jacob Burns, "Life Beyond the Wall: Israel Neglecting Palestinian Residents of Jerusalem," *Middle East Eye*, June 7, 2017, <https://www.middleeasteye.net/news/life-beyond-wall-israel-neglecting-palestinian-residents-jerusalem> (accessed June 4, 2020).

<sup>428</sup> Human Rights Watch phone interview with Kufr Aqab resident (name withheld), May 20, 2020; Human Rights Watch phone interview with Kufr Aqab resident (name withheld), May 18, 2020; Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020.

<sup>429</sup> Human Rights Watch phone interview with Kufr Aqab resident (name withheld), May 18, 2020.

<sup>430</sup> Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020.

Israeli authorities have also since the building of the barrier effectively stopped regulating construction. Municipal authorities approved a plan for Kufr Aqab in 2005, but Ir Amim found that it was “no longer current” even then.<sup>431</sup> Zghayyar and an official from the municipal council both told Human Rights Watch that authorities have not issued a building permit for the area since 2001.<sup>432</sup> Moien Odeh, a lawyer who has brought cases on behalf of Kufr Aqab and a former resident, said that residents used to have to get a difficult-to-obtain permit to “build anything,” but, following the outbreak of the second *Intifada* and the building of the barrier, authorities suggested off-hand to some contractors and residents that they did not need a permit and residents eventually stopped applying.<sup>433</sup> Ir Amim quoted the director of the municipality’s building inspection division in a June 2015 report as acknowledging that the municipality is not monitoring or enforcing construction there.<sup>434</sup> Ir Amim also determined that the division had not entered Kufr Aqab in a decade.<sup>435</sup>

The lack of regulation in Kufr Aqab stands in sharp contrast to the government’s policy of sharply restricting building in other Palestinian neighborhoods in East Jerusalem and carrying out thousands of home demolitions since 1967.<sup>436</sup> Amid the housing crunch and difficulty of building in Palestinian neighborhoods inside the separation barrier, many Palestinian Jerusalemites have moved to Kufr Aqab, where, according to Zghayyar, property costs one-third less.<sup>437</sup>

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<sup>431</sup> Ir Amim, “Displaced in Their Own City,” p. 42.

<sup>432</sup> Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020; Human Rights Watch phone interview with Kufr Aqab municipal council representative (name withheld), May 17, 2020.

<sup>433</sup> Human Rights Watch phone interview with Moien Odeh, lawyer, May 7, 2020.

<sup>434</sup> Ir Amim, “Displaced in Their Own City,” p. 46.

<sup>435</sup> Ibid.

<sup>436</sup> By contrast, authorities have carried out few demolitions in Kufr Aqab. Human Rights Watch phone interview with Kufr Aqab municipal council employee (name withheld), May 13, 2020; Nir Hasson, “In Highly Rare Move, Israel to Demolish Five Palestinian Residential Buildings Behind Separation Barrier,” *Haaretz*, October 28, 2017, <https://www.haaretz.com/israel-news/.premium-israel-to-demolish-5-residential-buildings-behind-separation-barrier-1.5460444> (accessed June 3, 2020); The Israeli Committee Against Home Demolitions (ICAHD), “Demolition and Displacement Report – June 2019,” <https://icahd.org/2019/07/03/demolition-and-displacement-report-june-2019/> (accessed June 3, 2020).

<sup>437</sup> Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020. Zghayyar estimated that an apartment that costs \$100,000 in Kufr Aqab would cost between \$350,000 to \$400,000 in Beit Hanina, a Palestinian neighborhood on the other side of the wall in East Jerusalem.

Kufr Aqab has since the building of the barrier attracted Jerusalemites married to Palestinians from other parts of the West Bank, who under Israel’s Citizenship and Entry into Israel Law (Temporary Order)—2003 cannot obtain permanent status through marriage to a Jerusalem resident. <sup>438</sup> Since Kufr Aqab falls within the Jerusalem municipality, Jerusalemites living there can claim that they live in the city and not lose their residency on that basis. Scores of Palestinians have since 1967 moved to other parts of the West Bank. <sup>439</sup> At the same time, its location beyond the barrier and lack of law enforcement means that West Bank residents can live there without crossing an Israeli checkpoint.

Because of Israel’s discriminatory system, Palestinian “mixed” couples from Jerusalem and the West Bank can with few exceptions live together legally on a long-term, secure basis only in neighborhoods like Kufr Aqab. By contrast, Jewish “mixed” couples, including Jerusalemites married to West Bank settlers, can freely live anywhere in Israel, East Jerusalem, and the West Bank settlements.

A Palestinian woman said she lived for four years in a Jerusalem neighborhood inside the separation barrier apart from her husband, who is from Hebron and has been unable to get permits to enter Jerusalem. During this time, she had to raise their three children alone, in order to maintain a “center of life” in the city and thereby her residency. <sup>440</sup> When she learned that she could both do that and live with her husband in Kufr Aqab, she said they moved there in 2006 and they have remained since. Her daughter, though, continued to attend school across the barrier, crossing the Qalandiya checkpoint daily. She said her family did not wish to remain in Kufr Aqab, citing the difficulty of life there, but had no other options.

High demand and lack of regulation in Kufr Aqab have driven a “rapid and informal increase in residential construction, particularly high-rise buildings.” <sup>441</sup> Built without properly vetted plans or oversight, and often within meters of each other, many buildings rise 10-12 stories high, lack adequate infrastructure for “water, drainage, sewage,

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<sup>438</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>439</sup> Ibid.

<sup>440</sup> Human Rights Watch phone interview with Kufr Aqab resident (name withheld), May 18, 2020.

<sup>441</sup> OCHA, “East Jerusalem Palestinian Localities Behind the Barrier.”

electricity and roads,” and appear not to meet basic safety standards. <sup>442</sup> Odeh, the lawyer, adds that this sort of construction creates a reality where no one knows the boundaries between parcels, and trespassing is common. <sup>443</sup> Multi-story buildings, about 90 percent built without a permit, according to a municipal council employee involved in inspections, <sup>444</sup> have been constructed on land reaching up the barrier, taking up virtually all the area available for public spaces, and contributing to population density. <sup>445</sup> An official from the municipal council observed that the only place left to build is “towards the sky.” <sup>446</sup>

Although Jerusalemites living in Kufr Aqab pay the same municipal taxes as those living in other Jerusalem neighborhoods, “public infrastructure, resources and services are significantly degraded or lacking entirely.” <sup>447</sup> In February 2015, the municipality’s deputy legal advisor acknowledged to Ir Amim that “the Municipality encounters difficulties” servicing Kufr Aqab. <sup>448</sup> Kufr Aqab has no government buildings beyond an Interior Ministry office at the Qalandiya checkpoint, and no emergency health or fire, banking, or welfare services. <sup>449</sup> As a result, residents generally have to cross Qalandiya checkpoint, where waits often take an hour or more to access most municipal services. According to Zghayyar, the Residents Committee Chair, about 3,800 children also cross the checkpoint on schooldays to attend class on the other side of the wall, given the relatively few schools built inside Kufr Aqab. <sup>450</sup> Israel’s national emergency service, Magen David Adom, generally does not service areas beyond the barrier like Kufr Aqab, <sup>451</sup> so, for residents to reach a Jerusalem hospital by ambulance, they must take a

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<sup>442</sup> Ibid.; Jerusalem Institute for Policy Research, “Kufr Aqab: Abstract.”

<sup>443</sup> Human Rights Watch phone interview with Moien Odeh, May 7, 2020.

<sup>444</sup> Human Rights Watch phone interview with Kufr Aqab municipal council employee (name withheld), May 13, 2020.

<sup>445</sup> Jerusalem Institute for Policy Research, “Kufr Aqab: Abstract.” p. III.

<sup>446</sup> Human Rights Watch phone interview with Kufr Aqab municipal council representative (name withheld), May 17, 2020.

<sup>447</sup> OCHA, “East Jerusalem Palestinian Localities Behind the Barrier.”

<sup>448</sup> Ir Amim, “Displaced in Their Own City,” p. 35.

<sup>449</sup> Ibid.; Jerusalem Institute for Policy Research, “Kufr Aqab: Abstract,” p. V.

<sup>450</sup> Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020; Jerusalem Institute for Policy Research, “Kufr Aqab: Abstract.”

<sup>451</sup> Mohammed Daraghmeh and Joseph Krauss, “Palestinians Fear Outbreak in Jerusalem’s ‘No Man’s Land’,” *Associated Press*, May 6, 2020, <https://apnews.com/5a23ac37a37b636d95ebc2436cebabc> (accessed June 4, 2020).

Palestinian ambulance to the checkpoint and transfer there to a Magen David Adom ambulance that can take them to one. <sup>452</sup>

In 2006 the Israeli government established the Jerusalem Envelope Administration (JEA) to oversee communities within the Jerusalem municipality but beyond the separation barrier, mainly Kufr Aqab and the Shuafat refugee camp, in addition to several smaller communities. <sup>453</sup> UN OCHA estimated in 2016 that about 160,000 Palestinians live in these areas. <sup>454</sup> According to Ir Amim, these areas receive only a fraction of the budget allocated to other Jerusalem neighborhoods. <sup>455</sup> The group said that the JEA has “effectively served to distance residents from the Municipality,” which often refers residents to the JEA. The JEA, in turn, often informs them that they do not have the funding to implement necessary projects. <sup>456</sup> The former head of the JEA acknowledged to Ir Amim the government’s “neglect,” as he put it, of these areas and has spoken of the “lawlessness” there, noting that “there is no government presence in [Kufr Aqab] for the purposes of public order.” <sup>457</sup> Ir Amim noted one exception to the neglect of the area: private investigators hired by the government to verify that residents actually live there for the purposes of probing their residency status. <sup>458</sup>

Even when the municipality provides services, it largely fails to meet the needs of residents. The municipality, for example, contracts the task of garbage collection to a private company but based on an underestimate of the number of residents the company

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<sup>452</sup> Human Rights Watch phone interview with Kufr Aqab municipal council employee (name withheld), May 13, 2020; Hyojin Park, “The Paramedics of Jerusalem,” *Al Jazeera*, January 10, 2018, <https://www.aljazeera.com/indepth/features/paramedics-jerusalem-180110074447702.html> (accessed June 4, 2020); WHO, “Health Conditions in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan,” November 5, 2020, [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) (accessed March 29, 2021).

<sup>453</sup> Ir Amim, “Displaced in Their Own City,” p. 38. For more on the Shuafat refugee camp, see Jerusalem Institute for Policy Research, “Shuafat Refugee Camp: Abstract,” 2019, <https://bit.ly/2AdOQnw> (accessed June 4, 2020); Mersiha Gadzo, “Shuafat Demolition to Tighten Israel's Control over Jerusalem,” *Al Jazeera*, November 22, 2018, <https://www.aljazeera.com/news/2018/11/shuafat-demolition-tighten-israel-control-jerusalem-181122150238941.html> (accessed June 4, 2020).

<sup>454</sup> OCHA, “East Jerusalem Palestinian Localities Behind the Barrier.”

<sup>455</sup> Ir Amim, “Displaced in Their Own City,” pp. 38-39.

<sup>456</sup> *Ibid.*

<sup>457</sup> *Ibid.*, pp. 39-40.

<sup>458</sup> *Ibid.*, pp. 38-39.

is to serve. <sup>459</sup> A lawsuit filed by Kufr Aqab residents against the municipality alleged that, in 2012, Jerusalem spent about 328 million NIS on garbage collection, but only around 2 million NIS – or less than 1 percent – in Kufr Aqab, despite the portion of Kufr Aqab within the city’s boundaries housing a percentage of the city’s population likely at least six times higher. <sup>460</sup> The municipality increased the budget following the suit, <sup>461</sup> but Odeh, the lawyer who filed it, said that the collection schedule still does not meet the needs of residents, who often resort to burning their trash. <sup>462</sup>

Ir Amim further estimated in 2015 that 10 out of 25 kilometers of roads in Kufr Aqab are unpaved, eight are in “dilapidated condition,” and only four are paved and “in reasonable condition.” Even paved ones, they noted, “lack sidewalks, signage, and pedestrian crossings,” and the “only traffic light in Kufr Aqab is permanently broken.” <sup>463</sup> Documents from the municipality cited by Odeh in a petition he filed show that, in 2015, less than 0.02 percent of the municipal budget for roads went to Kufr Aqab and other communities outside the barrier. <sup>464</sup> Some roads have been renovated since 2015, but the overall condition of roads remains poor. <sup>465</sup>

The poor condition of the roads compounds the already heavy traffic in Kufr Aqab, which is bisected by the main road connecting Ramallah with the south West Bank, including cities of Bethlehem, Hebron, and Jerusalem, via the Qalandiya checkpoint. According to a statement by Israeli authorities quoted by Reuters in April 2017, about 26,000 people cross the Qalandiya checkpoint daily. <sup>466</sup> Due to consistently heavy traffic, it can take up to

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<sup>459</sup> OCHA, “East Jerusalem Palestinian Localities Behind the Barrier.”

<sup>460</sup> Lawsuit on file with Human Rights Watch. The Jerusalem Institute for Public Affairs for Policy in 2018 and ACRI in 2019 both estimated that 61,500 people live in the portion of Kufr Aqab within Jerusalem, which constitutes 6.7 percent of the population in the Jerusalem municipality as of July 2019 of 921,000.

<sup>461</sup> Human Rights Watch phone interview with Munir Zghayyar, May 17, 2020.

<sup>462</sup> Human Rights Watch phone interview with Moien Odeh, May 7, 2020.

<sup>463</sup> Ir Amim, “Displaced in Their Own City,” p. 35.

<sup>464</sup> Documents on file with Human Rights Watch.

<sup>465</sup> See, for example, Aseel Jundi and Atef Daghlas, “Why Has Israel Allowed the Palestinian Authority to Pave a Road in the Jerusalem Municipality?” (Arabic), *Al Jazeera*, February 26, 2020, [aljazeera.net/news/alquds/2020/2/26/القدس-إسرائيل-فلسطين-الاحتلال-شارع](https://www.aljazeera.net/news/alquds/2020/2/26/القدس-إسرائيل-فلسطين-الاحتلال-شارع) (accessed June 4, 2020).

<sup>466</sup> Miriam Berger, “Israel’s ‘Checkpoint Q’: A Daily Hurdle for Palestinians,” *Reuters*, April 26, 2017, <https://www.reuters.com/article/us-israel-palestinians-qalandiya-idUSKBN17S23D> (accessed July 12, 2020).

two or three hours during morning and evening commutes to pass through the area around the checkpoint. <sup>467</sup>

Poor infrastructure, in particular, a run-down water pipeline system, also causes residents to lose about one-fourth of the water supplied to it. <sup>468</sup> While Mekorot, the national water company, supplies water to most neighborhoods in Jerusalem, including settlements, the Palestinian-run Jerusalem Water Undertaking, which operates in Ramallah and nearby areas, services Kufr Aqab, as it did before 1967, and struggles to meet the demands of residents. <sup>469</sup>

Jerusalem's mayor, Moshe Lion, visited Kufr Aqab, reportedly for the first time, in February 2021 and said the municipality will "increase its activity and take confidence-building steps." <sup>470</sup>

Lawmakers in 2017 introduced legislation at the Knesset that would separate communities beyond the separation barrier from the Jerusalem municipality and establish a separate local authority to govern them. <sup>471</sup> The legislation has not advanced, but residents expressed concern that the law represents the government's long-term designs for these areas. Authorities have long pursued a policy to box in, separate, and exert pressure on Palestinian Jerusalemites to live beyond the barrier. The draft law threatens to take things one step further, opening the door to removing residents of Kufr Aqab and other areas beyond the barrier from Jerusalem's demographic calculus altogether to preserve a Jewish majority there.

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<sup>467</sup> Moien Odeh email to Human Rights Watch, June 25, 2020.

<sup>468</sup> Ir Amim, "Displaced in Their Own City," p. 35; ARIJ, "Kafr 'Aqab Village Profile," 2012.

<sup>469</sup> Human Rights Watch phone interview with Moien Odeh, May 7, 2020. The Jerusalem Water Undertaking also services parts of the Palestinian neighborhood of Beit Hanina. Jerusalem Institute for Policy Research, "Kufr Aqab: Abstract."

<sup>470</sup> Hasson, "Israel Opens Vaccination Center at Checkpoint to Reach Palestinian East Jerusalem Residents," Haaretz, February 24, 2021. Idan Zonshine, "COVID Vaccine: Israel Sets Up Palestinians in East Jerusalem," Jerusalem Post, February 23, 2021, <https://www.jpost.com/health-science/mda-to-set-up-vaccination-station-at-qalandiya-crossing-in-east-jerusalem-659877> (accessed February 23, 2021).

<sup>471</sup> ACRI, "Implications of Establishing a Separate Local Authority for the Neighborhoods Beyond the Barrier in Jerusalem," Position Paper, November 2017, <https://law.acri.org.il/en/wp-content/uploads/2017/11/Separate-Municipality-Position-Paper-1.pdf> (accessed June 4, 2020).

## *Gaza Strip*

Israeli authorities have exerted primary control over the Gaza Strip since occupying it in 1967. Israel recognized Gaza as part of a “single territorial unit” with the West Bank in the 1995 Oslo Accords.<sup>472</sup> Israel’s withdrawal of its ground troops and settler population in 2005 reduced its day-to-day control and allowed Palestinian authorities to exercise more autonomy within Gaza than they had before. In 2007, Hamas authorities seized power from the Fatah-led PA in Gaza.

Israeli authorities, however, have remained in critical ways the supreme power, dominating the coastal strip through other means.<sup>473</sup> Israel controls Gaza’s territorial waters and airspace and has blocked the building of an airport and seaport, significantly complicating efforts to travel abroad.<sup>474</sup> Israel also controls the movement of people and goods into and out of Gaza, except for at Gaza’s border with Egypt, which the Egyptian government also significantly restricts. Israel controls all transit between Gaza and the West Bank and maintains a “policy of separation” between the two parts of the OPT.<sup>475</sup> It controls the Palestinian population registry, which determines eligibility for establishing legal residency and obtaining an ID card.<sup>476</sup> It sets the rates for the customs and value-added taxes that it collects on behalf of the PA on goods entering the common market.<sup>477</sup> It enforces a so-called “no-go” zone inside Gaza, near Israeli territory.<sup>478</sup> It controls the infrastructure upon which Gaza relies, including electricity lines, the underwater cable that phone calls are placed on, the network that provides internet, and the frequencies assigned to Palestinian cell phone companies.<sup>479</sup>

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<sup>472</sup> Oslo II, art. 31.

<sup>473</sup> See Gisha, “50 Shades of Control,” June 2017, [https://gisha.org/UserFiles/File/publications/50\\_Shades/50\\_Shades\\_Of\\_Control\\_EN.pdf](https://gisha.org/UserFiles/File/publications/50_Shades/50_Shades_Of_Control_EN.pdf) (accessed June 4, 2020).

<sup>474</sup> Gisha, “Scale of Control: Israel’s Continued Responsibility in the Gaza Strip,” November 2011, [http://gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol\\_en.pdf](http://gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf) (accessed June 6, 2020). In 2001, Israel bombed the airport that had operated briefly in Gaza and destroyed the site where construction of a seaport was to begin.

<sup>475</sup> COGAT, “Procedure For Settlement In The Gaza Strip By Residents Of Judea And Samaria Area,” 2018.

<sup>476</sup> Gisha, “Scale of Control,” pp. 17-19.

<sup>477</sup> *Ibid.*, pp. 19-20.

<sup>478</sup> *Ibid.*, pp. 20-22.

<sup>479</sup> *Ibid.*, pp. 22-23.



Israeli authorities impose a generalized closure on the Gaza Strip, exacerbated by Egypt’s restrictions at its border with Gaza. (c) 2020 UN OCHA

In light of these controls that Israel exercises over the lives and welfare of Palestinians in Gaza, Israel remains bound to provide them with the rights and protections afforded to them by the law of occupation, as the ICRC and UN have both determined. <sup>480</sup> Israeli authorities have consistently failed to meet their obligations as an occupying power.

<sup>480</sup> Both the ICRC and the UN continue to refer to Gaza as occupied territory. Email from Yves Sorokobi, Office of the UN Secretary General Spokesperson, to Gisha, February 7, 2007, on file with Human Rights Watch. “The UN welcomed the Israeli disengagement from Gaza in August 2005. However, there has been no change in our characterization of the Gaza Strip as occupied territory.” See ICRC, “Gaza Closure Not Another Year!”, June 14, 2010, [www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm](http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm) (accessed December 24, 2020). Also see Gisha, “Scale of Control,” pp. 29-30; Gisha, “Separating Land, Separating People: Legal Analysis of Access Restrictions between the West Bank and Gaza,” June 2015, <https://bit.ly/2MJaYc4pp> (accessed June 4, 2020), footnote 5, pp. 10-11.

The Egyptian government often imposes restrictions along its border with Gaza, which exacerbate the impact of Israel's policies on residents of Gaza, but Egypt's obligations differ since it is not the occupying power and can, with some key limitations, decide whom to allow to enter its territory. <sup>481</sup>

Given international consensus around and Israeli recognition of Gaza and the West Bank comprising a single territorial unit, the OPT, Human Rights Watch assesses dynamics in Gaza as part of the OPT, despite Israel's "separation policy." Viewed in that light, the severe repression of Palestinians in Gaza stands in marked contrast to the treatment of Israeli settlers in the West Bank and East Jerusalem. Israeli authorities deny Palestinians in the OPT, including in Gaza, basic rights and services that they provide Israeli settlers living in the same legal territory, including freedom of movement, the right to live with or visit loved ones living in that territory, and access to 24-hour electricity and clean water.

### Legal Status

Palestinians in Gaza, like those in the West Bank, hold Israeli-issued identity cards and passports that grant them residency in Gaza, but they do not have citizenship or nationality. About 70 percent of Gaza's nearly 2.1 million residents are refugees forced to flee their homes in what became Israel, or their descendants, who have been denied their right to return to the areas where they or their families once lived. <sup>482</sup> Israeli authorities struck from the registry thousands of Palestinians from Gaza who were not present in the territory in 1967 when the occupation began, either because they had fled during the fighting or were already abroad, as well as more than 100,000 between 1967 and 1994 who had been abroad for long periods. <sup>483</sup> Palestinians not in the population registry cannot

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<sup>481</sup> Human Rights Watch, *Unwilling or Unable: Israeli Restrictions on Access to and from Gaza for Human Rights Workers* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/04/02/unwilling-or-unable/israeli-restrictions-access-and-gaza-human-rights-workers>.

<sup>482</sup> UNRWA, "Where We Work: Gaza Strip," <https://www.unrwa.org/where-we-work/gaza-strip> (accessed June 4, 2020); see Inhumane Acts and Other Abuses of Fundamental Rights section; Human Rights Watch Policy on the Right of Return; ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed June 4, 2020), art. 12.4; UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at <https://www.refworld.org/docid/45139c394.html> (accessed June 9, 2020); "Dr. Awad Presents a Brief on Palestinians at the End of 2020," PCBS press release.

<sup>483</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section; HaMoked, "Ceased Residency": Between 1967 and 1994 Israel Revoked the Residency of Some Quarter Million Palestinians from the West Bank and the Gaza strip," June 12, 2012, <http://www.hamoked.org/Document.aspx?dID=Updates1175> (accessed June 9, 2020).

obtain ID cards and thereby enter or exit Gaza through either the Israeli—or Egyptian—controlled crossings. <sup>484</sup> By contrast, Israeli settlers in the OPT never risk losing their citizenship, even after having lived abroad for long periods.

Until 2005, the Israeli army ruled directly over Gaza, while applying Israeli civil law to the more than 7,500 Jewish settlers who lived there. <sup>485</sup> Following the withdrawal of those settlers in 2005 and the takeover by Hamas in 2007, Israel declared Gaza “hostile territory” <sup>486</sup> and tightened movement restrictions, imposing a generalized ban on travel to the rest of the OPT or abroad, irrespective of any individualized risk assessment for a particular person. That ban applies to all Palestinians except those whom Israeli authorities deem as presenting “exceptional humanitarian circumstances.” <sup>487</sup> This closure, alongside Egyptian restrictions on its border with Gaza, has remained in place since 2007 and has separated families and restricted residents from accessing medical care and educational and economic opportunities. <sup>488</sup> By contrast, Israeli settlers in the OPT enjoy freedom of movement across much of the OPT, including to East Jerusalem and West Bank settlements, as well as to Israel and abroad.

The shifts that took place between 2005 and 2007 altered the mechanisms but not the fact of Israeli control of the Gaza Strip, nor the systematic oppression of its population. The withdrawal of settlers and regular ground forces from Gaza shifted Israel’s practice from one focused on raids and arrests as in the West Bank to one built on the periodic use of overwhelming military force, often with devastating consequences for the civilian population.

In the period since 2007, the Israeli army conducted several large-scale military offensives in Gaza, including in 2008-09, 2012, and 2014, and clashed scores of times with Palestinian armed groups in Gaza. During these confrontations, Israeli forces regularly

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<sup>484</sup> Gisha, “Changes at Rafah Crossing,” n.d., <https://gisha.org/updates/1688> (accessed September 17, 2020).

<sup>485</sup> Israel CBS, “Localities (1) And Population, By Municipal Status And District (2),” 2004.

<sup>486</sup> Israel MFA, “Security Cabinet Declares Gaza Hostile Territory.” September 19, 2007.

<sup>487</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>488</sup> Human Rights Watch, *Unwilling or Unable*.

used excessive and vastly disproportionate force, at times deliberately targeted civilians or civilian infrastructure, <sup>489</sup> and, in total, killed well over 2,000 Palestinian civilians. <sup>490</sup>

Palestinian armed groups also committed war crimes, including indiscriminate rocket attacks fired towards Israeli population centers, <sup>491</sup> but Israel's attacks went far beyond striking those responsible. Beyond the thousands killed or maimed, Israeli attacks have destroyed tens of thousands of structures and critical infrastructure, including homes, hospitals, schools, and Gaza's only power plant, causing considerable harm to civilian life that has lasted for years afterward. <sup>492</sup> The 2014 hostilities alone completely destroyed or heavily damaged about 18,000 residential units, leaving more than 100,000 people

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<sup>489</sup> "Gaza: Israeli Soldiers Shoot and Kill Fleeing Civilians," Human Rights Watch news release, August 4, 2014, <https://www.hrw.org/news/2014/08/04/gaza-israeli-soldiers-shoot-and-kill-fleeing-civilians>; "Israel/Palestine: Unlawful Israeli Airstrikes Kill Civilians," Human Rights Watch news release, July 15, 2014, <https://www.hrw.org/news/2014/07/15/israel/palestine-unlawful-israeli-airstrikes-kill-civilians>; Human Rights Watch, *White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead* (New York: Human Rights Watch, 2009) <https://www.hrw.org/report/2009/08/13/white-flag-deaths/killings-palestinian-civilians-during-operation-cast-lead>; Human Rights Watch, *Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza* (New York: Human Rights Watch, 2009) <https://www.hrw.org/report/2009/03/25/rain-fire/israels-unlawful-use-white-phosphorus-gaza>; Human Rights Watch, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles* (New York: Human Rights Watch, 2009) <https://www.hrw.org/report/2009/06/30/precisely-wrong/gaza-civilians-killed-israeli-drone-launched-missiles>; "Israel: Gaza Airstrikes Violated Laws of War," Human Rights Watch news release, February 12, 2013, <https://www.hrw.org/news/2013/02/12/israel-gaza-airstrikes-violated-laws-war>; "Gaza: Unlawful Attacks in May Fighting," Human Rights Watch news release, June 12, 2019, <https://www.hrw.org/news/2019/06/12/gaza-unlawful-attacks-may-fighting>;

<sup>490</sup> Human Rights Watch, *World Report 2015*, (New York: Human Rights Watch, 2015), Israel/Palestine chapter, <https://www.hrw.org/world-report/2015/country-chapters/israel/palestine>; Human Rights Watch, *World Report 2013*, (New York: Human Rights Watch, 2013), Israel/Palestine chapter, <https://www.hrw.org/world-report/2013/country-chapters/israel/palestine>; Human Rights Watch, *World Report 2010*, (New York: Human Rights Watch, 2010), Israel/Palestine chapter, <https://www.hrw.org/world-report/2010/country-chapters/israel/palestine>.

<sup>491</sup> "Gaza: Palestinian Rockets Unlawfully Targeted Israeli Civilians," Human Rights Watch news release, December 24, 2012, <https://www.hrw.org/news/2012/12/24/gaza-palestinian-rockets-unlawfully-targeted-israeli-civilians>; Human Rights Watch, *Indiscriminate Fire: Palestinian Rocket Attacks on Israel and Israeli Artillery Shelling in the Gaza Strip* (New York: Human Rights Watch, 2007) <http://www.hrw.org/reports/2007/iop0707/>; "Gaza: Unlawful Attacks in May Fighting," Human Rights Watch news release, June 12, 2019, <https://www.hrw.org/news/2019/06/12/gaza-unlawful-attacks-may-fighting>; "Gaza: Apparently Unlawful Israeli Strikes Kill at Least 11 Civilians," Human Rights Watch news release, February 4, 2020, <https://www.hrw.org/news/2020/02/04/gaza-apparently-unlawful-israeli-strikes-kill-least-11-civilians>.

<sup>492</sup> "Gaza: Widespread Impact of Power Plant Attack," Human Rights Watch news release, August 10, 2014, <https://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack>; Human Rights Watch, *"I Lost Everything": Israel's Unlawful Destruction of Property during Operation Cast Lead* (New York: Human Rights Watch, 2010) <https://www.hrw.org/report/2010/05/13/i-lost-everything/israels-unlawful-destruction-property-during-operation-cast-lead>; "Israel: In-Depth Look at Gaza School Attacks," Human Rights Watch news release, September 11, 2014, <https://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks>.

without a home, according to B'Tselem.<sup>493</sup> In July 2019, some 8,200 people remained internally displaced as a result of 2014 hostilities, according to OCHA.<sup>494</sup> In January 2019, when campaigning for public office, former Israeli army chief-of-staff and current Alternate Prime Minister and Defense Minister Benjamin (Benny) Gantz said that these attacks “sent [parts of Gaza] back to the Stone Age.”<sup>495</sup> Israeli authorities have for years consistently failed to credibly investigate unlawful attacks and to hold those responsible to account.<sup>496</sup>

Israeli forces stationed on the Israeli side of the fences separating Gaza and Israel responded with excessive lethal force to weekly demonstrations for Palestinian rights on the Gaza side that took place for much of 2018 and 2019.<sup>497</sup> Snipers killed, according to OCHA, 214 Palestinian demonstrators, many of them more than one hundred meters away, and injured by live fire more than 8,000 more, including 156 whose limbs had to be amputated.<sup>498</sup> As a UN Commission of Inquiry put it, Israeli forces shot at “unarmed protesters, children and disabled persons, and at health workers and journalists performing their duties, knowing who they are.”<sup>499</sup> The commissioners concluded that while demonstrations were “at times violent,” protesters did not pose an imminent threat to life in the case of 187 of the 189 killings that took place in 2018, and Israel used “neither necessary nor proportional” force.<sup>500</sup> Snipers followed orders from senior officials that sanctioned using live ammunition on Palestinians who approached or attempted to cross

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<sup>493</sup> B'Tselem, “4.5 years after Israel destroyed thousands of homes in Operation Protective Edge: 13,000 Gazans still homeless,” March 3, 2019, [https://www.btselem.org/gaza\\_strip/20190303\\_13000\\_gazans\\_homelless\\_since\\_2014\\_war](https://www.btselem.org/gaza_strip/20190303_13000_gazans_homelless_since_2014_war) (accessed June 26, 2020).

<sup>494</sup> OCHA, “Humanitarian Needs Overview – OPT,” December 2019.

<sup>495</sup> Raoul Wootliff, “Parts of Gaza Sent Back to Stone Age’: Gantz Videos Laud His IDF Bona Fides,” *Times of Israel*, January 20, 2019, <https://www.timesofisrael.com/only-the-strong-survive-gantz-s-new-campaign-videos-laud-his-idf-bona-fides/> (accessed June 4, 2020).

<sup>496</sup> B'Tselem, “Whitewash Protocol: The So-Called Investigation of Operation Protective Edge,” September 2016, [https://www.btselem.org/download/201609\\_whitewash\\_protocol\\_eng.pdf](https://www.btselem.org/download/201609_whitewash_protocol_eng.pdf) (accessed June 4, 2020).

<sup>497</sup> “Israel: Apparent War Crimes in Gaza,” Human Rights Watch news release, June 13, 2018, <https://www.hrw.org/news/2018/06/13/israel-apparent-war-crimes-gaza>.

<sup>498</sup> OCHA, “Two Years On: People Injured and Traumatized During ‘Great March of Return’ Still Struggling” April 6, 2020, <https://www.ochaopt.org/content/two-years-people-injured-and-traumatized-during-great-march-return-are-still-struggling#ftn3> (accessed July 3, 2020).

<sup>499</sup> “UN Commission Urges Israel to Review Rules of Engagement Before Gaza Protest Anniversary,” UN HRC news release, March 18, 2019, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24348&LangID=E> (accessed June 4, 2020); World Health Organization (WHO), “Situation Report: Occupied Palestinian Territory, Gaza: 01–31 August 2019,” [http://www.emro.who.int/images/stories/palestine/documents/sitrep\\_aug\\_2019\\_vo\\_sh\\_rev\\_gro.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/sitrep_aug_2019_vo_sh_rev_gro.pdf?ua=1) (accessed June 4, 2020).

<sup>500</sup> “UN Commission Urges Israel to Review Rules of Engagement Before Gaza Protest Anniversary,” UN HRC news release.

or damage fences between Gaza and Israel regardless of whether they posed an imminent threat to life. These practices stem from a decades-long pattern that has changed little since the outbreak of the first Palestinian *Intifada* in 1987 of using excessive force to quell protests and disturbances, at great cost to civilians. Despite the frequency of such incidents over the years, Israeli authorities have failed to develop law enforcement tactics that comport with international human rights norms, which prohibit the use of lethal force except in situations when it is necessary to prevent an imminent threat of death or serious injury.<sup>501</sup> Israeli authorities have often justified these tactics in the name of protecting Israeli communities on the other side of the Gaza fence from the possibility of harm,<sup>502</sup> but without justifying the force used under the imminent-threat test.

### **Land and Housing**

Israel's closure, alongside restrictions that the Egyptian government often imposes, boxes Gaza's more than two million residents into a strip of territory that is 41 kilometers long and between 6 and 12 kilometers wide, totaling 365 square kilometers. Gaza's population density of about 5,453 people per square kilometer is more than 13 times that of Israel's 400 people per square kilometer.<sup>503</sup>

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<sup>501</sup> "Israel: Gaza Killings Unlawful, Calculated," Human Rights Watch news release, April 3, 2018, <https://www.hrw.org/news/2018/04/03/israel-gaza-killings-unlawful-calculated>.

<sup>502</sup> Ibid.; Judah Ari Gross "IDF Gears Up for Mass Gaza Riots, Warns that Hamas Plans to 'Massacre' Israelis," *Times of Israel*, May 13, 2018, <https://www.timesofisrael.com/idf-gears-up-for-mass-gaza-riots-warning-hamas-plans-to-massacre-israelis/> (accessed August 17, 2020).

<sup>503</sup> "About 13 Million Palestinians in the Historical Palestine and Diaspora, on the Occasion of the International Population Day, 11/7/2019," PCBS press release, July 10, 2019, <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3503> (accessed August 17, 2020); UN High-level Political Forum on Sustainable Development, "Israel - Voluntary National Review 2019," <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=1273&menu=3170> (accessed June 4, 2020).



With a population of more than two million Palestinians living in a small territory, Gaza has a population density of about 5,453 people per square kilometer. (c) 2016 Ain Media

Further confining the Palestinians of Gaza, Israeli authorities have established a “buffer zone” inside Gaza, as opposed to on its side of the fences that they have built separating Gaza from Israel. The Israeli army told the Israeli rights group Gisha in August 2015 that it forbids Gaza residents from approaching within 300 meters of the fence, except for those farmers whom it permits to approach within 100 meters of the fence.<sup>504</sup> Israeli forces routinely fire on those who enter or approach the “buffer zone.” Between 2010 and 2017, before the wave of protests that began in March 2018, Gisha reported 1,300 incidents of live fire on Gaza residents, which killed 161 Palestinians and injured more than 3,000.<sup>505</sup> Since 2014, Israeli authorities have also regularly sprayed herbicides along the eastern fences to remove vegetation, it says in order to “enable optimal and continuous security operations.”<sup>506</sup> Authorities have also said that the spraying takes place “exclusively” over

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<sup>504</sup> Letter from Public Inquiries Section - IDF spokesperson, to Gisha (Hebrew), August 11, 2015, [https://gisha.org/UserFiles/File/LegalDocuments/buffer\\_zone/8.3.2015\\_foi\\_to\\_idf\\_answer\\_2.pdf](https://gisha.org/UserFiles/File/LegalDocuments/buffer_zone/8.3.2015_foi_to_idf_answer_2.pdf) (accessed June 4, 2020).

<sup>505</sup> Gisha, “Closing In,” August 2018, <https://features.gisha.org/closing-in/> (accessed June 4, 2020); Al Mezan Center for Human Rights, “Israeli occupation violation statistics in areas of restricted access by land – from 1/1/2010 – 31/12/2019,” (Arabic), <http://mezan.org/posts/60/+%D8%A7%D9%84%D9%85%D9%86%D8%A7%D8%B7%D9%82+%D9%85%D9%82%D9%8A%D8%AF%D8%A9+%D8%A7%D9%84%D9%88%D8%B5%D9%88%D9%84> (accessed June 24, 2020).

<sup>506</sup> Michael Schaeffer Omer-Man, “IDF Admits Spraying Herbicides Inside the Gaza Strip,” *+972 Magazine*, December 28, 2015, <https://www.972mag.com/idf-admits-spraying-herbicides-inside-the-gaza-strip/115290/> (accessed June 4, 2020).

Israeli territory,<sup>507</sup> but the research group Forensic Architecture in January 2020 documented how the westward wind causes herbicide sprayed on the Israeli side of the fences to cause damage in more than 350 meters into Gaza.<sup>508</sup> Spraying these sorts of pesticides has caused extensive damage to crops in an area that includes the most arable land in all of Gaza, causing financial loss for farmers,<sup>509</sup> and can impair the health of people living in the area.<sup>510</sup>

Citing concerns about weapons smuggling, Israeli authorities also restrict how much of the sea, including Gaza's territorial waters, residents can access. For years, they generally permitted Palestinians to venture up to six nautical miles off the coast, though subject to frequent fluctuations; for a short period in 2019, they extended the limit to 15 nautical miles, though at other times barred access entirely.<sup>511</sup> Israel has not justified these fluctuations in the fishing zone on security grounds, but rather as punitive measures in response to rocket fire or the launching of incendiary balloons by armed Palestinian groups, acts with which fishermen had no involvement.<sup>512</sup> Between 2010 and 2017, the Palestinian rights group Al-Mezan documented 976 incidents of live fire at sea, resulting in five deaths and 250 incidents in which Israeli authorities seized boats or other equipment, allegedly for traveling beyond the permissible fishing zone.<sup>513</sup> B'Tselem in 2017 found that the number of registered fishermen in Gaza dropped from about 10,000 in 2000 to around 4,000 in 2017, half of whom are out of work and 95 percent of whom live below the poverty

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<sup>507</sup> Gisha, "Closing In."

<sup>508</sup> Forensic Architecture, "Herbicidal Warfare in Gaza (January 2020 update)," video report, January 20, 2020, <https://vimeo.com/386063595> (accessed June 4, 2020).

<sup>509</sup> Michael Schaeffer Omer-Man, "IDF Admits Spraying Herbicides Inside the Gaza Strip," *+972 Magazine*; "Severe Damage to Crops in Gaza Following Aerial Herbicide Spraying by Israel," Gisha press release, January 28, 2020, <https://gisha.org/updates/10909> (accessed June 4, 2020).

<sup>510</sup> See, for example, WHO, "The WHO Recommended Classification of Pesticides by Hazard and Guidelines to Classification," 2019 edition, <https://bit.ly/2ZvNVbZ> (accessed July 15, 2020); United States Environmental Protection Agency (EPA), "Glyphosate Draft Human Health Risk Assessment for Registration Review" memorandum, December 12, 2017, <https://bit.ly/32jHoTq> (accessed July 15, 2020); Luoping Zhang, Iemaan Rana, Rachel M. Shaffer, Emanuela Taioli and Lianne Sheppard, "Exposure to Glyphosate-based Herbicides and Risk for Non-Hodgkin Lymphoma: A Meta-analysis and Supporting Evidence," *Mutation Research*, Volume 781, July–September 2019, 186–206, <https://bit.ly/2OqNLfj> (accessed July 15, 2020).

<sup>511</sup> Gisha, "Closing In,"; See, for example, "Changes to Gaza's Fishing Zone Implemented by Israel in 2019," Gisha press release, June 13, 2019, <https://gisha.org/publication/10931> (accessed June 4, 2020).

<sup>512</sup> Gisha, "Fishing Zone Reduced Again in Act of Collective Punishment," May 30, 2019, <https://gisha.org/updates/10086> (accessed September 17, 2020).

<sup>513</sup> Quoted in Gisha, "Closing In,"; Abier Almasri, "Israeli Forces Kill Gaza Fisherman at Sea," Human Rights Dispatch, June 18, 2017, <https://www.hrw.org/news/2017/06/18/israeli-forces-kill-gaza-fisherman-sea>.

line, concluding that Israeli policies, including “harassment of fishermen,” are “destroying Gaza’s fishing sector.”<sup>514</sup>

### Resources and Services

Discriminatory restrictions and burdens imposed by Israeli authorities restrict the entry and exit of goods in and out of Gaza and limit the access of Gazans to basic services, such as electricity and water.

The 13-year-old closure sharply restricts the movement of goods. Following Hamas’s takeover in 2007 and Israel’s declaration of Gaza as “hostile territory,”<sup>515</sup> Israeli authorities between September 2007 and May 2010 banned most civilian goods from entering Gaza, including coriander, paper, and chocolate.<sup>516</sup> Israeli authorities in January 2008 calculated the minimum number of calories per person that Gaza residents needed to avoid malnutrition, although they insist they never implemented a policy based on the calculation.<sup>517</sup> Israeli officials said at the time that they wanted to keep Gaza’s economy “on the brink of collapse” while avoiding a humanitarian crisis.<sup>518</sup>

Since 2010, Israeli authorities have allowed most everyday goods to enter, but sharply restrict and often prohibit altogether what they deem “dual-use” items or those that could be used for military purposes, such as for building or fortifying tunnels into Israel.<sup>519</sup> The government’s “dual-use” list, though, includes both overly broad categories and items that are vital to meet the needs of Gaza’s population, including “communications equipment,” “steel elements and construction products,” “drilling equipment,” “fertilizers and chemicals,” gas tanks, castor oil, and “vehicles except for personal vehicles (not

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<sup>514</sup> “Israel Destroying Gaza’s Fishing Sector,” B’Tselem, updated June 19, 2018, [https://www.btselem.org/gaza\\_strip/20170129\\_killing\\_the\\_fishing\\_sector](https://www.btselem.org/gaza_strip/20170129_killing_the_fishing_sector) (accessed June 4, 2020).

<sup>515</sup> Israel MFA, “Security Cabinet Declares Gaza Hostile Territory,” September 19, 2007.

<sup>516</sup> Gisha, “Kerem Shalom Crossing,” March 3, 2020, <https://features.gisha.org/kerem-shalom-crossing/> (accessed June 4, 2020); Gisha, “Gaza Up Close,” September 1, 2020, <https://features.gisha.org/gaza-up-close/> (accessed December 24, 2020).

<sup>517</sup> Maayan Lubell, “Israel Gaza Blockade Study Calculated Palestinians’ Calories,” *Reuters*, October 17, 2012, <https://www.reuters.com/article/us-palestinians-israel-gaza/israel-gaza-blockade-study-calculated-palestinians-calories-idUSBRE89GoNM20121017> (accessed June 4, 2020).

<sup>518</sup> *Ibid.*

<sup>519</sup> Gisha, “Kerem Shalom Crossing.”

including 4X4 vehicles).”<sup>520</sup> Israeli authorities have also claimed certain kinds of medical equipment, including x-ray equipment, as “dual use,” according to the WHO.<sup>521</sup> Gisha has documented how many of these items are “rarely, if ever, allowed into the Strip.”<sup>522</sup> OCHA has said that these “restrictions impede the delivery of humanitarian assistance, basic services and reconstruction programs, and undermine the response capacity for emergencies.”<sup>523</sup> However, Israeli authorities have maintained them in lieu of alternatives, such as international monitoring of the use of dual-use items. Egypt only began formally allowing goods into Gaza in February 2018, but subject to unclear procedures, including denials of some goods also barred by Israeli authorities and at a volume significantly less than through the Israeli-administered crossing.<sup>524</sup>

As part of the closure policy, Israeli authorities also sharply restrict the export of goods out of Gaza to the West Bank, Israel, and abroad. Between June 2007 and October 2014, Israeli authorities on average permitted only 14 truckloads of goods to exit per month, according to Gisha.<sup>525</sup> The situation has improved somewhat since, with an average of 219 truckloads per month exiting for the four-year period between 2016 and 2019, but that still is just roughly 20 percent of the 1,064 truckloads per month exiting prior to the June 2007 tightening of the closure.<sup>526</sup> Egypt does not allow goods from Gaza to be shipped out via the crossing it administers.<sup>527</sup>

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<sup>520</sup> COGAT, “A List of Dual-use Goods and Equipment Requiring a Special License for Transportation,” (Arabic) February 26, 2020, <https://www.gov.il/ar/departments/policies/alistofdualusegoodsandequipmentboundbyaspeciallicenseforthepurposeoftransport> (accessed June 4, 2020).

<sup>521</sup> WHO, “Medical Equipment in Gaza’s Hospitals: Internal Management, the Israeli Blockade and Foreign Donations,” July 2009, [http://www.emro.who.int/images/stories/palestine/documents/pdf/Medical\\_equipment\\_in\\_Gaza\\_EB\\_reportJuly09.pdf](http://www.emro.who.int/images/stories/palestine/documents/pdf/Medical_equipment_in_Gaza_EB_reportJuly09.pdf) (accessed June 4, 2020), pp. 6-8.

<sup>522</sup> Gisha, “Dark-gray lists,” Information Sheet, January 31, 2016, [https://gisha.org/UserFiles/File/publications/Dark\\_Gray\\_Lists/Dark\\_Gray\\_Lists-en.pdf](https://gisha.org/UserFiles/File/publications/Dark_Gray_Lists/Dark_Gray_Lists-en.pdf) (accessed June 4, 2020), p. 1.

<sup>523</sup> OCHA, “Import Restrictions Impede Delivery of Services and Humanitarian Assistance,” (blog) September 2015, <https://www.ochaopt.org/content/gaza-strip-import-restrictions-impede-delivery-services-and-humanitarian-assistance> (accessed June 4, 2020).

<sup>524</sup> Gisha, “Gaza Up Close;” “First Time: Egypt Permits the Entry of Cement and Goods to Gaza via the Salah al-Din Crossing” (Arabic), *Sama News Agency*, February 7, 2018, <https://bit.ly/3rrxw32> (accessed September 17, 2020).

<sup>525</sup> Gisha, “Kerem Shalom Crossing.”

<sup>526</sup> Gisha Gaza export figures on file with Human Rights Watch.

<sup>527</sup> Gisha, “Gaza Up Close.”

Israeli authorities have acknowledged that their determinations do not turn solely on security. They have, for example, restricted or shut down exports as a punitive measure, which they did for a total of 50 days in 2018 and 2019, according to Gisha.<sup>528</sup> In addition, authorities have acknowledged taking into account “considerations relating to manufacturing capabilities, as well as supply and demand in the relevant markets.”<sup>529</sup> Israeli authorities, for example, forbid the marketing of many fruits and vegetables from Gaza in the West Bank and Israel.<sup>530</sup> While there is a wider variety of produce that can be sold from Gaza in the West Bank, Israeli authorities only in practice permitted, as of March 2021, the sale of eggplants and tomatoes to the Israeli market.<sup>531</sup> It also until November 2020 banned processed goods from Gaza entering markets in the West Bank and Israel.<sup>532</sup>

Not only do no such restrictions exist on Israeli producers in the OPT, but Israel has through its restrictions created in Gaza a “captive market,” as Gisha has put it, for Israeli businesses.<sup>533</sup> More than 80 percent of the goods entering Gaza are purchased from Israeli companies and suppliers, the value of which in 2015 alone amounted to almost 2 billion NIS (over \$600 million), according to Gisha.<sup>534</sup> The Israeli cement company Nesher also produces nearly all the cement used in Gaza.<sup>535</sup>

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<sup>528</sup> Gisha, “Kerem Shalom Crossing.”

<sup>529</sup> Gisha, “50 shades of control.”

<sup>530</sup> “For the First Time in Eight Years: Produce from Gaza to be Sold in Israel,” Gisha press release, March 12, 2015, <https://gisha.org/updates/4065> (accessed June 4, 2020); “Following Gisha’s Petition, Ministry of Agriculture Releases Procedure for Sale of Agricultural Produce from Gaza in the West Bank and Israel,” Gisha press release, May 5, 2019, <https://gisha.org/legal/10285> (accessed June 4, 2020).

<sup>531</sup> *Ibid.*; Gisha email to Human Rights Watch, April 4, 2021. In February 2021, Israeli authorities announced that they would formally also permit the sale of peppers and zucchini, but, according to Gisha, none have actually exited Gaza due to onerous conditions on shipping the produce. Their policies have also at times formally allowed exit of strawberries to Israel, but other restrictions have generally blocked their actual exit.

<sup>532</sup> “Cookie Crackdown: How Israel’s Ban on Exit of Processed Food Impedes an Entire Industry,” Gisha press release, November 2018, <https://gisha.org/publication/9676> (accessed June 24, 2020). In November 2020, two truckloads of snacks by a Gaza-based company made it to the West Bank, marking the first time a Gaza company successfully had been able to transit processed foods to the West Bank since 2007. Gisha (@Gisha\_Access), November 23, 2020, Twitter, [https://twitter.com/Gisha\\_Access/status/1330897579442311169?s=20](https://twitter.com/Gisha_Access/status/1330897579442311169?s=20) (accessed December 24, 2020).

<sup>533</sup> “Gisha in Response to Israel’s Statements at the AHLC Today: Change in Gaza Can Only Begin with Recognition of Israel’s Responsibility,” Gisha press release, January 31, 2018, <https://gisha.org/press/8595> (accessed June 4, 2020).

<sup>534</sup> *Ibid.*; Gisha, “50 Shades of Control”; Gisha, “Kerem Shalom Crossing.”

<sup>535</sup> Gisha, “50 Shades of Control.”

These restrictions have devastated Gaza’s economy. <sup>536</sup> Gross domestic product (GDP) per capita in Gaza dropped 23 percent between 1994 and 2016 in real dollars. <sup>537</sup> Eighty percent of Gaza’s population relies on humanitarian aid, according to UNRWA, <sup>538</sup> and more than half the population lives below the poverty line. <sup>539</sup> Unemployment rates in Gaza have for some time hovered around 50 percent and are higher for young people and women. <sup>540</sup>

Israeli policies also sharply limit access to basic services, such as electricity and water. Between 1967 and 2002, Gaza depended on electricity it received from the Israeli Electric Corporation (IEC). <sup>541</sup> Although Gaza’s power plant became operational in 2002, it has operated at only partial capacity, in part as a result of several Israeli aerial attacks, and Gaza remains “almost completely dependent,” as the Israeli Supreme Court put it in 2008, on Israel for its supply of electricity, either directly or indirectly. <sup>542</sup> The IEC, though, sells only a set quantity of electricity to Gaza, which is insufficient to meet the demand of the population, even if the power plant operated at full capacity, and periodically reduces supply. <sup>543</sup> In 2017, for example, it cut by 30 percent the amount it supplied Gaza, following a request from the PA, which sought to pressure Hamas authorities to relinquish their

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<sup>536</sup> See Gisha, “A Costly Divide: Economic Repercussions of Separating Gaza and the West Bank,” February 2015, [http://gisha.org/UserFiles/File/publications/a\\_costly\\_divide/a\\_costly\\_divide\\_en-web.pdf](http://gisha.org/UserFiles/File/publications/a_costly_divide/a_costly_divide_en-web.pdf) (accessed June 4, 2020).

<sup>537</sup> PCBS, “Quarterly National Accounts Variables in Palestine for the years 2017, 2018” undated, [http://www.pcbs.gov.ps/Portals/\\_Rainbow/Documents/E.QNA\\_Constant.htm](http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/E.QNA_Constant.htm) (accessed August 18, 2020). Baseline year – 2004. Also see United Nations Conference on Trade and Development (UNCTAD), “Fifty Years of Occupation Have Driven the Palestinian Economy into De-development and Poverty,” September 12, 2017, <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1539> (accessed August 18, 2020).

<sup>538</sup> UNRWA, “Protection in the Gaza Strip,” <https://www.unrwa.org/activity/protection-gaza-strip> (accessed June 4, 2020).

<sup>539</sup> OCHA, “Humanitarian Needs Overview – OPT,” December 2019, p. 11.

<sup>540</sup> Ibid.; “Unemployment in Gaza in Q2 of 2019 is 46.7%,” Gisha press release, September 4, 2019, <https://gisha.org/updates/10396> (accessed June 4, 2020).

<sup>541</sup> Gisha, “Hand on the Switch: Who’s Responsible for Gaza’s Infrastructure Crisis?” January 2017, [https://gisha.org/UserFiles/File/publications/infrastructure/Hand\\_on\\_the\\_Switch-EN.pdf](https://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf) (accessed June 4, 2020), p. 4.

<sup>542</sup> Ibid.; “Gaza: Widespread Impact of Power Plant Attack,” Human Rights Watch news release, August 10, 2014, <https://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack>; *Albassiouni v. Prime Minister*, HCJ 9132/07, January 30, 2008, available at <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Ahmed%20v.%20Prime%20Minister.pdf> (accessed June 4, 2020).

<sup>543</sup> Ibid.

control over Gaza. <sup>544</sup> Israeli forces have bombed Gaza's sole power plant on multiple occasions, <sup>545</sup> significantly reducing its capacity. <sup>546</sup> Israel's restriction on the entry of goods, including spare parts and equipment deemed dual-use, has hampered efforts to repair the plant. <sup>547</sup> In addition, authorities periodically restrict, sometimes punitively and other times over disputes in payments, the amount of industrial fuel it allows to be purchased for the plant, which the plant needs to operate. <sup>548</sup> Israel has also restricted the entry of solar panels and batteries, hampering efforts to develop alternative energy sources that would give Gaza a degree of energy autonomy. <sup>549</sup> Gaza has at times purchased a small quantity of electricity from Egypt, but an amount insufficient to meet the needs of its residents. <sup>550</sup> In 2017 and 2018, Gaza averaged 6.2 hours per day of electricity; that figure increased to 12 in 2019, largely due to Israel permitting Qatar to purchase fuel for use in Gaza through Israeli vendors. <sup>551</sup> Meanwhile, Israeli settlers in the OPT enjoy uninterrupted electricity, mostly from the same IEC. Regular power outages affect many aspects of everyday life in Gaza, from heating and cooling and sewage treatment to health care and business. <sup>552</sup>

Gaza residents also do not have regular access to clean water. Gaza relies principally on the Coastal Aquifer, which runs along Israel's coast and the Gaza Strip and is accessible

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<sup>544</sup> Raf Sanchez, "Israel Cuts Gaza Electricity after Palestinian President Says He Will No Longer Pay the Bill for Hamas," *Daily Telegraph*, June 12, 2017, <https://www.telegraph.co.uk/news/2017/06/12/israel-cuts-gaza-electricity-palestinian-president-says-will/> (accessed June 4, 2020).

<sup>545</sup> "Gaza: Widespread Impact of Power Plant Attack," Human Rights Watch news release; "Gaza: Israeli Offensive Must Limit Harm to Civilians," Human Rights Watch news release, June 28, 2006, <https://www.hrw.org/news/2006/06/28/gaza-israeli-offensive-must-limit-harm-civilians>.

<sup>546</sup> "The Gaza Electricity Crisis – FAQs," Gisha, updated January 3, 2018, [https://gisha.org/UserFiles/File/publications/Electricity\\_FAQ/Electricity\\_FAQ\\_EN.pdf](https://gisha.org/UserFiles/File/publications/Electricity_FAQ/Electricity_FAQ_EN.pdf) (accessed June 4, 2020).

<sup>547</sup> Gisha, "Hand on the Switch."

<sup>548</sup> *Ibid.*

<sup>549</sup> *Ibid.*, p. 6.

<sup>550</sup> *Ibid.*

<sup>551</sup> OCHA, "Gaza Strip: Early Warning Indicators - December 2019," [https://www.ochaopt.org/sites/default/files/early\\_warning\\_indicator\\_december\\_2019.pdf](https://www.ochaopt.org/sites/default/files/early_warning_indicator_december_2019.pdf) (accessed June 4, 2020); OCHA, "Improvements to Gaza Electricity," July 16, 2019, <https://www.ochaopt.org/content/improvements-gaza-electricity-supply> (accessed August 17, 2020).

<sup>552</sup> Abier Almasri (Human Rights Watch), "In Gaza, We Get Four Hours of Electricity a Day — If We're Lucky," commentary, *Los Angeles Times*, August 20, 2017, <https://www.hrw.org/news/2017/08/20/gaza-we-get-four-hours-electricity-day-if-were-lucky>.

inside Gaza via wells, as its sole water source. <sup>553</sup> Over-extraction, both upstream by Israelis and downstream by Palestinians in Gaza, as well as the intrusion of seawater, sewage, and nitrates, has left more than 96 percent of the groundwater “unfit for human consumption,” according to OCHA. <sup>554</sup> A 2018 study by the RAND Corporation found that water pollution accounts for 26 percent of illnesses in Gaza and is the leading cause of child mortality. <sup>555</sup> Gaza also purchases water from the Israeli water utility Mekorot, but Israel controls the supply. Water from Mekorot goes through the same pipeline system as the groundwater and mixes with it, reducing its quality. <sup>556</sup> Gaza’s old water pipeline system also causes about a 30 percent loss of supply through leaks, <sup>557</sup> but Israel complicates its maintenance by restricting the import of about 70 percent of the materials and equipment needed to repair the water and sewage systems on the grounds that they are “dual-use” items. <sup>558</sup> Gaza desalinates some water, but desalination requires significant electricity, fuel, and funding. <sup>559</sup> These limitations force most Gaza households to rely on purchasing purified water from private companies for drinking when they can afford it. <sup>560</sup> In 2019, Gaza residents used 79 liters per day of water, an increase from 2017 and 2018 levels, but below the WHO minimum recommended level of 100. <sup>561</sup>

## Case Studies: Gaza

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<sup>553</sup> Al Haq, “Water for One People Only,” pp. 28-31.

<sup>554</sup> OCHA, “Humanitarian Needs Overview 2019,” December 2018, [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/2018/12/humanitarian\\_needs\\_overview\\_2019-%281%29.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/2018/12/humanitarian_needs_overview_2019-%281%29.pdf) (accessed June 4, 2020); p. 22. In March 2019, the Palestinian CBS and PWA said that “more than 97% of the water pumped from the coastal aquifer does not meet the water quality standards of the World Health Organization.”; “The Palestinian Central Bureau of Statistics (PCBS) and the Palestinian Water Authority (PWA) Issue a Press Release on the Occasion of World Water Day, March 22, 2019” PCBS press release, March 22, 2019, [http://www.pcbs.gov.ps/portals/\\_pcbs/PressRelease/Press\\_En\\_21-3-2019-water-en.pdf](http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_21-3-2019-water-en.pdf) (accessed August 17, 2020). Also see, “Failing Gaza: Undrinkable Water, No Access to Toilets and Little Hope on the Horizon,” Oxfam, April 24, 2017, <https://www.oxfam.org/en/failing-gaza-undrinkable-water-no-access-toilets-and-little-hope-horizon> (accessed June 4, 2020).

<sup>555</sup> Yaniv Kubovich, “Polluted Water Leading Cause of Child Mortality in Gaza, Study Finds,” October 16, 2018, <https://www.haaretz.com/middle-east-news/palestinians/.premium.MAGAZINE-polluted-water-a-leading-cause-of-gazan-child-mortality-says-rand-corp-study-1.6566812> (accessed August 17, 2020).

<sup>556</sup> Gisha, “Hand on the Switch.”

<sup>557</sup> OCHA, “Humanitarian Needs Overview 2019,” p. 22.

<sup>558</sup> Gisha, “50 Shades of Control.”

<sup>559</sup> Gisha, “Hand on the Switch.”

<sup>560</sup> Ibid.

<sup>561</sup> OCHA, “Gaza Strip: Early Warning Indicators - December 2019.”

*The following individual case studies illustrate how Israeli authorities, through violations of basic rights, systematically oppress Palestinians in Gaza, a part of the OPT.*

“Yazan”: Yazan, 26, felt his dream had come true; the University of Nottingham in the United Kingdom offered him admission for undergraduate studies. Yazan missed the start of the semester in October 2018, as he awaited a reply to his application for an Israeli-issued permit and a letter allowing him to travel via Jordan to the UK. He received the permit in December and, on December 18, 2018, arrived at the Erez Checkpoint to begin his journey. Upon his arrival, though, an Israeli soldier escorted him to a room for questioning. He told Human Rights Watch that soldiers asked him about the situation in Gaza, one of his neighbors and a payment his father made.<sup>562</sup> After waiting three hours, a soldier returned and said, “You’ll be able to travel and everything will go well. How about providing us with some simple things in exchange for money and travel?” Yazan took this statement to be a request to provide intelligence about people in his community, and he refused. The soldier turned him away, warning that “you are ruining your future,” and urged him “to think about it.” Yazan said he considered leaving via Rafah, the crossing with Egypt, but the Hamas-administered waiting list was long, he could not afford to pay the several thousand dollars to advance his place on the waitlist, and the opportunity passed. Israel’s separation policy effectively makes it impossible for Yazan to pursue educational or professional opportunities in the West Bank, even though his mother is from Nablus.<sup>563</sup> He ended up studying in Gaza and now does temporary contract jobs, but “still has the same dream to study abroad” and continues to pursue scholarships. He told Human Rights Watch, “I flew away with this dream, but suddenly fell down and found myself in the real world. I feel like a bird inside a cage—I can fly in the cage, but always remain inside it. This is Gaza—you’re inside a big prison, wondering what the world outside has.”

“Leen”: Leen, a 23-year-old actress, received a permit to leave Gaza for a visa interview in Jerusalem in July 2016, but decided not to return and went to live with her uncle in Jenin. She told Human Rights Watch that her prior travels abroad made her feel that she “wouldn’t be able to achieve anything in Gaza” and could not come to terms with

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<sup>562</sup> Human Rights Watch phone interview with “Yazan,” Gaza City, February 11, 2020.

<sup>563</sup> Authorities, he noted, denied his mother a permit to travel to the West Bank in 2018 to attend a brother’s funeral and his aunt from Nablus a permit to enter Gaza in 2019 for his brother’s funeral.

remaining there.<sup>564</sup> She began studying at university and acting, moved to Ramallah, and applied to change her address so she could legally remain in the West Bank. But she never heard back about her application. Israeli authorities have effectively frozen the population registry since 2000, blocking even address changes.<sup>565</sup> Her permit expired, Leen's presence in the West Bank became illegal, and she said she began to fear getting stopped and removed back to Gaza. She said, "I dream of getting a Palestinian ID that would allow me to move freely and travel, then go back home to Gaza to see my family." She now finds herself stuck, unable to visit her family, but unwilling to give up her dream of pursuing a better life in the West Bank. She added, "Gaza is a small prison. Ramallah is a big one.... If I had the chance to go back in time, I would have remained in Gaza and just learned to cope with life there."

"Samia": Samia, a 27-year-old English teacher, traveled to Jordan in 2016 for her studies. She told Human Rights Watch that she soon decided to return to Gaza, but that her relatives whom she visited in the West Bank convinced her to stay with them.<sup>566</sup> She said she applied to change her address to the West Bank through the Palestinian Civil Affairs Office, which forwards applications to Israeli authorities, but she received no response. Samia began working as an English teacher in Ramallah and got engaged, but felt constantly restricted, unable to move freely with friends and family. On July 3, 2019, she set off in a taxi to visit her relatives in Nablus. On the way, Israeli soldiers stopped her at a checkpoint they had set-up. Upon seeing her address listed as Gaza, they accused her of "staying here illegally" and took her into custody at a military facility, where she spent the night. Early the next morning, she said, officers cuffed her around her feet and hands, put her in a vehicle without windows and drove her to the Erez Checkpoint, where they removed her back to Gaza without her belongings or even her ID card. "It was a nightmare," Samia said. She had planned to get married in 2020 and had already rented a place and began furnishing it, then "everything was gone within seconds." She could not believe, she said, that she "was deported from the second part of my country," a place just an hour away. She applied for a permit to return to the West Bank, but the Palestinian Civil Affairs office in Gaza told her that Israelis had placed a 6-month security bloc on her, barring her from travel. She said her fiancé twice applied for permits to visit Gaza, but

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<sup>564</sup> Human Rights Watch phone interview with "Leen," March 18, 2020.

<sup>565</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

<sup>566</sup> Human Rights Watch phone interview with "Samia," March 23, 2020.

Israeli authorities denied him both times; once due to Jewish holidays and the other without reason. She “lost hope” and even “told [her] fiancé to break up with me, if we are not able to get together.” He refused, she said, and they continue to look for a way to live together.

“Hadil”: In 2011, Hadil, a 37-year-old who works as a social media coordinator in Gaza, fell in love with a man from Nablus whom she met at a conference in Amman. She began applying for permits to visit him, but Israeli authorities routinely denied them, 11 times in total, she told Human Rights Watch.<sup>567</sup> In 2012, the man managed to enter Gaza through Egypt for a visit and the two got engaged. Shortly thereafter, following a July 2013 military coup, Egyptian authorities largely sealed their border with Gaza. Hadil applied in 2014 for a family reunification request to live with her fiancé in the West Bank, but that was rejected without a reason given. In late 2015, she managed to get a permit to attend a conference abroad. On her way back, during transit via the West Bank from Jordan, she contemplated staying. But she worried about getting caught and being sent “for life imprisonment in Gaza,” a reference to her fear that she would not be able to secure another travel permit, so she returned to Gaza, and the couple broke up in May 2015. In 2019, though, she managed to obtain permits through work to travel to the West Bank and met and got engaged to a man from Ramallah. She regularly worries, she said, about facing the same fate with this engagement. She has spoken to lawyers to file a request to change her address, she said, but they have told her that the odds are quite low that Israel will allow her to establish legal residence in the West Bank, and that the process will take significant time. Her fiancé’s family has encouraged her to stay without status in the West Bank, but she is unwilling to take that risk. The couple does not consider Gaza an option, she said, because they have already purchased a home in the West Bank and did not want to separate her fiancé from his family. With the path to living together in the OPT effectively closed, they are now, she said, focused on finding a way to live together abroad.

“Kiran”: 33-year-old Kiran and her husband decided in 2016 to move from Gaza to the West Bank in search of a better life. Kiran told Human Rights Watch that her husband obtained a permit to travel as a businessperson and decided to remain in the West Bank.<sup>568</sup> Without meeting the stringent criteria for which Israel permits Gazan residents to travel, Kiran obtained a falsified medical referral indicating that her then 3-year-old son needed to

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<sup>567</sup> Human Rights Watch phone interview with “Hadil,” Gaza City, February 16, 2020.

<sup>568</sup> Human Rights Watch phone interview with “Kiran,” March 19, 2020.

travel for urgent medical care, she told Human Rights Watch. Authorities granted him a permit and her a permit to accompany him, and they traveled in 2017 alongside her 8-month-old second son. They have remained in the West Bank without status since. Her husband requested to change his address to one in the West Bank in 2016, but, as of writing, had not received a reply. Kiran said her family of five, including a third child they had in the West Bank, lives in “constant fear” of getting caught and being sent back to Gaza, and stays home whenever “there is any tension.” They “feel like strangers inside [their own] home,” as if they “are illegally residing in another country.” She said she has missed many family occasions in Gaza, including weddings for both of her brothers, and that her husband hasn’t seen his five children from a prior marriage since he left Gaza. She said she has considered returning to Gaza, but she worries about how life in Gaza would affect her three young boys. She told Human Rights Watch that “my boys get so happy when they see planes in the sky...I can’t imagine their reaction when they see the planes they love firing missiles and bombs. I don’t want them to experience war and death.”

## Institutional Discrimination in Israel

Authorities inside Israel institutionally discriminate between the country’s Jewish and Palestinian inhabitants, though in ways less severe than the oppression and persecution of the OPT. There are roughly 6.2 million Jews and about 1.6 million Palestinians within Green Line Israel, according to data from the Israeli Central Bureau of Statistics.<sup>569</sup> Israel’s Proclamation of Independence affirms the “complete equality” of all residents. Palestinians in Israel are citizens who have the right to vote in national elections, unlike Palestinians in the West Bank, Gaza, and East Jerusalem (except for the small minority of Palestinian Jerusalemites who have applied for and been granted Israeli citizenship). For the first 17 years of Israel’s existence as a nation, however, Israeli authorities placed most Palestinians under military rule, confining them to dozens of enclaves, requiring them to obtain permits to leave their enclaves, and severely restricting their rights.<sup>570</sup> When

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<sup>569</sup> “Population of Israel on the Eve of 2021,” Israel CBS press release, December 31, 2020, [https://www.cbs.gov.il/he/mediarelease/DocLib/2020/438/11\\_20\\_438e.pdf](https://www.cbs.gov.il/he/mediarelease/DocLib/2020/438/11_20_438e.pdf) (accessed March 23, 2021). This figure excludes Israeli settlers, as well as Palestinians from occupied East Jerusalem and all Syrians living in the occupied Golan Heights.

<sup>570</sup> Nimer Sultany, “The Legal Structures of Subordination: The Palestinian Minority and Israeli Law,” in *Israel and Its Palestinian Citizens: Ethnic Privileges in the Jewish State*, eds. Nadim N. Rouhana and Sahar S. Huneidi (Cambridge University Press, 2017) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2365177](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2365177) (accessed June 4, 2020), pp. 202-203.

military rule ended in 1966, authorities granted Palestinians in Israel freedom of movement, but they continue to treat Jewish Israelis and Palestinians in starkly unequal ways, including with regards to legal status, land policies, and access to resources and services. This discriminatory treatment is undertaken to further Jewish Israeli control over demographics and land as officials have directly acknowledged.<sup>571</sup>

### *Legal Status*

Israel maintains a two-track citizenship structure that treats Palestinians unequally as compared to Jews. While both Jews and Palestinians living in Israel are citizens, Israel's citizenship process privileges Jews and sharply restricts which Palestinians, beyond most existing residents and their descendants, can become citizens.

Israel's 1952 Citizenship Law at its outset notes that the state grants citizenship via four routes: (1) "return," (2) "residence in Israel," (3) birth, and (4) naturalization.<sup>572</sup> Israel reserves the first path, "return," exclusively for Jews. This path grows out of the 1950 "Law of Return," which guarantees Jewish citizens of other countries the right to settle in Israel.<sup>573</sup> The Citizenship Law states that Jews already living in Israel at the time gain citizenship via this path, as opposed to the "residence in Israel" one.

Palestinians, by contrast, obtained citizenship in 1952 via the second path, "residence in Israel." The law, though, conditions citizenship on proving residency before 1948, inclusion in the population registry, and continuous presence or legal entry in the period between 1948 and 1952. None of these restrictions apply to Jewish Israelis. The language not only excludes the more than 700,000 Palestinians that fled or were expelled from their homes in 1948, along with their descendants,<sup>574</sup> but also those not counted in the population registry due to a perfunctory registration process and those not present or not

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<sup>571</sup> See Intent to Maintain Domination section.

<sup>572</sup> Adalah, Citizenship Law, No. 32 of 1952, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/37-Citizenship-Law-1952.pdf> (accessed May 3, 2020). The official translation calls the law the 'Nationality Law', but the Hebrew, *Hok ha-Ezrahut*, translates literally to 'Citizenship Law' and more accurately describes the process laid out. See Shira Robinson, *Citizen Strangers: Palestinians and the Birth of Israel's Liberal Settler State* (Stanford: Stanford University Press, 2013), pp. 72-112.

<sup>573</sup> Israel MFA, Law of Return 5710-1950.

<sup>574</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section.

able to prove their residency either before 1948 or continuously between 1948 and 1952.<sup>575</sup>

*Haaretz* reported in 2017 that Israeli authorities had revoked the citizenship of “hundreds if not thousands” of Palestinian Bedouins in the Negev region in recent years over alleged “erroneous registration” by them or their families between 1948 and 1952.<sup>576</sup> In an August 2020 Knesset hearing, government officials acknowledged investigating the circumstances around the granting of citizenship to about 2,600 people and said that they had concluded that about 500 of them had been granted citizenship by mistake, although they claimed to have reestablished the citizenship of 362 of them via an expedited process.<sup>577</sup>

While the third path, birth, covers both Jews and Palestinians, the fourth, naturalization, applies only to non-Jews. The Citizenship Law permits the Interior Ministry to grant citizenship to those who meet a number of conditions, including several years of residency in Israel, intention to settle, knowledge of Hebrew, renunciation of foreign citizenship, and oath of loyalty.

In July 2003, the Israeli government issued Citizenship and Entry into Israel Law (Temporary Order), which effectively suspended the naturalization process, as well as the granting of long-term status, for Palestinian spouses of Israeli citizens or residents from the West Bank and Gaza.<sup>578</sup> The Supreme Court has upheld the law and the Knesset has renewed it every year since, most recently in June 2020. In 2005, the Knesset permitted Palestinian women over 25 and Palestinian men over 35 who are married to Israeli citizens

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<sup>575</sup> See Shira Robinson, *Citizenship Strangers*, pp. 72-112.

<sup>576</sup> Jack Khoury, “Israel Revokes Citizenship of Hundreds of Negev Bedouin, Leaving Them Stateless,” *Haaretz*, August 25, 2017, <https://www.haaretz.com/israel-news/.premium-israel-revokes-citizenship-of-hundreds-of-bedouin-1.5445620> (accessed August 10, 2020); See also “Israel Illegally Revoking Citizenship from Thousands of Bedouin Citizens, Leaving them Stateless,” Adalah press release, September 18, 2017, <https://www.adalah.org/en/content/view/9238> (accessed August 12, 2020);

<sup>577</sup> Internal Affairs and Environment Knesset Committee meeting (online), August 10, 2020, attended by Human Rights Watch researcher; Knesset, Internal Affairs and Environment Committee, Protocol No. 49, August 11, 2020, available at <https://bit.ly/36hO3Qe> (Hebrew), (accessed September 29, 2020); Sue Surkes, “Knesset Demands Answers After Some Negev Bedouin Have Citizenship Revoked,” *Times of Israel*, August 16, 2020, <https://www.timesofisrael.com/knesset-demands-answers-after-some-negev-bedouin-have-citizenship-revoked/> (accessed September 28, 2020).

<sup>578</sup> Knesset, Citizenship and Entry into Israel Law (temporary provision) 5763 – 2003, (unofficial translation), [https://www.knesset.gov.il/laws/special/eng/citizenship\\_law.htm](https://www.knesset.gov.il/laws/special/eng/citizenship_law.htm) (accessed June 1, 2020); See Inhumane Acts and Other Abuses of Fundamental Rights section.

or residents to apply for renewable temporary permits. In 2007, it expanded the scope of the restriction to apply to spouses from Lebanon, Syria, Iraq, and Iran. <sup>579</sup>

Israeli authorities also distinguish between citizenship and nationality, and structurally discriminate between citizens based on their nationality. The Israeli government registers the nationality of all citizens and, until 2005, included nationality on each citizen's identity card. <sup>580</sup> Jewish Israelis and Palestinians are deemed to belong to different nationalities: "Jew" and "Arab". While recognizing more than 140 nationalities, the government does not recognize an "Israeli nationality" and has denied requests of citizens to identify their nationality as such. <sup>581</sup> Citizens have appealed this denial to the Supreme Court, which upheld it. In 2013, the Court reaffirmed a 1972 ruling denying that "an Israeli nationality had come into being, separate and differentiated from a Jewish nationality." <sup>582</sup> In a concurring opinion, Justice Hanan Melcer wrote that "the 'constitutional Jewishness' of the state negates the legal possibility of recognizing an 'Israeli nationality' which is distinct, as it were, from the 'Jewish nationality'." <sup>583</sup>

The bifurcation between citizenship and nationality means that Israeli law relegates Palestinians at birth to an inferior status by law. Israel has long defined itself as the "nation-state of the Jewish people," as enshrined in its 2018 Basic Law: Israel—The Nation-State of the Jewish People. That law, which has constitutional status, articulates for Jews alone the right of self-determination and makes it a national priority to build homes for Jews but not others. <sup>584</sup> Excluding Palestinians from the state's definition of the nation provides a legal basis to pursue policies that favor Jewish Israelis to the detriment of

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<sup>579</sup> "Israel: Family Reunification Ruling Is Discriminatory," Human Rights Watch news release, May 17, 2006, <https://www.hrw.org/news/2006/05/17/israel-family-reunification-ruling-discriminatory>; Adalah, "Ban on Family Unification" - Citizenship and Entry into Israel Law (Temporary Order), <https://www.adalah.org/en/law/view/511> (accessed June 4, 2020); Jonathan Lis, "Israeli Legislator Invokes Nation-state Law in Bid to Block Palestinian Family Unification," June 2, 2020, <https://www.haaretz.com/israel-news/.premium-israeli-legislator-invokes-nation-state-law-in-bid-to-block-palestinian-family-unifi-1.8890451>(accessed June 4, 2020); Adalah, Nationality and Entry Into Israel Law (Temporary Order) (Amendment) 2005, <https://www.adalah.org/uploads/oldfiles/features/famuni/lawBill27jul05.pdf> (accessed June 4, 2020).

<sup>580</sup> Norman Berdichevsky, *Modern Hebrew: The Past and Future of a Revitalized Language* (North Carolina: McFarland & Company, 2014) <https://bit.ly/3178FXz> (accessed June 4, 2020), p. 161.

<sup>581</sup> Revital Hovel, "Supreme Court Rejects Citizens' Request to Change Nationality From 'Jewish' to 'Israeli'," *Haaretz*, October 3, 2013, <https://www.haaretz.com/.premium-court-israeli-isn-t-ethnicity-1.5343897> (accessed June 4, 2020).

<sup>582</sup> *Ornan v. Ministry of the Interior*, CA 8573/08, October 2, 2013, <https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior> (accessed June 4, 2020).

<sup>583</sup> *Ibid.*

<sup>584</sup> Knesset, Basic Law: Israel - The Nation State of The Jewish People.

Palestinians, in the name of advancing the “national interest” or “national security.” For example, in November 2020, an Israeli magistrate court cited the 2018 Nation-State law to dismiss a lawsuit by two Palestinian schoolchildren seeking reimbursement for expenses incurred commuting to a nearby Palestinian school, since there are no such schools in the city of Karmiel in northern Israel where they live. The ruling stated that “Karmiel is a Jewish city intended to solidify Jewish settlement in the Galilee. The establishment of an Arabic-language school or even the funding of school transportation for Arab students is liable to alter the demographic balance and damage the city’s character.” It added that “the development and establishment of Jewish settlement is a national value enshrined in the Basic Law and is a worthy and dominant consideration in municipal decision-making.”<sup>585</sup>

Legal measures aimed at protecting the Jewish character of the state that discriminate against Palestinians undermine the pledge in Israel’s Proclamation of Independence to “ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex.” Palestinian citizens vote in elections and have served in the Knesset, but Israel’s Basic Law: The Knesset—1958, which has constitutional status, declares that no candidate can run for the Knesset if they expressly or implicitly endorse “negation of the existence of the State of Israel as a Jewish and democratic state.”<sup>586</sup> Israel’s Law of Political Parties (1992) further bars registration of any party whose goals directly or indirectly deny “the existence of Israel as a Jewish and democratic state.”<sup>587</sup> While the Supreme Court often opts against disqualifying candidates for violating these provisions,<sup>588</sup> the provisions formally block Palestinians from challenging the laws that codify their subjugation and, in so doing, diminish the value of the right of Palestinian citizens to vote. The fact that no government in Israel’s history has ever included

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<sup>585</sup> *Adv. Nezar Bakri v. Karmiel Municipality*, November 24, 2020, Krayot Magistrate’s Court, ruling on file with Human Rights Watch.

<sup>586</sup> Knesset, Basic Law: The Knesset – 1958.

<sup>587</sup> Political Parties Law, 5752-1992 (Hebrew), [https://www.nevo.co.il/law\\_html/Law01/282\\_001.htm](https://www.nevo.co.il/law_html/Law01/282_001.htm) (accessed June 1, 2020).

<sup>588</sup> Mordechai Kremnitzer, “Israel’s Top Court Decided Not to Disqualify Arab Lawmaker, but Its Lack of Conviction Is Disturbing,” *Haaretz*, February 10, 2020, <https://www.haaretz.com/israel-news/elections/.premium-israeli-court-didn-t-disqualify-arab-mk-but-its-lack-of-conviction-is-disturbing-1.8521477> (accessed June 1, 2020).

representatives of a Palestinian-led party highlights the political disempowerment of the community.<sup>589</sup>

Palestinian former Knesset member Azmi Bishara, in describing the situation of Palestinians inside Israel, writes, “in 1948, we lost a country and gained citizenship.”<sup>590</sup>

### *Land and Housing*

As a result of decades of land confiscations and discriminatory land policies, Israeli authorities have hemmed in Palestinian towns and villages, while nurturing the growth and expansion of Jewish communities, many of which in practice exclude Palestinians. The majority of Palestinians in Israel live in these communities, while some live in “mixed cities” like Tel Aviv-Jaffa and Haifa.<sup>591</sup>

Ninety-three percent of all land in Israel constitutes state land, directly controlled by the Israeli government.<sup>592</sup> Israeli authorities confiscated much of this land, several million dunams, from Palestinians through several different legal instruments, as documented in a later chapter of this report.<sup>593</sup> A government agency, the Israel Land Authority (ILA), manages and allocates state lands. Almost half the members of its governing body belong to the JNF,<sup>594</sup> whose explicit mandate is to develop and lease land for Jews and not any

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<sup>589</sup> Rami Ayyub, “A Historic First? Israel’s Arabs Could Lead Parliamentary Opposition,” Reuters, September 20, 2019, <https://www.reuters.com/article/us-israel-election-arabs/a-historic-first-israels-arabs-could-lead-parliamentary-opposition-idUSKBN1W51S> (accessed June 1, 2020).

<sup>590</sup> Shira Robinson, *Citizen Strangers*, p. 68.

<sup>591</sup> ACRI et al., “Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016,” Position Paper, January 29, 2017, <https://law.acri.org.il/en/wp-content/uploads/2017/02/2017.2.5-keminitz-law-position-paper-eng.pdf> (accessed September 17, 2020).

<sup>592</sup> Israel Land Authority, “About Us.”

<sup>593</sup> See Inhumane Acts and Other Abuses of Fundamental Rights section for detailed account of the range of methods.

<sup>594</sup> “Israeli Supreme Court Rejects Petition Against JNF Membership in ILA Land Council,” Adalah press release, June 22, 2018, <https://www.adalah.org/en/content/view/9595> (accessed June 10, 2020); ACRI, “Annul JNF representation on the Israel Land Council,” August 23, 2016, <https://law.acri.org.il/en/2016/08/23/annul-jnf-representation-on-the-israel-land-council/> (accessed June 10, 2020).

other segment of the population. <sup>595</sup> The fund owns 13 percent of Israel’s land, which the state is mandated to use “for the purpose of settling Jews.” <sup>596</sup>

Israeli authorities have almost exclusively allocated state lands for the development and expansion of Jewish communities. <sup>597</sup> Since 1948, the government has authorized the creation of more than 900 “Jewish localities” in Israel, <sup>598</sup> but none for Palestinians except for a handful of government-planned townships and villages in the Negev and Galilee, created largely to concentrate previously displaced Bedouin communities. <sup>599</sup> Less than 3 percent of all land in Israel falls under the jurisdiction of Palestinian municipalities, where the majority of Palestinian citizens live, according to a 2017 estimate by Israeli and Palestinian groups. <sup>600</sup>

Even inside Palestinian towns and villages within Israel, Israeli authorities discriminatorily restrict the land available for residential growth. The authorities have zoned large sections of Palestinian towns and villages for “agricultural” use or as “green” areas, prohibited residential building in them, and built roads and other infrastructure projects that impede expansion. A 2003 Israeli government-commissioned report found that “many Arab towns and villages were surrounded by land designated for purposes such as security zones, Jewish regional councils, national parks and nature reserves or highways, which prevent or

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<sup>595</sup> Keren Kayemeth LeIsrael- Jewish National Fund (KKL-JNF), “Jewish People Land,” <https://www.kkl-jnf.org/about-kl-jnf/kl-jnf-id/jewish-people-land/> (accessed June 10, 2020); Adalah, “Excerpts from the Jewish National Fund’s Response to H.C. 9205/04 and H.C. 9010/04,” <https://www.adalah.org/uploads/oldfiles/eng/publications/makan/hc9010.pdf> (accessed June 10, 2020).

<sup>596</sup> Adalah, “Excerpts from the Jewish National Fund’s Response to H.C. 9205/04 and H.C. 9010/04”; “Land Controlled by Jewish National Fund for Jews Only,” Adalah press release, July 29, 2007, <https://www.adalah.org/en/content/view/6787> (accessed June 10, 2020); KKL-JNF, “A Company with Share Capital with No Par Value - Memorandum of Association,” [https://www.kkl.org.il/files/HEBREW\\_FILES/odotenu/Memorandum-of-Association-English.pdf](https://www.kkl.org.il/files/HEBREW_FILES/odotenu/Memorandum-of-Association-English.pdf) (accessed June 10, 2020).

<sup>597</sup> See Sikkuy, “The Marketing of State-Owned Land for Development and Construction in Arab Communities – A Summary,” September 2011, [sikkuy.org.il/wp-content/uploads/2011/09/marketing\\_state\\_land\\_eng.pdf](http://www.sikkuy.org.il/wp-content/uploads/2011/09/marketing_state_land_eng.pdf) (accessed June 10, 2020).

<sup>598</sup> Israel CBS, “Localities (1) and Population, By District, Sub-District, Religion and Population Group,” September 15, 2020.

<sup>599</sup> ACRI et al., “Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016,” Position Paper; “Israel: Discriminatory Land Policies Hem in Palestinians,” Human Rights Watch news release, May 12, 2020, [https://www.hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians?fbclid=IwARovdJktAckixLI16niIINVibC3uoOI\\_YXoogQRGpWaynU4YbK\\_YAXMIqTc](https://www.hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians?fbclid=IwARovdJktAckixLI16niIINVibC3uoOI_YXoogQRGpWaynU4YbK_YAXMIqTc).

<sup>600</sup> *Ibid.*; Also see Sikkuy, “Expansion of Jurisdiction Boundaries in Arab Local Authorities,” <http://www.sikkuy.org.il/en/departments/equality-policy-department/expansion-jurisdiction-boundaries-arab-local-authorities/> (accessed June 10, 2019) (estimating that 3.4 percent of land in Israel fell within the jurisdiction of Palestinian municipalities).

impede the possibility of their expansion in the future.”<sup>601</sup> While increasing focus in recent years on these issues has resulted in more state-approved residential development,<sup>602</sup> they have done little to date to change the reality of hemmed-in Palestinian towns and villages. By contrast, in case studies documented by Human Rights Watch in each of Israel’s six districts, planning authorities provided sufficient land and zoning permissions to predominantly Jewish communities to facilitate their growth.<sup>603</sup>

These restrictions create density problems and a housing crunch in Palestinian communities. The Arab Center for Alternative Planning, based in Israel, told Human Rights Watch in December 2018 that it estimates that 15 to 20 percent of homes in Palestinian towns and villages lack permits, some because owners’ applications were rejected and others because they did not apply knowing that authorities would reject their requests on the grounds that they were contrary to the existing zoning. The group estimated that 60,000 to 70,000 homes in Israel, excluding Jerusalem, were at risk as of 2018 of full demolition.<sup>604</sup> As of July 2015, 97 percent of Israel’s pending judicial demolition orders were for structures located in Palestinian towns.<sup>605</sup>

These dynamics most dramatically manifest themselves in the Negev, where discriminatory Israeli policies and practices leave about 90,000 Palestinian Bedouins living in “unrecognized” informal communities, where their homes face the constant threat of demolition.<sup>606</sup> At the same time, Israeli authorities and quasi-governmental bodies have

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<sup>601</sup> Or Commission, Chapter I, “Before October Events: Background, Factors, Predicting Events and Police Readiness. Section A - Escalation processes in the Arab sector in light of the outbreak of riots,” (Hebrew), August 2003, <http://uri.mitkadem.co.il/vaadat-or/vaadat-or-part1.html> (accessed June 10, 2020).

<sup>602</sup> Bimkom, “Government Resolution 922: Level of Implementation in the Sphere of Planning – Interim Report,” November 2019, <https://bimkom.org/wp-content/uploads/922.pdf> (accessed June 10, 2020).

<sup>603</sup> “Israel: Discriminatory Land Policies Hem in Palestinians,” Human Rights Watch news release; “Israel: Grant Status Long Denied to Arab Village in Central Israel,” Human Rights Watch news release, October 8, 2010, <https://www.hrw.org/news/2010/10/08/israel-grant-status-long-denied-arab-village-central-israel>; Human Rights Watch, *Off the Map: Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages* (New York: Human Rights Watch, 2008), <https://www.hrw.org/report/2008/03/30/map/land-and-housing-rights-violations-israels-unrecognized-bedouin-villages>.

<sup>604</sup> Human Rights Watch interview with the Arab Center for Alternative Planning, Eilabun, Israel, December 19, 2018. “Israel: Discriminatory Land Policies Hem in Palestinians,” Human Rights Watch news release.

<sup>605</sup> ACRI et al., “Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016,” Position Paper.

<sup>606</sup> “Following Adalah Legal Action, Israel Expands Eligibility for Emergency COVID-19 Food Stamps Program,” Adalah press release, February 3, 2021, <https://www.adalah.org/en/content/view/10240> (accessed April 11, 2020). See Inhumane Acts and Other Abuses of Fundamental Rights section; Human Rights Watch, *Off the Map*.

invested billions of shekels in building new developments in the Negev designed predominantly for Jews. <sup>607</sup>

Israeli law permits towns with up to 400 households in the Negev and the Galilee regions, areas that comprise two-thirds of the land in Israel, <sup>608</sup> to maintain admissions committees that can reject applicants from living there for being “not suitable for the social life of the community” or for incompatibility with the “social-cultural fabric.” <sup>609</sup> This authority effectively permits the exclusion of Palestinians from small Jewish towns, which Adalah, a human rights group based in Haifa, estimated in 2014 make up 43 percent of all towns in Israel, albeit a far smaller percentage of the country’s population. <sup>610</sup> In a 2015 study, Yosef Jabareen, a professor at the Technion-Israel Institute of Technology in Haifa, found that there are more than 900 small Jewish towns, including *kibbutzim*, across Israel that can restrict who can live there and have no Palestinian citizens living in them. <sup>611</sup>

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<sup>607</sup> See Intent to Maintain Domination and Systematic Oppression sections.

<sup>608</sup> Sikkuy, “Development of the Negev and Galilee – For Jews Only?”

<sup>609</sup> Adalah, Law to Amend the Cooperative Societies Ordinance (No. 8), 5771-2011, (unofficial translation), <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/12-Admissions-Committees-Law-2011.pdf> (accessed June 10, 2020); “Israel: New Laws Marginalize Palestinian Arab Citizens,” Human Rights Watch news release, March 30, 2011, <https://www.hrw.org/news/2011/03/30/israel-new-laws-marginalize-palestinian-arab-citizens>.

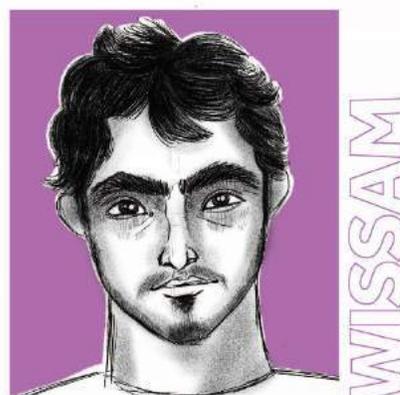
<sup>610</sup> “Israeli Supreme Court Upholds ‘Admissions Committees Law’ That Allows Israeli Jewish Communities to Exclude Palestinian Arab Citizens,” Adalah press release, September 17, 2014, <https://www.adalah.org/en/content/view/8327> (accessed June 10, 2020); Also see “A Setback in the Fight Against Discrimination in Housing,” ACRI press release, September 17, 2014, <https://law.acri.org.il/en/2014/09/17/setback-housing/> (accessed June 10, 2020); Jack Khoury, “Israeli Arab Couple Petitions High Court After Residency Denied,” *Haaretz*, February 14, 2007, <https://www.haaretz.com/1.4805873> (accessed June 10, 2020).

<sup>611</sup> Yosef Jabareen, “Territoriality of negation: Co-production of “creative destruction” in Israel,” *Geoforum*, Volume 66, November 2015, pp. 11-25, <https://www.sciencedirect.com/science/article/abs/pii/S0016718515002316?via%3Dihub> (accessed June 10, 2020).

# BORN UNEQUAL NEGEV



**JEWISH  
CITIZEN OF ISRAEL  
BORN IN AN ISRAELI TOWN**



**PALESTINIAN  
CITIZEN OF ISRAEL  
BORN IN UNRECOGNIZED  
BEDOUIN VILLAGE**

## IS MY COMMUNITY RECOGNIZED BY THE GOVERNMENT?

**YES**

As part of a policy to "Judaize the Negev", Israel actively nurtures the development of Jewish communities in the Negev

**NO**

Israel does not recognize 35 Palestinian Bedouin communities, making it impossible for 90,000 or so residents to live lawfully in their homes

## CAN I ACCESS BASIC SERVICES?

**YES**

Likely without any obstacles, thanks to billions of shekels Israel has invested in major infrastructure projects to attract Jewish residents to the area

**NO**

Israel refuses to connect your unrecognized village to national electricity or water grids or provide basic services like paved roads, sewage systems and schools

## CAN I STAY HERE FOR YEARS TO COME?

**YES**

Israel continues to make more and more land available to Jewish communities to encourage you to stay and raise your family here

**MAYBE NOT**

Israel seeks to concentrate Bedouins in government-planned townships. As a resident of an unrecognized village, you live under constant threat of home demolition

## IF I WANT TO MOVE, DO I HAVE A LOT OF OPTIONS?

**YES**

You can move to a big city or one of hundreds of other small Jewish towns across Israel

**MAYBE NOT**

Among other challenges, hundreds of small Jewish towns have admissions committees that have power by law to exclude Palestinian citizens from living there

HUMAN  
RIGHTS  
WATCH

VISUALIZING PALESTINE

The individuals depicted above are fictional representations for illustrative purposes only  
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## *Resources and Services*

Israeli authorities discriminate in the provision of resources and services between Palestinian and Jewish localities inside Israel. Revenues for localities in Israel derive principally from two sources: those generated locally by taxes and those received from the central government. The rights groups Sikkuy and Injaz found in a 2014 report that while local taxes make up 66 percent of the revenue for localities across Israel, they constitute only 31 percent of the overall budget for Palestinian localities.<sup>612</sup> While the gap in part reflects the significantly lower tax base in Palestinian localities, the groups found a larger disparity in income from non-residential or business taxes. They, in particular, highlighted the dearth of “revenue-generating properties” in Palestinian municipalities, including in the residential, industrial, commercial, tourism, banking, and infrastructure sectors.<sup>613</sup> In May 2020, Sikkuy found, based on 2018 data, that while Jewish localities collected 2.5 times more in residential taxes than Palestinian ones, they collected 6.5 times more in non-residential taxes.<sup>614</sup>

The significantly higher levels of non-residential local taxes that Jewish localities collect are the result of discriminatory state policies. The Knesset Research and Information Center found in July 2018 that only 2 percent of industrial zones managed by the government, which generate significant tax income, are located in Palestinian municipalities.<sup>615</sup> Government buildings also generate significant tax revenues, but, according to a July 2020 study by Knesset Research and Information Center, only 0.4 percent of government properties that generate tax revenues are located within Palestinian municipalities.<sup>616</sup> In addition, according to Sikkuy, not a single Palestinian municipality

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<sup>612</sup> Sikkuy and Injaz – Center for Professional Arab Local Governance, “From Deficits and Dependence to Balanced Budgets and Independence: The Arab Local Authorities’ Revenue Sources,” April 2014, [http://www.sikkuy.org.il/wp-content/uploads/2014/10/localauthorities\\_eng.pdf](http://www.sikkuy.org.il/wp-content/uploads/2014/10/localauthorities_eng.pdf) (accessed June 10, 2020), p. 4.

<sup>613</sup> *Ibid.*, p. 5.

<sup>614</sup> Sikkuy and Injaz, “The Fund for Reducing Gaps,” (Hebrew and Arabic), Position Paper, May 2020, <https://www.sikkuy.org.il/wp-content/uploads/2020/05/%D7%A0%D7%99%D7%99%D7%A8-%D7%A2%D7%9E%D7%93%D7%94-%D7%94%D7%A7%D7%A8%D7%9F-%D7%9C%D7%A6%D7%9E%D7%A6%D7%95%D7%9D-%D7%A4%D7%A2%D7%A8%D7%99%D7%9D-%D7%A1%D7%95%D7%A4%D7%99-1.pdf> (accessed June 10, 2020).

<sup>615</sup> Knesset Research and Information Center, Budgetary Control Department, “Description of Industrial Zones and Distribution of Income from Property Taxes - Submitted to the Economics Committee” (Hebrew), July 2018, <https://bit.ly/2CUlnQX> (accessed August 24, 2020).

<sup>616</sup> Knesset Research and Information Center, “Distribution of government property taxes revenue by sector,” (Hebrew), July 2020, <https://main.knesset.gov.il/Activity/Info/MMM/Pages/document.aspx?docId=5bad2ce5-0899-ea11-8113-00155doaf32a&businessType=1> (accessed July 20, 2020).

has a government hospital, university, military base, or government administrative buildings in it. <sup>617</sup> An April 2020 study by the Knesset Research and Information Center found that Palestinian localities, where about 90 percent of Palestinian citizens of Israel reside, <sup>618</sup> received in 2018 only 2.2 percent of the total amount of non-residential taxes across the country. <sup>619</sup>

Localities which collect less revenue from local taxes rely more on funding from the central government. Here too, Israeli authorities allocate budgets in a discriminatory fashion. For example, of the 2.82 billion NIS (\$804 million) of economic recovery funds handed out by the Israeli government to local authorities in April 2020 amid the Covid-19 pandemic, only 1.7 percent went to Palestinian municipalities, according to Adalah. <sup>620</sup> In education, the Israeli government operates two separate school systems, one for Jewish children and one for Palestinian children in Israel. <sup>621</sup> Discrimination colors every aspect of the two systems; often overcrowded and understaffed, poorly built or maintained, state schools for Palestinian children offer fewer facilities and educational opportunities than what are offered to Jewish Israeli children. <sup>622</sup> The Haifa-based rights group Mossawa Center found based on government data that, in 2013, the annual expenditure per student in Palestinian localities was 734 NIS (\$220), as compared to 3,344 NIS (\$1,004) in poor Jewish localities

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<sup>617</sup> Sikkuy email to Human Rights Watch, May 26, 2020.

<sup>618</sup> ACRI et al., “Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016,” Position Paper.

<sup>619</sup> Report on file with Human Rights Watch. This figure includes occupied East Jerusalem and the Golan Heights.

<sup>620</sup> “Arab Mayors Petition Israeli Supreme Court to Demand Equitable Budgets for Arab Towns Confronting COVID-19 Financial Damage,” Adalah press release, June 4, 2020, <https://www.adalah.org/en/content/view/10007> (accessed June 16, 2020); Jack Khoury, “Israeli Arab Councils Announce Strike in Protest of ‘Discrimination’ in Coronavirus Funds,” *Haaretz*, May 2, 2020, <https://www.haaretz.com/israel-news/.premium-israeli-arab-councils-to-strike-in-protest-of-discrimination-in-coronavirus-funds-1.8814841> (accessed June 10, 2020). Also see, Sikkuy and Injaz, “From Deficits and Dependence to Balanced Budgets and Independence.” An April 2020 Knesset report put the figure at 2.3 percent, but that figure includes occupied East Jerusalem and the Golan Heights. Knesset Report on file with Human Rights Watch. Following a May 2020 lawsuit filed by Adalah on behalf of Palestinian municipalities, the Israeli government in June provided them with an additional NIS 200 million (\$57.60 million). “Arab Towns to Receive NIS 200 Million to Mitigate Severe Covid Financial Damages,” Adalah press release, June 4, 2020, <https://www.adalah.org/en/content/view/10030> (accessed June 16, 2020).

<sup>621</sup> Human Rights Watch, *Second Class: Discrimination Against Palestinian Arab Children in Israel's Schools* (New York: Human Rights Watch, 2001) <https://www.hrw.org/report/2001/09/30/second-class/discrimination-against-palestinian-arab-children-israels-schools>.

<sup>622</sup> Ibid.; Nimer Sultany, “The Making of an Underclass: The Palestinian Citizens of Israel,” *Israel Studies Review*, Vol. 27, No. 2 (2012), pp. 190-200, <https://www.jstor.org/stable/41804808?seq=1> (accessed June 10, 2020); Mossawa Center, “The 2019 State Budget and Government Resolution 922,” n.d., <http://www.mossawa.org/eng//Public/file/12019%20State%20Budget%20and%20Government%20Resolution%20922.pdf> (accessed June 10, 2020).

and 5,934 NIS (\$1,781) in wealthier Jewish ones.<sup>623</sup> Citing government data for that same school year, *Haaretz* found that expenditures by the state for Jewish Israeli high school students were 35 to 68 percent higher than for Palestinian students at the same socioeconomic level.<sup>624</sup>

While authorities in recent years have reduced budgeting inequities, significant gaps remain. In particular, a five-year, more than 10 billion NIS (\$3 billion) “economic development plan for the Arab sector”<sup>625</sup> approved in December 2015 has increased allocation to sectors like transportation. However, it did not address other areas of disparity, including welfare services and high school education.<sup>626</sup> Palestinian localities have also received funding from “equalization grants” provided by the central government and from a governmental fund aimed at “closing the [economic] gaps” between differently situated localities, but, according to Sikkuy, not to levels proportional to the gaps that exist in comparison to Jewish localities.<sup>627</sup> The Mossawa Center found in a study of Israel’s 2019 budget that funding allocated to Palestinian areas remains “meager,” with significant needs in education and other areas still present, and that “systematic discrimination” remains endemic in government spending.<sup>628</sup>

These disparities contribute to the starkly different socio-economic situations for Palestinians and Jewish citizens. According to May 2020 figures from Israel’s Ministry for Social Equality, 45.3 percent of Palestinian families live below the poverty line, as compared to 13.4 percent of Jewish families.<sup>629</sup> Sikkuy in 2015 found that the wage gap between Palestinian and Jewish men stood at 44.6 percent and at 31 percent for women,

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<sup>623</sup> Mossawa Center, “Position Paper from the Mossawa Center on the Israeli State Budget and The Government Decision for Economic Development in the Arab Community for the Years 2016-2020,” 2016, <http://www.mossawa.org/eng//Public/file/oPosition%20Paper%20Budget%202016-2020.pdf> (accessed June 10, 2020).

<sup>624</sup> Or Kashti, “For Jews and Arabs, Israel’s School System Remains Separate and Unequal,” *Haaretz*, July 7, 2016, <https://www.haaretz.com/israel-news/.premium-for-jews-and-arabs-israels-school-system-remains-separate-and-unequal-1.5406700?ts=1593971995108> (accessed July 14, 2020).

<sup>625</sup> Inter-Agency Task Force on Israeli Arab Issues, “Historic Economic Development Plan for Arab Sector: Overview and Key Allocation Areas,” January 2016, <https://www.iataskforce.org/activities/view/437> (accessed June 10, 2020).

<sup>626</sup> Human Rights Watch phone interview with local NGO officer (name withheld), May 17, 2020.

<sup>627</sup> Sikkuy and Injaz, “From Deficits and Dependence to Balanced Budgets and Independence.”

<sup>628</sup> Mossawa Center, “The 2019 State Budget and Government Resolution 922.”

<sup>629</sup> “Strategic Outline 2020 for Economic Development of the Minority Population,” May 2020, Israel Ministry for Social Equality, report on file with Human Rights Watch.

and that 47.4 percent of Palestinians worked in unskilled labor and construction, as compared to 10.4 percent of Jewish Israelis.<sup>630</sup>

### *Case Study: Nazareth*

*The following case study details how Israeli authorities discriminate against the residents of the Palestinian city of Nazareth in Israel in ways that stifle the community's growth and undermine its well-being while promoting the development of a Jewish-majority city next to it.*

Nazareth, the largest Palestinian locality in Israel with a population of 77,400,<sup>631</sup> lies in the Galilee region within Israel's Northern District. It is the only Palestinian city that survived the events of 1948 intact.<sup>632</sup> Discriminatory Israeli land policies have restricted it to largely the same geographical area it had then, while its population has increased more than five-fold.<sup>633</sup> Meanwhile, Israeli authorities established Nazareth Illit (Upper Nazareth, renamed in 2019 Nof HaGalil; referenced henceforward by its original name) in the 1950s as a "Jewish town,"<sup>634</sup> according to Israel's first Prime Minister David Ben Gurion, in order to, as a then-senior official put it, "swallow up" Nazareth.<sup>635</sup> A road, Highway 75 or Zionism Road, largely demarcates the boundary today between Nazareth and Nazareth Illit. Israeli authorities have over the years nurtured the growth and development of Nazareth Illit, often at Nazareth's expense. Today, Nazareth Illit has developed into a "mixed city" with

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<sup>630</sup> Sikkuy, "Infographics: Fair representation through government tenders," infographic, August 2015, <http://www.sikkuy.org.il/wp-content/uploads/2015/10/Tenders-infographic-ENGLISH-FINAL-August-10-2015.pdf>; also see "Strategic Outline 2020 for Economic Development of the Minority Population," Israel Ministry for Social Equality (finding that 41 percent of Palestinian citizens of Israel work in the construction, agriculture and manufacturing industries, though not indicating what percentage of Jewish Israelis work in these industries).

<sup>631</sup> Israel CBS, "Population and Density Per Sq. Km. in Localities With 5,000 Residents and More On 31.12.2019(1)."

<sup>632</sup> Jonathan Cook, "Why Israel Has Silenced the 1948 Story of Nazareth's Survival" *Mondoweiss*, January 12, 2016, <https://mondoweiss.net/2016/01/silenced-nazareths-survival/> (accessed March 31, 2021).

<sup>633</sup> The population of Nazareth in 1946 was around 15,000. Leena Dallasheh, "Persevering Through Colonial Transition: Nazareth's Palestinian Residents After 1948," *Journal of Palestine Studies*. 45. 8-23 (2016), <https://bit.ly/3cQZIVM> (accessed June 10, 2020), p. 10.

<sup>634</sup> Letter made public in 1987 on 30th anniversary of Nazareth Illit establishment, quoted in Oren Yiftachel, *Ethnic Frontiers and Peripheries: Landscapes of Development and Inequality in Israel* (Oxfordshire: Taylor & Francis, 2019), <https://bit.ly/37mnc8> (accessed June 10, 2020).

<sup>635</sup> Quoted in Forman, "Military Rule," p. 350.



Nazareth, the largest Palestinian locality inside Israel, faces density problems and a housing crunch stemming in part from Israeli land policies that favor the development of Jewish-majority municipalities. Aerial photography taken between 2011 and 2015. © Lowshot Ltd

about 26 percent of its population Palestinian, in large part due to the migration of Nazarenes amid the squeeze they face, as described below.<sup>636</sup>

Slated to belong to the Arab State under the 1947 UN partition plan, Nazareth came under Israeli control in July 1948. Unlike the hundreds of thousands of Palestinians forced to leave their communities during the establishment of the Israeli state, the residents of Nazareth largely remained in their homes. According to historian Benny Morris, Israeli officials gave the order to “uproot all the residents of Nazareth,” but the commander of the nascent Israeli army’s brigade given the order, Ben Dunkelman, refused to carry it out, and

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<sup>636</sup> Human Rights Watch interview with Nazareth Illit general manager Hava Bachar, February 3, 2020; Kashti, “This Israeli City Has 25% Arab Residents, but Won’t Open a School for Them” *Haaretz*, November 5, 2019; <https://www.haaretz.com/israel-news/.premium-a-quarter-of-its-residents-are-arabs-but-nof-hagalil-won-t-open-a-school-for-them-1.8073126> (accessed September 30, 2020).

authorities eventually allowed the city to surrender.<sup>637</sup> Nazareth's population increased in the aftermath of the events of 1948, as it absorbed more than 5,000 Palestinians who had been displaced from nearby villages and prevented from returning to them.<sup>638</sup> Many displaced Palestinians have since remained in Nazareth, unable to return to their villages.<sup>639</sup>

One displaced Palestinian, 85-year-old souvenir-shop-owner Ameen Muhammad Ali, known as Abu Arab, told Human Rights Watch that he ended up in Nazareth in 1949 months after he and his family fled his home village of Safuriyya, which then stood six kilometers north of Nazareth, amid Israeli fire.<sup>640</sup> He was 13 at the time. After several months in Lebanon, he said his family managed to cross back into Israel before Israeli forces tightened border controls and blocked refugees from returning.<sup>641</sup> Some other Safuriyya residents also managed to return, which prompted Israeli authorities in January 1949, as historian Benny Morris documented, to forcibly expel residents who remained in the village or had returned there.<sup>642</sup> Later that year, Israeli authorities established the Jewish *moshav*, or cooperative village, of Tzipori on Safuriyya's lands.<sup>643</sup> Abu Arab said his family lost their home and about 200 dunams of land they owned in the village.

Later in 1949, Abu Arab's family moved to a neighborhood in Nazareth that came to be known as Safafra because of the many displaced Safuriyya residents who ended up

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<sup>637</sup> Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949* (Cambridge: Cambridge University Press, 1989), p. 419; Also see Mitch Potter, "The Toronto Man Who Saved Nazareth," *The Star*, December 20, 2015, <https://www.thestar.com/news/insight/2015/12/20/the-toronto-man-who-saved-nazareth.html> (accessed June 10, 2020); Jonathan Cook, "Why Israel has Silenced the 1948 Story of Nazareth's Survival."

<sup>638</sup> Forman, "Military Rule," p. 338; also see Leena Dallahseh, "Nazarenes in the Turbulent Tide of Citizenships: Nazareth from 1940 to 1966," (Ph.D. diss., New York University, 2012), p. 18; Dan Rabinowit, *Overlooking Nazareth: The Ethnography of Exclusion in Galilee* (Cambridge: Cambridge University Press, 1997), p. 4.

<sup>639</sup> See, for example, Jonathan Cook, "'A Place I Do Not Recognise': Palestinians Mark 70 years of Israeli Injustice," *Middle East Eye*, May 15, 2018, <https://www.middleeasteye.net/news/place-i-do-not-recognise-palestinians-mark-70-years-israeli-injustice> (accessed June 10, 2020)

<sup>640</sup> Human Rights Watch phone interview with Ameen Muhammad Ali, June 2, 2020. Other former residents of the villages have recounted an aerial attack by Israeli forces. See, for example, Zochrot, "Safuriyya," <https://zochrot.org/en/village/49363> (accessed June 10, 2020).

<sup>641</sup> Human Rights Watch phone interview with Ameen Muhammad Ali, June 2, 2020.

<sup>642</sup> Benny Morris, *The Birth of the Palestinian Refugee Problem*, p. 517.

<sup>643</sup> Zochrot, "Safuriyya."

there.<sup>644</sup> In January 2001, *Haaretz* estimated that internally displaced Palestinians and their descendants constitute about half of Nazareth's population.<sup>645</sup> Most of Abu Arab's family who lived in Safuriyya, including several dozen aunts, uncles, and cousins, never returned to the country, and they and their descendants remain refugees today, largely barred from even visiting. Abu Arab said he sometimes visits Tzipori, which today restricts who can live or enter there, in part to take care of five cemeteries in the *moshav* where Safuriyya's ancestors, including two of his cousins, are buried. He said he used to be able to see the lands of Safuriyya from his home in Nazareth and longs to return.<sup>646</sup>

Shortly after the establishment of the Israeli state, Israeli authorities placed Nazareth under military rule and began in the 1950s implementing a policy to "Judaize the Galilee."<sup>647</sup> The establishment of Nazareth Illit became a key part of that strategy, as the army's then-Planning Department Director Yuval Ne'eman put it, to "emphasize and safeguard the Jewish character of the Galilee as a whole."<sup>648</sup> The northern military governor at the time, Colonel Mikhael Mikhael, wrote that the establishment of Nazareth Illit would result in the "transfer of the center of gravity of life from Nazareth to the Jewish neighborhood."<sup>649</sup>

Israeli authorities established Nazareth Illit in the 1950s on lands belonging to residents of Nazareth and other nearby villages. The first confiscation, of about 1,200 dunams of land from Nazareth, took place in June 1954 under a 1943 law (Acquisition for Public Purpose Ordinance), a relic of British mandate law that permits the taking of land for a public purpose.<sup>650</sup> Nazarenes brought a legal challenge against the decision, but the Israeli Supreme Court upheld it, based on a state declaration that it confiscated the land solely to build government facilities.<sup>651</sup> Authorities used only a fraction of the land for government

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<sup>644</sup> Rochelle Davis, *Palestinian Village Histories: Geographies of the Displaced* (Stanford: Stanford University Press, 2010), p. 224.

<sup>645</sup> Ori Nir, "Focus/ 'Internal Refugees' Demand Their Rights Too," *Haaretz*, January 8, 2001, article on file with Human Rights Watch.

<sup>646</sup> Human Rights Watch phone interview with Ameen Muhammad Ali, June 2, 2020.

<sup>647</sup> See Intent to Maintain Domination and Systematic Oppression sections.

<sup>648</sup> Forman, "Military Rule."

<sup>649</sup> *Ibid.*

<sup>650</sup> *Ibid.*; Sabri Jiryis, "The Land Question in Israel." *MERIP Reports*, No. 47 (1976): pp. 5-26, [https://www.jstor.org/stable/3011382?read-now=1&seq=15#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/3011382?read-now=1&seq=15#page_scan_tab_contents) (accessed June 1, 2020) pp.13-14.

<sup>651</sup> *Ibid.*

facilities—109 dunams, according to one historian—with most of it going to develop a “Jewish neighborhood” inside Nazareth. <sup>652</sup> In August 1952, Government Secretary Ze’ev Sherf said, “the only chance of making Nazareth a partially Jewish city is by consolidating the [state] institutions there. It is a colonizing act with difficulties, but without it we will not be able to Judaize Nazareth.” <sup>653</sup>

Keen to avoid relegating the Jewish community to a minority status in Nazareth, Israeli officials opted in the late 1950s to make Nazareth Illit a separate locality, with the aim of later merging the municipalities once the Jewish community surpassed the Palestinian population. <sup>654</sup> Authorities continued to confiscate Palestinian land to develop Nazareth Illit into the 1960s and 1970s, including a 160 dunam plot of land in the center of Nazareth known as the Sprinzak Enclave. A military base for years and home to a hotel, the site falls within the municipality of Nazareth Illit, despite its location in the center of Nazareth, meaning Nazareth Illit receives the taxes based on the facilities there. <sup>655</sup> Through these confiscations, Nazareth Illit deepened its footprint in the Galilee, weaving between Nazareth and six other Palestinian villages and impeding the establishment of a larger, contiguous Palestinian municipal area. Nazareth-based journalist Jonathan Cook has written that Nazareth Illit’s development blocked Nazareth from “transform[ing] into the true capital of Israel’s Palestinian minority,” a nearly 200,000 person “conurbation” in the center of Israel, and instead effectively turned Nazareth into, as one Nazarene put it to him, “the largest Arab village in Israel.” <sup>656</sup>

Nazareth had a population of about 15,000 and a land mass, according to one historian, of 12,599 dunams before 1948. <sup>657</sup> Today, its population is 77,400 and its size is 14,172 dunams. <sup>658</sup> Israeli authorities only approved their first master plan for Nazareth in 2009;

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<sup>652</sup> Forman, “Military Rule”; Jonathan Cook, “Welcome to Nazareth.”

<sup>653</sup> Ibid.

<sup>654</sup> Forman, “Military Rule.”

<sup>655</sup> Joseph Algazy, “Nazareth Rejects Another Raw Deal for Its Future,” *Haaretz*, February 17, 2002, <https://www.haaretz.com/1.5271207> (accessed June 10, 2020); Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (London: Zed Books, 2003) <https://bit.ly/2zmmoiL> (accessed June 10, 2020) p. 88; Jonathan Cook, “Welcome to Nazareth.”

<sup>656</sup> Jonathan Cook, “Welcome to Nazareth.”

<sup>657</sup> Jiryis, “The Land Question in Israel”; Dallasheh, “Persevering through Colonial Transition.”

<sup>658</sup> Israel CBS, “Population and Density Per Sq. Km. in Localities With 5,000 Residents and More On 31.12.2019(1).” Land expansion request from 2017 on file with Human Rights Watch.

the prior plan had been established in 1942 under the British Mandate.<sup>659</sup> The total expansion of Nazareth over more than 70 years, totaling more than 6,000 dunams, has only slightly outpaced the land lost during the events around the establishment of Israel in 1948 and in the years that followed.<sup>660</sup> The Nazareth municipality has in subsequent years estimated that it needed between 10,403 and 12,378 more dunams to meet the needs of residents, including for new residential neighborhoods, land for industrial and commercial development, and more public spaces.<sup>661</sup> In a survey of Nazareth residents conducted in 2013 by Professor Yosef Jabareen of the Technion-Israel Institute of Technology in Haifa, 71.8 percent of those surveyed said that the local regulations barred them from any construction to expand their current properties.<sup>662</sup>

The restricted access to land for housing to accommodate natural population growth has created density problems and a housing crunch in Nazareth. In the same survey, 86.6 of residents identified traffic and 83.7 population density as “very serious” problems.<sup>663</sup> Musab Dukhan, a member of Nazareth’s municipal council, told Human Rights Watch that “narrow streets and a lack of space for parking creates heavy traffic” and that “there is no space for the new generation to build a future here and remain in the city.”<sup>664</sup> One resident described Nazareth as a “city that can’t breathe and always feels tense.”<sup>665</sup>

While restricting Nazareth, Israeli authorities have allowed Nazareth Illit to grow rapidly. Built in part on state land and designated as a city to receive new Jewish immigrants, Israeli authorities invested heavily in Nazareth Illit, including by establishing in 1992 the Ziporit Industrial Area, which includes factories and a park for high-tech companies. While

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<sup>659</sup> Yosef Jabareen, “Space of Risk: The Contribution of Planning Policies to Conflicts in Cities, Lessons from Nazareth,” *Planning Theory & Practice*, Vol. 7, No. 3, pp. 305–323, September 2006 (308-09), <https://bit.ly/2XR0xwn> (accessed June 10, 2020); Human Rights Watch phone interview with former Nazareth mayor Ramiz Jaraisy, April, 10, 2021. Jiryis, “The Land Question in Israel”; Dallahsheh, “Persevering through Colonial Transition.”

<sup>660</sup> Land expansion requests from 2013/2017 on file with Human Rights Watch.

<sup>661</sup> *Ibid.*

<sup>662</sup> Survey results on file with Human Rights Watch.

<sup>663</sup> *Ibid.*

<sup>664</sup> Human Rights Watch phone interview with Musab Dukhan, April 28, 2020.

<sup>665</sup> Human Rights Watch phone interview with Sally Azzam, June 2, 2020.

slated to be a regional industrial zone encompassing 3,560 dunams, <sup>666</sup> none of the revenues it generates go to Nazareth, located just to the south, or Palestinian villages directly adjacent to it. <sup>667</sup> Nazareth, by contrast, has two small industrial zones, one consisting of carpentry workshops in the Old City and the other of car repair shops. <sup>668</sup>

Nazareth long served as a regional administrative hub. Beginning in the late 1950s, Israeli authorities gradually relocated many government offices servicing the region from Nazareth to Nazareth Illit. The offices moved include those belonging to the agriculture ministry, the education ministry, the health ministry, the interior ministry, the prime minister's office, the census bureau, the customs, and value-added tax division, the taxation authority, the land registration department, and the Magistrate's, District and District Labor Courts. <sup>669</sup> Some buildings are located to the west of Highway 75, on the Nazareth side of the road, but fall within the municipal boundaries Nazareth Illit.

Moving these offices meant that Nazareth lost access to the significant tax revenues that government offices generate and that could have spurred development. <sup>670</sup> In a 2017 report, the Arab Center for Alternative Planning calculated that Nazareth received less than 30 percent of the per capita non-residential taxes, which largely stem from taxes on businesses and government properties, of Nazareth Illit. <sup>671</sup>

The Israeli government policy of funneling resources from Nazareth to Nazareth Illit has also underlined its approach to tourism. Although widely known as Jesus' hometown and home to a key church in the Christian tradition, authorities historically invested little in Nazareth's tourism infrastructure and, as a result, the city benefited little from the flocks of

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<sup>666</sup> The Arab Center for Alternative Planning, based in Israel, describes Nazareth's current industrial zones as "weak" and revenues as "insignificant." Arab Center for Alternative Planning, "Distributive Justice: Model of Allocation of Revenues from "Tziporit" Industrial Zone," June 2017, [https://www.acap.org/en/files/userfiles/Booklet%20Distributive%20Justice%20with%20cover%20EN\(2\).pdf](https://www.acap.org/en/files/userfiles/Booklet%20Distributive%20Justice%20with%20cover%20EN(2).pdf) (accessed June 10, 2020).

<sup>667</sup> Ibid.; Human Rights Watch phone interview with former mayor of Nazareth, Ramiz Jaraisy, May 5, 2020. Human Rights Watch phone interview with Musab Dukhan, April 28, 2020.

<sup>668</sup> Jonathan Cook, "Welcome to Nazareth."

<sup>669</sup> Algazy, "Nazareth Rejects Another Raw Deal for Its Future," *Haaretz*; Human Rights Watch phone interview with Musab Dukhan, April 28, 2020.

<sup>670</sup> Human Rights Watch phone interview with former Nazareth council member, April 28, 2020.

<sup>671</sup> Arab Center for Alternative Planning, "Distributive Justice." Nazareth Illit received 543NIS (US\$154) per capita, compared to 1,879 NIS (\$533) for Nazareth.

religious tourists that visit.<sup>672</sup> Authorities only in 1993 granted Nazareth the status of “National Priority A” in tourism—a status that qualifies the city to receive grants and tax breaks—in preparation for the millennium and planned visit by the Pope at the time.<sup>673</sup> The first commercial chain hotel in Nazareth did not open until the late 1990s.<sup>674</sup> Subsequent governments revoked Nazareth’s tourism priority status, while retaining it for Nazareth Illit, which had received it in the 1970s.<sup>675</sup>

Three business owners in or near Nazareth’s Old City—one runs a restaurant, one a café, and one a souvenir shop—told Human Rights Watch that tourists and in particular organized tour groups often spend only an hour or two visiting Nazareth’s churches, without entering the Old City or spending money or the night in the city.<sup>676</sup> Some stay in hotels in Nazareth Illit, while others continue on to eat and sleep in the nearby predominantly Jewish city of Tiberias, on the Sea of Galilee.<sup>677</sup>

The lack of revenue-generating properties, as well as discriminatory allocation of budgets from the central government, means Nazareth residents often receive inferior services compared to those in Nazareth Illit. The business owners each separately contrasted the traffic, lack of parking spaces, and narrow roads in Nazareth with the availability of parking and open roads in Nazareth Illit.<sup>678</sup> A 2015 study by the Knesset Research and Information Center found that the average class size in Nazareth is 30.3, as compared to 21.4 in Nazareth Illit.<sup>679</sup> Dukhan, the municipal council official, said that, as of April 2021, the

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<sup>672</sup> Yosef Jabareen, “Space of Risk,” 309.

<sup>673</sup> Algazy, “Nazareth Rejects Another Raw Deal for Its Future,” *Haaretz*; Human Rights Watch phone interview with Ramiz Jaraisy May 5, 2020.

<sup>674</sup> Jonathan Cook, email to Human Rights Watch, May 27, 2020.

<sup>675</sup> Ibid.; Algazy, “Nazareth Rejects Another Raw Deal for Its Future,” *Haaretz*; Human Rights Watch phone interview with Ramiz Jaraisy, May 5, 2020.

<sup>676</sup> Human Rights Watch phone interview with Khalil Haddad, June 3, 2020. Human Rights Watch phone interview with Sally Azzam, June 2, 2020. Human Rights Watch phone interview with Ameen Muhammad Ali, June 2, 2020.

<sup>677</sup> “Nazareth Dispatch,” post by Jonathan Cook (blog), August 7, 2013, <https://www.jonathan-cook.net/2013-08-07/nazareth-dispatch/> (accessed June 10, 2020).

<sup>678</sup> Human Rights Watch phone interview with Khalil Haddad, June 3, 2020. Human Rights Watch phone interview with Sally Azzam, June 2, 2020. Human Rights Watch phone interview with Ameen Muhammad Ali, June 2, 2020.

<sup>679</sup> Letter to Yehiel (Hilik) Bar, Knesset Research and Information Center, June 25, 2015, [https://fs.knesset.gov.il/globaldocs/MMM/5b1107dc-1277-e511-80d1-00155doad6b2/2\\_5b1107dc-1277-e511-80d1-00155doad6b2\\_11\\_10405.pdf](https://fs.knesset.gov.il/globaldocs/MMM/5b1107dc-1277-e511-80d1-00155doad6b2/2_5b1107dc-1277-e511-80d1-00155doad6b2_11_10405.pdf) (accessed June 10, 2020).

difference in the number of students per classroom between Nazareth and Nazareth Illit had risen to at least 10 and, in some cases, up to 20. <sup>680</sup>

The housing crunch, density, and high rents push many Nazarenes to quit the city. Nazarenes often head to nearby predominantly Jewish localities to spend time in parks, given the paucity of those or other public spaces in their hometown. When one Nazareth resident sought to enter a public park in the nearby predominantly Jewish city of Afula in June 2019, security guards barred her entry upon learning that she was from Nazareth, just months after Afula's mayor promised to act against the "conquest of the park," calling for residents to "hoist Israeli flags throughout the park and play music in Hebrew," and campaigned on a platform of "preserving the Jewish character of Afula." <sup>681</sup> The city reversed course and agreed to open its park to all visitors following a lawsuit by Adalah. <sup>682</sup>

Ironically, thousands of Nazarenes have moved to Nazareth Illit in recent years, many of them purchasing property from Jewish Israelis who were resettled there as immigrants and then earned enough to "head for a better life in the center of the country," according to Cook. <sup>683</sup> Nazarene restaurant owner Khalil Haddad, 43, told Human Rights Watch that, although born and raised in Nazareth Illit, he and his wife decided when they got married in 2006 to live in Nazareth, considering it their "national duty" as Palestinians. However, the population density, housing crunch, and lack of playgrounds, parks, and other public spaces gradually eroded his opposition to living in Nazareth Illit, and they finally decided to move there in 2014. <sup>684</sup>

Some of the factors that motivated Haddad to leave the city he loved with his young family bear some similarities to pressures that lead urban dwellers in other contexts to move out of cities, including high housing costs, congestion, and a shortage of green space. In the

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<sup>680</sup> Human Rights Watch phone interview with Musab Dukhan, April 10, 2021.

<sup>681</sup> "Israeli City Takes Aim at Surrounding Arab Communities, Bans Non-residents from Public Park," Adalah press release, July 2, 2019, <https://www.adalah.org/en/content/view/9758> (accessed June 10, 2020); "Afula Mayor Attends Demonstration Against Sale of Home to Arab Family," *Times of Israel*, June 16, 2019, <https://www.timesofisrael.com/afula-mayor-attends-demonstration-against-sale-of-home-to-arab-family/> (accessed June 12, 2020).

<sup>682</sup> "Afula's Public Park Will Be Open to All Visitors - Including Non-residents - Following Adalah's Petition," Adalah press release, July 24, 2019, <https://www.adalah.org/en/content/view/9783> (accessed June 10, 2020).

<sup>683</sup> Jonathan Cook, "Welcome to Nazareth."

<sup>684</sup> Human Rights Watch phone interview with Khalil Haddad, June 3, 2020.

case of Nazareth, these pressures in part derive from discriminatory Israeli land and budgetary policies.

Hava Bachar, Nazareth Illit's general manager, told Human Rights Watch in 2020 that 26 percent of the city's residents today are Palestinian, many from Nazareth, which she attributes to the fact that "Nazareth and other nearby [Palestinian] towns do not have space to grow."<sup>685</sup> Bachar noted that the municipality was not about to "give away land" to these communities, given "our ambition to reach 100,000 citizens" and suggested instead that Israel build "a new city for Arab citizens."<sup>686</sup> Bachar noted that the city is "bringing in Jewish families to settle" in order to "ensure it stays Jewish."<sup>687</sup>

Despite moving, many Nazarenes who live in Nazareth Illit maintain a center of life in Nazareth. Haddad said he continues to do his shopping, including for groceries, in Nazareth, referring to Nazareth Illit as a "bedroom community."<sup>688</sup> It does not have a state school to serve the roughly 3,000 school-age Palestinian children, forcing most, including Haddad's son, to commute to Nazareth, since Palestinian and Jewish Israelis attend separate schools.<sup>689</sup> Former Nazareth Illit mayor Shimon Gafsou, who once described Nazareth as a "nest of terror,"<sup>690</sup> told the *Washington Post* in 2013 that "I would rather cut off my right arm than build an Arab school."<sup>691</sup>

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<sup>685</sup> Human Rights Watch interview with Nazareth Illit general manager Hava Bachar, February 3, 2020; "Israel: Discriminatory Land Policies Hem in Palestinians," Human Rights Watch news release.

<sup>686</sup> *Ibid.*

<sup>687</sup> *Ibid.*

<sup>688</sup> Human Rights Watch phone interview with Khalil Haddad, June 3, 2020.

<sup>689</sup> ACRI, "The Need for an Arab Public School in Upper Nazareth," October 28, 2019, [https://www.english.acri.org.il/post/\\_139](https://www.english.acri.org.il/post/_139) (accessed June 10, 2020); Human Rights Watch, *Second Class*.

<sup>690</sup> Jack Khoury and Eli Ashkenazi, "Israeli Mayor Calls on State to Declare Arab City 'Hostile to Israel,'" *Haaretz*, November 21, 2012, <https://www.haaretz.com/.premium-own-mayor-says-nazareth-is-hostile-to-israel-1.5199305> (accessed August 18, 2020).

<sup>691</sup> William Booth and Ruth Eglash, "High Above Nazareth, an Israeli Mayor Wants to Keep His City Jewish 'Now and Forever,'" *Washington Post*, September 20, 2013, [https://www.washingtonpost.com/world/high-above-nazareth-an-israeli-mayor-wants-to-keep-his-city-jewish-now-and-forever/2013/09/19/1a3fd172-2157-11e3-ad1a-1a919f2ed890\\_story.html](https://www.washingtonpost.com/world/high-above-nazareth-an-israeli-mayor-wants-to-keep-his-city-jewish-now-and-forever/2013/09/19/1a3fd172-2157-11e3-ad1a-1a919f2ed890_story.html) (accessed June 10, 2020).

## Conclusion

Israeli authorities use a series of policies and practices to methodically privilege Jewish Israelis and repress Palestinians. The severity of the repression carried out in the OPT amounts to “systematic oppression” by one racial group over another, a key component for the crime of apartheid as set out in both the Rome Statute and Apartheid Convention. <sup>692</sup>

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<sup>692</sup> Rome Statute, art. 7(2)(g); Apartheid Convention, art. II.

## V. Inhumane Acts and Other Abuses of Fundamental Rights

Grave abuses, or “inhuman[e] acts” as set out in the Apartheid Convention and Rome Statute, amount to the crime against humanity of apartheid when carried out in the context of systematic oppression with an intent to maintain a system of domination. Severe abuses of fundamental rights make up the crime against humanity of persecution when carried out with discriminatory intent.

To maintain the domination of Jewish Israelis over Palestinians, Israeli authorities have carried out over many years a range of serious abuses.

In the OPT, many of these abuses amount to inhumane acts, one of the three elements of the crime of apartheid, including:

- sweeping restrictions on movement;
- the confiscation of hundreds of thousands of dunams of land in the West Bank from Palestinians, depriving them of their property, means of livelihood and way of life, and consequent hemming in of the densely populated enclaves where most live;
- the imposition of harsh conditions, including near-categorical denial of building permits, in large parts of the West Bank that coerce thousands to abandon their homes in conditions that amount to forcible transfer;
- the denial of residency rights to hundreds of thousands of Palestinians and their relatives for being abroad when the occupation began in 1967, or for long periods during the first few decades of the occupation, or as a result of the effective freeze on family reunification over the past two decades; and
- the suspension of basic civil rights, such as freedom of assembly and association, depriving millions of the opportunity to have a voice in the wide range of affairs that most affect their daily lives and futures.

Separately from the inhumane acts carried out in the OPT, the Israeli government has carried out abuses against Palestinians within Israel, including:

- refusing to allow Palestinians access to the millions of dunams of land that were confiscated from them;
- implementing policies that make it virtually impossible for tens of thousands of Palestinians in the Negev region to live lawfully in the communities they have lived in for decades;
- not permitting the more than 700,000 Palestinians who fled or were expelled in 1948 and their descendants to return to Israel; and
- restricting legal residency in ways that block many Palestinian spouses and families from living together in Israel.

Carried out pursuant to long-standing policies and practices of the Israeli government, these acts dispossess many Palestinians, bar some from entering their places of origin, block others from leaving it, forcibly separate families, and wreak havoc on the lives of many more.

**INHUMANE ACTS**

Israeli authorities have carried out a range of abuses against Palestinians. Many of those abuses in the occupied territory amount to inhumane acts.

Map: Israel and Occupied Palestinian Territory

**SWEEPING MOVEMENT RESTRICTIONS**  
**GAZA WEST BANK**  
 Closure of Gaza, imposition of permit regime, erection of separation barrier in part on Palestinian land, and nearly 600 checkpoints and other obstacles across the West Bank

**LAND CONFISCATION**  
**WEST BANK EAST JERUSALEM**  
 2+ million dunams of West Bank land confiscated (more than 1/3 of its total land area), including in East Jerusalem

**FORCIBLE TRANSFER**  
**WEST BANK EAST JERUSALEM**  
 Effectively impossible for Palestinians to obtain building permits in most of the West Bank, including East Jerusalem; thousands of homes demolished as a result

**DENIAL OF RESIDENCY RIGHTS**  
**GAZA WEST BANK EAST JERUSALEM**  
 500,000+ Palestinians across the occupied territory stripped of legal status since 1967

**SUSPENSION OF CIVIL RIGHTS**  
**GAZA WEST BANK**  
 4.7 million Palestinians in the West Bank and Gaza have for decades been denied basic civil rights, such as freedom of speech and assembly or a say in the affairs that affect them most

HUMAN RIGHTS WATCH  
 VISUALIZING PALESTINE  
 SOURCES HRW (2021). A Threshold Crossed  
 WWW.VISUALIZINGPALESTINE.ORG  
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 APR 2021

## Inhumane Acts in the OPT

Israeli authorities have carried out a range of inhumane acts in the OPT.

### *Movement Restrictions*

For over two decades, Israeli authorities have imposed sweeping restrictions on the ability of the more than 2 million Palestinians living in Gaza to leave that territory and sharply restricted the movement of 2.7 million Palestinians in the West Bank, both within that territory and beyond.

### **Closure of Gaza**

For the last 25 years, Israel has increasingly restricted the movement of Gaza residents. Since 2007, the year that Hamas seized effective political control over the Gaza Strip from the Fatah-led PA, Israel has imposed a generalized travel ban on movement in and out of the small territory with few exceptions. The Israeli army since 2007 has limited travel through the Erez Crossing, the passenger crossing from Gaza to the other part of the OPT, the West Bank, and abroad, as well as to Israel. Israel has limited passage to cases presenting what it deems “exceptional humanitarian circumstances,” meaning mainly those needing vital medical treatment outside Gaza and their companions, although authorities also grant permits each year to hundreds of Gaza residents eligible on other grounds, such as high-level businesspeople and merchants.<sup>693</sup> Israel has restricted movement even for those seeking to travel under these narrow exceptions to Israel’s closure policy.<sup>694</sup> Most Gaza residents do not fit within these exemptions. For the five-year period between January 2015 and December 2019, an average of about 373 Palestinians exited Gaza via Erez each day, less than 1.5 percent of the daily average of 26,000 in September 2000, before the closure, according to the Israeli rights group Gisha.<sup>695</sup> Most Palestinians who grew up under this closure have never exited Gaza.

Israeli authorities have also for more than two decades sharply restricted the use of Gaza’s airspace and territorial waters by Palestinians. They blocked both reopening an airport that

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<sup>693</sup> Human Rights Watch, *Unwilling or Unable*.

<sup>694</sup> “Israel: Record-Low in Gaza Medical Permits,” Human Rights Watch news release, February 13, 2018, <https://www.hrw.org/news/2018/02/13/israel-record-low-gaza-medical-permits>.

<sup>695</sup> Data from Gisha on file with Human Rights Watch.

Palestinians once operated there, and building a seaport, leaving them dependent on leaving Gaza by land in order to travel abroad.<sup>696</sup> Egypt has for much of the last 15 years largely kept shut its border crossing with Gaza, Gaza's only other outlet to the outside world, contributing to the closure.

Israel restricts all travel between Gaza and the West Bank, despite its having recognized the two to be part of a single territorial unit,<sup>697</sup> even when the travel takes place via the circuitous route through Egypt and Jordan rather than through Israeli territory. The closure adversely affects many aspects of everyday life and contributes to other violations of Palestinians' rights, including the right to family reunification, the right to access healthcare, education, and economic opportunities.<sup>698</sup>

Israeli authorities often justify the closure on security grounds. Authorities have said in particular that they want to minimize travel between Gaza and the West Bank to prevent transferring "a human terrorist infrastructure" from Gaza to the West Bank, the latter of which has a porous border with Israel and is home to hundreds of thousands of Israeli settlers.<sup>699</sup>

As an occupying power that maintains significant control over aspects of life in Gaza despite the formal withdrawal of its troops,<sup>700</sup> Israel has obligations under international humanitarian law to ensure the welfare of the population there. Palestinians also have the right under international human rights law to freedom of movement, in particular, within the OPT, that Israel can restrict only in response to concrete, specific security threats. Its

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<sup>696</sup> Gisha, "Scale of Control," pp. 12-14. In 2001, Israel bombed the airport that had operated briefly in Gaza and destroyed the site where construction of a seaport was to begin.

<sup>697</sup> Oslo II, art. 31.

<sup>698</sup> B'Tselem and HaMoked, "So Near and Yet So Far: Implications of Israeli-Imposed Seclusion of the Gaza Strip on Palestinians' Right to Family Life," January 2014, [http://www.btselem.org/sites/default/files/201401\\_so\\_near\\_and\\_yet\\_so\\_far\\_eng.pdf](http://www.btselem.org/sites/default/files/201401_so_near_and_yet_so_far_eng.pdf) (accessed March 29, 2020); Palestinian Center for Human Rights (PCHR), "Actual Strangulation and Deceptive Facilitation," March 2016, <https://pchr.org/en/wp-content/uploads/2016/03/Gaza-Strip-Actual-Strangulation.pdf> (accessed March 29, 2020) pp. 31-33; Physicians for Human Rights-Israel, "#Denied: Harassment of Palestinian Patients Applying for Exit Permits," June 2015, <http://cdn2.phr.org.il/wp-content/uploads/2016/04/Denied-2015-New-Report.pdf> (accessed March 29, 2020); Gisha, "Student Travel Between Gaza and the West Bank 101," September 2012, <http://www.gisha.org/UserFiles/File/publications/students/students-2012-eng.pdf> (accessed March 29, 2020).

<sup>699</sup> *Kafarne v. Defense Minister*, HCJ 495/12, State Response of August 16, 2012, para. 26 (Hebrew), [tinyurl.com/k3o8ckn](http://tinyurl.com/k3o8ckn) (accessed May 2, 2020). Excerpts unofficially translated by Gisha are available at [tinyurl.com/p4jcx9](http://tinyurl.com/p4jcx9) (accessed May 2, 2020).

<sup>700</sup> See Intent to Maintain Domination and Systematic Oppression and Institutional Discrimination sections.

policy of presumptively denying free movement, with narrow exceptions, based on generalized security threats and irrespective of any individualized assessment of the security risk of the individual, fails any reasonable test of balancing Israel's security concerns against the human right to freedom of movement. While Israel has legitimate security concerns in regulating entry to its territory, those concerns cannot justify the massive violation of rights that the near-total travel ban inflicts on the over two million Palestinians living in a sliver of territory.

### **Permit Regime in the West Bank**

Israeli authorities have also imposed onerous restrictions on freedom of movement in the West Bank that they justify based on “substantive security reasons” given that “Palestinian residents from the region carried out... hundreds of deadly terrorist attacks.”<sup>701</sup> Israeli policies, however, restrict the movement of all Palestinians, not just those whom authorities deem to present a security threat. The army requires Palestinian ID holders, with narrow exemptions, to apply to the Israeli army for time-limited permits to enter significant parts of the West Bank,<sup>702</sup> including East Jerusalem, the “seam zone” between the separation barrier and the Green Line which covers more than 184,000 dunams,<sup>703</sup> and areas controlled by settlements and the army, while allowing Israelis and foreigners to move freely among these areas, as well as to Israel, without permits. To obtain permits, Palestinians “face an arbitrary, entirely non-transparent bureaucratic system,” with “no way of assessing the chances that their applications will be approved or how soon,” according to the Israeli rights group B'Tselem.<sup>704</sup> “Many applications are denied without explanation, with no real avenue for appeal,” and “permits already granted are easily revoked, also without explanation,” B'Tselem adds. Those denied permits

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<sup>701</sup> HaMoked: *Center for the Defence of the Individual v. The Government of Israel et al.* Preliminary Response on behalf of the Respondents, HCJ 9961/03, January 1, 2004, [http://www.hamoked.org/items/3827\\_eng.pdf](http://www.hamoked.org/items/3827_eng.pdf) (accessed May 2, 2020).

<sup>702</sup> Women over the age of 50 and men over the age of 55 can enter East Jerusalem and Israel, though not the “seam zone” and some other areas in the West Bank, without a permit. “HaMoked to the Military: Palestinians Over 50 Must Be Allowed to Freely Access West Bank Lands Trapped Behind the Barrier,” HaMoked, May 20, 2020, <http://www.hamoked.org/Document.aspx?dID=Updates2172> (accessed June 17, 2020).

<sup>703</sup> “Israel: Palestinians Cut off from Farmlands,” Human Rights Watch news release, April 5, 2012, <https://www.hrw.org/news/2012/04/05/israel-palestinians-cut-farmlands>.

<sup>704</sup> “Restrictions on Movement,” B'Tselem.

include many who have never been detained or convicted on security grounds.<sup>705</sup> The uncertainty discourages many Palestinians from applying for permits at all.

When it comes to travel abroad, Palestinians in the West Bank must travel via Jordan through the Israeli-controlled Allenby Crossing, unless they receive a difficult-to-secure permit to leave from Ben Gurion Airport near Tel Aviv. But Israeli authorities sometimes ban them from using that crossing on unspecified security grounds.<sup>706</sup> Between 2015 and 2019, the Israeli rights group HaMoked filed administrative appeals against 797 Israeli-issued travel bans on Palestinians.<sup>707</sup>

While countries have wide latitude to restrict entry at their own borders, Israel largely restricts movement of the occupied population not only to travel between the West Bank and the Gaza Strip, even when it does not take place through Israel, but also within the West Bank itself. Israeli authorities, for example, have erected nearly 600 permanent obstacles, such as checkpoints and roadblocks, within the West Bank, according to OCHA.<sup>708</sup> Palestinians also regularly face ad-hoc “flying” checkpoints across the West Bank—OCHA estimated that Israeli forces set up nearly 1,500 such checkpoints between April 2019 and March 2020 alone.<sup>709</sup> Israeli forces routinely turn away or humiliate and delay Palestinians at checkpoints without explanation, obstructing commutes to school, work, or appointments of all kinds.<sup>710</sup> The separation barrier, 85 percent of which falls within the West Bank rather than along the Green Line, further encumbers movement in the West Bank.<sup>711</sup>

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<sup>705</sup> See, for example, Omar Shakir, “Amnesty International Staffer Challenges Israel’s Travel Ban,” Human Rights Watch dispatch, May 25, 2020, <https://www.hrw.org/news/2020/05/25/amnesty-international-staffer-challenges-israels-travel-ban> (accessed June 4, 2020).

<sup>706</sup> *Ibid.*

<sup>707</sup> Jessica Montell, executive director of HaMoked, email to Human Rights Watch, June 3, 2020.

<sup>708</sup> OCHA, “Longstanding Access Restrictions Continue to Undermine the Living Conditions of West Bank Palestinians,” March-May 2020.

<sup>709</sup> *Ibid.* Also see Umm Forat, “Flying Checkpoints and Traffic Jams: The Genius of the Israeli Occupation’s Architecture,” *Haaretz*, June 1, 2020, <https://www.haaretz.com/middle-east-news/palestinians/the-idiot-who-cut-me-off-did-not-build-the-checkpoint-that-ruined-our-day-1.8922173> (accessed July 3, 2020).

<sup>710</sup> “Restrictions on Movement,” B’Tselem.

<sup>711</sup> “Israel: Palestinians Cut off From Farmlands,” Human Rights Watch news release; International Court of Justice (ICJ), Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ General List, No.131, ICJ Rep 136, July 9, 2004, <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> (accessed June 15, 2020).

The generalized travel ban Israeli authorities impose on Gaza, presumptively blocking residents from leaving Gaza, amounts to a measure that denies Palestinians “the right to leave and to return to their country,” one of the inhumane acts set out in the International Convention on the Suppression and Punishment of the Crime of Apartheid.<sup>712</sup> The Gaza closure, the severe movement restrictions in the West Bank, and the restrictions on movement between the West Bank and Gaza, two parts of the OPT, also violate Palestinians’ “right to freedom of movement,” as also outlined in the Apartheid Convention.<sup>713</sup> The closure, with its severe restrictions on the entry and exit of people and goods and provisions of services,<sup>714</sup> also constitutes “conditions preventing the full development” of the community, as also defined in the Apartheid Convention.<sup>715</sup>

### *Land Expropriation and Creation of Separate Enclaves (West Bank, East Jerusalem)*

Using a range of official justifications, Israel has since 1967 taken over much of the land in the West Bank from Palestinians in large part to serve the needs of Jewish Israeli settlers. B’Tselem and Kerem Navot have found that Israeli authorities have confiscated more than 2 million dunams of land, making up more than one-third of the West Bank.<sup>716</sup> Israeli settlement authorities effectively control these lands, including about 540,000 that fall within their formal jurisdiction.

Most commonly, Israeli authorities take land, including land privately owned by Palestinians, by declaring it to be “state land.”<sup>717</sup> The Israeli group Peace Now estimates that the Israeli government holds about 1.4 million dunams of land, or about a quarter of the West Bank, as state land.<sup>718</sup>

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<sup>712</sup> Apartheid Convention, art II(c).

<sup>713</sup> Ibid.

<sup>714</sup> See Systematic Domination and Systematic Oppression sections.

<sup>715</sup> Apartheid Convention, art II(c).

<sup>716</sup> B’Tselem and Kerem Navot, “This Is Ours – And This, Too,” p. 8; Yotam Berger, “Israeli Settlers ‘Upgrade’ West Bank Springs to Usurp Palestinian Land,” *Haaretz*, May 31, 2019, <https://www.haaretz.com/israel-news/.premium-israeli-settlers-upgrade-west-bank-springs-to-usurp-palestinian-land-1.7309122> (accessed May 2, 2020); “Settlements,” B’Tselem, updated January 16, 2019, <https://www.btselem.org/settlements> (accessed June 4, 2020).

<sup>717</sup> See B’Tselem, “Under the Guise of Legality.”

<sup>718</sup> Peace Now, “State Land Allocation in the West Bank-for Israelis Only.”

Under Israeli judicial and military practice and policy, land not formally registered as privately owned by authorities who controlled the West Bank before 1967 can be declared state land. Upon seizing control of the West Bank in 1967, the Israeli military froze the land registration process that had been underway under Jordanian auspices and has not conducted one since. Landowners who did not register their land before 1967 have the onus of proving ownership through a lengthy and expensive process that typically involves producing tax documents, gathering testimonies from neighbors and local officials, and paying for a court-approved survey of the land.<sup>719</sup> In some cases, the authorities declared as state land parcels on which Palestinian landowners had paid taxes to the Jordanian authorities, a hallmark of ownership at the time. Israeli courts have upheld as legal the state's mechanism for declaring state land.<sup>720</sup>

Even if ownership can be proved, Israeli authorities interpret Ottoman land law in such a way as to take land without paying compensation to the owners when it can claim that at least 50 percent of the parcel has not been cultivated within the prior three years.<sup>721</sup> This interpretation facilitated the takeover of "absentee" property belonging to Palestinians who fled during or following the 1967 War, as well as from Palestinians who remained in the West Bank but lost access to their land.<sup>722</sup> Beginning in 1979, following an Israeli Supreme Court ruling that restricted the army's authority to transfer to settlements lands confiscated on purported security grounds that it recognized as privately owned by Palestinians,<sup>723</sup> the Israeli military Custodian of Government Property conducted a hasty and error-riddled land survey that aimed to identify uncultivated lands that Israeli authorities could claim as state land.<sup>724</sup> Based on the survey, Israeli authorities declared as state land parcels that had been cultivated but not intensely, that consisted of rocky

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<sup>719</sup> Human Rights Watch, *Occupation Inc.: How Settlement Businesses Contribute to Israel's Violation of Palestinian Rights*.

<sup>720</sup> See B'Tselem, "Under the Guise of Legality," p. 34.

<sup>721</sup> Ibid. The laws vested ownership rights in certain kinds of farmland, far from villages, based on continuous cultivation at a level reasonable under the circumstances, but also reverted land to state ownership if it lay fallow for three years.

<sup>722</sup> B'Tselem, "Land Grab," pp. 58-59. Israeli authorities have also given some "absentee" properties to settlements, sometimes via land-swaps, and also continue to manage some properties, which they have leased to settlements or relatives of the 'absentees'. Kerem Navot, "Israeli Settlers' Agriculture as a Means of Takeover in the West Bank," August 2013, [https://f35bf8a1-b11c-4b7a-ba04-05c1ffa0108.filesusr.com/ugd/cdb1a7\\_370bb4f21ceb47adb3ac7556c02b8972.pdf](https://f35bf8a1-b11c-4b7a-ba04-05c1ffa0108.filesusr.com/ugd/cdb1a7_370bb4f21ceb47adb3ac7556c02b8972.pdf) (accessed May 2, 2020).

<sup>723</sup> *Dweikat et al. v. Government of Israel et al.*, HCJ 390/79, Judgement, October 22, 1979, [http://www.hamoked.org/files/2010/1670\\_eng.pdf](http://www.hamoked.org/files/2010/1670_eng.pdf). Case also known as "Elon Moreh."

<sup>724</sup> B'Tselem, "Land Grab," p. 51.

terrain where much of the land is not arable, and where Palestinian residents had staked claims to the land through the informal mechanisms used to establish ownership in the West Bank, but had not registered it in the official land registry. <sup>725</sup>

Through this process, Israeli authorities have designated as state land about 788,000 dunams, excluding East Jerusalem but including about 100,000 dunams currently in Areas A and B. <sup>726</sup> The remaining roughly 600,000 dunams of state land it holds, including about 70,000 dunams currently in Areas A and B, consists of land that Jordanian or British authorities registered as state land during their respective reigns over the West Bank and which Israel took control of in 1967. <sup>727</sup>

Israeli authorities have issued hundreds of eviction orders against Palestinians they claim are “illegally holding” state land. <sup>728</sup> The Israeli rights groups Kerem Navot and Haqel found, based on a review of more than 600 eviction orders issued against Palestinians between 2005 and 2018, that 41.5 percent of the territory encompassed by the orders had not formally been declared by authorities as state land. <sup>729</sup>

Of the more than 675,000 dunams of state land that Israeli authorities have officially allocated for third parties in the West Bank, they have earmarked more than 99 percent to serve the needs of Israeli civilians. <sup>730</sup>

Beyond what they deem state land, Israeli authorities have confiscated tens of thousands of dunams of land they acknowledge to be privately owned by Palestinians. Peace Now, based on data provided by the Israeli government, found in 2007 that more than 30 percent of the land located within settlements is privately-owned Palestinian land, by the

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<sup>725</sup> Ibid.

<sup>726</sup> Haqel and Kerem Navot, “Out of Order: Civil Administration Eviction Orders from ‘State Land’ 2005-2018,” December 2019, [https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/a76eb4\\_a511485a16f74e44a328efaa00e1444f.pdf](https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/a76eb4_a511485a16f74e44a328efaa00e1444f.pdf) (accessed June 15, 2020), p. 4; Kerem Navot, “Blue and White Make Black,” December 2016, <https://www.keremnavot.org/blue-and-white-make-black> (accessed May 2, 2020).

<sup>727</sup> Haqel and Kerem Navot, “Out of Order,” p. 18. This category also includes land formerly managed by the Waqf, or Islamic Trust, and some land owned by Jews before 1948 and held in custodianship by Jordanian authorities prior to 1967.

<sup>728</sup> Ibid., p. 10.

<sup>729</sup> Ibid. The groups found that authorities issued 91 percent of the orders, covering 96 percent of the territory confiscated under the orders, related to land owned by Palestinians.

<sup>730</sup> Peace Now, “State Land Allocation in the West Bank-for Israelis Only.”

Israeli government's own accounting.<sup>731</sup> In addition, the Israeli rights group Kerem Navot estimates that more than 40 percent of the roughly 55,000 dunams of land outside the jurisdiction of settlement municipalities, that settlers use for agricultural activity, is acknowledged to be private Palestinian land.<sup>732</sup>

Israeli authorities have relied on two primary legal tools to carry out confiscations of acknowledged private Palestinian property. First, authorities have expropriated land for public use, permanently stripping Palestinian landowners of their rights to it in return for some compensation.<sup>733</sup> Second, the Israeli army, particularly during the first 12 years of its occupation, seized privately owned land in the West Bank for security purposes. These seizure orders did not change the title to the land, premised as they were on the assumption that the occupation is temporary. But while continuing to list the confiscated land as belonging to its Palestinian owners, Israeli authorities gave it to Israeli civilians while sharply restricting its Palestinian owners and their heirs from accessing it. Kerem Navot determined based on a review of more than 1,000 seizure orders that, between 1967 and 2014, Israeli authorities seized on security grounds more than 100,000 dunams of land, most of it privately owned by Palestinians, for settlements or infrastructure intended in significant part to serve the needs of settlers.<sup>734</sup> Most of the confiscations took place before 1979 when the Israeli Supreme Court restricted the authority of the army to give to settlements privately owned land that it had seized on security grounds.<sup>735</sup> Since that decision, though, authorities with few exceptions have not returned to their Palestinian owners lands they seized and allocated to settlements prior to the court decision.

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<sup>731</sup> Steven Erlanger, "West Bank Sites on Private Land, Data Shows," *New York Times*, March 14, 2007, <https://www.nytimes.com/2007/03/14/world/middleeast/14israel.html> (accessed May 2, 2020); Peace Now, "Breaking the Law in the West Bank, One Violation Leads to another: Israeli Settlement Building on Private Palestinian Property," October 2006, [https://peacenow.org.il/wp-content/uploads/2016/05/Breaking\\_The\\_Law\\_in\\_WB\\_nov06Eng.pdf](https://peacenow.org.il/wp-content/uploads/2016/05/Breaking_The_Law_in_WB_nov06Eng.pdf) (accessed May 2, 2020).

<sup>732</sup> Dror Etkes, director of Kerem Navot, email to Human Rights Watch, July 4, 2020; Kerem Navot, "Israeli Settlers' Agriculture as a Means of Takeover in the West Bank."

<sup>733</sup> B'Tselem, "Land Grab" pp. 60-61. Also see Yotam Berger, "Private Palestinian Land Can be Taken for Public Use in Settlements, Israeli Attorney General Says," *Haaretz*, November 15, 2017 [haaretz.com/israel-news/premium-ag-private-palestinian-land-can-be-taken-for-public-use-in-settlements-1.5465801](http://haaretz.com/israel-news/premium-ag-private-palestinian-land-can-be-taken-for-public-use-in-settlements-1.5465801) (accessed June 11, 2020).

<sup>734</sup> Kerem Navot, "Seize the Moral Low Ground, Land Seizure for "Security Needs" in the West Bank," December 2018, [https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/a76eb4\\_c5e9bfddf49c4d87b30d570722acc728.pdf](https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/a76eb4_c5e9bfddf49c4d87b30d570722acc728.pdf) (accessed June 28, 2020), p. 15.

<sup>735</sup> *Ibid.* *Dweikat et al v. Government of Israel*, HCJ 390/79 (1979), Judgment, [http://www.hamoked.org/files/2010/1670\\_eng.pdf](http://www.hamoked.org/files/2010/1670_eng.pdf) (accessed June 29, 2020).

In addition, settlers have established settlements without any formal process or authorization from the Israeli military authorities, largely on the private property of Palestinians. Rather than demolish the buildings that settlers constructed on stolen land without permits, however, the authorities have, with a few notable exceptions, facilitated the land takeover by providing infrastructure, water, electricity, and other services. <sup>736</sup> One hundred and fifty of such so-called outposts have been established across the West Bank since 1991, according to B'Tselem and Kerem Navot. <sup>737</sup> Peace Now has documented 60 outposts established since 2012 alone. <sup>738</sup> Israeli authorities retroactively granted legal status to 15 outposts between 2012 and early 2019, <sup>739</sup> and Netanyahu has indicated that he intends to annex and incorporate outposts into Israel. <sup>740</sup>

In February 2017, the Knesset passed a law allowing authorities to retroactively expropriate private Palestinian land on which settlements have been built. In June 2020, however, the Supreme Court struck it down as unconstitutional, <sup>741</sup> finding that “less harmful tools” could achieve similar ends. These include a military order cited by the attorney-general in a submission to the court that recognizes as valid deals made in “good faith,” where authorities reasonably believed at the time of sale that the land was not privately owned by Palestinians. <sup>742</sup> Attorney General Avichai Mandelblit began to cite this

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<sup>736</sup> Israeli authorities in some cases have demolished structures built on private Palestinian land, at times at the order of the Supreme Court. See, for example, Yotam Berger, “Israel to Raze Structures Built on Private Palestinian Land in West Bank Outpost,” *Haaretz*, June 11, 2018 <https://www.haaretz.com/israel-news/.premium-israel-to-raze-structures-in-illegal-west-bank-outpost-1.6170866> (accessed June 17, 2020); Yotam Berger, “Israel’s Top Court Rejects Settlers’ Claim, Orders Outpost Built on Palestinian Land Demolished,” *Haaretz*, October 23, 2017, <https://www.haaretz.com/israel-news/.premium-israel-s-top-court-orders-outpost-built-on-palestinian-land-demolished-1.5459750> (accessed June 17, 2020).

<sup>737</sup> B'Tselem and Kerem Navot, “This Is Ours – And This, Too,” p. 8.

<sup>738</sup> “Data - Settlements Population,” Peace Now, [https://peacenow.org.il/en/settlements-watch/settlements-data/population\\_](https://peacenow.org.il/en/settlements-watch/settlements-data/population_) (accessed March 27, 2021).

<sup>739</sup> Peace Now, “Return of the Outpost Method,” July 2019, [http://peacenow.org.il/wp-content/uploads/2019/08/maahazim-english\\_full.pdf](http://peacenow.org.il/wp-content/uploads/2019/08/maahazim-english_full.pdf) (accessed July 15, 2020), p. 10.

<sup>740</sup> “Data on Netanyahu’s Jordan Valley Annexation Map,” Peace Now, September 11, 2019, <https://peacenow.org.il/en/data-on-netanyahus-jordan-valley-annexation-map> (accessed March 27, 2021).

<sup>741</sup> Hagar Shezaf, “Israel’s High Court Strikes Down West Bank Land-grab Law as ‘Unconstitutional,’” *Haaretz*, June 9, 2020, <https://www.haaretz.com/israel-news/.premium-israel-s-high-court-strikes-down-west-bank-land-grab-law-as-unconstitutional-1.8908929> (accessed June 10, 2020).

<sup>742</sup> “Initial Analysis of the Israeli Supreme Court’s Decision in the Settlements Regularization Case,” Adalah, June 15, 2020, [https://www.adalah.org/uploads/uploads/Settlements\\_Regularization\\_Law\\_Paper\\_English\\_FINAL\\_15.06.2020.pdf](https://www.adalah.org/uploads/uploads/Settlements_Regularization_Law_Paper_English_FINAL_15.06.2020.pdf) (accessed June 16, 2020); “Israel’s Use of ‘Good Faith’ to Confiscate Private Palestinian Property in the Occupied West Bank – in Bad Faith,” Adalah, December 30, 2019 <https://www.adalah.org/en/content/view/9885> (accessed June 16, 2020).

order in 2018 as a basis to legalize outposts, <sup>743</sup> and estimated at the time that this mechanism would offer a pathway to formalizing the status of 80 percent of the remaining areas within settlements that do not have legal status. <sup>744</sup>

Israeli military records show other parcels of land as sold by Palestinians to Israeli settlement entities. In many cases, though, settlers' claims to the land they bought rely on dubious documents or sellers not legally entitled to sell the land in question, creating fraudulent sales. <sup>745</sup> Even in cases in which Palestinian landowners genuinely sell land they owned to a settlement, such a transaction might involve duress because Israeli authorities fully or partially prevented the Palestinian owners from making use of the land before they sold it.

Israeli authorities have also expropriated from Palestinians nearly one-third of the land in East Jerusalem, comprising at least 23,378 dunams according to B'Tselem, largely to build settlements. <sup>746</sup> Owners of expropriated land in East Jerusalem, as in the West Bank, can officially claim compensation, but many Palestinian owners do not seek it so as not to legitimize the expropriation. <sup>747</sup>

Beyond reclassifying land status, Israeli authorities have used other mechanisms to take control of land. First, they have declared close to 1.765 million dunams of land, almost one-third of the entire West Bank, as "closed military areas" as of March 2015, according

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<sup>743</sup> Jacob Magid, "Attorney General Announces New Settlement Legalization Process," *Times of Israel*, December 16, 2018, <https://www.timesofisrael.com/attorney-general-announces-new-settlement-legalization-process/> (accessed June 12, 2020). "Attorney General Begins Implementation of Regulation Law and the Government Endorses a Bill to Legalize Outposts," Peace Now press release, December 17, 2018, <https://peacenow.org.il/en/attorney-general-begins-implementation-of-regulation-law-and-the-government-endorses-a-bill-to-legalize-outposts> (accessed June 12, 2020). "The District Court Ruled that Settlers in an Outpost Established on Private Palestinian Land Have Rights to the Land," Peace Now press release, August 29, 2018. <https://peacenow.org.il/en/district-court-ruled-settlers-outpost-established-private-palestinian-land-rights-land> (accessed June 12, 2020).

<sup>744</sup> Tova Zimuki, "Without Law, With the Series: How Mandelblit Will Prepare the Settlement Houses," (Hebrew), *Ynet News*, December 16, 2018, <https://www.ynet.co.il/articles/0,7340,L-5426616,00.html> (accessed June 12, 2020).

<sup>745</sup> B'Tselem, "Land Grab," pp. 62-63. Also see Ir Amim, "Shady Dealings in Silwan," May 2009, <https://www.ir-amim.org.il/sites/default/files/Silwanreporteng.pdf> (accessed May 2, 2020).

<sup>746</sup> "Statistics on Expropriaion [sic] in East Jerusalem," B'Tselem.

<sup>747</sup> B'Tselem, "Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem," January 1997, [https://www.btselem.org/sites/default/files/publications/199505\\_policy\\_of\\_discrimination\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/199505_policy_of_discrimination_eng.pdf) (accessed May 2, 2020). Kerem Navot, "Seize the Moral Low Ground."

to figures obtained by Kerem Navot. <sup>748</sup> More than two-thirds of closed military areas, a category that includes both designated state land and acknowledged private Palestinian land, fall outside the formal jurisdiction of settlement municipalities. Kerem Navot found that of the more than half the land in these closed military areas that were closed ostensibly to be used for military training 78 percent is not actually used for training. <sup>749</sup> Second, the Israeli army has issued formal no-construction orders, primarily along roads and parts of the separation barrier, on more than 488,600 dunams of Palestinian land in the West Bank, as documented by Kerem Navot. <sup>750</sup>

Land grabs and restrictions confine the nearly 3 million Palestinians in the West Bank to densely populated enclaves. Israel maintains full control over the majority of the West Bank, including East Jerusalem and Area C. In Areas A and B, where Palestinians have a limited degree of self-rule and which comprises the remaining roughly 40 percent of the West Bank excluding East Jerusalem, it concentrates Palestinians, according to B'Tselem, into “165 non-contiguous ‘territorial islands.’” <sup>751</sup>

The mass confiscation of Palestinian land and restrictions that block Palestinians from recovering what authorities seized from them or using their lands amount to the inhumane act of “expropriation of landed property” under the Apartheid Convention. <sup>752</sup> The boxing of Palestinians into densely populated enclaves constitutes measures “designed to divide the population along racial lines by the creation of separate reserves and ghettos.” <sup>753</sup>

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<sup>748</sup> Kerem Navot, “A Locked Garden, Declaration of Closed Areas in the West Bank,” March 2015, [https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/cdb1a7\\_5d1ee4627ac84dca83419aebf4fad17d.pdf](https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/cdb1a7_5d1ee4627ac84dca83419aebf4fad17d.pdf) (accessed May 2, 2020).

<sup>749</sup> Ibid.

<sup>750</sup> Human Rights Watch phone interview with Dror Etkes, director of Kerem Navot, June 1, 2020; Hamos Harel, “Israel is Preventing Construction in Territories Controlled by Palestinians for Security Reasons,” (Hebrew), *Haaretz*, January 25, 2013, <https://www.haaretz.co.il/news/politics/1.1937128> (accessed May 2, 2020); Kerem Navot, “Seize the Moral Low Ground.”

<sup>751</sup> B'Tselem, “Expel and Exploit, the Israeli Practice of Taking Over Rural Palestinian Land,” December 2016, [https://www.btselem.org/download/201612\\_expel\\_and\\_exploit\\_eng.pdf](https://www.btselem.org/download/201612_expel_and_exploit_eng.pdf) (accessed May 2, 2020), p. 16.

<sup>752</sup> Apartheid Convention, art II (d).

<sup>753</sup> Ibid.

### *Forcible Transfer and the Right to Residence (Area C of the West Bank and East Jerusalem)*

Israeli authorities have made it virtually impossible for Palestinians to obtain building permits in East Jerusalem and in the 60 percent of the West Bank under its exclusive control (Area C), effectively forcing Palestinians in need of housing or space to establish a business to leave these areas or to build at the risk of seeing their “unauthorized” structures bulldozed. <sup>754</sup> More than 371,000 Palestinians live in East Jerusalem, <sup>755</sup> while an estimated 300,000 Palestinians reside in Area C. <sup>756</sup> Israel exercises complete control over planning procedures and construction in these areas and effectively prevents building outside built-up areas, constituting less than one percent of Area C and 15 percent of East Jerusalem (8.5 percent of the Jerusalem municipality), which are in many cases already densely populated, <sup>757</sup> in order to maximize Jewish Israeli control over the land as documented in previous chapters of this report. <sup>758</sup>

Israeli authorities refuse the vast majority of requests by Palestinians to upgrade or build homes, schools, health clinics, wells, water cisterns, animal pens, or other structures. Between 2016 and 2018, Israeli authorities approved less than 1.5 percent of applications for Palestinians to build in Area C, 21 applications in total, while issuing 2,147 demolition orders, according to data obtained from the Israeli Civil Administration by Bimkom. <sup>759</sup> In other words, it issued 100 times more demolition orders than building permits in this period. Since 2000, it has approved less than four percent of all building requests from Palestinians in Area C, <sup>760</sup> and many Palestinians have stopped bothering to even apply for

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<sup>754</sup> Human Rights Watch, *Separate and Unequal*.

<sup>755</sup> Israel CBS, “Population and Density Per Sq. Km. in Localities With 5,000 Residents and More On 31.12.2019(1).”

<sup>756</sup> OCHA, “Under Threat, Demolition Orders in Area C of the West Bank,” September 7, 2015, [https://reliefweb.int/sites/reliefweb.int/files/resources/demolition\\_orders\\_in\\_area\\_c\\_of\\_the\\_west\\_bank\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/demolition_orders_in_area_c_of_the_west_bank_en.pdf) (accessed May 2, 2020), p. 3.

<sup>757</sup> “Planning Policy in the West Bank,” B’Tselem, updated February 6, 2019; Ir Amim and Bimkom, “Deliberately Planned, A policy Thwart Planning in the Palestinian Neighborhoods of Jerusalem,” February 2017, <http://www.ir-amim.org.il/sites/default/files/Deliberately%20Planned.pdf> (accessed May 2, 2020), p. 5.

<sup>758</sup> See Intent to Maintain Domination and Systematic Oppression sections.

<sup>759</sup> Hagar Shezaf, “Israel Rejects Over 98 Percent of Palestinian Building Requests in the West Bank’s Area C,” *Haaretz*, January 21, 2020, <https://www.haaretz.com/israel-news/.premium-israel-rejects-98-of-palestinian-building-permit-requests-in-west-bank-s-area-c-1.8403807> (accessed May 2, 2020). The government said it approved 56 building permits in 2019, but 35 were part of a state plan to relocate Palestinian Bedouins against their will and were not implemented.

<sup>760</sup> *Ibid.*

them.<sup>761</sup> Meanwhile, Israeli authorities between 2000 and 2018 approved on average fewer than 400 construction permits a year for Palestinians in East Jerusalem.<sup>762</sup>

Largely for lacking a permit, Israeli authorities have razed thousands of Palestinian properties. They have also demolished Palestinian homes as punishment imposed on those accused of attacking Israelis and as collective punishment of their families.<sup>763</sup> From 2009 through 2020, Israeli authorities demolished 7,118 structures in East Jerusalem and Area C, displacing 10,493 people, according to OCHA.<sup>764</sup> B'Tselem documented that Israeli authorities fully demolished in this same period 2,319 homes throughout the West Bank, including East Jerusalem, for lacking a building permit, leaving 9,053 people displaced.<sup>765</sup> Israel has not offered resettlement options or compensation to families whose homes it demolished. Israeli authorities also carried out 84 punitive home demolitions during this period, acts that left 345 people without a home, according to B'Tselem.<sup>766</sup> International humanitarian law prohibits an occupying power from destroying property unless “absolutely necessary” for “military operations” and prohibits all acts that constitute collective punishment.<sup>767</sup>

These coercive policies affect many more Palestinians living in these areas, who face demolition orders and the prospect that authorities could at any time raze their homes. According to Israeli government data obtained by Bimkom, the Israeli government carried out about 21 percent of the more than 18,600 demolition orders it issued in the West Bank,

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<sup>761</sup> “Planning Policy in the West Bank,” B'Tselem, updated February 6, 2019, [https://www.btselem.org/planning\\_and\\_building](https://www.btselem.org/planning_and_building) (accessed May 2, 2020).

<sup>762</sup> “Jerusalem Municipal Data reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem,” Peace Now press release, September 12, 2019, <https://peacenow.org.il/en/jerusalem-municipal-data-reveals-stark-israeli-palestinian-discrepancy-in-construction-permits-in-jerusalem> (accessed May 2, 2020). Statistics on the number of permit applications are not available.

<sup>763</sup> Israeli authorities also have issued demolition orders for structures allegedly built on archaeological sites in the West Bank. According to government data obtained by *Haaretz*, between 2017 and 2019, authorities issued 224 such demolition orders. Hagar Shezaf, “When an Archaeological ‘Find’ Can Evict Palestinians from Their Homes,” *Haaretz*, June 23, 2020, <https://www.haaretz.com/israel-news/.premium-when-an-archaeological-find-can-evict-palestinians-from-their-home-1.8935454> (accessed July 3, 2020).

<sup>764</sup> “Data on demolition and displacement in the West Bank,” OCHA, <https://www.ochaopt.org/data/demolition> (accessed August 19, 2020).

<sup>765</sup> “Database on Fatalities and House Demolitions,” B'Tselem.

<sup>766</sup> *Ibid.*

<sup>767</sup> Fourth Geneva Convention, art. 53; “Israel: Stop Punitive Demolitions,” Human Rights Watch news release, November 21, 2014, <https://www.hrw.org/news/2014/11/21/israel-stop-punitive-home-demolitions>.

not including East Jerusalem, between 1995 and March 2020. <sup>768</sup> As of April 2021, the UN considered 46 Palestinian communities in the West Bank at “high-risk of forcible transfer due to a ‘relocation’ plan advanced by the Israeli authorities.” <sup>769</sup>

These policies create a coercive environment that pressures Palestinians to leave East Jerusalem and Area C. By making it exceedingly difficult to remain, Israeli policies induce Palestinians in these communities to abandon their homes and livelihoods and relocate, usually to towns or cities under the administrative and civil control of the PA. Peace Now estimates that, although Palestinians constitute 90 percent of the population of the Jordan Valley, Israel effectively restricts them from building on about 94 percent of the territory. <sup>770</sup> According to OCHA, between January 1, 2009, and December 31, 2020, Israel demolished 2,601 Palestinian structures in the Jordan Valley for lacking a permit, displacing 3,716 people and affecting 23,464 others. <sup>771</sup> More than 250,000 Palestinians lived in the Jordan Valley before 1967. <sup>772</sup> Between 50,000 and 200,000 of them fled to Jordan during the 1967 War. <sup>773</sup> Today, the population stands between 60,000 and 80,000. <sup>774</sup>

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<sup>768</sup> Civil Administration data on file with Human Rights Watch.

<sup>769</sup> OCHA, “46 Bedouin Communities at Risk of Forcible Transfer in the Central West Bank: A Vulnerability Profile,” <https://www.ochaopt.org/page/46-bedouin-communities-risk-forcible-transfer-central-west-bank-vulnerability-profile> (accessed April 5, 2021); “Breakdown of Data on Demolition and Displacement in the West Bank,” OCHA, <https://bit.ly/3rRS192> (accessed April 5, 2021).

<sup>770</sup> Peace Now, “Policy of Palestinian dispossession in the Jordan Valley and Northern Dead Sea,” Factsheet, 2017, <https://peacenow.org.il/wp-content/uploads/2017/04/JordanValleyEng.pdf> (accessed June 15, 2020).

<sup>771</sup> “Data on Demolition and Displacement in the West Bank,” OCHA.

<sup>772</sup> Al-Haq, “Settling Area C: The Jordan Valley Exposed,” January 31, 2018, <http://www.alhaq.org/publications/8057.html> (accessed May 3, 2020); Palestinian Academic Society for the Study of International Affairs (PASSIA), “Israeli Annexation of The Jordan Valley,” <http://www.passia.org/maps/view/74> (accessed May 3, 2020); Maan Development Center and Jordan Valley Popular Committees, “Bankrolling Colonialism: How US Zionist Organizations in the Jordan Valley are undermining a future Palestinian state,” 2010, <https://www.badil.org/en/resources/documents/individual-studies.html?download=864:bankrolling-colonialism-usz-orgs-in-the-jordan-valley> (accessed May 3, 2020); PLO Negotiation Affairs Department, “Israeli Annexation Policy in the Jordan Valley: Destroying the Future of the State of Palestine,” September 2013, [https://www.nad.ps/sites/default/files/jordanvalley\\_factsheet.pdf](https://www.nad.ps/sites/default/files/jordanvalley_factsheet.pdf) (accessed May 3, 2020); Jordan Valley Solidarity, “About the Jordan Valley - Geography and Population,” April 13, 2010, <http://jordanvalleysolidarity.org/background-info/geographyanddemographics/> (accessed June 15, 2020).

<sup>773</sup> B’Tselem, “Dispossession & Exploitation: Israel’s Policy in the Jordan Valley & Northern Dead Sea,” May 2011, <https://bit.ly/2N1x21M> (accessed June 15, 2020), p. 10.

<sup>774</sup> “The Jordan Valley,” B’Tselem, [https://www.btselem.org/topic/jordan\\_valley](https://www.btselem.org/topic/jordan_valley) (accessed May 3, 2020); Peace Now, “Policy of Palestinian Dispossession in the Jordan Valley and Northern Dead Sea,” Factsheet, 2017.

Coercive policies have particularly affected Palestinian communities in the Jordan Valley, around Jerusalem, and in the South Hebron Hills. <sup>775</sup> In many of these areas, Israeli authorities have blocked residents, including Bedouin and herding communities, from accessing roads and agricultural lands, failed to provide electricity, sewage, water, and other utilities, and rejected their applications for such services. Many of these communities also have no reliable access to water sources and have to spend up to one-sixth of their income to purchase water from small, portable water tankers. These restrictions often result in children walking long distances for school and leaving residents with limited access to health care. <sup>776</sup>

In addition, Israel has directly deported more than 1,500 Palestinians out of the OPT, largely before 1993, only some of whom they have permitted to return. <sup>777</sup>

Israel's coercive policies in East Jerusalem and Area C of the West Bank amount to intentional forcible transfer of civilians within an occupied territory, defined as "the movement of individuals under duress from where they reside to a place that is not of their choosing," <sup>778</sup> a grave breach of the laws of war. The Rome Statute states that forcible transfer can occur "directly or indirectly," through coercive circumstances as well as direct force, <sup>779</sup> and defines it, when carried out in a widespread or systematic manner, as a state policy, as a crime against humanity and one of the kinds of inhumane acts that make up the crime of apartheid. <sup>780</sup> The Israeli policies in these areas, which have coerced thousands to leave their homes and put tens of thousands more at risk, amount to forcible transfer under the terms of the Rome Statute. By denying building permits for houses, schools, clinics, and infrastructure and demolishing homes and entire areas, these

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<sup>775</sup> See, for example, Al Haq, "Plight of Palestinian Bedouin Depicts Impact of Illegal Israeli Occupation and Practices in Palestinian Territory," 2014, <https://www.alhaq.org/publications/8068.html> (accessed June 15, 2020); B'Tselem, "Civil Administration Plans to Expel Tens of Thousands of Bedouins from Area C," December 30, 2019, <https://www.btselem.org/video/2009/12/video-testimony-bedouins-maale-edomim#full> (accessed May 3, 2020).

<sup>776</sup> Human Rights Watch, *Separate and Unequal*.

<sup>777</sup> "Statistics on Deportation," B'Tselem, January 1, 2011, <https://www.btselem.org/deportation/statistics> (accessed May 2, 2020); B'Tselem, "Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992," June 1993, [https://www.btselem.org/sites/default/files/publications/199306\\_deportation\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/199306_deportation_eng.pdf) (accessed July 3, 2020).

<sup>778</sup> *Naletilic and Martinovic* (Trial Chamber), March 31, 2003, paras. 519-521, cited in *Case Law of the International Criminal Tribunal for the Former Yugoslavia*, [http://www.hrw.org/reports/2004/ij/icty/2.htm#\\_Toc62882623](http://www.hrw.org/reports/2004/ij/icty/2.htm#_Toc62882623).

<sup>779</sup> Rome Statute, arts. 8.2.b.viii, 7.2.g.

<sup>780</sup> *Ibid.*; art. 7.1.d.

policies suffocate communities and constitute “the deliberate creation of conditions preventing the[ir] full development.” <sup>781</sup>

### *Denial of Residency and Nationality*

Israeli authorities have denied millions of Palestinians the right to residency and nationality through its control over population registries, the granting of legal status and residency rights, and entry and exit to Israel and the OPT.

### **West Bank and Gaza**

Israeli policies on Palestinian residency have arbitrarily denied hundreds of thousands of Palestinians the ability to live in, and travel to and from, the West Bank and Gaza. Israeli restrictions on residency separate families, bar thousands from returning to their homes in the OPT, trap others inside their homes or parts of the OPT, and block others from pursuing educational or economic opportunities. <sup>782</sup>

Israeli authorities have primarily done so through their ongoing control of the population registry—the list of Palestinians whom authorities consider lawful residents of the OPT. Israel requires Palestinians to be included in the population registry to obtain Israeli-sanctioned identification cards and passports, which allow Palestinians to reside, work, and inherit property, but do not convey citizenship or nationality. Israeli security forces manning checkpoints require Palestinians to present an identification card before allowing passage for travel within the OPT, including to schools, jobs, hospitals or to visit family. <sup>783</sup> Egyptian authorities also require Palestinians to present an identification card or passport to enter or exit via the Rafah crossing. <sup>784</sup>

Israeli authorities base the population registry on a census it conducted in the West Bank and Gaza in September 1967, several months after it took control of these areas. The

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<sup>781</sup> Apartheid Convention, art II(c).

<sup>782</sup> Human Rights Watch, “*Forget About Him.*”

<sup>783</sup> Ibid.

<sup>784</sup> Gisha, “Changes at Rafah Crossing.”

census counted 954,898 Palestinians as physically present, <sup>785</sup> but excluded at least 270,000 Palestinians who had been living there before 1967, but were absent during the census, either because they had fled during the 1967 war or were abroad for study, work, or other reasons. <sup>786</sup> Israeli authorities did not include these Palestinians in the population registry, requiring them to obtain visitor permits to return to their homes and denying entry to many, including all men aged 16 to 60, during the early years of the occupation. <sup>787</sup> Israeli authorities set up a restrictive family reunification process that operated until 2000 based on low annual quotas and subject to arbitrary and evolving criteria that failed to take into account genuine familial or historical ties. <sup>788</sup>

Between 1967 and 1994, Israeli authorities struck from the registry thousands of Palestinians who traveled and stayed abroad for long periods. During this period, it permanently canceled the registry of 140,000 registered Palestinians, solely because they left the West Bank for a period of more than three years, according to data from the Office of the Coordinator of Government Activities in the Territories (COGAT), the Israeli army body in charge of administering the occupied West Bank. Authorities also during this same period revoked the residency of 108,878 Palestinians from Gaza either for staying abroad for more than seven years or for not being present during censuses conducted in 1981 and

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<sup>785</sup>The Israeli census recorded the population of the West Bank, including East Jerusalem, as 598,637, and the population of the Gaza Strip as 356,261. Levy Economics Institute of Bard College, “The 1967 Census of the West Bank and Gaza Strip: A Digitized Version,” February 2012, [http://www.levyinstitute.org/pubs/1967\\_census/dataset\\_doc.pdf](http://www.levyinstitute.org/pubs/1967_census/dataset_doc.pdf) (accessed June 15, 2020); Levy Economics Institute of Bard College, “Population, Area and Population Density in the West Bank by District,” February 2012, <https://bit.ly/3hurjzp> (accessed June 15, 2020); “Gaza Strip Population According to 1967 Census and Egyptian Estimate for 1966,” February 2012, <https://bit.ly/2YE84L1> (accessed June 15, 2020). Also see UN Conference on Trade and Development (UNCTAD), “Population and Demographic Developments in the West Bank and Gaza Strip until 1990,” U.N. Doc. UNCTAD/ECDC/SEU/1, June 28, 1994, <https://unctad.org/system/files/official-document/poecdceud1.en.pdf> (accessed April 3, 2020), pp. 73, 75.

<sup>786</sup> Yehuda Lukacs, *Israel, Jordan and the Peace Process* (Syracuse, NY: Syracuse University Press, 1997), note 4, p. 218, citing two UNRWA reports from October and December 1967; and Daniel Dishon, ed., *Middle East Record, 1967* (Tel Aviv: Israeli Univ. Press, 1968), p. 311.

<sup>787</sup> B’Tselem and HaMoked, “Perpetual Limbo,” June 2006, p. 9.

<sup>788</sup> Human Rights Watch, “*Forget About Him*.” For instance, after 1967, Israeli authorities granted residency to children under 16 who were born in the West Bank and Gaza, or who were born abroad if one parent was a registered resident. In 1987, with the outbreak of the first Palestinian *intifada*, the military ordered that children under 16 who were born in the occupied territory could only be registered if their mother was a resident, and that children born abroad could not be registered after the age of five, regardless of either parent’s residency status. In 2000, authorities stopped granting entry to all unregistered Palestinians more than five years old. Authorities in 2006 began to grant entry permits to Palestinian children for the purpose allowing them to apply for registration, but it has refused to register children who turned 16 during the period from 2000 to 2006, when Israeli policies had made their entry and registration impossible.

1988. <sup>789</sup> A survey conducted in 2005, on behalf of B'Tselem, estimated that more than 640,000 Palestinians in the West Bank and Gaza had a parent, sibling, child, or spouse who was unregistered, even though 78.4 percent of them had filed a family reunification request that had not yet been processed. <sup>790</sup>

Soon after its establishment, the PA in 1995 took on the task of handling requests to update the population registry or apply for residency, but its role consists of transferring those requests to the Israeli side for approval. <sup>791</sup> Since 2000, Israeli authorities have for the most part refused to update the population registry or process applications for residency by unregistered Palestinians, their spouses, and close relatives, even if they had lived in the West Bank or Gaza for years and had families, homes, jobs, or other ties there. <sup>792</sup> Israel entirely froze the “family reunification” process by which Palestinians apply to grant legal status to join immediate relatives or spouses not registered in the population registry. <sup>793</sup> Israeli authorities have cited the security situation following the outbreak of the second *Intifada* as the rationale for the freeze, <sup>794</sup> but they have not explained why their blanket refusal to process new applications is necessary for security

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<sup>789</sup> HaMoked, “‘Ceased Residency’: Between 1967 and 1994 Israel revoked the residency of Some Quarter Million Palestinians from the West Bank and the Gaza Strip,” June 12, 2011, <http://www.hamoked.org/Document.aspx?dID=Updates1175> (accessed May 3, 2020).

<sup>790</sup> B'Tselem and HaMoked, “Perpetual Limbo,” p. 20.

<sup>791</sup> “Israel: End Restrictions on Palestinian Residency,” Human Rights Watch news release, February 5, 2012, <https://www.hrw.org/news/2012/02/05/israel-end-restrictions-palestinian-residency>. In May 2020, the PA stopped transferring applications to Israeli authorities, as part of its vow to end coordination with Israel on security and civil affairs. Avi Issacharoff, “Israeli Officials Confirm Palestinian Authority is Ending Security Coordination,” *Times of Israel*, May 21, 2020, <https://www.timesofisrael.com/israeli-officials-confirm-palestinian-authority-has-ended-security-coordination/> (accessed August 4, 2020); Amira Hass, “The Palestinian Authority is Harming Its Own People in the Name of National Pride,” *Haaretz*, August 3, 2020, <https://www.haaretz.com/israel-news/.premium-in-the-name-of-national-pride-the-palestinian-authority-is-harming-its-own-people-1.9040489> (accessed August 4, 2020). The PA said in November 2020 that it would resume coordination with Israel on security and civil affairs. Jack Khoury, Noa Landau, Nir Hasson, “Palestinian Authority Announces It Will Resume Cooperation with Israel,” *Haaretz*, November 17, 2020, <https://www.haaretz.com/middle-east-news/palestinians/.premium-palestinian-authority-resumes-cooperation-with-israel-minister-announces-1.9314412> (accessed November 23, 2020).

<sup>792</sup> “Israel Continues to Harm the Right of Palestinians to Family Life: The State Persists in its Refusal to Examine Family Unification Requests Submitted by Palestinian Residents of the Occupied Territories,” HaMoked, June 17, 2018, <http://www.hamoked.org/Document.aspx?dID=Updates1997> (accessed May 3, 2020).

<sup>793</sup> *Ibid.*

<sup>794</sup> “Application on Behalf of the Respondents for Summary Dismissal of the Petition in Response to the Application for a Temporary Injunction,” HaMoked, September 2, 2007, [http://www.hamoked.org/items/9073\\_eng.pdf](http://www.hamoked.org/items/9073_eng.pdf).

reasons. They simply refuse to process any new application without an explanation or to review whether the particular individual presents a security threat.

The freeze has remained in place since 2000, outside of processing about 35,000 family unification applications in the late 2000s as a “diplomatic gesture” to the PA.<sup>795</sup> The PA’s Civil Affairs Ministry estimated that, between September 2000 and August 2005 alone, it relayed more than 120,000 applications for family reunification that Israeli authorities did not process.<sup>796</sup> The Israeli Supreme Court opted in 2019 not to force the army to end its freeze, following a challenge by the Israeli rights group HaMoked.<sup>797</sup> The two-decade-old freeze has meant that Israeli authorities have stopped registering most categories of people, with the exception of children who had at least one registered Palestinian parent.

Israeli authorities have also systematically barred entry to Israel and the West Bank over the last two decades of non-registered Palestinians who lived or used to live in the West Bank and their non-registered spouses and other family members.<sup>798</sup>

Israel’s refusal to update the population registry has applied even to requests to change addresses, which made the presence of Palestinians living in the West Bank, but registered in Gaza, illegal.<sup>799</sup> Most entered the West Bank on temporary permits, which have long since expired. In 2010, the Israeli army estimated that at that time around

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<sup>795</sup> “Israel Continues to Harm the Right of Palestinians to Family Life,” HaMoked.

<sup>796</sup> B’Tselem and HaMoked, “Perpetual Limbo,” p. 13, citing information provided by the PA Civil Affairs Ministry on August 14, 2005.

<sup>797</sup> “In the absence of documentation: HaMoked Had to Delete Its Petitions Against Israel’s Freeze on Family Unification in the West Bank,” HaMoked, August 8, 2019, <http://www.hamoked.org/Document.aspx?dID=Updates2097> (accessed May 3, 2020).

<sup>798</sup> Human Rights Watch, “*Forget About Him*”; “Israel Continues to Harm the Right of Palestinians to Family Life,” HaMoked.

<sup>799</sup> Gisha, “Disengagement Danger: Israeli Attempts to Separate Gaza from the West Bank,” Briefing paper, February 2006, <https://bit.ly/2Y3B7ZF> (accessed April 3, 2020), citing a letter from Avi Biton, Office of the Coordinator of Operations in the Territory, November 17, 2004 and *Kachlut v. West Bank Military Commander*, State’s Response, HCJ 5504/03, February 25, 2004, para. 4. Israel allowed around 2,800 Palestinians registered as residents of Gaza to change their addresses to the West Bank in 2011, but this did not clear the backlog. Following a 2013 petition filed by HaMoked and other organizations, Israeli authorities indicated that they would not forcibly relocate to Gaza Palestinians with registered addresses in the Gaza Strip who had lived in the West Bank since September 2005. See Gaza case studies in Systematic Domination and Inhumane Acts and Other Abuses of Fundamental Rights sections.

35,000 Palestinians from Gaza were living in the West Bank with expired permits.<sup>800</sup> Israeli law considers Palestinians with expired permits as unlawful “infiltrators,”<sup>801</sup> and authorities have removed dozens back to Gaza.<sup>802</sup> Those who remain cannot freely move within the West Bank, fearing arrest at checkpoints and forcible return to Gaza, and often face difficulties registering at schools or universities, doing business, or owning property.

Israel’s policies that deny Palestinians in the OPT the ability to live in or travel to the areas they are from deny them “the right to freedom of movement and residency,” one of the inhumane acts set out in the Apartheid Convention.

### **East Jerusalem**

Israeli policies have also denied residency rights to thousands of Palestinians in East Jerusalem and left many without nationality. Since its annexation of East Jerusalem in 1967, it has applied its 1952 Law of Entry to Palestinians from there and designated them as “permanent residents,” the same status afforded to a foreigner who wants to live in Israel. Permanent residents may live, work, and receive benefits, but that status derives from their presence, can be revoked at the Interior Ministry’s discretion, and does not automatically pass to one’s children or non-resident spouse even if they have lived in Jerusalem for years.<sup>803</sup> A path to citizenship exists for Palestinian Jerusalemite permanent residents, but the vast majority have chosen not to pursue it, as it involves recognizing Israel, the occupying power, as the legitimate sovereign. The vast majority of those who applied did not receive citizenship. Authorities rejected many applicants for failing to demonstrate that Israel, and not the West Bank, was their “center of life,” or for their

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<sup>800</sup> Letter from Uri Mendes, Division Head, Coordination and Operations Directorate, Coordinator of Government Activities in the Territories (COGAT), to Ido Bloom, HaMoked: Center for the Defence of the Individual, June 2, 2010, available at: [http://www.hamoked.org/files/2010/112281\\_eng.pdf](http://www.hamoked.org/files/2010/112281_eng.pdf) (accessed August 20, 2020).

<sup>801</sup> Order Regarding Prevention of Infiltration, No. 1650, Amendment No. 2. The order, as amended, defines an “infiltrator” as anyone who resides in the West Bank without a valid permit, including those who entered the territory without a permit and those who stayed in the area after their permit expired.

<sup>802</sup> Letter from Uri Mendes to HaMoked, June 2, 2010; B’Tselem and HaMoked, “One Big Prison,” p. 20; “Military data Reveals: Sharp Rise in the Number of People Deported by the Military from their West Bank Homes to the Gaza Strip,” HaMoked press release.

<sup>803</sup> “Israel: Jerusalem Palestinians Stripped of Status,” Human Rights Watch news release.

having a criminal record, insufficient knowledge of Hebrew, or “lack of loyalty [to Israel].” Others never received a response to their applications.<sup>804</sup>

Between the start of Israel’s occupation of East Jerusalem in 1967 and the end of 2020, Israel revoked the permanent resident status of at least 14,701 Palestinians from East Jerusalem.<sup>805</sup> Authorities have justified most revocations based on a failure to prove a “center of life” in Jerusalem, targeting those it said had been living in other parts of the OPT outside Jerusalem’s municipal borders or who had studied or lived abroad for extended periods of time. Others lost their residency after obtaining permanent residency or citizenship in another country. The number of revocations has dropped since 2015 when the Interior Ministry said it would adopt “a more lenient approach” that would maintain the residency of Palestinian Jerusalemites who “maintain a connection” to the city.”<sup>806</sup> Authorities have, though, in recent years revoked status to punish Palestinians accused of attacking Israelis and as an act of collective punishment against their relatives.<sup>807</sup>

Each revocation often has a much wider impact, as the families of persons who lose their status often accompany them as they leave the city, and other Palestinians have to adjust their lives to safeguard their precarious status. Palestinians from East Jerusalem have told Human Rights Watch that the fear of losing this status weighs on their daily life, determining where families live and deterring them from pursuing educational and

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<sup>804</sup> Between 2003 and 2016, only about 15,000 of Jerusalem’s Palestinians applied for citizenship. Authorities have approved fewer than 6,000 of them for citizenship. Dov Lieber, “Israel almost Almost entirely Entirely halts Halts citizenship Citizenship approvals Approvals for East Jerusalemites,” *Times of Israel*, September 16, 2016, <https://www.timesofisrael.com/israel-almost-entirely-halts-citizenship-approvals-for-east-jerusalemites/> (accessed June 4, 2020). In 2018, Israeli authorities granted citizenship to 363 of the 1,012 Palestinians who applied that year. ACRI, “East Jerusalem: Facts and Figures 2019,” May 2019, <https://bit.ly/3cAETow> (accessed June 4, 2020). Authorities in 2019 streamlined the application process and, in 2020, 1,826 Palestinian Jerusalemites received citizenship.” Nir Hasson, “Israel Denies East Jerusalem Resident’s Citizenship Because His Home ‘Doesn’t Make Sense’,” *Haaretz*, February 2, 2021, <https://www.haaretz.com/israel-news/.premium-israel-denies-east-jerusalem-resident-s-citizenship-his-home-doesn-t-make-sense-1.9505231> (accessed February 3, 2021).

<sup>805</sup> HaMoked, “Ministry of Interior Data: 18 East Jerusalem Palestinians Were Stripped of their Permanent Residency Status in 2020.”

<sup>806</sup> Ibid., Letter from Mali Davidian, Supervisor of Freedom of Information Act, Israel Population, Immigration and Border Authority, to Advocate Benjamin Agsteribbe, HaMoked: Center for the Defence of the Individual, May 31, 2015 available at: [http://www.hamoked.org/files/2015/1159352\\_eng.pdf](http://www.hamoked.org/files/2015/1159352_eng.pdf) (accessed August 20, 2020).

<sup>807</sup> “Israel: Jerusalem Palestinians Stripped of Status,” Human Rights Watch news release.

professional opportunities abroad. <sup>808</sup> By pushing Palestinians to leave their home city, residency revocations amount to forcible transfer. <sup>809</sup>

Israeli law authorizes arrest and deportation for those found without legal status. Without that status, Palestinians cannot formally work, move freely, renew driver’s licenses, or obtain birth certificates for children, which are needed to register them in school. They could also lose benefits under Israel’s national insurance program, which provides social welfare benefits, such as healthcare, unemployment benefits, and support payments for children, the elderly, and people with disabilities. Those who lose their residency can petition the Interior Ministry to recover their status, during which time they can obtain a temporary status to remain in Jerusalem. Some Palestinians have succeeded in reinstating their status, but only after protracted legal and administrative processes that many cannot afford. <sup>810</sup>

In a March 2017 decision, the Supreme Court ruled that Palestinians from East Jerusalem enjoy “special status” as “native residents” that authorities should account for in determining their status. <sup>811</sup> But Israeli policy continues to fail to do that in practice.

### *Mass Suspension of Civil Rights (West Bank, Gaza)*

Israeli authorities have deprived generations of Palestinians in the OPT of their basic civil rights, including the rights to free assembly, association, and expression. In particular, authorities have targeted Palestinians for their anti-occupation speech, activism, and affiliations, jailing thousands, outlawing hundreds of political and non-government organizations, and shutting down dozens of media outlets. <sup>812</sup>

In the West Bank, the army continues to rely on draconian military orders issued in the early days of the occupation to criminalize non-violent political activity. Authorities, for example, continue to apply British Mandate-era regulations that allow them to declare

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<sup>808</sup> Ibid.

<sup>809</sup> Ibid.

<sup>810</sup> Ibid.

<sup>811</sup> *Al-Haq v. Minister of Interior*, AAA 3268/14, Judgment, March 14, 2017, [hamoked.org/files/2018/1159582\\_eng.pdf](https://www.hamoked.org/files/2018/1159582_eng.pdf) (accessed June 15, 2020).

<sup>812</sup> Human Rights Watch, *Born Without Civil Rights*.

unlawful groups that advocate “bringing into hatred or contempt of, or the exciting of disaffection against” local authorities and to arrest Palestinians for affiliation with such groups.<sup>813</sup> As of March 2020, the Israeli Defense Ministry maintained formal bans against 430 organizations, including the Palestine Liberation Organization that Israel signed a peace accord with, its ruling Fatah party, and all the other major Palestinian political parties.<sup>814</sup> The army prosecuted 1,704 Palestinians in the West Bank for “membership and activity in an unlawful association” between July 1, 2014, and June 30, 2019, according to data it provided Human Rights Watch.<sup>815</sup>

In addition, the army regularly uses military orders permitting it to shut down unlicensed protests or to create closed military zones to suppress peaceful Palestinian demonstrations in the West Bank and detain participants.<sup>816</sup> One military order, for example, imposes a prison term of up to 10 years on civilians convicted by military courts for participating in a gathering of more than 10 people without a military permit on any issue “that could be construed as political” or for displaying “flags or political symbols” without army approval.<sup>817</sup> The Israeli army said that, in the five-year period between July 1, 2014, and June 30, 2019, it prosecuted 4,590 West Bank Palestinians for entering a “closed military zone,”<sup>818</sup> a designation often used for protest sites.

The army has further cited the broad definition of incitement in its military laws, defined to include “praise, sympathy or support for a hostile organization” and “attempts, orally or otherwise, to influence public opinion in the Area in a manner which may harm public

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<sup>813</sup> The Defense (Emergency) Regulations, 1945, available at [http://www.imolin.org/doc/amlid/Israel/The\\_Defence\\_Emergency\\_Regulations\\_1945.pdf](http://www.imolin.org/doc/amlid/Israel/The_Defence_Emergency_Regulations_1945.pdf) (accessed May 3, 2020).

<sup>814</sup> “List of Declarations and Orders of Terrorist Organizations and Unlawful Associations,” (Hebrew), Ministry of Defense, [https://nbctf.mod.gov.il/he/Announcements/Pages/%D7%A7%D7%91%D7%A6%D7%99%D7%9D-%D7%9C%D7%94%D7%95%D7%A8%D7%93%D7%94-\(DATA\).aspx](https://nbctf.mod.gov.il/he/Announcements/Pages/%D7%A7%D7%91%D7%A6%D7%99%D7%9D-%D7%9C%D7%94%D7%95%D7%A8%D7%93%D7%94-(DATA).aspx) (accessed June 29, 2020).

<sup>815</sup> See letter from Israeli army to Human Rights Watch, November 18, 2019, in Human Rights Watch, *Born Without Civil Rights*.

<sup>816</sup> See Human Rights Watch, *Born Without Civil Rights*, p. 29.

<sup>817</sup> Order No. 101 – Order Regarding Prohibition of Incitement and Hostile Propaganda Actions, August 1967, arts. 1, 3, 10, as amended by Order No. 718 (1977), Order No. 938 (1981), Order No. 1079 (1983), and Order No. 1423 (1995), available at <https://bit.ly/2DfDfTOA> (accessed May 3, 2020).

<sup>818</sup> See letter from Israeli army to Human Rights Watch, November 18, 2019 in Human Rights Watch, *Born Without Civil Rights*.

peace or public order,” to criminalize speech merely opposing its occupation.<sup>819</sup> The army acknowledged prosecuting 358 Palestinians in the West Bank for “incitement” between mid-2014 and mid-2019.<sup>820</sup>

While the law of occupation permits occupiers to restrict some civil and political rights based on limited security justifications, the decades-long mass suspension of basic civil rights for Palestinians in the OPT with no end in sight amounts to measures “calculated to prevent” their “participation in the political, social, economic and cultural life” and create “conditions preventing the[ir] full development” by denying them the rights to freedom of expression, peaceful assembly, and association, specifically identified in the Apartheid Convention.<sup>821</sup> When the sweeping restrictions result in unlawful arrests, they also constitute a denial of the right of liberty by virtue of “arbitrary arrest and illegal imprisonment” under the Apartheid Convention.

## Other Abuses in Israel

Separately from the inhumane acts committed in the OPT, the Israeli government has carried out other abuses against Palestinians within its pre-1967 borders.

### *Land Expropriation and Restrictions*

Beginning in 1948 and in subsequent decades, Israeli authorities seized several million dunams of land from Palestinians inside Israel. Many of the most serious abuses described in this subsection, involving the massive confiscation of land from Palestinian citizens of Israel, occurred between 1948 and 1966. While the plight of Palestinians in Israel has generally improved since the lifting in 1966 of the martial law that Israeli authorities imposed on them for the first 17 years of the country’s history, these violations are continuing insofar as many of the victims remain unable to recover what authorities seized from them, return to live in the villages they came from, or obtain compensation for the losses they experienced.

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<sup>819</sup> Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (Military Order No. 1651), 5770-2009, art. 251.

<sup>820</sup> See letter from Israeli army to Human Rights Watch, November 18, 2019, in Human Rights Watch, *Born Without Civil Rights*.

<sup>821</sup> Apartheid Convention, art. II(c).

A precise figure of the amount of land confiscated from Palestinians in Israel is not available, in part as a result of the different forms of land ownership under Ottoman law and the lack of formal registration of much of the land in the land registry before 1948.<sup>822</sup> The pre-eminent historians of the era, though, largely estimate that Israeli authorities confiscated at least 4.5 million dunams of land from Palestinians, constituting an estimated 65 to 75 percent of all land owned by Palestinians before 1948, including 40 to 60 percent of the land belonging to Palestinians who remained and became Israeli citizens.<sup>823</sup> Some historians also estimate that of the 370 Jewish towns and villages established by the Israeli government between 1948 and 1953, 350 were built on land confiscated from Palestinians.<sup>824</sup> Much of the confiscation took place between 1949 and 1966. During these years Israel subjected most Palestinians in Israel to military rule, confined them to dozens of enclaves, and severely restricted their movement. *Haaretz* reported, based on declassified government documents, that Israeli officials lifted military rule in 1966 only after they had ensured that internally displaced Palestinians “could not return to the villages they had fled or been expelled from.”<sup>825</sup>

Israeli authorities used principally two mechanisms to seize land belonging to Palestinians in Israel. First, in 1950, the Knesset, building on emergency regulations issued in December 1948 to authorize land confiscations, passed the Absentees’ Property Law that allowed the state to confiscate the land and homes of Palestinians not present on their property in 1947 and 1948 amid the fighting in the events surrounding the establishment

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<sup>822</sup> Alexandre (Sandy) Kedar, Professor of Law at the University of Haifa, email to Human Rights Watch, July 24, 2020.

<sup>823</sup> *Ibid.*; Jeremy Forman, “From Arab land to ‘Israel Lands’: the legal dispossession of the Palestinians displaced by Israel in the wake of 1948,” *Environment and Planning D: Society and Space*, 2004, Volume 22, pp. 809-830, DOI:10.1068/d402; Alexandre (Sandy) Kedar, “The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967,” *New York University Journal of International Law and Politics* 33, No. 4, Summer 2001: pp. 923-1000, <https://law.haifa.ac.il/images/documents/theLegalTransformation.pdf> (accessed July 23, 2020); Yoav Mehozay “The Rule of Difference: How Emergency Powers Prevent Palestinian Assimilation in Israel,” *Israel Studies Review*, Volume 27, No. 2, Special Issue: Law, Politics, Justice, and Society: Israel in a Comparative Context (Winter 2012), pp. 18-40, <https://www.jstor.org/stable/41804801?seq=1> (accessed July 23, 2020); Don Peretz, *Israel and the Palestine Arabs* (Washington DC: Middle East Institute, 1958) pp. 140-147; Joel Beinin, *Was the Red Flag Flying There? Marxist Politics and the Arab-Israeli Conflict in Egypt and Israel, in 1948-1965* (Los Angeles: University of California Press, 1990) <https://bit.ly/37xp1Lp> (accessed May 2, 2020), p. 69; “The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value,” Adalah, Position Paper, March 2019, [https://www.adalah.org/uploads/uploads/Position\\_Paper\\_on\\_Article\\_7\\_JNSL\\_28.03.19.pdf](https://www.adalah.org/uploads/uploads/Position_Paper_on_Article_7_JNSL_28.03.19.pdf) (accessed July 23, 2020).

<sup>824</sup> Beinin, *Was the Red Flag Flying There?* p. 69; Shira Robinson, *Citizenship Strangers*, p. 47.

<sup>825</sup> Yotam Berger, “Declassified: Israel Made Sure Arabs Couldn’t Return to Their Villages,” *Haaretz*, May 27, 2019; <https://www.haaretz.com/.premium-israel-lifted-military-rule-over-arabs-in-1966-only-after-ensuring-they-couldn-t-ret-1.7297983> (accessed June 14, 2020).

of Israel and who had fled or were expelled to one of several neighboring or nearby Arab countries or to “any part of Palestine outside the area of Israel,” including those places “in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment.”<sup>826</sup> Israeli authorities applied the law to take hold of most of the land belonging to the hundreds of thousands of Palestinian refugees who came to reside outside of Israel, as well as land belonging to Palestinians internally displaced as a result of the events of 1947 and 1948. Israeli authorities placed the land under the control of the Custodian for Absentees’ Property and eventually converted it to state land, almost exclusively used to build new Jewish communities.<sup>827</sup> Israeli authorities have also used the Absentees’ Property Law to take control of land belonging to Palestinians in occupied East Jerusalem.<sup>828</sup>

Second, the Israeli government declared many Palestinian towns and villages, particularly those outside the enclaves that Palestinians lived in during the period of military rule, as “closed areas.” It then passed in 1953 the Land Acquisition Law, which, building on a prior emergency regulation, permitted the state to take ownership of land uncultivated since 1948. It also allowed the state to take over land in those cases where it did not recognize claims of ownership filed by Palestinians, even if the land was under cultivation. The rights group Adalah estimates that the Israeli government seized 1.2-1.3 million dunams of land under the Land Acquisition Law.<sup>829</sup> The law offered compensation, but largely in the form of “alternative plots that were either uncultivable or belonged to refugees in exile,” as one historian wrote, or compensation based on rates so low that Israel’s then-Foreign Minister and later Prime Minister Moshe Sharett referred to them as a “scandalous robbery.”<sup>830</sup>

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<sup>826</sup> Knesset, Absentees’ Property Law, No.20 of 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) (accessed May 2, 2020).

<sup>827</sup> Beinun, *Was the Red Flag Flying There?* p. 69; Shira Robinson, *Citizenship Strangers*, p. 47. In 1973, Israel enabled some ‘absentees’ to claim compensation for their seized property, but only to those residing in Israel and only effective if claimed within fifteen years. NRC, “Legal Memo - The Absentee Property Law and its Application to East Jerusalem,” February 2017, [nrc.no/globalassets/pdf/legal-opinions/absentee\\_law\\_memo.pdf](http://nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf) (accessed June 15, 2020).

<sup>828</sup> Ibid.; “Israeli Supreme Court Upholds Continued Confiscation of Occupied East Jerusalem Properties through the Absentee Property Law,” Adalah press release, April 17, 2015, <https://www.adalah.org/en/content/view/8530> (accessed May 2, 2020).

<sup>829</sup> Adalah, Land Acquisition Law (Actions and Compensation), <https://www.adalah.org/en/law/view/533> (accessed May 2, 2020).

<sup>830</sup> Shira Robinson, *Citizen Strangers*, p. 47.

In a 2005 report, the Global IDP Project of the Norwegian Refugee Council estimated based on a review of a range of sources that there were at the time between 150,000 and 300,000 Palestinians in Israel internally displaced from the events surrounding the establishment of Israel.<sup>831</sup> The UN Committee on Economic, Social and Cultural Rights (CESCR) found in 1998 that most of what they estimated to be around 200,000 internally displaced Palestinians, who they refer to as “present absentees,” continue to be displaced and dispossessed within the State because their lands were confiscated and not returned to them.”<sup>832</sup>

Israeli authorities continue to block Palestinian citizen landowners from accessing or using land that they confiscated from them.<sup>833</sup> For example, in November 1948, Israeli forces expelled residents from the village of Iqrit, near the Lebanon border, after fighting in the area had largely ended and soon after declaring Iqrit a closed military area.<sup>834</sup> Residents, most of whom remained internally displaced inside Israel, filed a legal challenge against their displacement and, in 1951, the Israeli Supreme Court ruled that residents should be allowed to return to their homes.<sup>835</sup> However, before the order could be carried out and two months before another Supreme Court hearing on the case, the army blew up all the houses still standing in the village.<sup>836</sup> Residents have continued to seek to return, but the government has continued to block them, claiming in the 1960s, for example, that return would constitute a security risk.<sup>837</sup> In 2003, the Israeli Supreme Court rejected a new petition by residents to return, determining the issue to be “political” and therefore deferring to the government, which had determined that permitting Iqrit residents to return

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<sup>831</sup> NRC Global IDP Project, “Profile of Internal Displacement: Israel,” <https://www.refworld.org/pdfid/3c5532fc9.pdf> (accessed August 12, 2020), pp. 17-18.

<sup>832</sup> UN Economic and Social Council, “Concluding observations of the Committee on Economic, Social and Cultural Rights - Israel,” December 4, 1998, E/C.12/1/Add.27, <https://undocs.org/E/C.12/1/Add.27> (accessed August 4, 2020).

<sup>833</sup> See, for example, Zochrot, “‘Memory and [Return]’- Imagining Return to al-Lajun Destroyed Village,” November 2015, <https://zochrot.org/en/video/56415> (accessed June 16, 2020).

<sup>834</sup> Nadeem Shehadeh and Bill Van Esveld (Human Rights Watch), “For Israel’s Palestinian Citizens, an Issue Unsettled,” commentary, *GlobalPost*, March 30, 2012, <https://www.hrw.org/news/2012/03/30/israels-palestinian-citizens-issue-unsettled>; Harriet Sherwood, “Return to Iqrit: How One Palestinian Village is Being Reborn,” *The Guardian*, May 15, 2013, <https://www.theguardian.com/world/2013/may/15/return-iqrit-palestinian-village-israel> (accessed June 14, 2020); Also see Zochrot, “Iqrit,” <https://zochrot.org/en/village/48985> (accessed June 17, 2020).

<sup>835</sup> Ibid.

<sup>836</sup> Ibid.

<sup>837</sup> Ibid.

would “harm the country’s important interests.”<sup>838</sup> The court, though, noted that residents were entitled to either compensation or allocation of an alternative parcel of land, conditions the residents had previously refused.<sup>839</sup>

Land confiscations and discriminatory land and housing policies have created a situation where the majority of Palestinian citizens of Israel, who make up around 19 percent of Israel’s population,<sup>840</sup> live in crowded Palestinian municipalities, which have jurisdiction over less than three percent of all land in Israel.<sup>841</sup>

### *Coercive Practices in the Negev Region*

Israeli authorities have also in some instances used coercive practices to restrict the rights of Palestinian citizens of Israel. They have, for example, made it virtually impossible for tens of thousands of Palestinian Bedouins residing in the Negev to live lawfully in the communities they have lived in for decades.<sup>842</sup> Dating back to the formulation of the state’s first formal plans in the 1960s, authorities have refused to legally recognize 35 Bedouin communities in the Negev, forcing their 90,000 or so residents, constituting more than 28 percent of the Bedouin population in the Negev, to live under constant threat of demolition.<sup>843</sup> Israeli law considers all buildings in these unrecognized villages illegal and authorities have refused to connect most to the national electricity or water grids or provide basic infrastructure, such as paved roads or sewage systems.<sup>844</sup> The communities

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<sup>838</sup> *Awni Sbeit et al. v. The Government of Israel et al.*, HCJ 840/97 (2003) (Hebrew), <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C97/400/008/130&fileName=97008400.130&type=4> (accessed June 15, 2020), para. 6. Also see, Amiram Barkat, “High Court Rejects the Right of Ikrit Refugees to Return Home,” *Haaretz*, June 27, 2003; <https://www.haaretz.com/1.5486435> (accessed June 14, 2020).

<sup>839</sup> *Ibid.*; Nur Masalha, *Catastrophe Remembered: Palestine, Israel and the Internal Refugees: Essays in Memory of Edward W. Said* (London: Zed Books, 2005), <https://bit.ly/2N1sKrc> (accessed June 15, 2020).

<sup>840</sup> Israel CBS, “Localities (1) and Population, By District, Sub-District, Religion and Population Group,” September 15, 2020.

<sup>841</sup> See Systematic Oppression section. “Israel: Discriminatory Land Policies Hem in Palestinians,” Human Rights Watch news release; ACRI et al., “Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016.” Position Paper.

<sup>842</sup> Human Rights Watch, *Off the Map, Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages* (New York: Human Rights Watch, 2008), <https://www.hrw.org/reports/2008/iopto308/iopto308webwcover.pdf>.

<sup>843</sup> “Following Adalah Legal Action, Israel Expands Eligibility for Emergency COVID-19 Food Stamps Program,” Adalah press release, February 3, 2021; Adalah and Negev Coexistence Forum for Civil Equality (NCF), Joint NGO Report: UN Committee on Economic, Social and Cultural Rights, “Re: List of Issues for the State of Israel: Violations of the ICESCR by Israel Against the Arab Bedouin in the Negev/Naqab desert,” January 2019, <https://bit.ly/2zCAexM> (accessed May 3, 2020), p. 1.

<sup>844</sup> Human Rights Watch, *Off the Map*.

do not appear on official maps, most have no educational facilities or basic infrastructure, and, without recognized addresses, residents cannot register to participate in local elections.<sup>845</sup>

Israeli authorities have demolished thousands of Bedouin homes, many consisting of no more than tents or shacks, over the course of decades. According to government data, between 2013 and 2019, 10,697 structures belonging to Palestinian Bedouins were demolished in the Negev, including 2,241 in 2019 alone, the majority by owners themselves in the face of demolition orders and under threat of significant penalty.<sup>846</sup> Israeli authorities have razed one unrecognized village that has been embroiled in a years-long legal battle with the state, al-Araqib, 185 times.<sup>847</sup> In a 2007 letter to Human Rights Watch, the Justice Ministry said it considered there to be 45,000 illegal structures in the Negev at that time.<sup>848</sup>

For years, authorities have sought to concentrate Bedouins living in the Negev in government-planned townships in order to maximize the land available for Jewish communities.<sup>849</sup> Many Bedouins, though, see the development of these townships as an effort to extinguish their land claims elsewhere in the Negev and do not view them as acceptable residential options, given their lack of involvement in their development and concerns about overcrowding and government neglect.<sup>850</sup> Those efforts continue;

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<sup>845</sup> Adalah and NCF, “Violations of the ICESCR by Israel Against the Arab Bedouin in the Negev/Naqab desert.”

<sup>846</sup> Negev Coexistence Forum for Civil Equality, “On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab,” July 2020, <https://www.dukium.org/wp-content/uploads/2020/07/HDR-2020-Data-on-2019-Eng-3.pdf> (accessed August 18, 2020), p. 14; Almog Ben Zikri, “Bedouin Home Demolitions in Israel Double in 2017,” *Haaretz*, March 28, 2018, <https://www.haaretz.com/israel-news/bedouin-home-demolitions-in-israel-double-in-2017-1.5939858> (accessed May 3, 2020); NCF, The Regional Council for the Unrecognized Villages in the Negev (RCUV) and Alhuquq Center, “The Arab Bedouin indigenous people of the Negev/Nagab – A Short Background,” <https://bit.ly/2YAjsYy> (accessed May 3, 2020).

<sup>847</sup> “Israel Demolishes Bedouin Village for 185th Time,” *Middle East Monitor*, March 25, 2021 <https://www.middleeastmonitor.com/20210325-israel-demolishes-bedouin-village-for-185th-time/> (accessed March 27, 2021); Oren Ziv, “If Pandemic Hits, Unrecognized Bedouin Villages Could ‘Become Like Northern Italy,’” *+972 Magazine*, March 29, 2020 <https://www.972mag.com/coronavirus-unrecognized-bedouin-villages/> (accessed May 3, 2020). Also see Adalah, “From Al-Araqib to Susiya: The Forced Displacement of Palestinians on Both Sides of the Green Line,” May 2013, <https://bit.ly/2BdEIR2> (accessed June 15, 2020); Oren Ziv, “Israel Steps Up Campaign Against Bedouin Village It Demolished 173 Times,” *+972 Magazine*.

<sup>848</sup> Human Rights Watch, *Off the Map*.

<sup>849</sup> See Intent to Maintain Domination and Systematic Oppression sections.

<sup>850</sup> Human Rights Watch, *Off the Map*, p. 16-18.

according to the rights group Adalah, a 2019 government plan would displace 36,000 Bedouins in order to expand military training areas and establish “economic development” projects.<sup>851</sup>

### *Denial of Residency and Nationality*

#### **Effective Ban on Granting Status to Palestinian Spouses from the OPT**

Israel’s Citizenship and Entry into Israel Law (Temporary Order)—2003 bars Palestinians from the West Bank and Gaza from residing with their spouse in Israel or East Jerusalem.<sup>852</sup> The temporary order, enacted by the Knesset in July 2003, renewed every year since and upheld by the Israeli Supreme Court, prohibits with few exceptions the granting of residency or citizenship to Palestinian ID holders, even if married to an Israeli citizen or permanent resident.<sup>853</sup> While Israeli authorities already restricted family reunification before 2003, this law has brought the process to a near halt.<sup>854</sup>

The law denies Israeli citizens and residents, both Jewish and Palestinian, who marry Palestinian residents of the West Bank and Gaza the right enjoyed by other Israelis to live with their loved ones in the place of their choosing. This denial is based on the spouse’s ethnicity rather than on an individualized assessment of security risk. If an Israeli marries a foreign spouse who is Jewish, the spouse can obtain citizenship automatically. Other foreigners can receive immediate status and normally become eligible for citizenship after living in Israel for several years.<sup>855</sup> Palestinian men over 35 and women over 25 from the

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<sup>851</sup> “Israel Announces Massive Forced Transfer of Bedouin Citizens in Negev,” Adalah press release, January 30, 2019, <https://www.adalah.org/en/content/view/9677> (accessed May 3, 2019); “The Illegality of Israel’s Plan to Transfer Palestinian Bedouin Citizens of the State into ‘Refugee Displacement Camps’ in the Naqab (Negev),” Adalah press release, December 10, 2019, <https://www.adalah.org/en/content/view/9888> (accessed May 3, 2019).

<sup>852</sup> Adalah, *Nationality and Entry into Israel Law*, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/41-Citizenship-and-Entry-into-Israel-Law-Temporary-Order-2003.pdf> (accessed May 3, 2020).

<sup>853</sup> Adalah, *Nationality and Entry into Israel Law*; “Israel: Family Reunification Ruling Is Discriminatory,” Human Rights Watch news release, May 17, 2006, <https://www.hrw.org/news/2006/05/17/israel-family-reunification-ruling-discriminatory>.

<sup>854</sup> During Knesset testimony on July 18, 2003, an official said that authorities granted 16,000 family reunification petitions in the preceding decade. “Israel: Don’t Outlaw Family Life,” Human Rights Watch news release, July 27, 2003, <https://www.hrw.org/news/2003/07/27/israel-dont-outlaw-family-life>.

<sup>855</sup> *Ibid.*

West Bank and Gaza married to Israeli citizens or residents can apply for temporary, renewable visitor permits, but authorities have denied many of those applications. <sup>856</sup>

The law forces a difficult choice for the thousands of couples—30,000 where one spouse is a Palestinian citizen of Israel, according to the Mossawa Center—who marry despite these restrictions. They must either live separately or have the Israeli citizen or resident spouse move to the West Bank, despite Israeli military orders prohibiting Israelis from living in Area A. <sup>857</sup> Moreover, moving to the OPT has led Palestinian Jerusalemites to lose their residency status and jeopardizes the eligibility of both Israeli citizens and residents to exercise rights related to residency or citizenship such as the right to receive social security benefits. This difficult choice has splintered thousands of families. <sup>858</sup>

### **Palestinian Refugees**

Israel's Citizenship Law of 1952 denies citizenship and residency rights to the more than 700,000 Palestinians who resided before 1948 in the territory that is now Israel and who fled or were expelled during the events of 1948, and to their descendants. <sup>859</sup> Restrictive Israeli policies also block refugees from neighboring countries from legally residing even in

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<sup>856</sup> Jonathan Lis, "Israeli Legislator Invokes Nation-state Law in Bid to Block Palestinian Family Unification," *Haaretz*, June 2, 2020, <https://www.haaretz.com/israel-news/.premium-israeli-legislator-invokes-nation-state-law-in-bid-to-block-palestinian-family-unifi-1.8890451> (accessed June 15, 2020). "Knesset Expected to Renew the Citizenship Law Despite Dissolution of the Knesset," Mossawa Center press release, n.d., <http://www.mossawa.org/eng/?mod=articles&ID=800> (accessed May 3, 2020).

<sup>857</sup> *Ibid.*; *Haaretz* estimated in 2004 that the law, at the time, affected between 16,000 and 21,000 families. "Israel: Reject Law Separating Spouses," Human Rights Watch news release, May 22, 2005. <https://www.hrw.org/news/2005/05/22/israel-reject-law-separating-spouses>; Declaration regarding Area Closure (Prohibition on Entry and Stay (Israelis) (Area A), 5761-2000" (Hebrew), Israel Defense Forces, October 5, 2000, [https://www.nevo.co.il/law\\_html/law65/666\\_039.htm](https://www.nevo.co.il/law_html/law65/666_039.htm) (accessed July 14, 2020); Also see Umm Forat, "For an Israeli Married to a Palestinian, Family Unification Is Forbidden," *Haaretz*, June 1, 2020, <https://www.haaretz.com/middle-east-news/palestinians/for-an-israeli-married-to-a-palestinian-family-unification-is-forbidden-1.8886935> (accessed May 3, 2020).

<sup>858</sup> Khulood Badawi, "In Israel, Love Knows Boundaries," commentary, Human Rights Watch dispatch, February 14, 2018, <https://www.hrw.org/news/2018/02/14/israel-love-knows-boundaries>

<sup>859</sup> Adalah, Citizenship Law, No. 32 of 1952; UNRWA, "Palestine Refugees," <https://www.unrwa.org/palestine-refugees> (accessed May 3, 2020); Letter from Human Rights Watch to Israeli Prime Minister Barak, December 21, 2000; UN, "Global Issues – Refugees," <https://www.un.org/en/global-issues/refugees> (accessed June 15, 2020). ("Under international law and the principle of family unity, the children of refugees and their descendants are also considered refugees until a durable solution is found. Both UNRWA and UNHCR recognize descendants as refugees on this basis, a practice that has been widely accepted by the international community, including both donors and refugee hosting countries.")

the OPT. <sup>860</sup> International human rights law guarantees to refugees and exiles the right to enter the territory they are from, even where sovereignty is contested or has changed hands, and reside in areas where they or their families once lived and have maintained links to. <sup>861</sup> Like refugees in other contexts, Palestinian refugees should be given the opportunity to freely decide between returning to their country of origin, local integration, or third-country resettlement. <sup>862</sup> The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has registered 5.7 million Palestinian refugees. <sup>863</sup> Many remain stateless and have lived for generations in crowded refugee camps in poor conditions in the OPT, Jordan, Lebanon, and Syria. <sup>864</sup>

## Conclusion

Israeli authorities have deprived millions of people of their basic rights by virtue of their identity as Palestinians. These longstanding policies and systematic practices box in, dispossess, forcibly separate, marginalize, and otherwise inflict suffering on Palestinians.

In the OPT, movement restrictions, land expropriation, forcible transfer, denial of residency and nationality, and the mass suspension of civil rights constitute “inhuman[e] acts” set out under the Apartheid Convention and the Rome Statute. Under both legal standards, inhumane acts when carried out amid systematic oppression and with the intent to maintain domination make up the crime against humanity of apartheid. <sup>865</sup>

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<sup>860</sup> Jessica Montell, executive director of HaMoked, email to Human Rights Watch, February 24, 2020. HaMoked, “Family Unification in the OPT: The Case of KB,” August 31, 2011, <http://www.hamoked.org/Case.aspx?clD=Cases0131> (accessed February 24, 2021).

<sup>861</sup> ICCPR 12.4; UN Human Rights Committee, CPR, General Comment No. 27 of 1999, art. 12 (freedom of movement) <https://www.refworld.org/docid/45139c394.html> (accessed May 3, 2020).

<sup>862</sup> Human Rights Watch Policy on the Right of Return (which notes that “[t]he international community has a duty to ensure that claims of a right to return are resolved fairly, that individual holders of the right are permitted freely and in an informed manner to choose whether to exercise it, and that returns proceed in a gradual and orderly manner. Governments' legitimate security concerns should be met consistently with these principles and other internationally recognized human rights.”).

<sup>863</sup> “UNRWA Appeals for US\$1.5 Billion,” UNRWA press release, February 11, 2021.

<sup>864</sup> “Israel’s Refusal to Grant Palestinian Refugees Right to Return has Fuelled Seven Decades of Suffering,” Amnesty International, press release, May 15, 2019, [amnesty.org/en/latest/news/2019/05/israels-refusal-to-grant-palestinian-refugees-right-to-return-has-fuelled-seven-decades-of-suffering/](https://www.amnesty.org/en/latest/news/2019/05/israels-refusal-to-grant-palestinian-refugees-right-to-return-has-fuelled-seven-decades-of-suffering/) (accessed May 3, 2020).

<sup>865</sup> Rome Statute, art 7(1)(h), art(7)(1)(k), art 8(2)(g), art 8(2)(h).

Collectively, these policies and practices in the OPT severely deprive Palestinians of fundamental human rights, including to residency, private property, and access to land, services, and resources, on a widespread and systematic basis. When committed with discriminatory intent, on the basis of the victims' identity as part of a group or collectivity, they amount to the crime against humanity of persecution under the Rome Statute and customary international law.

Separately from the inhumane acts carried out in the OPT, the Israeli government violates the rights of Palestinians inside Israel on account of their identity, including measures that have made it virtually impossible for tens of thousands of Palestinian Bedouins living in the Negev to live lawfully in the communities; the denial to hundreds of thousands of Palestinians of the ability to access or use land confiscated from them historically; the effective bar on citizens and residents obtaining long-term legal status to and thereby living permanently together in Israel with spouses from the West Bank and Gaza, which deprives them of the ability to live together permanently in Israel; and the denial of residency rights to Palestinians who fled or were expelled from their homes in the events around the establishment of the state.

These abuses continue and there is no indication that authorities have investigated, much less held accountable, anyone involved in their commission.

## Recommendations

These recommendations stem from Human Rights Watch's finding that Israeli authorities are committing the crimes against humanity of apartheid and persecution.

Human Rights Watch found that the Israeli government has pursued an intent to maintain the domination of Jewish Israelis over Palestinians throughout the territory it controls. In the OPT, including East Jerusalem, that intent has been coupled with systematic oppression of Palestinians and inhumane acts committed against them. When these three elements occur together, they amount to the crime of apartheid.

Israeli authorities are also committing the crime against humanity of persecution based on the discriminatory intent behind Israel's treatment of Palestinians and the grave abuses it has carried out in the OPT.

### To the State of Israel

- Dismantle all forms of systematic oppression and discrimination that privilege Jewish Israelis at the expense of Palestinians and otherwise systematically violate Palestinian rights in order to ensure the dominance of Jewish Israelis, and end the persecution of Palestinians, including by ending discriminatory policies and practices in such realms as citizenship and nationality processes, protection of civil rights, freedom of movement, allocation of land and resources, access to water, electricity, and other services, and granting of building permits.
- Fully respect the human rights of Palestinians, including those in the OPT, as well as the protections owed to Palestinians in the OPT under international humanitarian law.
- Cease construction and expansion of settlements, dismantle existing settlements, and bring Israeli citizens inhabiting settlements in the West Bank, including East Jerusalem, back within Israel's internationally-recognized borders.
- End the generalized ban on travel to and from Gaza and permit the free movement of people to and from Gaza, and in particular between Gaza and the West Bank, and abroad, subject to, at most, individual screenings and physical searches for security purposes.

- Permit Palestinians from the West Bank and Gaza to move freely into East Jerusalem, subject to, at most, individual screenings and physical searches for security purposes.
- End discrimination in the application of planning, permit, and building laws and regulations that subject Palestinians to discriminatory permit refusals and demolition orders.
- Provide equitable access to land, housing, and essential services for Palestinians.
- Dismantle the segments of the Separation Barrier not built along the Green Line but, rather, inside the OPT.
- Repeal discriminatory laws and legal provisions in favor of legislation that is rooted in the principle of equality and conforms to international human rights standards, including:
  - The Citizenship and Entry into Israel Law (Temporary Order)—2003, which allows Israeli citizens and residents to obtain legal status for their non-Israeli spouses, but not if the spouses are Palestinians from the West Bank and Gaza, who are explicitly ineligible under this law with few exceptions;
  - Provisions in the 2011 Admission Commissions Law that effectively allow discrimination by residents of small towns inside Israel against prospective residents on the basis of their race, ethnicity, or national origin;
  - Provisions in the Basic Law: Israel as the Nation-State of the Jewish People that discriminate between Jews and non-Jews with regard to the right to self-determination and to housing.
- Remove arbitrary restrictions on residency rights for Palestinian residents of East Jerusalem, the West Bank, and the Gaza Strip and their families, including by stopping the practice of revoking the residency of Palestinians in East Jerusalem, ending the effective freeze on family reunification applications in the West Bank and Gaza since 2000, and allowing Palestinians to resettle in other parts of the OPT and register their new addresses.
- Recognize and honor the right of Palestinians who fled or were expelled from their homes in 1948 and their descendants to enter Israel and reside in the areas where they or their families once lived, as Human Rights Watch has outlined in a separate policy, which also outlines the options of integration in place or in the OPT and resettlement elsewhere. <sup>866</sup>

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<sup>866</sup> Human Rights Watch Policy on the Right of Return.

- Cooperate with and heed the recommendations of UN bodies and human rights mechanisms.
- Ratify the Rome Statute and incorporate crimes against humanity, including the crimes of persecution and apartheid, into national criminal law with a view to investigate and prosecute individuals credibly implicated in these crimes.

### **To the Palestinian Liberation Organization**

- Adopt an advocacy strategy centered on the immediate attainment of the full human rights of Palestinians, rather than one that puts off attainment of human rights in favor of a particular political outcome.

### **To the Palestinian Authority**

- Cease all security coordination with the Israeli army that contributes to facilitating the crimes of apartheid and persecution in the OPT.
- Incorporate crimes against humanity, including the crimes of persecution and apartheid, into national criminal law.

### **To the International Criminal Court Office of the Prosecutor**

- Investigate and prosecute individuals credibly implicated in the crimes against humanity of apartheid or persecution.

### **To Members of the United Nations**

- Establish through the UN an international commission of inquiry to investigate systematic discrimination and repression based on group identity in the OPT and Israel. The inquiry should be mandated to establish and analyze the facts, and, where applicable, identify those responsible for serious crimes, including apartheid and persecution, with a view to ensure that the perpetrators of violations are held accountable, as well as collect and preserve evidence related to abuses for future use by credible judicial institutions. The inquiry's mandate should be sufficiently broad to cover the role of other actors, including companies and officials of other states.

- Establish a UN Committee of representatives of member states to assess the findings of the international commission of inquiry, regularly review compliance with the commission of inquiry's recommendations, and recommend further action as needed.
- Recommend, given the deadlock on this issue at the UN Security Council, that member states and blocs of states impose unilateral measures in the form of targeted sanctions, including travel bans and asset freezes, against officials and entities credibly implicated in the crimes of apartheid and persecution; unilaterally condition arms sales and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution of Palestinians; and subject agreements, cooperation schemes, and all forms of trade and dealing with Israel to enhanced due diligence to screen for those directly contributing to the commission of the crimes of apartheid and persecution of Palestinians, mitigate the human rights impacts and, where not possible, end those activities and funding found to contribute to facilitating these serious crimes.
- Establish through the UN a position of UN global envoy for the crimes of persecution and apartheid with a mandate to advocate for their end and identify steps that states and judicial institutions should take to prosecute these crimes. Once established, request the UN Security Council to invite the envoy to participate in quarterly briefings on the situation in the Middle East.

## To All States

- Issue individual and collective public statements expressing concern about Israeli authorities' commission of the crimes of apartheid and persecution.
- Subject agreements, cooperation schemes, and all forms of trade and dealing with Israel to enhanced due diligence to screen for those directly contributing to the commission of crimes of apartheid and persecution of Palestinians, mitigate the human rights harms and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.
- Impose targeted sanctions, including travel bans and asset freezes, against officials and entities responsible for the continued commission of grave international crimes, including apartheid and persecution.

- Condition arms sales and military and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution.
- Incorporate the crimes against humanity of apartheid and persecution into national criminal law with a view to investigate and prosecute individuals credibly implicated in these crimes.
- Investigate and prosecute those credibly implicated in the crimes of persecution and apartheid, under the principle of universal jurisdiction and in accordance with national laws.
- Consider including calls for Israel to grant Palestinians in the occupied territory civil rights at least equal to those it grants its own citizens in publications, reports, and policy positions and to assess Israel's conduct on this basis, as Human Rights Watch has outlined in a separate publication.<sup>867</sup>

### To the President of the United States

- Issue a public statement of concern regarding Israeli authorities' commission of the crimes of apartheid and persecution.

### To the United States Department of State, Department of Defense and Department of Treasury

- Condition military and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution.
- Conduct an assessment of and release a public report on the use of US-origin weapons and/or equipment, or Israeli weapons and/or equipment purchased with US funds, to contribute to the commission of the crimes of apartheid and persecution, or to facilitate violations of international human rights or humanitarian law. If and when further assistance is provided, ensure that no funding goes to units where there is credible information implicating them in the commission of gross violations of human rights, in compliance with 620M of the

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<sup>867</sup> Human Rights Watch, *Born Without Civil Rights*.

Foreign Assistance Act of 1961, 22 U.S.C. 2378d and Section 362 of Title 10 of the U.S. Code, otherwise known as the Leahy Laws.

- Impose visa bans and asset freezes pursuant to the Global Magnitsky Accountability Act of 2016, Executive Order 13818, and Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2019, on all Israeli officials found to be responsible for or complicit in gross human rights violations, including the crimes of apartheid and persecution.

## To the United States Congress

- Issue public statements of concern regarding Israeli authorities' commission of the crimes of apartheid and persecution.
- If the US executive branch fails to condition military and security assistance to Israel, Congress should legislate accordingly to condition military and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution.
- Request a report from the Government Accountability Office (GAO) on how US support to Israel, including funds, weapons, and equipment, is used to contribute to the commission of the crimes of apartheid and persecution; request that the GAO include in its report an investigation into the degree to which the US Departments of State and Defense are able to conduct appropriate human rights vetting of Israeli military units.
- Ensure that all offices tasked with ensuring compliance under the Leahy Laws at the Departments of State and Defense have adequate funding and staff.

## To the European Union and its Member States

- Issue public statements of concern regarding Israeli authorities' commission of the crimes of apartheid and persecution.
- Conduct a holistic assessment of the implications for EU and member states relations with Israel arising from the findings of the crimes of apartheid and persecution, identifying in particular the legal consequences and obligations under EU and international law that apply to EU institutions, member states and EU-based private businesses, and the steps that should be taken accordingly, and make such assessment public

- Subject all EU and member states' bilateral agreements, cooperation schemes, and all forms of trade and dealing with Israel to enhanced due diligence to screen for those directly contributing to the commission of crimes of apartheid and persecution of Palestinians, mitigate the human rights harms and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.
- Impose targeted sanctions against individuals and entities found to be responsible for the continued commission of grave international crimes, including apartheid and persecution.
- Condition military and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution.
- Support the establishment of a Commission of Inquiry by the UN to investigate all forms of systematic discrimination or repression based on group identity in Israel or the OPT.
- Support the establishment of a UN envoy on the crimes of apartheid and persecution.

## **To the European Parliament**

- Urge for the European Commission, the European External Action Service and EU member states to take the steps outlined above and request the EU High Representative and the Commission to keep the Parliament informed about next steps.

## **To businesses active in Israel and the OPT**

- Cease business activities that directly contribute to the crimes of apartheid and persecution.
- Assess whether their goods and services contribute to the crimes of apartheid and persecution, such as equipment used in the unlawful demolition of Palestinian homes, and cease providing goods and services that will likely be used for such purposes, in accordance with the UN Guiding Principles on Business and Human Rights.

## Acknowledgements

Omar Shakir, Israel and Palestine Director at Human Rights Watch, was the lead researcher and author of this report. Other Human Rights Watch researchers contributed research and writing. Eric Goldstein, acting director of Human Rights Watch's Middle East and North Africa division, was the report's primary editor.

Tom Porteous, deputy program director at Human Rights Watch, and Clive Baldwin, senior legal advisor at Human Rights Watch, provided program and legal review. Kenneth Roth, executive director at Human Rights Watch, also reviewed the report. Philippe Boloignon, deputy director of global advocacy, Akshaya Kumar, director of crisis advocacy, and Bruno Stagno, chief advocacy officer, led the development of the recommendations in the report.

Balkees Jarrah, associate director of the International Justice Program, Bill Van Esveld, associate director in Human Rights Watch's Children's Rights Division, Elisa Epstein, Washington advocacy officer at Human Rights Watch, Felix Horne, senior researcher with Human Rights Watch's Environment and Human Rights Division, and Joseph Amon, consultant for Human Rights Watch, among others, also edited parts of the report.

Emilie Max, consultant for Human Rights Watch, contributed legal research. Sari Bashi, a consultant for Human Rights Watch, supported outreach and communications efforts. Diakonia, a Swedish development organization, provided a legal memorandum addressing legal issues related to the report. Aaqib Mahmood, former intern at Human Rights Watch, and Diana Naoum, former Middle East and North Africa coordinator for Human Rights Watch, also contributed research.

Associates in Human Rights Watch's Middle East and North Africa Division and Travis Carr, photo and publications coordinator at Human Rights Watch, helped prepare the report for publication. Shirly Eran translated the report into Hebrew.

Ahmed Benchemsi contributed to the development of the accompanying multimedia piece, among others. The graphics for the report were developed in partnership with Visualizing Impact, whose effort was led by Jessica Anderson and Yosra El Gazzar.

We would also like to thank Nathan Thrall, Hagai El-Ad, Tareq Baconi, Michael Sfard, Moien Odeh, Dror Etkes, Murad Samara, Kathleen Peratis, Naji Naji, Tania Hary, Ahmed Elqattawi, and Ruhan Nagra, among others, for their insights and time.

Most importantly, we wish to thank the Palestinian, Israeli, and other human rights defenders and activists who for years have documented and courageously spoken out against the serious abuses documented in this report and the men and women who shared their stories with us.

# **Appendix I: Letter from Human Rights Watch to Israel Prime Minister**

July 20, 2020

Mr. Benjamin Netanyahu  
Prime Minister of the State of Israel  
Office of the Prime Minister

Dear Mr. Prime Minister,

I write to request your assistance in obtaining information pertaining to Israel's treatment of Palestinians inside Israel and in the Occupied Palestinian Territory: the West Bank, including East Jerusalem, and the Gaza Strip. We would greatly appreciate the opportunity to understand your perspectives on these issues, so they can be reflected in a forthcoming Human Rights Watch report on them. For this to happen, we would need to receive your responses by Monday, August 10.

Human Rights Watch (HRW) is an international human rights organization, whose head office is located in New York City. The organization publishes reports on the state of human rights in nearly 100 countries worldwide, with the objective of defending human rights and promoting respect for international humanitarian law. Human Rights Watch has covered human rights issues in Israel and Palestine for nearly three decades and, in that time, has regularly met and corresponded with Israeli officials.

Human Rights Watch's forthcoming report examines Israeli laws, policies and practices affecting Palestinians in Israel, East Jerusalem, the West Bank and Gaza Strip and compares them to the treatment of Jewish Israelis living in the same or nearby areas. The report draws on years of research by Human Rights Watch and other rights organizations, a review of laws, government planning documents, statements by officials, land records and field work conducted for this report.

Our research has been examining whether Israeli authorities have carried out grave abuses on a systematic basis against Palestinians, and whether these occurred in a context of a discriminatory system or systems designed to ensure the dominance of Jewish Israelis over Palestinians. We are examining the extent to which Israeli officials have carried out any

abuses pursuant to long-standing policies and practices and whether they form part of the implementation of aims to sustain a Jewish demographic majority and maximize Jewish Israeli control over land in Israel and the West Bank.

To better understand and reflect the perspective of the Israeli government on these issues, we would appreciate answers to the following questions:

1. Do Israeli laws, policies and practices treat Palestinians living in Israel and in areas under Israeli control in a manner equal to the way they treat Jewish Israelis living in these same areas?
  - a. If so, what is the Israeli government's response to claims of discrimination against Palestinians?
  - b. If not, please describe all measures being taken by the Israeli government to ensure equality.
2. Why do Israeli authorities significantly restrict travel for Palestinians between the West Bank and the Gaza Strip? Does the government maintain a policy of separating Gaza and the West Bank? If this policy is motivated by security considerations, please explain how the government balances this consideration against the right of Palestinians to freedom of movement.
3. Data from the Civil Administration obtained by Bimkom indicates that, between 2016 and 2018, Israeli authorities approved less than 1.5 percent of applications by Palestinians to build in Area C, 21 applications in total, while issuing 2,147 demolition orders. Why does the Israeli Civil Administration reject such a high percentage of permits for Palestinians to build in Area C of the West Bank and demolish structures built without a permit at a rate higher than for such structures built by Israeli settlers?
4. Data from the Civil Administration obtained by the Israeli group Peace Now in 2018 indicates that Israeli authorities have allocated 99.76% of all "state land" allocated to third parties in the West Bank to serve the needs of Israeli settlers. Why has so little state land been allocated for use by Palestinians in the West Bank as compared to settlers?
5. Why do Israeli authorities continue to wield significant influence over the Population Registry in the OPT, including in the Gaza Strip nearly 15 years after its disengagement from Gaza? Why have authorities since September 2000 refused to

- process applications, outside of those processed as a “gesture” to the PA between November 2007 and March 2009, for Palestinians in the OPT to grant legal status to those not already in the Population Registry, or even change their addresses? If the policy is motivated by security considerations, why is it that an effectively blanket refusal to process new applicants, as opposed to a policy of making individualized assessments, is necessary to ensure security?
6. Why do authorities continue to revoke the residency status of Palestinian Jerusalemites who they have determined no longer “maintain a connection” to the city?
  7. Is there a government policy to seek to maintain a Jewish majority in Jerusalem? If so, why?
  8. Colin Hames, the former head of Israeli government body in charge of supplying services to neighborhoods in Jerusalem beyond the separation barrier, the Jerusalem Envelope Administration, described the government’s “neglect” of these areas, including Kufr Aqab. Why have authorities effectively failed to police, regulate construction or in large part provide basic services to residents?
  9. Why does the Israeli government bar with few exceptions the granting of Israeli citizenship or long-term legal status to Palestinians from the West Bank and Gaza who marry Israeli citizens and residents, a restriction that does not apply to Jewish spouses of Israeli citizens and residents? What role, if any, does demographics and in particular any objective to foster a Jewish majority factor into the annual renewal and the enforcement of this law and, more generally, in the formulation of Israeli governmental policy on issues related to citizenship, nationality and residency rights and access to and allocation of land and resources?
  10. Why do Israeli authorities deny residency rights to Palestinian refugees who fled or were expelled from their homes inside today’s Israel between 1947 and 1949, while guaranteeing it to Jewish citizens of other countries, including those who have never been to Israel?
  11. Why have authorities refused to grant legal status to several dozen Palestinian Bedouin communities in the Negev, making it impossible for more than 70,000 Bedouins to reside lawfully in the communities that they have lived in for decades?

Is there a government policy to “Judaize” the Negev region, as well as the Galilee?  
If so, what is the objective of this policy?

We will reflect any pertinent information you provide us by Monday, August 10 in our report on these issues and weigh that information in formulating our conclusions and recommendations.

In November 2019, the IDF spokesman replied to a Human Rights Watch letter and we reflected the information provided at length and published the letter in its entirety in a report issued the following month. In March 2020, the Israeli Planning Administration provided substantial information in response to a Human Rights Watch letter, which we also published and reflected at length in a May 2020 publication.

We would also welcome an opportunity to meet you and relevant colleagues virtually or in person to get your feedback on our research and interim findings.

My contact information follows my signature information, below.

Thank you in advance for your attention to this request.

Regards,

Eric Goldstein  
Deputy Director  
Middle East and North Africa  
Human Rights Watch



The widely held assumption that the Israeli occupation of Palestinian territory is a temporary situation and that the “peace process” will soon bring an end to Israeli abuses has obscured the reality on the ground today of Israel’s entrenched discriminatory rule over Palestinians. A single authority, the Israeli government, rules primarily over the area between the Jordan River and Mediterranean Sea, populated by two groups of roughly equal size, methodologically privileging Jewish Israelis while repressing Palestinians, most severely in the Occupied Palestinian Territory (OPT), made-up of the West Bank, including East Jerusalem, and Gaza.

Drawing on years of human rights documentation, case studies and a review of government planning documents, statements by officials and other sources, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* examines Israel’s treatment of Palestinians and evaluates whether particular Israeli policies and practices in certain areas amount to the crimes against humanity of apartheid and persecution.

The crime of apartheid refers to inhumane acts committed in the context of systematic oppression by one racial group over another and with the intent to dominate the marginalized group. Persecution consists of severe abuses of fundamental rights committed with discriminatory intent.

Across Israel and the OPT, Israeli authorities have pursued an intent to maintain domination over Palestinians by exercising control over land and demographics for the benefit of Jewish Israelis. In the OPT, the intent has been coupled with inhumane acts, including sweeping movement restrictions, mass land confiscation and the suspension of civil rights for millions of Palestinians, carried out amid systematic oppression.

On this basis, the report concludes that Israeli officials have committed the crimes against humanity of apartheid and persecution.

Human Rights Watch calls on Israel to end apartheid and persecution. It also enumerates actions the international community should take in order to achieve this end.

*(above) The Israeli settlement of Maale Adumim in the occupied West Bank, with Palestinian neighborhoods of occupied East Jerusalem in the background.*

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*(front cover) A Palestinian boy runs near Israel’s separation barrier in the city of Qalqilya in the Israeli-occupied West Bank. The barrier entirely encircles the city, which is home to more than 55,000 Palestinians.*

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