ISRAEL'S APARTHEID AGAINST PALESTINIANS: CRUEL SYSTEM OF DOMINATION AND CRIME AGAINST HUMANITY

(UNDER STRICT EMBARGO UNTIL 1 FEBRUARY 2022)

ABBREVIATIONS AND GLOSSARY

ACRI	Association for Civil Rights in Israel, a human rights organization
Adalah	Adalah – The Legal Center for Arab Minority Rights in Israel, a human rights organization
Addameer	Addameer Prisoner Support and Human Rights Association, a human rights organization
Akevot	Akevot Institute for Israeli-Palestinian Conflict Research
Al-Haq	Al-Haq – Law in the Service of Man, a human rights organization
Al Mezan	Al Mezan Center for Human Rights, a human rights organization
Apartheid Convention	International Convention on the Suppression and Punishment of the Crime of Apartheid
ARIJ	Applied Research Institute – Jerusalem
Ateret Cohanim	formally known as Ateret Yerushalayim, a Jewish settler organization
Badil	BADIL Resource Centre for Palestinian Residency and Refugee Rights
Bimkom	Bimkom – Planners for Planning Rights, a human rights organization
B'Tselem	B'Tselem (Israeli Information Center on Human Rights in the Occupied Territories), a human rights organization
"buffer zone"	access-restricted area located along the fence separating the Gaza Strip from Israel
CAT	(UN) Committee against Torture
CEDAW	(UN) Committee on the Elimination of Discrimination against Women
CERD	(UN) Committee on the Elimination of Racial Discrimination
CESCR	(UN) Committee on Economic, Social and Cultural Rights
Civil Administration	Israeli military unit that oversees all civilian matters for Jewish Israeli settlers and Palestinian residents in the West Bank excluding East Jerusalem
COGAT	(Israel's) Coordination of Government Activities in the Territories
Convention against Torture	(UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Custodian of Absentee Property	head of an entity appointed by the Israeli minister of finance that manages absentees' property
Custodian for Government and Abandoned Property in Judea and Samaria	head of an entity under the authority of the Israeli Civil Administration charged with managing land and property in the occupied West Bank excluding East Jerusalem
Custodian General	head of an entity under the authority of the Israeli Ministry of Justice that manages all property in Israel when the owners cannot manage it or are untraceable, as well as playing a significant role regarding properties in East Jerusalem owned by Israelis before 1948
DCI-Palestine	Defense for Children International – Palestine, a human rights organization
Development Authority	Israeli body established to administer the property of Palestinian refugees and other property confiscated by the state
"dual use" policy	policy restricting Palestinian imports to the OPT of goods that Israel deems to potentially have military, as well as civilian, use
dunam	land area (10 dunams = 1 hectare)
Elad	Elad-Ir David Foundation, a Jewish settler organization
Erez crossing	passenger crossing between Israel and the Gaza Strip
ESCWA	(UN) Economic and Social Commission for Western Asia
"firing zone"	land designated by Israel for the stated purpose of military exercises
GDP	gross domestic product
Gisha	Gisha – Legal Center for Freedom of Movement, a human rights organization
Green Line	demarcation line set out in the 1949 Armistice Agreements between Israel and its neighbours that served as the de facto borders of the State of Israel until 1967
GRM	Gaza Reconstruction Mechanism
Haaretz	an Israeli newspaper
HaMoked	HaMoked: Center for the Defence of the Individual, a human rights organization
HCJ	(Israel's) High Court of Justice, a function of Israel's Supreme Court when it exercises judicial review over executive authorities.
HRC	(UN) Human Rights Committee

HRW	Human Rights Watch, a human rights organization
IACtHR	Inter-American Court on Human Rights
ICAHD	Israeli Committee Against House Demolitions, a human rights organization
ICBS	Israeli Central Bureau of Statistics
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	internally displaced person
ILC	(UN) International Law Commission
intifada	Palestinian uprising against Israel's military rule
Ir Amim	a human rights organization focusing on Jerusalem
Israel Land Administration	predecessor body to the Israel Land Authority
Israel Land Authority	Israeli government body responsible for managing state land in Israel
Israel Security Agency	Israel's internal security service (also known as Shabak or Shin Bet)
Jerusalem Post	an Israeli newspaper
Jewish Agency for Israel	operative branch of the World Zionist Organization
JNF/KKL	Jewish National Fund / Keren Kayemeth LeIsrael (Hebrew for Jewish National Fund)
Kerem Navot	a human rights organization
kibbutz (plural: kibbutzim)	Jewish community organized as a collective, with communal living and wealth held in common, and usually based on agriculture or industry
Knesset	Israel's parliament
Mahash	internal investigation unit at the Israeli Justice Ministry
MAP	Medical Aid for Palestinians
Mekorot	Israeli state-owned water company
"mixed cities"	Israeli cities with mixed Jewish and Palestinian populations
MK	member of the Knesset
MoFA	(Israel's) Ministry of Foreign Affairs
moshav (plural: moshavim)	Jewish agricultural community organized as a cooperative
Mossawa Center	Mossawa Center – the Advocacy Center for Palestinian Arab Citizens in Israel, a human rights organization
nation state law	Basic Law: Israel the Nation State of the Jewish People
NCF	Negev Coexistence Forum for Civil Equality
Negev/Naqab	Hebrew/Arabic name for a region in southern Israel
NGO	non-governmental organization
NIS	New Israeli Shekel, Israel's currency
NRC	Norwegian Refugee Council, a humanitarian organization
OCHA	(UN) Office for the Coordination of Humanitarian Affairs
OECD	Organization of Economic Cooperation and Development
OHCHR	Office of the (UN) High Commissioner for Human Rights
OPT	Occupied Palestinian Territories
PCATI	Public Committee Against Torture in Israel, a human rights organization
PCBS	Palestinian Central Bureau of Statistics
PCHR	Palestinian Centre for Human Rights, a human rights organization
Peace Now	an NGO
PFLP	Popular Front for the Liberation of Palestine
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
PMO	(Israel's) Prime Minister's Office
Rafah crossing	crossing between Egypt and the Gaza Strip
Rome Statute	Rome Statute of the International Criminal Court
"seam zone"	section of Palestinian land within the West Bank that falls between the fence/wall and the Green Line and is therefore severed from the OPT
State Comptroller	Israeli ombudsperson with authority to review policies and operations of government

Times of Israel	an Israeli newspaper
UNCCP	UN Conciliation Commission for Palestine
UNCTAD	UN Conference on Trade and Development
UNGA	UN General Assembly
UNICEF	UN Children's Fund
UNRWA	UN Relief and Works Agency for Palestine Refugees in the Near East
UNSC	UN Security Council
UAWC	Union of Agricultural Work Committees
waqf	endowment under Islamic law by which an institution holds property for charitable purposes, often as the result of a donation by an individual or group
WFP	World Food Programme, a UN humanitarian programme
WHO	World Health Organization, a UN agency
WZO	World Zionist Organization
+972 Magazine	an Israeli online news magazine

1. EXECUTIVE SUMMARY

"Israel is not a state of all its citizens… [but rather] the nation-state of the Jewish people and only them"
Message posted online in March 2019 by Israel's then prime minister, Benjamin Netanyahu

On 18 May 2021, Palestinians across cities and villages in Israel and the occupied West Bank and Gaza Strip closed their offices, shops, restaurants and schools, abandoned construction sites, and refused to report to work for the whole day. In a display of unity not seen for decades, they defied the territorial fragmentation and segregation they face in their daily lives and observed a general strike to protest their shared repression by Israel.

The strike was sparked by the Israeli authorities' plan to evict seven Palestinian families from their homes in Sheikh Jarrah, a Palestinian residential neighbourhood near the Old City in East Jerusalem, which has been repeatedly targeted by Israel's sustained campaign to expand illegal settlements and transfer Jewish settlers. To stop the threatened evictions, the Palestinian families launched a campaign on social media under the hashtag #SaveSheikhJarrah, attracting worldwide attention and mobilizing protesters on the ground. Israeli security forces responded to the protests with the same excessive force they have been using to stifle Palestinian dissent for decades. They arbitrarily arrested peaceful demonstrators, threw sound and stun grenades at crowds, dispersed them with excessive force and skunk water, and fired concussion grenades at worshippers and protesters gathered in the Al-Aqsa mosque compound.

The brutal repression generated a wave of solidarity elsewhere in the Occupied Palestinian Territories (OPT) and amongst Palestinian citizens of Israel, across the Green Line (the demarcation line set out in the 1949 Armistice Agreements between Israel and its neighbours that served as the de facto borders of the State of Israel until 1967). In Israel, police forces orchestrated a discriminatory campaign against Palestinian citizens involving mass arbitrary arrests of, and unlawful force against, peaceful protesters, while failing to protect Palestinians from organized assaults by Jewish attackers following the outbreak of intercommunal violence. Meanwhile, armed hostilities broke out on 10 May as Palestinian armed groups fired indiscriminate rockets into Israel from Gaza. Israel responded with a ruthless 11-day military offensive against the territory, targeting residential homes without effective advance warning, damaging essential infrastructure, displacing tens of thousands of people and killing and injuring hundreds of others. It thereby exacerbated the chronic humanitarian crisis caused primarily by Israel's long-standing unlawful blockade.

For many Palestinians who observed the general strike in Israel and the OPT, these discriminatory and repressive actions in East Jerusalem, the Gaza Strip and Palestinian cities and towns, as well as "mixed cities" with Jewish and Palestinian populations, in Israel represented different manifestations of an overall system of oppression and domination by Israel. This system, which operates with varying levels of intensity and repression based on Palestinians' status in the separate enclaves where Palestinians live today, and violates their rights in different ways, ultimately seeks to establish and maintain Jewish hegemony wherever Israel exercises effective control. By coming out to protest, they were expressing unity, and a rejection of Israel's fragmentation of the Palestinian people. A manifesto published on social media by some activists that same day denounced long-standing Israeli practices and policies that "tried to turn [Palestinians] into different societies, each living apart, each in its own separate prison".

Palestinians have been calling for an understanding of Israel's rule as apartheid for over two decades and have been at the forefront of advocacy in that regard at the UN. Over time, research conducted by Palestinian human rights organizations, and more recently some Israeli human rights groups, has contributed to broader international recognition of Israel's treatment of Palestinians as apartheid. Yet states, particularly Israel's Western allies, have been reluctant to heed these calls, and have refused to take any meaningful action against Israel. Meanwhile, Palestinian organizations and human rights defenders who have been leading anti-apartheid advocacy and campaigning efforts have faced growing Israeli repression for years as punishment for their work. In October 2021, the Israeli authorities escalated their attacks on Palestinian civil society even further by misusing counterterrorism legislation to outlaw six prominent organizations, including three major human rights groups, to shut down their offices and to detain and prosecute their employees. In parallel, Israel has subjected Israeli organizations denouncing apartheid and other serious human rights violations against Palestinians to smears and delegitimization campaigns.

Building on a growing body of work, Amnesty International has documented and analysed Israel's institutionalized and systematic discrimination against Palestinians within the framework of the definition of apartheid under international law. This has aimed to determine whether discriminatory and exclusionary Israeli laws, policies and practices against Palestinians amount to apartheid as a violation of public international law, a serious human rights violation and a crime against humanity. It has done so by firstly determining Israel's intent to oppress and dominate all Palestinians by establishing its hegemony across Israel and the OPT, including through means of demography, and maximizing resources for the benefit of its Jewish population at the expense of Palestinians. It

has then analysed the laws, policies and practices which have, over time, come to constitute the main tools for establishing and maintaining this system, and which discriminate against and segregate Palestinians in Israel and the OPT today, as well as controlling Palestinian refugees' right to return. It has conducted this analysis by examining the key components of this system of oppression and domination: territorial fragmentation; segregation and control through the denial of equal nationality and status, restrictions on movement, discriminatory family reunification laws, the use of military rule and restrictions on the right to political participation and popular resistance; dispossession of land and property; and the suppression of Palestinians' human development and denial of their economic and social rights. Furthermore, it has documented specific inhuman and inhumane acts, serious human rights violations and crimes under international law, committed against the Palestinian population with the intent to maintain this system of oppression and domination.

In this way, Amnesty International has demonstrated that Israel has imposed a system of oppression and domination over Palestinians wherever it exercises control over the enjoyment of their rights – across Israel and the OPT and with regard to Palestinian refugees. The segregation is conducted in a systematic and highly institutionalized manner through laws, policies and practices, all intended to prevent Palestinians from claiming and enjoying equal rights to Jewish Israelis within Israel and the OPT, and thus intended to oppress and dominate the Palestinian people. This oppression and domination have been cemented by a legal regime that controls (by negating) the rights of Palestinian refugees residing outside Israel and the OPT to return to their homes. Over decades, Israeli demographic and geopolitical considerations have shaped policies towards Palestinians in each of the different areas of Israel, East Jerusalem, the rest of the West Bank and the Gaza Strip in different ways. This means that, today, Israel's system of control is not applied uniformly across all areas. Palestinians experience this system in different ways and face differing levels of repression based on their status and the area in which they live.

The organization has concluded that Israel has perpetrated the international wrong of apartheid, as a human rights violation and a violation of public international law, wherever it imposes this system. It has assessed that almost all of Israel's civilian administration and military authorities, as well as governmental and quasi-governmental institutions, are involved in the enforcement of the system of apartheid against Palestinians across Israel and the OPT and against Palestinian refugees and their descendants outside the territory. Amnesty International has also concluded that the patterns of proscribed acts perpetuated by Israel both inside Israel and in the OPT form part of a systematic as well as widespread attack directed against the Palestinian population, and that the inhuman or inhumane acts committed within the context of this attack have been committed with the intention to maintain this system and amount to the crime against humanity of apartheid under both the Apartheid Convention and the Rome Statute.

This work builds on decades of Amnesty International desk and field research collecting evidence of violations of international human rights and humanitarian law in Israel and the OPT, and on publications by Palestinian, Israeli and international organizations in addition to academic studies, monitoring by grassroots activist groups, reports by UN agencies, experts and human rights bodies, and media articles.

Amnesty International carried out research and analysis in the course of this work between July 2017 and November 2021. Researchers extensively analysed relevant Israeli legislation, regulations, military orders, directives by government institutions and statements by Israeli government and military officials. The organization reviewed other Israeli government documents, such as planning and zoning documents and plans, budgets and statistics, Israeli parliamentary archives and Israeli court judgments. It also examined relevant reports and statistics published by Palestinian authorities. The research was guided by a global policy on the human rights violation and crime of apartheid adopted by Amnesty International in July 2017, following recognition that the organization had given insufficient attention to situations of systematic discrimination and oppression around the world.

As part of its research, Amnesty International spoke with representatives of Palestinian, Israeli and international non-governmental organizations (NGOs), relevant UN agencies, legal practitioners, scholars and academics, journalists, and other relevant stakeholders. In addition, it conducted extensive legal analysis on the situation, including engaging with and seeking advice from external experts on international law.

Amnesty International's work on this issue aims to support Palestinian civil society and Israeli organizations in their efforts to end Israel's oppression and domination over Palestinians at a time when their work is becoming increasingly threatened. By doing so, it also hopes to contribute to a greater understanding and recognition of institutionalized discrimination committed in Israel and the OPT and against Palestinian refugees as a system and crime of apartheid.

APARTHEID IN INTERNATIONAL LAW

Apartheid is a violation of public international law, a grave violation of internationally protected human rights and a crime against humanity under international criminal law. Three main international treaties prohibit and/or explicitly criminalize apartheid: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) and the Rome Statute of the International Criminal Court (Rome Statute).

The crime against humanity of apartheid under the Apartheid Convention, the Rome Statute and customary international law is committed when any inhuman or inhumane act (essentially a serious human rights violation) is perpetrated in the context of an institutionalized regime of systematic oppression and domination by one racial group over another, with the intention to maintain that system. A regime of oppression and domination can best be understood as the systematic, prolonged and cruel discriminatory treatment by one racial group of members of another with the intention to control the second racial group.

Thus, the crime against humanity of apartheid is committed when serious human rights violations are committed in the context, and with the specific intent, of maintaining a regime or system of prolonged and cruel discriminatory control of one or more racial groups by another.

The framework of apartheid allows a comprehensive understanding, grounded in international law, of a situation of segregation, oppression and domination by one racial group over another. Amnesty International notes and clarifies that systems of oppression and domination will never be identical. Therefore, it does not seek to argue that, or assess whether, any system of oppression and domination as perpetrated in Israel and the OPT is, for instance, the same or analogous to the system of segregation, oppression and domination as perpetrated in South Africa between 1948 and 1994.

To determine whether Israel has created and maintained an institutionalized regime of systematic oppression and domination, Amnesty International looked at the way Israel exerts control over the Palestinian people. It also considered a number of serious human rights violations that would constitute the crime against humanity of apartheid if committed with the intention to maintain such a system of oppression and domination.

INTENT TO OPPRESS AND DOMINATE PALESTINIANS

Since its establishment in 1948, Israel has pursued an explicit policy of establishing and maintaining a Jewish demographic hegemony and maximizing its control over land to benefit Jewish Israelis while minimizing the number of Palestinians and restricting their rights and obstructing their ability to challenge this dispossession. In 1967, Israel extended this policy beyond the Green Line to the West Bank and Gaza Strip, which it has occupied ever since. Today, all territories controlled by Israel continue to be administered with the purpose of benefiting Jewish Israelis to the detriment of Palestinians, while Palestinian refugees continue to be excluded.

Demographic considerations have from the outset guided Israeli legislation and policymaking. The demography of the newly created state was to be changed to the benefit of Israeli Jews, while Palestinians – whether inside Israel or, later on, in the OPT – were perceived as a threat to establishing and maintaining a Jewish majority, and as a result were to be expelled, fragmented, segregated, controlled, dispossessed of their land and property and deprived of their economic and social rights.

Jewish Israelis form a group that is unified by a privileged legal status embedded in Israeli law, which extends to them through state services and protections regardless of where they reside in the territories under Israel's effective control. The Jewish identity of the State of Israel has been established in its laws and the practice of its official and national institutions. Israeli laws perceive and treat Jewish identity, depending on the context, as a religious, descent-based, and/or national or ethnic identity.

Palestinians are treated by the Israeli state differently based on its consideration of them as having a racialized non-Jewish, Arab status and, beyond that, as being part of a group with particular attributes that is different from other non-Jewish groups. With respect to Palestinian citizens of Israel, the Israeli Ministry of Foreign Affairs officially classifies them as "Arab citizens of Israel", an inclusive term that describes a number of different and primarily Arabic-speaking groups, including Muslim Arabs (this classification includes Bedouins), Christian Arabs, Druze and Circassians. However, in public discourse, Israeli authorities and media generally refer only to Muslim Arabs and Christian Arabs – those who generally self-identify as Palestinians – as Israeli Arabs and associate them with Palestinians living in the OPT and beyond, using the specific terms Druze and Circassians for those other non-Jewish groups. The authorities also clearly consider Palestinian citizens of Israel as a single group different from Druze and Circassians since they exempt this group alone from military service in "consideration for their family, religious, and cultural affiliations with the Arab world (which has subjected Israel to frequent attacks), as well as concern over possible dual loyalties."

In May 1948, the Declaration of the Establishment of the State of Israel announced a Jewish state. Although it guaranteed the right to "complete equality of social and political rights to all its inhabitants", the right has not been guaranteed in the Basic Laws, which act as constitutional documents in the absence of a written constitution.

At the same time as establishing Israel as a Jewish state, the 1948 Declaration appealed to Jewish people around the world to immigrate to Israel. In 1950, Israel granted every Jew the right to immigrate to Israel under the Law of Return, followed by the right to automatic Israeli citizenship under the Nationality Law of 1952. The Israeli authorities saw this partly as a necessary measure to prevent another attempt to exterminate Jews in the wake of the Holocaust and to provide shelter to Jews who faced persecution elsewhere in the world. Meanwhile, hundreds of thousands of Palestinian refugees displaced during the 1947-49 conflict remained barred from returning to their homes based on demographic considerations. The essence of the system of oppression and domination over Palestinians was clearly crystallized in the 2018 nation state law, which enshrined the principle that the "State of Israel is the nation State of the Jewish people" and that the right of self-determination is exclusive "to the Jewish people".

In parallel, statements by leading Israeli politicians as well as senior civilian and military officials over the years confirm Israel's intention to maintain a Jewish demographic majority and to oppress and dominate Palestinians. Since 1948, regardless of their political affiliations, they have publicly emphasized the overarching objective of maintaining Israel's identity as a Jewish state, and stated their intention to minimize Palestinians' access to and control of land across all territories under Israel's effective control. They have carried this out by seizing Palestinians' homes and properties and effectively restricting them to living in enclaves through discriminatory planning and housing policies. The discriminatory intent to dominate Palestinian citizens in Israel is also manifested through statements that clearly point to the need for a separate and unequal citizenship structure and the denial of Palestinians' right to family reunification as a means of controlling demography.

The intention to dominate and control the Palestinian population in the OPT through discriminatory land, planning and housing policies as well as the denial of any agricultural or industrial development for the benefit of Palestinians is equally clear. Since the 1967 annexation of East Jerusalem, Israeli governments have set targets for the demographic ratio of Jews to Palestinians in Jerusalem as a whole and have made it clear through public statements that the denial of economic and social rights to Palestinians in East Jerusalem is an intentional policy to coerce them into leaving the city. Israel's withdrawal of its settlers from Gaza, while it maintained control over the people in the territory in other ways, was also expressly linked to demographic questions, and a realization that a Jewish majority could not be achieved there. Finally, public materials published by the Israeli government make it obvious that Israel's long-standing policy to deprive millions of Palestinian refugees of their right to return to their homes is also guided by demographic considerations.

TERRITORIAL FRAGMENTATION AND LEGAL SEGREGATION

In the course of establishing Israel as a Jewish state in 1948, its leaders were responsible for the mass expulsion of hundreds of thousands of Palestinians and the destruction of hundreds of Palestinian villages in what amounted to ethnic cleansing. They chose to coerce Palestinians into enclaves within the State of Israel and, following their military occupation in 1967, the West Bank and Gaza Strip. They have appropriated the vast majority of Palestinians' land and natural resources. They have introduced laws, policies and practices that systematically and cruelly discriminate against Palestinians, leaving them fragmented geographically and politically, in a constant state of fear and insecurity, and often impoverished.

Meanwhile, Israel's leaders have opted to systemically privilege Jewish citizens in law and in practice through the distribution of land and resources, resulting in their relative wealth and well-being at the expense of Palestinians. They have steadily expanded Jewish settlements on occupied Palestinian territory in violation of international law.

In 1948, before Israel was established, Palestinians comprised around 70% of the population of Palestine (then a British mandate territory) and owned about 90% of the privately owned land. Jews, many of whom had emigrated from Europe, comprised around 30% of the population and they and Jewish institutions owned about 6.5% of the land.

Israeli authorities have acted to turn that situation on its head. Some of those who fled their homes during the 1947-49 conflict were internally displaced from their villages, towns and cities to other parts of what became Israel. Others fled to different parts of what was then British mandate Palestine (22% of which fell under the control of Jordan and Egypt following the conflict – what is now the OPT). Most of the rest fled to the neighbouring Arab countries of Jordan, Syria and Lebanon. Israel prevents these Palestinian refugees, and their descendants, as well as internally displaced persons within Israel, from returning to their former places of residence.

Palestinians became fragmented even further after the June 1967 war, which resulted in Israel's military occupation of the West Bank, including East Jerusalem, and the Gaza Strip, the creation of a separate legal and administrative regime to control the occupied territories, and another wave of Palestinian displacement.

The new military regime in the OPT was established on top of a pre-existing multi-layered legal system made up of Ottoman, British, Jordanian and Egyptian laws – the legacy of the powers that had previously controlled the area. In 1994, the Oslo Accords between Israel and the Palestine Liberation Organization (PLO) created the Palestinian Authority and granted it limited control over Palestinian civil affairs in urban centres. In addition to failing to end the occupation, the Oslo Accords divided the West Bank into three different administrative areas, with varying levels of Palestinian and Israeli military and civil jurisdiction, fragmenting and segregating Palestinians even further to Israel's benefit. Even though Israel withdrew Israeli settlers from the Gaza Strip in 2005, it retained effective control over the territory, which it tightened further through an unlawful air, sea and land blockade, and an official policy separating Gaza from the West Bank, following Hamas's takeover of the territory two years later. As a result, the entirety of the West Bank and Gaza Strip remains under Israeli military occupation, with Israel controlling the Palestinian population living there, their natural resources and, with the exception of Gaza's short southern border with Egypt, their land and sea borders and airspace. Two sets of complementary international legal frameworks continue to apply to the conduct of Israel as the occupying power with effective control over the OPT: international human rights law and international humanitarian law.

Palestinians in the OPT living under these separate jurisdictions require permits from the Israeli authorities to cross between them – from and to the Gaza Strip, annexed East Jerusalem and the rest of the West Bank – and are also separated from Palestinian citizens of Israel, both geographically and on the basis of their status. Meanwhile, Palestinian refugees displaced during the 1947-49 and 1967 conflicts continue to be physically isolated from those residing in Israel and the OPT through Israel's continuous denial of their right to return to their homes, towns and villages.

Palestinian citizens of Israel are subject to Israeli civil laws, which in general afford them greater freedoms and human rights protections than Palestinians living in the OPT, but nonetheless deny them equal rights with Jewish Israelis (including to political participation) and institutionalize discrimination against them. While Palestinians in annexed East Jerusalem also live under Israeli civil laws, they are granted permanent residence rather than citizenship. On the other hand, Palestinians in the rest of the West Bank remain subject to Israel's military rule and draconian military orders adopted since 1967. The vast majority of these orders no longer apply to the Gaza Strip after Israel removed most aspects of its military rule there with the withdrawal of settlers in 2005. Palestinians in the West Bank and Gaza Strip are additionally subject to Palestinian laws.

Today, Palestinian citizens and permanent residents of Israel comprise some 21% of Israel's population and number approximately 1.9 million. Some 90% of Palestinians with Israeli citizenship live in 139 densely populated towns and villages in the Galilee and Triangle regions in northern Israel and the Negev/Naqab region in the south, as a result of deliberate segregation policies. The vast majority of the remaining 10% live in "mixed cities".

As of July 2021, there were 358,800 Palestinian residents within the boundaries of the Jerusalem Municipality, comprising 38% of the city's population. Of these, around 150,000 live in areas segregated from the rest of the city by the fence/wall and other military checkpoints. Some 225,178 Jewish Israeli settlers were also living in East Jerusalem in 13 illegal settlements built by the Israeli authorities and in private homes taken over from Palestinians under discriminatory schemes.

Approximately 3 million Palestinians live in the rest of the West Bank in addition to more than 441,600 Jewish settlers residing in 132 settlements that have been officially established by the Israeli government, as well as 140 unauthorized outposts that have been established since the 1990s without government approval and are considered illegal even under Israeli law. Some 2 million Palestinians live in the Gaza Strip. Of these, around 1.4 million (over 70% of the population) are registered refugees with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

LEGAL SEGREGATION AND CONTROL

Israel's rule over the OPT through military orders in the context of its occupation has given rise to a false perception that the military regime in the OPT is separate from the civil system in annexed East Jerusalem and within Israel. This view ignores the fact that many elements of Israel's repressive military system in the OPT originate in Israel's 18-year-long military rule over Palestinian citizens of Israel, and that the dispossession of Palestinians in Israel continues today.

The very existence of these separate legal regimes, however, is one of the main tools through which Israel fragments Palestinians and enforces its system of oppression and domination, and serves, as noted by the UN

Economic and Social Commission for Western Asia (ESCWA), "to obscure [the Israeli apartheid] regime's very existence". Indeed, Israeli policies aim to fragment Palestinians into different geographic and legal domains of control not only to treat them differently, or to segregate them, from the Jewish population, but also to treat them differently from each other in order to weaken ties between Palestinian communities, to suppress any form of sustained dissent against the system they have created, and ensure more effective political and security control over land and people across all territories.

USE OF MILITARY RULE TO CONTROL AND DISPOSSESS

Over the years, Israel has used military rule as a key tool to establish its system of oppression and domination over Palestinians across both sides of the Green Line, applying it over different groups of Palestinians in Israel and the OPT almost continuously since 1948 – with the exception of a seven-month gap in 1967 – to advance Jewish settlement in areas of strategic importance and to dispossess Palestinians of their land and property under the guise of maintaining security.

Israel placed its Palestinian citizens under military rule for the first 18 years of its existence (1948-1966) and used during that time British Mandate Defence (Emergency) Regulations that granted them unrestricted powers to control the movement of Palestinian residents, confiscate their property, allow for the closure of entire villages as military zones, demolish their houses, and try them before military courts. Palestinians required permits to leave their areas of residence, including to access medical care and jobs. Israeli state institutions placed Palestinians under a system of surveillance and control that deliberately restricted their political freedoms by banning protests and arresting political activists on account of their political activities.

Israel eventually abolished its military rule over Palestinian citizens in December 1966 after it successfully prevented internally displaced Palestinians from returning to their homes in empty villages by destroying them and subjecting their land to forestation. While restrictions on movement were progressively removed, and the human rights situation of Palestinian citizens of Israel has undoubtedly greatly improved since the end of the military rule over them, elements of the system remained. The emergency regulations were never repealed and, as of 1967, their application was extended to the occupied West Bank (excluding annexed East Jerusalem) and Gaza Strip to control the Palestinian population there, prevent any form of dissent, and allow the Israeli state to dispossess Palestinians of their land and resources. Beyond legislation, the experience accumulated by the Israeli authorities, during the military rule over Palestinian citizens of Israel constituted the basis for the military administration in the OPT.

Despite the establishment of the Palestinian Authority, more than 1,800 Israeli military orders continue to control and restrict all aspects of the lives of Palestinians in the West Bank: their livelihoods, status, movement, political activism, detention and prosecution, and access to natural resources. Israeli military legislation in the West Bank is enforced by the military justice system. Since 1967, the Israeli authorities have arrested over 800,000 Palestinian men, women and children in the West Bank, including East Jerusalem, and Gaza Strip, bringing many of them before military courts that systematically fail to meet international standards of fair trial, and where the vast majority of cases end in conviction.

Palestinians from the Gaza Strip were subjected to Israeli military legislation and tried before military courts until Israel dismantled its settlements in 2005. Since then, elements of Israeli military law have continued to apply to the area with regards to the movement of people and goods in and out of Gaza, access to territorial waters and the "buffer zone" along the fence separating Israel from Gaza.

By contrast, Jewish settlers have been exempted from the military orders governing Palestinians since the late 1970s after Israel extraterritorially extended its civil law over Israeli citizens residing in or travelling through the OPT. Jewish settlers in the occupied West Bank are therefore brought before Israeli civilian courts.

DENIAL OF NATIONALITY, RESIDENCE AND FAMILY LIFE

Israel maintains its system of fragmentation and segregation through different legal regimes that ensure the denial of nationality and status to Palestinians, violate their right to family unification and return to their country and their homes, and severely restrict freedom of movement based on legal status. All are intended to control the Palestinian population and aim to preserve a Jewish Israeli majority in key areas across Israel and the OPT.

Whilst they are granted citizenship, Palestinian citizens of Israel are denied a nationality, establishing a legal differentiation from Jewish Israelis. They are also denied certain benefits because of a linked exemption from military service.

Meanwhile, Palestinian residents of East Jerusalem are not Israeli citizens. Instead, they are granted fragile permanent residency status that allows them to reside and work in the city, and enjoy social benefits provided by the Israeli National Insurance Institute and the national health insurance. Under discriminatory legislation and

policies, however, the Israeli authorities have revoked the status of thousands of Palestinians, including retroactively, if they cannot prove that Jerusalem is their "centre of life". This has had devastating consequences on their human rights. By contrast, Jewish Israeli settlers residing in East Jerusalem enjoy Israeli citizenship and are exempt from laws and measures enacted against Palestinian residents of East Jerusalem.

At the same time, Israel has controlled the population registry in the West Bank and Gaza since 1967 and imposed policies, restrictions and measures to control the demography of the territory. Palestinians in these territories remain without citizenship and are considered stateless, except for those who have obtained a citizenship from a third country. The Israeli military issues them with identification cards that enable them to permanently live and work in the territory. Israel's control of the population registry since 1967 has further facilitated the fragmentation of Palestinians and restricted their freedom of movement based on their legal status and residence.

After the outbreak of the Palestinian *intifada* (uprising) at the end of 2000, the Israeli Civil Administration, a military unit that oversees all civilian matters for Jewish Israeli settlers and Palestinian residents in the West Bank excluding East Jerusalem, froze most changes to the Palestinian population registry without prior notification to the Palestinian Authority. The freeze included the suspension of all "family unification" procedures for Palestinian residents of the OPT who had married foreign nationals. Even though on two occasions since then Israel committed to granting a small number of family reunification requests as goodwill diplomatic gestures to the Ramallah-based Palestinian authorities, in general, Israel continues to deny the conferring of residency status to tens of thousands of foreign nationals who are married to Palestinians from the West Bank and Gaza Strip. This is profoundly discriminatory; Jewish settlers residing in settlements in the West Bank face no restrictions in obtaining authorization from the Israeli authorities for their spouses to enter the occupied territory and reside with them.

In early 2003, Israel began prohibiting Palestinians registered in Gaza from residing in the West Bank, arresting thousands and removing them forcibly to the Gaza Strip after labelling them as "infiltrators". Over the years, the Israeli authorities authorized some Palestinians to change their addresses from the Gaza Strip to the West Bank but only implemented their commitment partially. At the same time, thousands of Palestinians remain undocumented in Gaza as the Israeli authorities have refused to regularize their status since 2008.

These policies have serious consequences on the ability of Palestinians in the OPT to lead a normal life, particularly in light of stringent restrictions on movement: those in the West Bank who are not registered face the imminent threat of deportation, are unable to access healthcare, education and social benefits, open a bank account and have legal jobs, and are effectively prisoners in their homes because of fear of ID checks at Israeli checkpoints. Undocumented Palestinians in Gaza are also denied their freedom of movement, and access to healthcare and education in other parts of the OPT and abroad. Overall, restrictions on family unification interfere with Palestinians' enjoyment of their rights to privacy, to family life and to marry, blocking them from conferring residency status to their spouses and children.

Israel continues to deny Palestinian refugees – displaced in the 1947-49 and 1967 conflicts – and their descendants their right to gain Israeli citizenship or residency status in Israel or the OPT. By doing so, it denies them their right to return to their former places of residence and property – a right, which has been widely recognized under international human rights law.

DISRUPTION OF FAMILY LIFE

In addition to measures that separate families inside the OPT, Israel has enacted discriminatory laws and policies that disrupt family life for Palestinians across the Green Line in a clear example of how Israel fragments and segregates Palestinians through one system of domination. Like other measures Amnesty International has documented, they are primarily guided by demographic – rather than security – considerations and aim to minimize Palestinian presence inside the Green Line to maintain a Jewish majority.

Since 2002, Israel has adopted a policy of prohibiting Palestinians from the West Bank and Gaza from gaining status in Israel or East Jerusalem through marriage, thus preventing family unification. The Citizenship and Entry into Israel Law enshrined the policy in law between 2003 and its expiry in July 2021. The law barred thousands of Palestinians in Israel and East Jerusalem from living there with their Palestinian spouses from the West Bank and Gaza. Israel's then interior minister stated the law was needed because "it was felt that [family unification] would be exploited to achieve a creeping right of return…"

The 2003 law did not allow spouses from the West Bank or Gaza to receive permanent residency or Israeli citizenship. Instead, successful applicants received temporary, six-month permits. Amendments to the law over the years broadened its scope to further limit and deny family reunification for Palestinian citizens of Israel.

When the Israeli government lost the vote to extend the law in July 2021, it signalled its intent to nonetheless maintain the policy. The interior minister issued instructions not to accept applications from Palestinians for family unification until new or similar legislation is put in place. Israeli authorities say the policy is necessary on "security grounds", but it is implemented in a blanket manner without specific evidence against individuals.

By contrast, the 2003 law explicitly did not apply to residents of Jewish settlements in the West Bank wanting to marry and live with their spouse inside Israel, making it, and the ongoing policy underpinning it, blatantly discriminatory.

RESTRICTIONS ON MOVEMENT

Since the mid-1990s the Israeli authorities have imposed a closure system within the OPT and between the OPT and Israel, gradually subjecting millions of Palestinians who live in the West Bank, including East Jerusalem, and Gaza Strip to ever more stringent restrictions on movement based on their legal status. These restrictions are another tool through which Israel segregates Palestinians into separate enclaves, isolates them from each other and the world, and ultimately enforces its domination.

Israel controls all entry and exit points in the West Bank and controls all travel between the West Bank and abroad. Israel also controls all movement of people into and out of the Gaza Strip to the rest of the OPT and Israel through the Erez Crossing, the passenger crossing from Gaza to Israel. (The Egyptian authorities also maintain tight Egyptian restrictions on the Rafah crossing between Gaza and Egypt.) With the exception of East Jerusalemites, who have a permanent residency status in Israel, Palestinians from the OPT cannot travel abroad via Israeli airports unless they obtain a special permit, which is issued only to senior businesspeople and in exceptional humanitarian cases.

Israeli military and security forces can ban West Bank Palestinians from travelling abroad, often on the basis of "secret information" that Palestinians cannot review and therefore challenge. These bans have affected human rights defenders and activists who travel abroad to advocate for Palestinians' rights.

For Palestinians in Gaza, travel abroad is nearly impossible under Israel's illegal blockade and tight Egyptian restrictions maintained on the Rafah crossing. Gazans must obtain official permits to exit Gaza through the Erez crossing from the Israeli Civil Administration, which limits its approval to rare exceptions. This has effectively segregated Palestinians in the Gaza Strip from the rest of the OPT, Israel and the rest of the world.

Palestinian citizens of Israel and Palestinian residents of East Jerusalem are allowed to travel abroad via the same crossings and ports as Jewish citizens. However, they continue to report being subjected to separate discriminatory and humiliating security checks and interrogations at Israel's airports based on their national identity, despite some improvements introduced as a result of a legal petition filed in 2007 by an Israeli human rights NGO. In addition, the Israeli authorities continue to ban thousands of Palestinian spouses from the OPT lawfully residing in Israel under military "stay permits" from enjoying the same right.

For Palestinians, travel inside the OPT is difficult, time-consuming and subordinated to Israeli strategic considerations that favour Jewish settlements and their associated infrastructure. In that sense, it perpetuates a feeling of powerlessness and domination in Palestinians' daily lives. Israel imposed a comprehensive closure system on the movement of Palestinians in the West Bank following the outbreak of the second *intifada* in 2000, which remains in effect in various forms. This closure system includes a web of hundreds of Israeli military checkpoints, earth mounds and road gates, in addition to blocked roads, and the winding fence/wall.

The 700km fence/wall, which Israel continues building mostly illegally on Palestinian land inside the occupied West Bank, has isolated 38 Palestinian localities in the West Bank comprising 9.4% of the area of the West Bank, and has trapped them in enclaves known as "seam zones", forcing residents to obtain special permits for entry and exit to their homes and acquire separate permits to access their agricultural land.

Israel has generally allowed women aged over 50 and men aged over 55 from the West Bank to enter Jerusalem or Israel without permits, but only if they have no "security" record or ban. Meanwhile, Palestinians from the Gaza Strip can enter the West Bank, including East Jerusalem, only for urgent and life-threatening medical conditions, essential business and exceptional humanitarian cases under Israel's military "separation policy" between the West Bank and Gaza Strip. Palestinians must obtain Israeli military permits – which has become virtually impossible to do – in order to travel between the areas, with no clear procedure for making an application or obtaining an outcome.

The permits regime is a military, bureaucratic and arbitrary procedure which applies only to Palestinians in the West Bank and Gaza Strip. It does not apply to Jewish settlers, Israeli citizens or foreign nationals, who generally can move freely within the West Bank and between the West Bank and Israel.

RESTRICTIONS ON RIGHT TO POLITICAL PARTICIPATION

While Israeli laws and policies define the state as democratic, the fragmentation of the Palestinian people ensures that Israel's version of democracy overwhelmingly privileges political participation by Jewish Israelis. In addition, the representation of Palestinian citizens of Israel in the decision-making process, primarily in the Knesset, has been restricted and undermined by an array of Israeli laws and policies.

Most importantly, Israel's constitutional law prevents Israeli citizens from challenging the definition of Israel as a Jewish state and in effect any laws that establish such an identity. While Palestinian citizens of Israel can vote and run in national elections, in practice their right to political participation is limited, and they continue to be perceived as the "enemy from within".

Under Israel's Basic Law: The Knesset of 1958, the Central Elections Committee can disqualify a party or candidate from participation in elections if their objectives or actions are meant to negate the definition of Israel as a Jewish and democratic state; incite racism; or support armed struggles by a hostile state or a terrorist organization against Israel. In addition, the registration of any party whose goals or actions deny either directly or indirectly "the existence of Israel as a Jewish and democratic state" is prohibited under the 1992 Law on Political Parties.

Over the years, the Supreme Court has in general overturned attempts by the Central Elections Committee to ban Palestinian parties and disqualify Palestinian candidates for violating these provisions on the basis of public statements expressing views deemed unacceptable to the majority of Knesset members. However, these provisions prevent Palestinian lawmakers from challenging laws that codify Jewish Israeli domination over the Palestinian minority, and unduly limit their freedom of expression, and as a result, impede their ability to represent the concerns of their constituents effectively.

Limitations on the right of Palestinian citizens of Israel to participate in elections are accompanied by other infringements of their civil and political rights that limit the extent to which they can participate in the political and social life of Israel. This has included racialized policing of protests, mass arbitrary arrests and the use of unlawful force against protesters during demonstrations against Israeli repression in both Israel and the OPT. Such measures, which target peaceful protesters, are aimed to deter further demonstrations and stifle dissent. Upon arrest, Palestinians are routinely placed in pretrial detention; by contrast, Jewish protesters are generally granted bail. This points to a discriminatory treatment of Palestinians by the criminal justice system, which appears to treat Palestinians as "suspects" instead of assessing the individual threat they pose.

Israel places severe restrictions on Palestinian civil and political rights, particularly in the West Bank, where military orders are still enforced. Israeli authorities have since 1967 outlawed more than 400 Palestinian organizations, including all major political parties and several prominent civil society organizations widely recognized for the provision of vital services such as legal aid and medical care as well as the quality of their human rights reporting and advocacy, most recently in October 2021. In addition, the Israeli authorities often prosecute Palestinians for "membership and activity in an unlawful association", a charge frequently levied against anti-occupation activists. Over the years, they have arrested scores of Palestinian lawmakers, placing them under administrative detention or prosecuting them in military courts in trials that fail to meet international standards. At the same time, Military Order 101 Regarding Prohibition of Incitement and Hostile Propaganda Actions punishes and criminalizes Palestinians for attending and organizing an assembly of 10 or more people without a permit for an issue that "may be construed as political". The order, which does not define what is meant by "political", effectively bans protests, including peaceful protests, and stipulates up to 10 years' imprisonment and/or hefty fines for anyone breaching it.

Palestinians in East Jerusalem, on the other hand, are neither able to participate in political life in Israel nor in the West Bank. Although they can vote, and run, in municipal elections in Jerusalem, they have traditionally boycotted them in protest at Israel's ongoing occupation and illegal annexation of East Jerusalem, and they remain excluded from national elections.

As a result, protests remain for Palestinians the only means to influence Israeli politics and challenge the system of oppression and domination in the OPT. Palestinians in the OPT have, over the years, mobilized and organized non-violent popular resistance against Israel's military occupation and expansion of settlements, which has been systematically met with excessive and unlawful force, arbitrary arrests and prosecution in military courts, as well as undue restrictions on freedom of movement.

Despite the 2005 "disengagement", Palestinians in the Gaza Strip continue to face Israeli repression for their popular resistance against the occupation. This has included excessive and often lethal force during protests near the fence that separates Gaza from Israel.

DISPOSESSION OF LAND AND PROPERTY

In 1948, Jewish individuals and institutions owned around 6.5% of mandate Palestine, while Palestinians owned about 90% of the privately owned land there. Within just over 70 years the situation has been reversed.

Since its creation, the Israeli state has enforced massive and cruel land seizures to dispossess and exclude Palestinians from their land and homes. Although Palestinians in Israel and the OPT are subjected to different legal and administrative regimes, Israel has used similar land expropriation measures across all territorial domains under the Judaization policy, which seeks to maximize Jewish control over land while effectively restricting Palestinians to living in separate, densely populated enclaves to minimize their presence. This policy has been continuously pursued in Israel since 1948 in areas of strategic importance that include significant Palestinian populations such as the Galilee and the Negev/Naqab, and has been extended to the OPT following Israel's military occupation in 1967. Today, ongoing Israeli efforts to coerce the transfer of Palestinians in the Negev/Naqab, East Jerusalem and Area C of the West Bank under discriminatory planning and building regimes are the "new frontiers of dispossession" of Palestinians, and the manifestation of the strategy of Judaization and territorial control.

The land regime established soon after Israel's creation, which was never dismantled, remains a crucial aspect of the system of oppression and domination against Palestinians. It consisted of legislation, reinterpretation of existing British and Ottoman laws, governmental and semi-governmental land institutions, and a supportive judiciary that enabled the acquisition of Palestinian land and its discriminatory reallocation across all territories under its control.

While much of the seizure of Palestinians' land and property and the destruction of their villages inside Israel occurred in the late 1940s and 1950s, massive and racially motivated dispossessions continued into the 1970s. The effects continue to severely impact Palestinians. They are still prohibited from accessing and using land and property that belonged to them or their families in 1948. The dispossession has also contributed to the isolation and exclusion of Palestinian citizens from Israeli society, marking them as a group with perpetual lesser rights and with no right to claim access to lands and properties that have been in their families for generations.

Three main pieces of legislation made up the core of the Israeli land regime and played a major role in this process: the Absentees' Property Law (Transfer of Property Law) of 1950; the Land Acquisition Law of 1953, which retroactively "legalized" expropriation of lands that the state, newly established Jewish localities and the Israeli army had taken control of using emergency regulations after the 1947-49 conflict; and the British Land (Acquisition for Public Purposes) Ordinance of 1943, which enabled the minister of finance to expropriate land for any public purpose. The laws, which remain in force, were instrumental in expropriating and acquiring Palestinian land and property, leading over the years to their exclusive ownership by the Israeli state and Jewish national institutions. Since East Jerusalem's annexation in 1967, the entire Israeli land regime has been utilized in East Jerusalem for the expropriation of Palestinian land and its conversion mainly to state land. Israeli authorities have also enacted additional legal tools that affect Palestinian land and housing rights in East Jerusalem.

The Absentees' Property Law effectively gave the state control over all property belonging to Palestinians who were expelled or fled their homes, regardless of whether or not they became refugees outside the country or were internally displaced from their villages and homes and had settled inside Israel, mostly in nearby Palestinian villages. They were deemed "absentees" even though they never crossed an international border and, in many cases, remained within a few kilometres of their homes and land.

The destruction of the Palestinian village of Iqrit near Acre in northern Israel is a clear example of the cruel application of this policy. In 1948, the Israeli army instructed about 600 residents of Iqrit to leave their homes "temporarily". They were never allowed to return. The residents petitioned the Supreme Court of Israel to be granted their right of return, and won. However, the Israeli Ministry of Defense refused to implement the decision, fearing it would create a precedent for the return of other Palestinians forced out of their villages. So, in 1951, the ministry destroyed the village except for the church and cemetery. The Palestinian community of Iqrit now comprises around 1,500 individuals who mostly live 20km away in Al-Rameh. They continue to fight for their right to return to their homes and land in Iqrit.

Parallel to direct land expropriation by the Israeli government, all pre-1948 Jewish properties in annexed East Jerusalem held by the Jordanian Custodian of Enemy Property were transferred to the Israeli Custodian General under an amendment to the 1970 Legal and Administrative Matters Law. The law allowed the original Jewish owner, or their lawful heirs, to request the Custodian General to release such properties back to them. It applies only to Jewish property owners, not to Palestinians whose properties in West Jerusalem were confiscated after 1948, and is a clearly discriminatory compensation scheme.

According to one estimate, Israel has expropriated over 10,000 shops, 25,000 buildings and almost 60% of the fertile land belonging to Palestinian refugees in Israel and East Jerusalem under the Absentees' Property Law.

In addition to the Israeli state's allocation of confiscated Palestinian land for advancing Jewish settlement in Jerusalem, Jewish settler organizations such as Ateret Cohanim and Elad have relied on the 1950 Absentees' Property Law and the 1970 Legal and Administrative Matters Law to devise a legal scheme to file eviction cases against Palestinians and dispossess them of their properties, allow Jewish settlers to settle in predominantly Palestinian neighbourhoods, and further the expansion of Jewish settlements. According to estimates by the UN Office for the Coordination of Humanitarian Affairs (OCHA), in 2019, there were 199 Palestinian families, comprising 877 people, facing eviction cases, mainly in the Old City and the neighbourhoods of Sheikh Jarrah and Silwan. Land and property grabs by settlers' organizations have been taking place with the assistance of state institutions, including the Custodian General, the Jewish National Fund and the judiciary.

Israel resorted to emergency and military legislation, some of which mirrored Israeli civil laws, to confiscate Palestinian land in the rest of the West Bank and, until its unilateral withdrawal in 2005, in the Gaza Strip as well, in order to establish and maintain its control over the territory by building and expanding settlements and their related infrastructure, setting up national parks, archaeological sites and military "firing zones". In the first decade of the occupation of the West Bank and Gaza Strip, the Israeli authorities proceeded to confiscate privately owned Palestinian land mainly through requisition orders for alleged military needs, in addition to expropriation orders, absentee property orders and military orders declaring specific areas as "closed military zones". These measures were legitimized by the Supreme Court of Israel, which ultimately rendered the question of the legality of the settlements non-justiciable.

In addition to laws, Israel has used a selective registration of ownership rights, a discriminatory allocation of expropriated Palestinian land for Jewish settlement and a discriminatory urban planning and zoning regime to forcibly transfer Palestinians from their land and properties. The result has been the deliberate impoverishment of the Palestinian population both within Israel and in the OPT.

The land title settlement process, initiated under the British mandate before 1948, became an additional tool for Israel's dispossession of Palestinians across all territorial domains and, ultimately, enabled the Israeli authorities to transfer millions of dunams (hundreds of thousands of hectares) of state land for Jewish settlement. The Israeli authorities pursued this policy aggressively in the OPT following a 1979 Supreme Court decision, which held that the Elon Moreh settlement near the West Bank city of Nablus was illegal because its purpose was not military, forcing them to drastically reduce the use of requisition orders.

In parallel, the Israeli government enabled Jewish localities and settlements to use the expropriated lands. In Israel and East Jerusalem, it transferred from the state to Jewish national organizations and institutions, many of which serve Jews only, while the legal title of the land remained in the state's name. In the rest of the OPT, the Israeli government adopted policies that allowed the allocation of state land almost exclusively to Israeli state institutions and organizations, state and private companies, for the benefit of Jewish Israeli settlers.

State land in Israel is largely used to develop Jewish towns and localities; Palestinian citizens of Israel are effectively blocked from leasing land on 80% of state land. Jewish national bodies generally do not lease land to non-Jews and do not accept them in the housing projects and/or communities they establish on state lands that have been developed specifically for new Jewish immigrants. About 13% of state land in Israel, or over 2.5 million dunams, is owned and administered solely through the Jewish National Fund for exclusive use by Jews.

The establishment and promotion of Israeli settlements in the OPT, which are illegal under international law, and populating them with Jewish Israeli civilians has been an Israeli government policy since 1967. To date, some 38% of land in East Jerusalem has been expropriated from Palestinians, most of it privately owned. The Israeli authorities have used these major land expropriations for the construction of 13 Jewish Israeli settlements in strategic locations to surround Palestinian neighbourhoods and therefore disrupt Palestinians' geographic contiguity and urban development.

In the rest of the West Bank, between 1967 and 2009, Israel increased the total area of state land from some 530,000 dunams to 1.4 million dunams, the vast majority of it located in Area C, and allocated nearly half of it for civilian use. Of this, some 99.76% (674,459 dunams) was allocated for the exclusive benefit of Israeli settlements, according to information provided by the Israeli military in 2018 to the Israeli NGO Peace Now. Today, Israeli settlements cover nearly 10% of the West Bank, and their regional councils have jurisdiction over roughly 63% of Area C (or 40% of the West Bank), where most settlers live. At the end of 2020, there were 272 settlements and outposts in the West Bank (excluding East Jerusalem), in which over 441,600 Israeli settlers were living. As of July 2021, an additional 225,178 Jewish Israeli settlers were living in East Jerusalem, which was then home to 358,800 Palestinians.

Israeli settlements in the West Bank, including East Jerusalem, are meant to be permanent places of residence or economic activity for Jewish Israelis and are built solely to serve their needs. The Israeli authorities provide subsidies, tax incentives and low-cost utilities and resources to encourage Jewish Israelis to live in these places and to support the settlement economy.

While Israel no longer seizes houses and land from Palestinians in Gaza, it uses unlawful lethal force to control and restrict Palestinians' movement in the "buffer zone" separating the territory from Israel and a similarly access-restricted maritime area off Gaza's coast. According to human rights organizations, the "buffer zone" extends to a distance between 300m and 1,500m from the fence and covers a total of about 62km^2, or roughly 17% of the total area of the Gaza Strip. It covers over 35% of the agricultural land in Gaza. Meanwhile, the access-restricted maritime area covers 85% of its fishing waters.

DISCRIMINATORY ZONING AND PLANNING POLICIES

In tandem with the system of land ownership and allocation, zoning and planning policies have been central in fulfilling Israel's policies of establishing Jewish control while marginalizing Palestinian communities in both Israel and the OPT. Planning has been used to expand the Jewish Israeli presence in strategic locations; build Jewish towns, cities and settlements; obstruct the geographical expansion of Palestinian towns and centres; and regulate land use and Palestinian access to land for development by zoning it as green areas, industrial zones or military zones. Such planning was used, for example, to enclose Palestinian localities or erase Palestinian villages that were demolished after 1948 by designating them as military zones or national parks.

In all areas where Israel exercises full control (in Israel, East Jerusalem and Area C of the West Bank), a local outline plan sets out the policy for use of the land for purposes such as residence, industry and green space, serves as the legal basis for granting building permits and is the main tool through which central government enables local development. In Israel and East Jerusalem, a local outline plan can only be prepared by an official governmental authority under the Planning and Building Law of 1965. However, state planners fail to provide adequate plans for Palestinian localities that consider the needs of the residents.

Similarly, in Area C of West Bank, the Israeli Civil Administration's planning system does not allow for any Palestinian representation or meaningful participation and, as a result, does not take account of the Palestinian population's needs, and consistently privileges the interests of Israeli settlers. At the same time, the Israeli Civil Administration uses a selective interpretation of Jordanian law to insist that planning must conform with outdated British mandate plans, and routinely rejects applications for building permits on this basis.

These discriminatory measures lead to unregulated building and subsequent demolitions in both Israel and the OPT.

The result has been the complete absence of new Palestinian developments. Since 1948 the state has established more than 700 Jewish localities in Israel, whereas it has not established any new locality for Palestinians except for the state-planned Bedouin townships in the Negev/Naqab designed for the forced urbanization of Bedouins.

According to an estimate by the Mossawa Center, an NGO, in 2019, around 50,000 structures were built by Palestinian citizens of Israel without a building permit. Under the Planning and Building Law of 1965, any building or development without a building permit can be "demolished, dismantled or removed" by relevant Israeli authorities, and its owner may be liable for the cost of the demolition as well as a fine and/or imprisonment. Between 2012 and 2014, 97% of administrative demolition orders were issued in what Israeli authorities label the Arab sector, comprising mainly Palestinian citizens of Israel, but also the much smaller Druze minority.

The Negev/Naqab is a prime example of how Israel's discriminatory planning and building policies are designed to maximize land and resources for Jewish Israelis at the expense of Palestinian land and housing rights. Instead of zoning Palestinian Bedouin villages in the Negev/Naqab as residential areas, since the 1970s, the Israeli authorities have zoned the villages and the lands around them for military, industrial or public use. Over the years, Israel has recognized 11 of these villages but 35 remain "unrecognized" with residents considered to engage in "illegal squatting" and unable to apply for a building permit to legalize their established or new homes as the lands are not designated as residential. The buildings of whole communities have been repeatedly demolished as a result. By contrast, Israeli courts have retroactively approved Jewish communities built without outline plans and building permits in the same area. The lack of official status also means that the Israeli authorities do not provide these villages any essential infrastructure or services such as healthcare or education, and residents have no representation in the different local governmental bodies as they cannot register for or participate in municipal elections.

Similarly, the deliberate refusal to approve zoning plans for Palestinian neighbourhoods in East Jerusalem has had a ruinous effect on Palestinian communities hindering their development, including the construction of public spaces, schools and commercial zones for employment opportunities. Palestinians live in underdeveloped and densely populated areas in East Jerusalem; they face an acute shortage of housing while entire neighbourhoods are exposed to a risk of demolition for unlicensed building.

Palestinians comprise 60% of the population in East Jerusalem today, but only 15% of the land is designated by the Israeli planning authorities for Palestinian residence, with 2.6% of this land zoned for public buildings. According to data from Peace Now, from 1991 to 2018, only 16.5% of the applications for building permits approved in Jerusalem were for Palestinians in East Jerusalem, compared to 37.8% for Jewish settlements in East Jerusalem. The remaining applications approved were for West Jerusalem.

In Area C of the West Bank, the deeply discriminatory urban planning and zoning system means that, in practice, Palestinians are only allowed to build on about 0.5% (roughly 1,800 hectares) of Area C, most of which is already built-up. Meanwhile, Israeli authorities have allocated 70% of the land in Area C to settlements. In July 2019, the Israeli Security Cabinet promised to grant building permits for 715 housing units for Palestinians. By contrast, it promised building permits for 6,000 housing units for Jewish settlers. By the end of June 2020, only one building permit had been issued for Palestinians. By contrast, 1,094 building permits were issued for Jewish settlements between July 2019 and March 2020.

SUPPRESSION OF PALESTINANS' HUMAN DEVELOPMENT

Decades of deliberately unequal treatment of Palestinians in all areas under the control of Israel has left Palestinians marginalized and subject to widespread and systematic socio-economic disadvantage as they are barred from equitable access to natural and financial resources, livelihood opportunities, healthcare and education. Discriminatory treatment and allocation of resources by Israeli authorities for the benefit of Jewish Israeli citizens in Israel and Israeli settlers in the OPT compound the inequalities on the ground.

Across Israel and the OPT, millions of Palestinians live in densely populated areas that are generally underdeveloped and lack adequate essential services such as garbage collection, electricity, public transportation and water and sanitation infrastructure. In areas under full Israeli control such as the Negev/Naqab, East Jerusalem and Area C of the West Bank, the denial of essential services is inherently linked to discriminatory planning and zoning policies, and is intended to create unbearable living conditions to force Palestinians to leave their homes to allow for the expansion of Jewish settlement. In addition, Israeli policies of exclusion, segregation and severe restrictions on movement in the entirety of the West Bank and the Gaza Strip mean that Palestinians face difficulties accessing healthcare, including life-saving treatment, and education even though Israel bears the responsibility under international law to provide such services not just to its own population but also to Palestinians living under its military occupation. When they manage to access such services, they are in general inferior to those provided to Jewish Israeli citizens. These policies severely impact Palestinians' socio-economic rights and prevent them from fulfilling their human potential.

Palestinians living in Israel and the OPT are unambiguously disadvantaged across all well-being indicators for which measures are available. They experience higher rates of poverty, and lower levels of labour force participation, educational attainment and health than Jewish Israelis, including settlers living in the occupied West Bank. Their lack of enjoyment of a range of economic and social rights is a direct result not only of their segregation from Jewish Israelis but also from each other through severe restrictions on movement, and the subjugation of Palestinian human development to the socio-economic interests of Jewish Israelis. Israel maintains Jewish domination over the Palestinian economy through the exclusion and intentional neglect of Palestinian communities inside Israel, and the creation of a regime of economic dependency in the OPT in the context of a prolonged military occupation.

Socio-economic gaps between Palestinian and Jewish Israeli citizens are the result of discriminatory policies pursued over decades. Historically, Israel prevented its Palestinian citizens from accessing livelihoods under its 18-year-long military rule, and used them, at different times, as a source of cheap labour in order to preserve the interests of the Jewish majority. In addition to cruel land seizures, other discriminatory policies have led to Palestinians' social and economic deprivation: the exclusion of Palestinian localities from high priority areas for development, the discriminatory allocation of land and water for agriculture as well as discriminatory planning and zoning, and the failure to implement major infrastructure development projects in Palestinian communities.

Without zoning plans, Palestinian communities have been unable to designate land for housing and industrial use or establish the infrastructure needed for economic development. Today, only 2% of industrial zones in Israel, which generate a significant tax income, are located within Palestinian localities, which are poorly connected to other parts of Israel by public transportation or main roads. As a result, Palestinian communities in Israel lack the

infrastructure required for economic development, forcing their population to seek employment in the Jewish sector, where they face institutional discrimination when competing for jobs.

They also experience discrimination in the allocation of public resources, most of which are distributed to Jewish localities. For example, Palestinian local authorities collect less tax revenue, largely because of the disparity in income from non-residential or business taxes, which is in turn the result of discriminatory Israeli policies. Palestinian localities also receive lower subsidies from the central government intended for specific expenditures, such as education, welfare, health and cultural services. According to a 2018 survey by the Israeli Central Bureau of Statistics, monthly public expenditure on education and culture in the Jewish sector was nearly three times more per capita than in the (predominantly Palestinian) Arab sector.

Across the OPT, Israel's policies of territorial fragmentation and segregation pursued in the context of a prolonged military occupation have had a devastating effect on the performance of the Palestinian economy, leaving it disconnected, weak and subordinate to Israel's geo-demographic goals, and unable to achieve sustainable and equitable development for the Palestinian population. Whilst the situation in the OPT has improved over recent decades with regards to some social rights, including maternal mortality, levels of literacy and education and vaccination rates, in general, living standards have been stagnating or deteriorating with access to healthcare, employment, education and housing being particularly affected.

The 1994 Paris Protocol between Israel and the Palestine Liberation Organization (PLO) entrenched the dependence of the Palestinian economy on Israel via a customs union that leaves no space for independent Palestinian economic policies, tying the OPT to the trade policies, tariff structure and value-added tax rate of Israel. Since 1999, Palestinian gross domestic product (GDP) in the OPT has effectively remained stagnant. The Palestinian economy suffers from numerous restrictions by Israel on trade that impact on the production of exports and importable goods. Almost all Palestinian imports and exports transit ports and crossing points controlled by Israel, where delays and security measures increase costs by an average of USD 538 per shipment, resulting in a significant and persistent trade deficit.

In addition, Israel imposed a "dual use" policy in 2007 that restricts the entry of any goods it deems to potentially have military, as well as civilian, use, including chemicals and technology. The list of 117 liable items is vague, including categories such as "communications equipment, communication support equipment, or equipment with communication functions" that can include items that are found in everyday use, such as home appliances and medical equipment. This policy only applies to Palestinian importers in the West Bank and Gaza Strip, not to their Israeli counterparts or even to Israeli settlers in the OPT. It has had a devastating impact on the economy in general, especially on the agriculture, information and communications technology (ICT) and manufacturing sectors, and has had catastrophic effects in the Gaza Strip in particular.

Meanwhile, by physically separating East Jerusalem from the rest of the West Bank, since the second *intifada* the Israeli authorities have hindered Palestinians' ability to access livelihoods and considerably reduced the city's role as the main commercial centre for the West Bank. According to the UN Conference on Trade and Development (UNCTAD), between 1993 and 2013, the Palestinian economy in East Jerusalem shrunk by approximately 50%, while the fence/wall caused over USD 1 billion of direct losses to Palestinians in East Jerusalem in the first 10 years since the start of its construction. Elsewhere in the West Bank, according to the Palestinian Central Bureau of Statistics, Israeli-imposed movement restrictions cost Palestinians 60 million lost work hours per year (equivalent to USD 274 million).

The blockade and Israel's repeated military offensives have had a heavy toll on Gaza's essential infrastructure and further debilitated its health system and economy, leaving the area in a state of perpetual humanitarian crisis. Indeed, Israel's collective punishment of Gaza's civilian population, the majority of whom are children, has created conditions inimical to human life due to shortages of housing, potable water and electricity, and lack of access to essential medicines and medical care, food, educational equipment and building materials.

According to UNCTAD, between 2007 and 2018, due to the Israeli blockade, Gaza's share of the Palestinian economy decreased from 31% to 18%. As a result, more than 1 million people were pushed below the poverty line, with the rate of poverty increasing from 40% in 2007 to 56% in 2017. This entrenched the dependence of more than 80% of the population on international assistance.

The collapse of Gaza's economy caused by the blockade has been exacerbated by four Israeli military offensives in the past 13 years, which have caused huge destruction to civilian property and essential infrastructure including electricity, water and sewerage and sanitation plants, in addition to killing at least 2,700 Palestinian civilians as well as injuring and displacing tens of thousands of others. During this period Palestinian armed groups have fired thousands of indiscriminate rockets towards cities and towns in Israel killing or injuring dozens of civilians. In 2019, UNCTAD estimated the cost of the three Israeli military operations in Gaza between 2008 and 2014 to be at least three times the GDP of Gaza.

Severe movement restrictions have a particularly detrimental effect on the agriculture sector. Prior to 1967, the agriculture sector employed about a quarter of the labour force in the West Bank and contributed about a third of its GDP and exports. Following the occupation, the Israeli authorities have deprived Palestinians and their economy of 63% of the most fertile and best grazing land located in Area C by building settlements and the fence/wall, and imposing severe restrictions on Palestinians' movement and ability to access their land.

The fence/wall has isolated more than 10% of the area of the West Bank, directly affecting 219 Palestinian localities and causing approximately 80% of Palestinian farmers who have land in the "seam zone" between the fence/wall and the Green Line to lose access to such land. Farmers wishing to access their farmland in the "seam zone" are required to obtain military permits, which they must renew repeatedly. For those who manage to obtain them, access is only permitted on foot and through the specific agricultural gates that appear on the permits.

In addition, Israel ensures that over 35% of agricultural land in Gaza and 85% of the fishing area along the Gaza coast are off-limits to Palestinians, enforced by the "buffer zone" and access-restricted maritime area. An estimated 178,000 people, including 113,000 farmers, can no longer access the farmland in the "buffer zone". Since 2014, the Israeli military has aerial-sprayed herbicides over Palestinian crops along the fence between Gaza and Israel, resulting in the loss of livelihoods for Gazan farmers, with far-reaching health implications. Although Israel claims that the spraying is intended to "enable optimal and continuous security operations", it has not provided any evidence to support this claim.

Ever since the discovery of oil and gas off Gaza's coast, Israel has repeatedly changed the demarcation of Gaza's maritime coast, sometimes reducing it to just 3 nautical miles. The lack of access to sufficient fishing waters affects an estimated 65,000 Gazans, and has impoverished nearly 90% of fishermen. Additionally, the Israeli navy uses lethal force against Gazan fishermen working off the coast, and sinks and seizes their boats.

In addition to denying Palestinians' access to livelihoods through severe restrictions on movement, the Israeli authorities have systematically and unlawfully appropriated Palestinians' natural resources for the economic benefit of their own citizens in Israel and in the settlements, in violation of international law. Israel's exploitation of Palestinian natural resources of fertile agricultural land, water, oil, gas, stone and Dead Sea minerals deprives Palestinians of equal access to, or the opportunity to administer, develop and benefit from, their own resources. This severely impinges on their access to livelihoods and socio-economic rights, such as the rights to food and an adequate standard of living.

Israel's control of water resources and water-related infrastructure in the OPT results in striking inequalities between Palestinians and Jewish settlers. The Israeli authorities restrict Palestinians' access to water in the West Bank through military orders, which prevent them from building any new water installation without first obtaining a permit from the Israeli army. They are unable to drill new wells, install pumps or deepen existing wells, and are denied access to the Jordan River and freshwater springs. Israel even controls the collection of rainwater in most of the West Bank, and the Israeli army often destroys rainwater-harvesting cisterns owned by Palestinian communities. Meanwhile, in the Gaza Strip, the coastal aquifer has been depleted by Israeli over-extraction and contaminated by sewage and seawater infiltration, resulting in more than 95% of its water being unfit for human consumption.

As a result of these policies, average Palestinian consumption of water in the OPT is about 70 litres a day per person, with approximately 420,000 people in the West Bank consuming 50 litres a day, less than a quarter of the average Israeli consumption of about 300 litres per person. For Israeli settlers residing in Israeli settlements, the average daily water consumption is 369 litres, about six times the amount consumed by Palestinians. According to the UN, 90% of households in Gaza, which are already impoverished, have to buy water from desalination or purification plants, costing between 10 and 30 times more than piped water.

The Israeli government discriminates when providing funds to the health system serving Palestinian citizens of Israel, even though they have worse health than their Jewish Israeli counterparts, and does not provide any healthcare facilities to Palestinian Bedouins living in unrecognized villages in the Negev/Naqab, forcing them to travel long distances to seek medical care. This is reflected in significant health gaps between the Jewish and (predominantly Palestinian) Arab populations, with the latter universally scoring worse in official statistics. For example, in 2019 infant mortality for Arab citizens of Israel (5.4 per 1,000 births) was more than double that for Jewish Israelis (2.4).

In the West Bank and Gaza Strip, Israel's half-a-century-long military occupation does not just impact Palestinians' standard of health but also their ability to access the necessary care and treatment, in particular specialized treatment for serious medical conditions available in many cases only in East Jerusalem, Israel or abroad. Those referred for medical treatment in East Jerusalem or Israel must apply for an Israeli military permit on humanitarian grounds. Such permits are difficult to obtain and often issued with a delay or denied. The permit

regime has a particularly devastating impact on the health of Palestinians in Gaza where the blockade, coupled with a chronic energy crisis, has undermined the availability and quality of health services and left the system close to collapse.

Finally, Israel discriminates against Palestinian students in Israel and East Jerusalem, who receive less funding than their Jewish counterparts at all levels of school education. An analysis by the Mossawa Center of the Israeli Ministry of Education's 2016 budget found that (predominantly Palestinian) Arab students from disadvantaged backgrounds received 30% less funding per learning hours in primary education, 50% less funding at the intermediate school level and 75% less funding at the secondary school level than Jewish students with the same socio-economic status.

A SYSTEM OF APARTHEID

Israel has created and maintains an institutionalized regime of systematic oppression and domination over Palestinians, which is enforced across Israel and the OPT through reinforcing discriminatory laws, policies and practices, and, when seen as a totality, controls virtually every aspect of Palestinians' lives and routinely violates their human rights.

This system of apartheid originated with the creation of Israel in May 1948 and has been built and maintained over decades by successive Israeli governments across all territories they have controlled, regardless of the political party in power at the time. Israel has subjected different groups of Palestinians to different sets of discriminatory and exclusionary laws, policies and practices at different times, responding to the territorial gains it made first in 1948 and then in 1967, when it annexed East Jerusalem and occupied the rest of the West Bank and the Gaza Strip. Over decades, Israeli demographic and geopolitical considerations have shaped policies towards Palestinians in each of these territorial domains.

Although Israel's system of apartheid manifests itself in different ways in the various areas under its effective control, it consistently has the same purpose of oppressing and dominating Palestinians for the benefit of Jewish Israelis, who are privileged under Israeli civil law regardless of where they reside. It is designed to maintain an overwhelming Jewish majority with access to and benefiting from the maximum amount of territory and land acquired or controlled, while restricting the right of Palestinians to challenge the dispossession of their land and property. This system has been applied wherever Israel has exercised effective control over territory and land or over the exercise of the rights of Palestinians. It is realized in law, policy and practice, and reflected in the discourse of the state from its establishment and until this day.

While international law applies differently to the situations in Israel and in the OPT, this fact does not excuse prohibited discrimination against Palestinians in any of the areas under Israel's control. Israel's treatment of Palestinians inside Israel is governed by international human rights law, to the exclusion of international humanitarian law. In the OPT, Israel's conduct is bound both by the rules of international humanitarian law relevant to military occupation (law of occupation) and its obligations under international human rights law. The law of occupation allows, and in some cases requires, differential treatment between nationals of the occupying power and the population of the occupied territory. However, it does not allow the occupying power to do this where the intention is to establish or maintain a regime of systematic racial oppression and domination.

The continuing forced displacement of a majority of Palestinians from their land and property in 1947-49 and subsequently in 1967; the forced deportations, forcible transfers and arbitrary restrictions on their freedom of movement; the denial of nationality and the right of return; the racialized and discriminatory dispossession of their lands and property; and the subsequent discriminatory allocation of and access to national resources (including land, housing and water) combine not only to hinder Palestinians' current enjoyment of their rights, including access to livelihood, employment, healthcare, food security, water and sanitation, and education opportunities, but also to ensure that Palestinians cannot as individuals or communities enjoy a status equal to that of Jewish Israelis in Israel, the OPT and other situations where Israel exercises control over Palestinians' enjoyment of their rights, particularly the right of return.

The racial discrimination against and segregation of Palestinians is the result of deliberate government policy. The regular violations of Palestinians' rights are not accidental repetitions of offences, but part of an institutionalized regime of systematic oppression and domination.

CRIMES AGAINST HUMANITY

Israel and individuals acting on its behalf have been, in the process of establishing and maintaining a system of domination and oppression over Palestinians, systematically perpetrating inhuman and inhumane acts as proscribed, respectively, by the Apartheid Convention and the Rome Statute.

Amnesty International has examined specifically the inhuman or inhumane acts of forcible transfer, administrative detention and torture, unlawful killings and serious injuries, and the denial of basic freedoms or persecution committed against the Palestinian population in Israel and the OPT, which are associated with and enforce the system of discriminatory laws, policies and practices described above. The organization has concluded that the patterns of proscribed acts perpetuated by Israel both inside Israel and in the OPT form part of a systematic as well as widespread attack directed against the Palestinian population, and that the inhuman or inhumane acts committed within the context of this attack have been committed with the intention to maintain this system and amount to the crime against humanity of apartheid under both the Apartheid Convention and the Rome Statute.

FORCIBLE TRANSFERS

Israel implements a myriad of laws and policies to force Palestinians in Israel and the OPT into small enclaves or to leave the territory altogether. In the Negev/Naqab in Israel, East Jerusalem and Area C of the West Bank, which are under full Israeli control, Israeli authorities enforce similar planning and building regimes against the Palestinian population, which result in widespread and similar patterns of home and property demolitions, including structures directly linked to livelihoods, on grounds of the lack of building permits. They deny communities in these areas the provision of essential services, and in the case of the OPT take no action against violent attacks by Israeli settlers. Together, these policies create a coercive environment that aims to force Palestinians to abandon their homes.

Palestinians are caught in a Catch-22 situation. Israel requires them to obtain a permit to build or even erect a structure such as a tent, but rarely issues them a permit. Consequently, to have shelter or develop their communities, Palestinians build without a permit. Israeli forces then demolish the structures on the basis that they were built without a permit. By contrast, Israeli authorities freely allow amendments to plans to promote development where they are setting up Jewish cities in Israel or Israeli settlements in the OPT.

Since 1948, Israel has demolished tens of thousands of Palestinian homes and other properties across all areas under its jurisdiction and effective control. This includes the destruction of more than 500 Palestinian villages in what became Israel following the 1947-49 conflict. Those affected are some of the poorest and most marginalized communities in both Israeli and Palestinian society, often refugees or internally displaced persons, who are forced to rely on family and humanitarian actors for shelter and livelihoods.

Israel's revocation of the permanent residency status of thousands of Palestinians in East Jerusalem has similarly resulted in forcible transfers.

Additionally, Israel has deliberately destroyed homes and displaced civilians during military operations, rendering tens of thousands of Palestinians homeless and displaced. The evidence suggests that most of the destruction was not justified by military necessity and amounted to violations of international humanitarian law. Considered within the context of the system of oppression and domination, the violations contribute to maintaining this system of apartheid.

Israel's discriminatory state policies, regulations and conduct against Palestinians in Israel and the OPT have involved the crime against humanity of deportation or forcible transfer under both the Rome Statute and Apartheid Convention.

ADMINISTRATIVE DETENTION, TORTURE AND OTHER ILL-TREATMENT

Since the occupation of the West Bank and Gaza Strip in 1967, the Israeli authorities have made widespread use of administrative detention to imprison thousands of Palestinians, including children without charge or trial under renewable detention orders. The military judicial system in the OPT has used these orders to lock away thousands of Palestinians, including children, for months and at times years. Israel regularly uses administrative detention against political opponents of the occupation. By contrast, administrative detention has rarely been used to detain Jewish citizens of Israel.

While administrative detention may be lawful in certain circumstances, Israel's systematic use of it against Palestinians indicates that it is used to persecute Palestinians, rather than as an extraordinary and selective security measure. Consequently, Amnesty International has considered many administrative detainees to be prisoners of conscience detained as punishment for their views challenging the policies of the occupation.

Also, for decades, the Israel Security Agency, Israel Prison Service and Israeli military forces have tortured or otherwise ill-treated Palestinian detainees, including children, during arrest, transfer and interrogation. The Israel Security Agency uses particularly harsh methods to obtain information and "confessions". Among the methods regularly reported by Palestinian detainees are painful shackling and binding, immobilization in stress positions, sleep deprivation, threats, sexual harassment, prolonged solitary confinement and verbal abuse.

Israeli courts have admitted evidence obtained through torture of Palestinians, accepting the justification of "necessity". Prompt, thorough and impartial investigations by Israeli authorities into allegations by Palestinians that they have been tortured are extremely rare, effectively giving state endorsement to the crime of torture.

Israel's widespread and systematic use of arbitrary arrest, administrative detention and torture on a large scale against Palestinians, in flagrant violation of fundamental rules and peremptory norms of international law, forms part of the state's policy of domination and control over the Palestinian population. It forms part of the state's widespread as well as systematic attack on the Palestinian population and constitutes the crimes against humanity of "imprisonment or other severe deprivation of physical liberty" and "torture" under the Rome Statute and the Apartheid Convention.

UNLAWFUL KILLINGS AND SERIOUS INJURIES

Israeli forces have killed and injured thousands of Palestinian civilians in the OPT since 1967, often in circumstances suggesting that the killings were systematic, unlawful and arbitrary, and with near total impunity. Such killings and injuries were perpetrated outside the context of armed conflict during Israeli law enforcement activities in the OPT, including during the suppression of protests, arrest raids, when enforcing travel and movement restrictions, and conducting search operations.

In some cases, Israeli forces appear to have deliberately targeted medics, journalists and human rights defenders during protests.

Despite ample evidence of unlawful killings, Amnesty International is not aware of any case in which a member of any Israeli security force has been convicted of wilfully causing the death of a Palestinian in the OPT since 1987. In general, prosecutions have been extremely rare. When convictions have occurred, soldiers have been convicted of manslaughter or lesser offences.

There is also a pattern of Israeli forces and security agents killing Palestinian citizens of Israel, including in the context of protests against discriminatory Israeli policies and actions, in circumstances that indicate that the killings were unlawful.

Patterns of excessive use of force against Palestinians during law enforcement operations, information available about the Israeli military's "rules of engagement", as well as Israeli officials' statements following such operations particularly during protests, reflect a planned and persistent policy of shooting to kill or maim Palestinians. They are consistent with the inhuman and inhumane acts of "murder" and "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" or the "infliction upon the members of a racial group or groups of serious bodily or mental harm" under the Rome Statute and Apartheid Convention.

DENIAL OF BASIC RIGHTS AND FREEDOMS, AND PERSECUTION

Israel's systematic denial of the right to a nationality and severe restrictions on movement and residence, including the right to leave and to return to their country, go beyond what is justifiable under international law. Their sweeping application has targeted the Palestinian population in a discriminatory manner on the basis of their racialized identity as Palestinians, affecting their participation in political, social, economic and cultural life in Israel and the OPT and deliberately prevent their full development as a group. These restrictions further undermine the enjoyment of a host of basic rights and freedoms, including the rights to freedom of opinion and expression, freedom of peaceful assembly and association, livelihood, work, health, food and education.

By denying the Palestinian population basic human rights through years of deliberate discriminatory and exclusionary policies and official statements that are reflected in practice, Israeli authorities have committed the crime against humanity of, or other inhumane act similar to, "persecution" within the meaning of the Rome Statute and "denial of basic human rights" that "prevent the racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing [its or their] full development" under the Apartheid Convention.

SECURITY CONSIDERATIONS AND INTENT TO OPPRESS AND DOMINATE

Israel has an obligation under international law to protect all persons within its jurisdiction and control from violence. In the context of an international armed conflict and a military occupation there may be circumstances where treating different groups differently is based on lawful grounds without infringing the prohibition of discrimination. While legitimate security concerns may allow differential treatment of Palestinians, security-related policies must comply with international law, and ensure that any restrictions on rights are necessary and proportionate to the security threat.

Amnesty International has shown, however, that Israeli authorities have pursued policies that deliberately discriminate against Palestinians over a prolonged period and in a particularly cruel manner in ways that have no reasonable basis in security or "defence". For example, the prolonged and cruel discriminatory denial of Palestinians' access to their land and property that was seized in a violent and discriminatory manner has no security rationale. There is no security basis for the effective segregation of Palestinian citizens of Israel through discriminatory laws on planning and access to housing or the denial of their right to claim their property and homes seized under the authority of racist laws. Similarly, arbitrary and discriminatory interference with the rights of Palestinian citizens of Israel to marry and extend rights of residence to their spouses and children, in the absence of evidence that particular individuals pose a threat, cannot be justified based on security.

In the context of Israel's occupation of the West Bank and Gaza Strip, certain limitations on human rights may be permissible under international humanitarian law if conducted in good faith. However, the justification for the differential treatment cannot extend to the settlement of Jewish Israelis in the occupied territories. Nor can it extend to the murders, the targeted killings, the torture, the deportation and forcible transfers of populations that have been perpetrated in the OPT over the years.

Amnesty International has demonstrated that other policies that Israel has justified on security grounds have been consistently implemented in a grossly disproportionate and discriminatory manner, resulting in mass, systematic violations of Palestinians' human rights. These include Israel's policies of sweeping, severe and long-term restrictions on freedom of movement in the West Bank and Gaza Strip.

CONCLUSION AND RECOMMENDATIONS

The totality of the regime of laws, policies and practices described by Amnesty International demonstrates that Israel has established and maintained an institutionalized regime of oppression and domination of the Palestinian population for the benefit of Jewish Israelis – a system of apartheid – wherever it has exercised control over Palestinians' lives since 1948. Amnesty International concludes that the State of Israel considers and treats Palestinians as an inferior non-Jewish racial group. The segregation is conducted in a systematic and highly institutionalized manner through laws, policies and practices, all of which are intended to prevent Palestinians from claiming and enjoying equal rights to Jewish Israelis within the territory of Israel and within the OPT, and thus are intended to oppress and dominate the Palestinian people. This has been complemented by a legal regime that controls (by negating) the rights of Palestinian refugees residing outside Israel and the OPT to return to their homes.

Dismantling this cruel system of apartheid is essential for the millions of Palestinians who continue to live in Israel and the OPT, as well as for the return of Palestinian refugees who remain displaced in neighbouring countries, often within 100km of their original homes, so that they can enjoy their human rights free from discrimination. Among other, more specific, recommendations, Amnesty International is calling on Israel to remove all measures of discrimination, segregation and oppression currently in place against the Palestinian population and to undertake a review of all laws, regulations, policies and practices that discriminate on racial, ethnic or religious grounds with a view to repealing or amending them in line with international human rights law and standards.

Israel must grant equal and full human rights to all Palestinians in Israel and the OPT in line with principles of international human rights law and without discrimination, while ensuring respect for protections guaranteed for Palestinians in the OPT under international humanitarian law. It must also recognize the right of Palestinian refugees and their descendants to return to homes where they or their families once lived in Israel or the OPT. In addition, Israel must provide victims of human rights violations, crimes against humanity and serious violations of international humanitarian law – and their families – with full reparations. These should include restitutionof and compensation for all properties acquired on a racial basiss.

The scale and seriousness of the violations documented in this report make it clear that the international community needs to urgently and drastically change its approach to the Israeli-Palestinian conflict and recognize the full extent of the crimes that Israel perpetrates against the Palestinian people. Indeed, for over seven decades, the international community has stood by as Israel has been given free rein to dispossess, segregate, control, oppress and dominate Palestinians. The numerous UN Security Council resolutions adopted over the years have remained unimplemented with Israel facing no repercussions for actions that have violated international law apart from formulaic condemnations. Meanwhile, addressing Israeli violations against Palestinians in the occupied West Bank and Gaza Strip merely within the framework of international humanitarian law, and separately from the violations perpetrated against Palestinians in Israel, has failed to tackle the root causes of the conflict and achieve any form of accountability and justice for the victims.

Without taking any meaningful action to hold Israel to account for its systematic and widespread violations and crimes under international law against the Palestinian population, the international community has contributed to

undermining the international legal order and has emboldened Israel to continue perpetrating crimes with impunity. In fact, some states have actively supported Israel's violations by supplying it with arms, equipment and other tools to perpetrate crimes under international law and by providing diplomatic cover, including at the UN Security Council, to shield it from accountability. By doing so, they have completely failed the Palestinian people and have only exacerbated Palestinians' lived experience as people with lesser rights and inferior status to Jewish Israelis.

While ultimately change can only come from within Israel, the international community can take concrete actions to pressure Israel into dismantling its apartheid system. The crime against humanity of apartheid entails individual international criminal responsibility, which applies to individuals, members of organizations and representatives of the state who participate in its commission. Thus, Israel itself, the Palestinian authorities, the international community and the International Criminal Court (ICC) should all investigate the commission of the crime of apartheid under international law.

All states may exercise universal jurisdiction over all persons reasonably suspected of committing the crime of apartheid, while states that are party to the Apartheid Convention have an obligation to do so including to prosecute, bring to trial and punish those persons responsible for the crime. This means that states must conduct prompt, effective and impartial criminal investigations when presented with reasonable evidence that an individual within their territory or control is reasonably suspected of criminal responsibility or extradite suspects to another jurisdiction that will do so.

Nearly six years after the ICC Prosecutor announced the opening of a preliminary examination into the "Situation in Palestine", in February 2021, the Pre-Trial Chamber concluded that the "Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem," paving the way for investigation into crimes committed in the OPT since 13 June 2014. On 3 March 2021, the Prosecutor announced that her office was proceeding to open an investigation into Rome Statute crimes committed in the OPT. Amnesty International is therefore calling on the Office of the Prosecutor of the ICC to consider the applicability of the crime against humanity of apartheid within its current formal investigation.

While the ICC has held that it has jurisdiction over Rome Statute crimes committed in the OPT, it does not have jurisdiction over crimes committed within Israel itself. The UN Security Council must therefore ensure that perpetrators of the crime against humanity of apartheid and other crimes under international law in Israel and the OPT are brought to justice either by referring the entire situation to the ICC or by establishing an international tribunal to try alleged perpetrators. The UN Security Council must also impose targeted sanctions, such as asset freezes, against Israeli officials most implicated in the crime of apartheid, and a comprehensive arms embargo on Israel.

At the same time, the UN General Assembly should re-establish the Special Committee against Apartheid, which was originally established in November 1962, to focus on all situations, including Israel and the OPT, where the serious human rights violation and crime against humanity of apartheid are being committed and to bring pressure on those responsible to disestablish these systems of oppression and domination.

All governments and regional actors, particularly those that enjoy close diplomatic relations with Israel such as the USA, the European Union and its member states and the UK, but also those states that are in the process of strengthening their ties – such as some Arab and African states – must not support the system of apartheid or render aid or assistance to maintaining such a regime, and cooperate to bring an end to this unlawful situation. As a first step, they must recognize that Israel is committing the crime of apartheid and other international crimes, and use all political and diplomatic tools to ensure Israeli authorities implement the recommendations outlined in this report and review any cooperation and activities with Israel to ensure that these do not contribute to maintaining the system of apartheid. Amnesty International is also reiterating its long-standing call on states to immediately suspend the direct and indirect supply, sale or transfer of all weapons, munitions and other military and security equipment, including the provision of training and other military and security assistance. Finally, it is calling on states to institute and enforce a ban on products from Israeli settlements.

The Palestinian authorities for their part must also ensure that any type of dealings with Israel, primarily through security coordination, do not contribute to maintaining the system of apartheid against Palestinians in the OPT, and should document as necessary and in line with international standards the discriminatory impacts of Israel's apartheid on the Palestinian population in the OPT to provide evidence of such impact to relevant international courts and other bodies.

Businesses too, have a responsibility to assess their activities in Israel and the OPT and ensure that they do not contribute to or benefit from the system of apartheid, and address such impact when it occurs and cease relevant activities if it cannot be prevented. Finally, national and international humanitarian and development organizations

must increase advocacy, both public and private, with the Israeli government to end discrimination and segregation in law, policy and practices against Palestinians in Israel and the OPT, including through advocacy with donors, and conduct rigorous and ongoing assessments of all projects and assistance for Palestinians to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation of Palestinians.

2. SCOPE AND METHODOLOGY

2.1 SCOPE

This report documents and analyses Israel's institutionalized and systematic discrimination against Palestinians. It focuses on the main and foundational elements of Israel's discrimination against Palestinians in Israel and the Occupied Palestinian Territories (OPT) and against Palestinian refugees who are outside Israel and the OPT. The report examines Israeli legislation, policies and practices that affect Palestinians in all areas under its jurisdiction and effective control (Israel and the OPT), or where their rights are effectively controlled by Israel.

Amnesty International researched and compiled this report within the framework of the definition of apartheid under international law, to determine whether discriminatory and exclusionary Israeli law, policies and practices against Palestinians amount to apartheid as a violation of public international law, a serious human rights violation and a crime against humanity.

This report is not comprehensive and should not be read as an exhaustive analysis of all forms of discrimination experienced by Palestinians within Israel and the OPT (or indeed of all forms of discrimination committed within Israel and the OPT). Amnesty International has documented serious violations of human rights committed by Israel against Palestinians in both Israel and the OPT, and raised concerns about the consequences of such violations for Palestinians, since the 1960s. The organization has also documented violations committed by Palestinian authorities or armed groups against Palestinians and Israelis, which are not the focus of this report.[1]

Similarly, this report does not imply that discrimination exclusively affects Palestinians in Israel and the OPT. It does not focus on discrimination experienced by other minority groups, such as the Druze and Circassians, but it refers to some of the policies that affect the enjoyment of their rights in Israel.

The geographical scope of this report is limited to Israel and the OPT. The report does examine Israeli laws, policies and practices that affect the rights of Palestinian refugees outside Israel and the OPT by denying them the right to nationality and residency in their homes in Israel and the OPT, and how this denial affects Palestinians living within Israel and the OPT. However, it does not address the situation of Palestinian refugees in their host countries, which Amnesty International has researched and reported on elsewhere.[2] The report also does not address human rights violations or Israeli discriminatory policies against Syrians in the occupied Golan Heights.[3]

The framework of apartheid, recognized under international law as a violation of public international law, a serious human rights violation and a crime against humanity, allows a comprehensive understanding, grounded in international law, of a situation of segregation, oppression and domination by one racial group over another. Amnesty International notes and clarifies that systems of oppression and domination will never be identical. Therefore, this report does not seek to argue that, or assess whether, any system of oppression and domination as perpetrated in Israel and the OPT is, for instance, the same or analogous to the system of segregation, oppression and domination as perpetrated in South Africa between 1948 and 1994. Instead, this report analyses the systematic discrimination currently perpetrated by Israel against Palestinians and determines whether it meets the international definition of apartheid as set out by international law and treaties, as a violation of public international law, a serious human rights violation and a crime against humanity.

Amnesty International has reached a general conclusion on the perpetration of the crime against humanity of apartheid rather than seeking to establish individual criminal responsibility. Establishing such responsibility would be the task of domestic or international courts, which in doing so must strictly apply international standards of

[1] See Amnesty International, Palestine (State of), amnesty.org/en/location/middle-east-and-north-africa/palestine-state-of

[2] Amnesty International, Seventy+ Years of Suffocation", nakba.amnesty.org/en; Amnesty International, *Exiled and Suffering: Palestinian Refugees in Lebanon* (Index: MDE 18/010/2007), 17 October 2007, amnesty.org/en/documents/mde18/010/2007/en; Amnesty International, *Iraq: Human Rights Abuses against Palestinian Refugees* (Index: MDE 14/030/2007), 1 October 2007, amnesty.org/en/documents/mde14/030/2007/en; Amnesty International, *Denied Refuge: Palestinians from Syria Seeking Safety in Lebanon* (Index: MDE 18/002/2014), 1 July 2014, amnesty.org/en/documents/mde18/002/2014/en

[3] The Syrian Golan Heights came under Israeli occupation following the 1967 war. Thousands of Syrians were forcibly displaced from the Golan Heights as a result of the war and the occupation. Israel destroyed more than 100 villages and most of the land was used to establish illegal Israeli settlements. In 1981, Israel adopted the Golan Heights Law, which extends Israeli jurisdiction and law to the occupied Golan Heights. The international community has condemned this "annexation" and the Golan Heights is acknowledged to be occupied territory where international humanitarian law is applicable, with Israel recognized as the occupying power with responsibilities towards the Syrian population outlined under international humanitarian law and international human rights law.

fairness. The report thus identifies and allows engagement with the systematic nature of violations and provides a way forward towards accountability and enjoyment of rights by all.

Amnesty International's examination of Israel's treatment of Palestinians as potentially a system of apartheid builds on the growing body of work by human rights groups, legal practitioners, writers and academics. Palestinians have been advocating for an understanding of Israel's rule as apartheid for over two decades. Dismantling Israel's apartheid was central to the call from Palestinian civil society that established the Boycott, Divestment and Sanctions movement in 2005. Palestinian human rights organizations, including members of the Palestinian Human Rights Organizations Council, have significantly contributed to the documentation and analysis of the system and crime of apartheid and have been at the forefront of advocacy in that regard at the UN. UN Special Rapporteurs on the situation of human rights in the OPT have published reports concluding that Israel has committed acts potentially amounting to apartheid and recommending that the UN General Assembly request the International Court of Justice to assess this further. In 2017, the UN's Economic and Social Commission for Western Asia (ESCWA), published a report, which was later withdrawn from its website, stating that Israel had "established an apartheid regime that dominates the Palestinian people as a whole".

More recently, the Israeli human rights organizations Yesh Din and B'Tselem (Israeli Information Center on Human Rights in the Occupied Territories) as well as Human Rights Watch have also examined the situation and concluded that apartheid is practised in part of or in the whole of the territory under the effective control of the State of Israel.

Over the years, this research coupled with grassroots campaigning has contributed to a broader international recognition of Israel's treatment of Palestinians as apartheid by activist groups, civil society organizations and media outlets, including some mainstream ones. Yet states, particularly Israel's Western allies, have been reluctant to do the same, and have refused to take any meaningful action against Israel despite the overwhelming evidence. Further, while some diplomats have confidentially recognized Israel's rule over Palestinians as apartheid, they have in most cases limited their analysis to Israel's conduct in the OPT. Meanwhile, Palestinian organizations and human rights defenders who have been leading anti-apartheid advocacy and campaigning efforts have faced Israeli repression for years as punishment for their work. In October 2021, the Israeli authorities escalated their attacks on the Palestinian human rights movement even further by designating six prominent civil society organizations as "terrorist organizations", allowing the Israeli authorities to shut down their offices, seize their assets and detain and prosecute their employees, in addition to prohibiting funding or even the public expression of support for their activities. In parallel, Israel has subjected Israeli organizations denouncing apartheid to smears and delegitimization campaigns.

Amnesty International publishes this report with a view to supporting Palestinian civil society and Israeli organizations in their efforts to end Israel's oppression and domination over Palestinians. By doing so, it also hopes to contribute to a greater understanding and recognition of institutionalized discrimination committed in Israel and the OPT and against Palestinian refugees as a system and crime of apartheid.

The body of work developed by Palestinian and other human rights organizations provides a spectrum of analysis and focuses within the legal framework of apartheid. Amnesty International recognizes that different legal and administrative regimes govern Palestinians across the different territorial domains where they live: Israel, annexed East Jerusalem, the rest of the occupied West Bank and the Gaza Strip, and outside Israel and the OPT. Consequently, the organization also acknowledges that Israel's system of oppression and domination over Palestinians has evolved over time, and currently manifests itself differently and with different levels of severity across the distinct domains. However, given that territorial and legal fragmentation and segregation are key elements through which Israel enforces its oppression and domination over Palestinians, Amnesty International believes that the full extent of Israel's control over Palestinians is only evident when the whole context of the state's control over Palestinians in all domains is taken into consideration. Therefore, instead of assessing separately whether or not Israel has perpetrated the international wrong and the crime against humanity in each of the territories under its control, Amnesty International has analysed the system of institutionalized discrimination against Palestinians as a whole. It has reached its conclusions through legal interpretation that the system and crime of apartheid is best understood holistically as the intentional, prolonged and cruel control of one racial group by another.

While recognizing the potential validity of the arguments made by some Palestinian human rights groups and others that apply the right to self-determination as the framework of analysis for the situation in Israel and the OPT, Amnesty International limits its analysis to legal frameworks that explicitly address institutionalized racial discrimination. This is because, while the organization recognizes that both the Jewish and the Palestinian peoples claim the right to self-determination, Amnesty International does not take a position on international political or legal arrangements that might be adopted to implement that right. Instead, the organization engages with the reality of the existence of the State of Israel, as well as the mandate for its creation in UN General Assembly Resolution 181 (II) of 1947, and the fact that, subsequent to 1967, Israel has exercised effective control over the

whole territory of British mandate Palestine.[4] It considers that the State of Israel has obligations under international law, including through obligations expressed in General Assembly Resolution 181 (II), to ensure the right to equality and non-discrimination. Similarly, it considers that Israel is prohibited by conventional and customary international law from establishing a system of institutional discrimination against the Palestinian people, from denying Palestinians equal rights with Jewish Israelis, and from establishing an oppressive system of domination.

Amnesty International examines in this report whether the State of Israel, and public officials acting on its behalf, have created and maintained a system of oppression and domination that has included ethnic cleansing, fragmentation and dispossession of the Palestinian inhabitants of the land that made up British mandate Palestine prior to 1948.

2.2 METHODOLOGY

This report builds on decades of Amnesty International desk and field research collecting testimonies and evidence of violations of international human rights and humanitarian law in Israel and the OPT, and on publications by Palestinian, Israeli and international human rights and humanitarian organizations in addition to academic studies, monitoring by grassroots activist groups, reports by UN agencies, experts and human rights bodies, and media articles.

Amnesty International carried out research and analysis for this report between July 2017 and November 2021. The research and analysis were guided by a global policy on the human rights violation and crime of apartheid that Amnesty International adopted in July 2017, following recognition that the organization had given insufficient attention to situations of systematic discrimination and oppression around the world. This report follows similar research and analysis conducted on the situation in Myanmar.[5]

Amnesty International extensively analysed relevant Israeli legislation, regulations, military orders, directives by government institutions and statements by Israeli government and military officials. It reviewed other Israeli government documents, such as planning and zoning documents and plans, budgets and statistics, Israeli parliamentary archives and Israeli court judgments. It also reviewed relevant reports and statistics published by Palestinian authorities.

As part of its research, Amnesty International spoke with representatives of Palestinian, Israeli and international non-governmental organizations (NGOs), relevant UN agencies, legal practitioners, scholars and academics, journalists, and other relevant stakeholders. In addition, it conducted extensive legal analysis on the situation, including engaging with and seeking advice from external experts on international law.

To illustrate the interplay between various long-standing discriminatory laws, policies and practices that constitute the foundational elements of Israel's system of oppression and domination, and their devastating impact on the human rights of Palestinians across Israel and the OPT, the report contains 34 emblematic case studies. Many of these case studies have been the focus of Amnesty International's human rights monitoring and campaigns in Israel and the OPT for years and include evidence compiled by different teams of researchers over time. To complement long-standing concerns and analyse them through the framework of apartheid, between February 2020 and July 2021, Amnesty International representatives interviewed 56 people in areas that are the focus of these case studies.

For safety reasons and because of Covid-19 movement restrictions on access, most of these interviews were conducted remotely. All interviews with Palestinians residing in the Gaza Strip were carried out remotely, given Israel's refusal to grant Amnesty International access since 2012. Some people were interviewed several times and remained in close contact with Amnesty International until the time of publication. The report also makes use of interviews carried out in the context of relevant work prior to February 2020. Wherever possible, Amnesty International corroborated information collected through interviews by reviewing photographic and video evidence and other relevant documentation, such as court documents, all of which are on file.

All interviewees were informed about the nature and purpose of the research as well as how the information they provided would be used. Oral consent was obtained from each interviewee prior to the start of the interview and confirmed again at the end of the interview. No incentives were provided to interviewees in exchange for their

[4] Following the end of the First World War, under a League of Nations mandate from 1922 to 1947, Britain ruled over Palestine, a territory formerly under the control of the Ottoman Empire. Article 22 of the Covenant of the League of Nations provided the legal obligations of Britain, as the Mandatory Power of Palestine, to provide "administrative advice and assistance" to the local population "until such time as they are able to stand alone". League of Nations, General Assembly, "Question of Palestine - Article 22 of the Covenant of the League of Nations", 30 April 1947, un.org/unispal/document/auto-insert-185531

[5] Amnesty International, *"Caged without a roof": Apartheid in Myanmar Rakhine State* (Index: ASA 16/7484/2017), 21 November 2017, amnesty.org/en/documents/asa16/7484/2017/en

accounts. Some interviewees requested that their names not be published for security reasons; their names and information that could identify them have been withheld in this report.

Amnesty International completed the majority of its research for this report in August 2021. Consequently, details of patterns of violations and case studies are updated to the end of that month, but not beyond. This is clarified in references in footnotes. The report does, however, address major relevant developments in Israeli legislation and government policy in September and October 2021.

Amnesty International has, over the years, continuously and actively sought to engage with the Israeli authorities on patterns of violations presented in this report, but has rarely received substantive responses. It sent a letter to the Israeli minister of foreign affairs on 22 October 2021 to seek a meeting on its work for the promotion and protection of human rights in Israel and the OPT, including that related to issues covered in this report, but had not received a response by publication.

Amnesty International extends its thanks to the individuals who consented to speak with its representatives and provided information for this report. In particular, the organization is deeply grateful to the people who shared their stories, often at great personal risk, and entrusted it with raising their experiences and exposing human rights concerns.

3. TIMELINE

The following, by no means comprehensive, set of developments in the history of Palestine and Israel are pertinent to understanding the issues covered by Amnesty International's report.

Following the defeat of the Ottoman empire in the First World War, in **1922** the League of Nations placed Palestine under a British mandate, which lasted until 1947. The area of mandate Palestine covered what is now Israel and the OPT.

In **1947**, the UN recommended partition of Palestine into a Jewish state (comprising 55% of the territory) and an Arab state (45%), with international control over Jerusalem and its environs. At that time, Jews comprised around 30% of the population and Palestinians around 70%. The Palestinian leadership at the time, as well as Arab states, rejected the UN partition plan.

In the **1947-49** conflict before and after the **May 1948** declaration of the State of Israel, thousands of Palestinians and Jews were killed and more than 800,000 Palestinians were displaced from their homes in the context of attacks on civilians. This experience is known as the *nakba* (catastrophe) by Palestinians. Some were internally displaced from their villages and cities to other parts of what became Israel. Others fled to different parts of mandate Palestine (22% of which fell under the control of Jordan and Egypt following the conflict). Most of the rest fled to Jordan, Syria and Lebanon.

Since then, Israel has prevented the Palestinian refugees and their descendants, as well as internally displaced persons within Israel, from returning to their homes.

Palestinians who remained in Israel – around 150,000 people – became entitled to Israeli citizenship. However, **from 1948 to 1966** they were placed under military rule. Meanwhile, **between 1949 and 1952** the Jewish population more than doubled, mainly through immigration.

After the establishment of Israel, two parts of mandate Palestine remained outside its control: the Gaza Strip, which was administered by Egypt; and the eastern area, which became known as the West Bank and was administered by Jordan.

The Arab-Israel war in **1967**, which Israel won in six days, led to Israel militarily occupying the West Bank, including East Jerusalem, and the Gaza Strip. Together, these areas are known as the OPT. The war also resulted in the displacement of a further 350,000 refugees, the vast majority of them Palestinians from the OPT, mainly to Jordan. Israel also prevents these Palestinian refugees and their descendants from returning.

In **1980**, Israel unilaterally (and unlawfully under international law) formalized its 1967 annexation of East Jerusalem, including Palestinian parts of the city and a surrounding area of about 70km^2 that belonged to about 28 Palestinian villages.

The first *intifada* (uprising) by Palestinians against Israel's occupation began in **December 1987** and ended in **1993** with the signing of the first Oslo Accords. Between **1993 and 1995**, further negotiations between Israel and the Palestine Liberation Organization (PLO) led to more Oslo Accords. These established the Palestinian Authority and tasked it with limited self-governance of the Gaza Strip and parts of the West Bank and divided the West Bank (excluding East Jerusalem and Hebron) into Areas A, B and C. The establishment of the Palestinian Authority did not change the status of the OPT under international law as territories under Israeli military occupation.

The Palestinian authorities have varying degrees of administrative responsibility over Areas A and B, where some 90% of Palestinians live (around 2.8 million people). Israel has full civil and security authority over Area C, Palestinian rural areas that comprise about 60% of the West Bank and are home to around 300,000 Palestinians.

In **September 2000** Palestinians launched a second *intifada* against Israel's military rule in the West Bank and Gaza Strip. During the uprising, which ended in 2005, Israeli forces killed Palestinians unlawfully by shooting them during protests and at checkpoints although they were not posing imminent danger. They also bombed residential areas and carried out extrajudicial executions. Palestinian armed groups and individuals deliberately killed Israeli civilians by placing bombs in crowded places and in drive-by shootings both in Israel and in the OPT. In response, the Israeli authorities collectively punished the OPT's entire population by imposing severe restrictions on movement and demolishing hundreds of Palestinian homes.

In **mid-2002**, Israel began constructing a fence/wall in and around the West Bank, mostly on Palestinian land. The route has meant further appropriation of Palestinian land and the separation and segregation of Palestinian communities. In 2004, the International Court of Justice advised that the barrier was illegal.

In **September 2005**, Israel "disengaged" from the Gaza Strip, withdrawing all military personnel and some 8,000 Jewish settlers from the territory while retaining control over its airspace, coastal waters and borders. Many settlers were moved to settlements in the West Bank.

In **2007**, armed clashes between security forces and armed groups loyal to the two main Palestinian political parties, Fatah and Hamas, culminated in Hamas seizing control of Palestinian government institutions in the Gaza Strip, and the ousting of forces loyal to Fatah. Since then, Hamas has acted as the de facto government of Gaza establishing a parallel security and law enforcement apparatus there, while Fatah remains the dominant party comprising the Palestinian authorities, including government and presidency, in the West Bank.

Meanwhile, Israel imposed an air, land and sea blockade on the Gaza Strip collectively punishing its entire population. Since then, Israel has severely restricted the entry of goods and fuel into Gaza, the export of produce from Gaza and the movement of people between Gaza and the West Bank.

In **December 2008**, **November 2012**, **July 2014** and **May 2021**, Israel launched military offensives against Gaza, while Palestinian armed groups fired rockets from the territory into Israel. These offensives have caused huge destruction to civilian property and infrastructure including electricity, water and sewerage networks and sanitation plants in Gaza in addition to killing at least 2,700 Palestinian civilians as well as injuring and displacing hundreds of thousands of others. During this period Palestinian armed groups fired thousands of indiscriminate rockets towards cities and towns in Israel killing or injuring dozens of civilians.

Most recently, the outbreak of violence in **May 2021** occurred after threatened forced evictions of Palestinians in East Jerusalem prompted widespread protests.

4. APARTHEID IN INTERNATIONAL LAW

4.1 PROHIBITION AND CRIMINALIZATION OF APARTHEID

Originally, "apartheid" referred to a political system formally introduced in South Africa in 1948 (building on existing racially discriminatory and segregationist laws and policies developed and applied under a system of minority white rule). The system was characterized by laws, policies and practices that ensured racial oppression and domination (which included formal racial segregation and discrimination) by one racial group ("white" South Africans) over others (especially, but not limited to, "black" South Africans).[6] Formal apartheid finally ended in South Africa in the mid-1990s. Similar systems, although not necessarily referred to as apartheid, were introduced and maintained in other countries of southern Africa until they were dismantled at the end of racist minority rule.[7] After its formal introduction in 1948 and especially in the 1970s, the international community adopted the term "apartheid" to condemn such systems and practices of formalized racial oppression and domination.

The international community expressly prohibits apartheid in public international law,[8] international human rights law,[9] and international criminal law.[10] The totality of these condemnations, prohibitions and criminalization, including the criminalization in the Rome Statute of the International Criminal Court (ICC) that occurred after apartheid in South Africa had ended, makes it clear that the international community intended not only to condemn and criminalize apartheid as practised in southern Africa but wherever a system of oppression and domination based on race might be enforced.[11]

Currently, three main international treaties prohibit and/or explicitly criminalize apartheid: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) and the Rome Statute of the ICC (Rome Statute).[12]

The 1965 ICERD, which has been ratified by 182 countries, was the first international human rights law instrument to proscribe and condemn apartheid. It provides in Article 3 that "States Parties particularly condemn

[6] Such South African laws included, among many others, the Population Registration Act (1950), which classified citizens into racial "population groups"; and the Reservation of Separate Amenities Act (1953), which allowed racial segregation of public amenities such as premises, vehicles and services.

[7] See especially Zimbabwe, which became independent in 1980, and Namibia, which became independent in 1990. Three other states in the sub-region were formally protectorates of the UK and either practised some form of segregation and/or were dependent on links with the South African economy and thus were subjected to apartheid policies: Botswana, which attained independence in 1964; Lesotho, which attained independence in 1966; and Swaziland, which obtained independence in 1968. Forms of segregation and systematic discrimination were also practised in Angola and Mozambique, which became independent in 1975.

[8] The International Court of Justice (ICJ) has held that apartheid constitutes a "flagrant violation of the purposes and principles of the (UN) Charter". See ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), advisory opinion, 21 June 1971. Dire Tladi, International Law Commission (ILC) Special Rapporteur, has concluded that the prohibition of apartheid amounts to a peremptory norm of international law. See ILC, *Fourth Report on Peremptory Norms of General International Law (*Jus Cogens*) by Dire Tladi, Special Rapporteur*, 31 January 2019, UN Doc. A/CN.4.727, paras 91-101. See also UN Security Council (UNSC), Resolution 418 (1977), adopted on 4 November 1977, UN Doc. S/Res/418. In addition, see John Dugard and John Reynolds. "Apartheid, International Law, and the occupied Palestinian territory", August 2013, European Journal of International Law, Volume 24, Issue 3, academic.oup.com/ejil/article/24/3/867/481600

[9] See, for example, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

[10] International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 (Apartheid Convention) and Rome Statute of the International Criminal Court (Rome Statute). In addition, the UN General Assembly (UNGA) had already declared apartheid a crime against humanity in 1968. See UNGA, Resolution 2396 (XXXIII), adopted on 2 December 1968, UN Doc. A/Res/2396. In addition, "inhuman acts resulting from the policy of apartheid" are listed as a crime against humanity in Article I(b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by UNGA Resolution 2391 (XXIII) on 26 November 1968, entered into force on 11 November 1970.

[11] Carola Lingaas, *The Concept of Race in International Criminal Law,* 2020, p. 155; John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory" (previously cited).

[12] In addition, "practices of apartheid" are listed as grave breaches of international humanitarian law and war crimes. See, in particular, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted 8 June 1977, entered into force 7 December 1978, Article 85(4)(c); International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Rule 156: Definition of War Crimes. Apartheid has also been criminalized under the following: UN Transitional Administration in East Timor Regulation 2000/15, 6 June 2000, UN Doc. UNTAET/REG/2000/15, Section 5(1)(j); Statute of the Extraordinary African Chambers Within the Courts of Senegal Created to Prosecute International Crimes Committed in Chad between 7 June 1982 and 1 December 1990, Article 6(e); Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Annex: Statute of the African Court of Justice and Human and Peoples' Rights), adopted on 27 June 2014.

racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."[13] Since then, other international human rights law treaties have explicitly referenced the prohibition of the practice of apartheid.[14]

The ICERD places obligations on states parties to repeal and suppress laws, policies and practices that establish and perpetuate segregation and apartheid, not only in the territories over which they exercise sovereignty, but also in the territories beyond their borders over which they exercise effective control.[15] States have a duty to respect, protect and fulfil the human rights of people under their jurisdiction, including people living in territory that is outside national borders but under their effective control.[16] As such, states parties are legally obliged not to engage in acts constituting the system of apartheid and to prevent, prohibit and punish such acts in all situations under their jurisdiction, including where the effect of their actions is felt extraterritorially.[17] Israel ratified the ICERD in 1979 and as a result its legal obligations under the convention are applicable in both Israel and the OPT.[18] The Committee on the Elimination of Racial Discrimination (CERD) has concluded that Israel has violated Article 3 of the ICERD, although it has not explicitly used the term "apartheid", and called on Israel to eradicate all such policies and practices against non-Jewish communities and in particular "policies or practices that severely and disproportionately affect the Palestinian population" in Israel and the OPT.[19]

[13] ICERD, adopted by UNGA Resolution 2106 (XX) on 21 December 1965, entered into force on 4 January 1969.
[14] UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979.
[15] This was further upheld by the ICJ, which held that the government of South Africa had maintained "a policy of apartheid" while it unlawfully administered and occupied Namibia, and was thus "accountable for any violations of its international obligations, or of the rights of the people of Namibia." The ICJ ruled that "Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States". ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), advisory opinion, 21 June 1971, para. 118.
[16] For example, the ICJ confirmed that Israel is obliged to extend to people in the OPT the application of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other treaties to which it is a state party. See ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion, 9 July 2004, paras 110-113. See also UN Human Rights Committee (HRC), General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add.13, para. 10; HRC, Concluding Observations: Israel, 3 September 2010, UN Doc. CCPR/C/ISR/CO/3, para. 9; European Court of Human Rights (Grand Chamber), *Öcalan v. Turkey*, Application 46221/99, 12 March 2003, paras 91 and 110-113.
[17] Jurisdiction must be interpreted broadly to cover all situations where the state controls the enjoyment of a protected right. The UN Committee on the Elimination of Racial Discrimination (CERD) has called on states parties to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the state party that negatively impact on the enjoyment of rights of indigenous peoples in territories outside that state party. See, for example, CERD, Concluding Observations: USA, 8 May 2008, UN Doc. CERD/C/USA/CO/6, para. 30; CERD, Concluding Observations: Norway, 2011, UN Doc. CERD/C/NOR/CO/19-20, para. 17. The UN Committee on Economic, Social and Cultural Rights (CESCR) has also consistently indicated that states parties must refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. See, for example, CESCR, General Comment 24: State Obligations under the ICESCR in the Context of Business Activities, 10 August 2017, UN Doc. E/C.12/GC/24, para. 29; CESCR, General Comment 15: The Right to Water, 20 January 2003, UN Doc. E/C.12/2002/11, para. 31. The HRC in its General Comment 36 on the right to life interpreted the term "jurisdiction" in Article 2 of the ICCPR in functional terms, referring to the ability of one state to affect the "enjoyment" of the right to life of a person living in another state: "[A] State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner." HRC, General Comment 36, Article 6: Right to life, 3 September 2018, UN Doc. CCPR/C/GC/36, para. 63. In its analysis of the meaning of the term "jurisdiction", the Inter-American Court on Human Rights (IACtHR) made specific reference to Article 31(1) of the Vienna Convention on the Law of Treaties. According to the court, Article 1(1) "signifies that the State obligation to respect and to ensure human rights applies to every person who is within the State's territory or who is in any way subject to its authority, responsibility or control." IACtHR, The Environment and Human Rights, advisory opinion OC-23/17, requested by the Republic of Colombia, 15 November 2017, para. 73.
[18] In its advisory opinion on the construction of a wall in the OPT, the ICJ held that human rights instruments to which Israel is a party are applicable to the OPT. ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion, 9 July 2004.
[19] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, paras 21, 22, 23 and 24; CERD, Report, March 2012, UN Doc. A/67/18, paras 28(24) and 28(27).

Further, the prohibition of apartheid under public international law and international human rights law forms part of customary international law.[20] The International Court of Justice has held that apartheid is a "flagrant violation of the purposes and principles of the [UN] Charter".[21]

The 1973 Apartheid Convention defines apartheid as a crime against humanity and obliges states parties to investigate and prosecute persons suspected of criminal responsibility for the crime.[22] There are currently 109 states parties to the Apartheid Convention;[23] Israel is not a state party.

The Rome Statute of 1998, which also defines apartheid as a crime against humanity in Article 7(1)(j), requires the usual contextual elements of commission of the crime as part of a widespread or systematic attack directed against the civilian population, pursuant to a state or organizational policy. There are currently 123 states parties to the Rome Statute; Israel signed it in 2000 but withdrew its signature in 2002.[24] In 2015, the State of Palestine became a state party to the Rome Statute and accepted the jurisdiction of the ICC over alleged crimes, including war crimes and crimes against humanity, committed in the "occupied Palestinian territory, including East Jerusalem, since June 13, 2014".

Amnesty International considers that apartheid is a crime against humanity under customary international law.[25] The International Law Commission has concluded that the prohibition of crimes against humanity is a peremptory norm of international law, from which no deviation is permitted, that is, no state may withdraw from its obligation to respect them under any circumstances.[26] The definition of crimes against humanity in the Rome Statute reflects to a large extent the rules of customary international law,[27] and the inclusion of apartheid within Article 7 of the Rome Statute suggests that the crime against humanity of apartheid is a crime under customary international law.[28] There is therefore strong evidence that the specific definition of apartheid as a crime against humanity in the Rome Statute reflects customary international law.[29] This report applies the definition of the crime against humanity of apartheid in the Rome Statute to reflect customary international law.

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[20] This conclusion is based on a number of factors, including the wide ratification of treaties prohibiting apartheid (see above); the condemnation and calls for eradication of apartheid practices in many UN Resolutions, for instance apartheid was deemed a crime against humanity by UNGA Resolution 2202 A (XXI) of 16 December 1966 and by the UNSC (endorsing the above resolution) in Resolution 556 (1984) of 23 October 1984. It should also be remembered that apartheid is indisputably a form of racial discrimination, which itself is prohibited under customary international law. For similar academic opinions on the status of apartheid in international law, see, for instance, Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection*, 2009, p. 70; Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World", 2015, Oslo Law Review, Volume 86, pp. 103-7; Carola Lingaas, *The Concept of Race in International Criminal Law* (previously cited).

[21] ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), advisory opinion, 21 June 1971. The ILC has held that the prohibition amounts to a peremptory norm of international law. See ILC, *Fourth Report on Peremptory Norms of General International Law* (previously cited), paras 91-101.

[22] The International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) was adopted by UNGA Resolution 3068 (XXVIII) on 30 November 1973, and entered into force on 18 July 1976.

[23] Apartheid Convention, Status of treaties, treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-7&chapter=4&clang=_en (accessed on 20 August 2021).

[24] Daniel Benoliel and Ronen Perry, "Israel, Palestine, and the ICC", 2010, Michigan Journal of International Law, Volume 32, repository.law.umich.edu/cgi/viewcontent.cgi?article=1056&context=mjil; and UN, Treaty Collection: Rome Statute of the International Criminal Court, treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&lang=en#EndDec

[25] Rules of customary international law are international legal rules derived from consistent state practice and consistent consideration by states that these rules are legally binding on them (*opinio juris*). Customary international law binds all states irrespective of whether or not they have joined relevant international treaties.

[26] See, for example, paragraph (4) of the commentary on the preamble to the ILC's draft articles on crimes against humanity in ILC, *Report on the Work of the Sixty-Ninth Session,* 2017, UN Doc. A/72/10, para. 46. An assessment by ILC Special Rapporteur Dire Tladi shows that "[t]he written responses of States to the preambular paragraph of those draft articles also point to the general recognition of States of the peremptory character of the prohibition of crimes against humanity". See ILC*, Fourth Report on Peremptory Norms of General International Law* (previously cited), para. 88. The ILC's draft articles on crimes against humanity are in ILC, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries"*, Yearbook of the International Law Commission*, 2001, Volume II, Part Two. See also ICC, *Prosecutor v. Ruto and Sang*, Case ICC-01/09-01/11, Trial Chamber, Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial, 18 June 2013, para. 90.

[27] The Rome Statute's Article 7 definition of "crime against humanity" has been accepted by the 123 states parties to the Rome Statute and is the basis of domestic criminalization of crimes against humanity in many states. This definition was adopted essentially verbatim by the ILC in draft Article 3 of its "Text of the draft articles on crimes against humanity provisionally adopted by the Commission in 2015". See ILC, *Sixty-Seventh Session (4 May-5 June and 6 July-7 August 2015) Report*, 24 August 2015, UN Doc. A/70/10.

[28] For other evidence that corroborates the rule under customary international law, the UNGA had already declared apartheid a crime against humanity in 1968. See UNGA, Resolution 2396 (XXXIII), adopted on 2 December 1968, UN Doc. A/Res/2396. In addition, "inhuman acts resulting from the policy of apartheid" are listed as a crime against humanity in Article I(b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by UNGA Resolution 2391 (XXIII) of 26 November 1968, entered into force on 11 November 1970.

[29] See ILC, *Fourth Report on Peremptory Norms of General International Law* (previously cited), paras 91-101.

4.1.1 DEFINITIONS OF APARTHEID UNDER INTERNATIONAL LAW

The starting point for a definition of apartheid must be that in Article II of the Apartheid Convention, the first international convention to explicitly define the crime under international law. It provides that:

… the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them…[30]

Article II then lists specific inhuman acts that committed in this context amount to the crime under international law of apartheid, ranging from violent ones such as murder and torture to legislative, administrative and other measures calculated to prevent a racial group or groups from participating in the political, social, economic and cultural life of the country and deny them basic human rights and freedoms. The specific inhuman acts enumerated are:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
(i) By murder of members of a racial group or groups;
(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
(d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

The Rome Statute provides that the crime against humanity of apartheid is committed when "inhumane acts of a character similar to those referred to in paragraph 1"[31] are 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".[32] The "special intent" element of the crime of apartheid under the Rome Statute that distinguishes it from other crimes against humanity is thus the maintenance of a regime of systematic oppression and domination.

There are two main differences between the Apartheid Convention and the Rome Statute. First, the Rome Statute explicitly requires the existence 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."[33] While the Apartheid Convention does not expressly use the term "institutionalized regime" in the manner in which the Rome Statute does, a similar requirement can be gleaned from its definition of apartheid. Among other things, the convention describes the crime of apartheid as including "similar policies and practices of racial segregation and discrimination as practised in southern Africa,"[34] which indisputably involved institutionalized racial oppression and domination. The definition also specifically includes "legislative measures",[35] clearly an "institutionalized" measure, among the "inhuman acts" constituting offences of apartheid.[36] Thus, for the

[30] Apartheid Convention, Article II, *chapeau*.
[31] Paragraph 1 of the Rome Statute lists types of acts that constitute crimes against humanity.
[32] Rome Statute, Article 7(2)(h).
[33] Rome Statute, Article 7(2)(h).
[34] Apartheid Convention, Article II, *chapeau*.
[35] Apartheid Convention, Article II(c).
[36] Apartheid Convention, Article I(1).

proscribed acts listed under both the Apartheid Convention and the Rome Statute to amount to the crime of apartheid, they must be committed to (create or) maintain an "institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime".

In this regard it can be noted that the Apartheid Convention focuses more on the "purpose" to create or maintain such domination, meaning that the crime of apartheid can be committed in the absence of an existing regime of systematic oppression and domination as long as there is an intent to establish such a regime, while the Rome Statute requirement that the inhumane acts be committed within the context of the regime implies that the regime must already exist.[37] Nevertheless, considering the gravity and scale of the crime of apartheid, it is unlikely that the crime will be prosecuted in the absence of an existing system of oppression and domination, especially where the intent is implied from existing conduct.[38] For the purposes of this report, Amnesty International has applied the more stringent (or narrow) definition in the Rome Statute, which better reflects apartheid as a crime against humanity under customary international law.

The second difference is that the list of "inhumane" acts proscribed in the Rome Statute appears more restricted than the list of "inhuman acts" in the Apartheid Convention. Indeed, as shown, the inhuman acts proscribed in the Apartheid Convention include both inherently violent ones and more systemic acts designed to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and deny them basic human rights and freedoms.

At first glance the list of inhumane acts in the Rome Statute appears restricted to the more violent acts such as murder and torture. However, a closer look points both to the inhumane act of persecution proscribed in Article 7(1)(h) and defined in Article 7(2)(g) as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity" as well as "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health", proscribed in Article 7(1)(k), which together would cover all the proscribed inhuman acts under the Apartheid Convention that do not on the face of it appear in the Rome Statute definition.[39]

With respect to international human rights law, the ICERD does not define apartheid. However, at the very least, systems, regimes and practices that meet the definitions contained in the crime of apartheid under the Apartheid Convention[40] and the Rome Statute[41] would amount to a violation of the international human rights prohibition in the ICERD. The public international law prohibition of apartheid is best found in an advisory opinion by the International Court of Justice relating to South Africa's presence in Namibia (Namibia case), where the violation is defined as "distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights".[42] While the ICERD and public international law definitions may be broader than the definition under international criminal law, the violation is considered one of the most grave and serious. Considering the seriousness of the violation, this report thus applies the structural elements of the international criminal law definition to determine whether the systematic discrimination practised by Israel against the Palestinian people amounts to the human rights violation prohibited by the ICERD and public international law, namely whether it amounts to a system of "oppression and domination by one racial group over any other racial group or groups".[43]

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[37] Under the Rome Statute, the *actus reus* includes the requirement that the inhumane acts are perpetrated "in the context" of a regime of oppression and domination.

[38] International law expert Miles Jackson has argued that "[i]n practice, this difference may not amount to a great deal, given that the kinds of acts sufficient to ground an inference of the required purpose will often mean that the relevant context under the Rome Statute has been established". See Miles Jackson, "Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law", 23 March 2021, diakonia.se/ihl/news/israel-palestine-publication/expert-opinion-occupation-palestine-apartheid, para. 27.

[39] International law experts Gerhard Werle and Florian Jessberger have argued that the Apartheid Convention is an important guide to interpreting the Rome Statute. See Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law*, 3rd edition, 2014. See also Kai Ambos, Christopher K. Hall, Niamh Hayes, Larissa van den Herik, Joseph Powderly and Carsten Stahn (Kai Ambos and others), "Article 7 – Crimes against humanity" in Kai Ambos and Otto Triffterer (editors), *The Rome Statute of the International Criminal Court: A Commentary*, 3rd edition, 2016, pp. 283-4; and Miles Jackson, "Expert Opinion" (previously cited), para. 23, for the rebuttal of any argument that such acts causing suffering and serious injury to mental or physical health are less serious than the more overtly physical attacks on the person.

[40] The "domination by one racial group of persons over any other racial group of persons and systematically oppressing them". Apartheid Convention, Article 1.

[41] Discrimination that amounts to an "institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups": Rome Statute, Article 7.

[42] ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), advisory opinion, 21 June 1971.

[43] Miles Jackson, "Expert Opinion" (previously cited), paras 27 and 28, comes to the similar conclusion that the customary (public international law) prohibition on states is contained in the Apartheid Convention, which can thus be seen to give content

4.2 INSTITUTIONALIZED REGIME OF SYSTEMATIC OPPRESSION AND DOMINATION

As per its definition under the Apartheid Convention and the Rome Statute, the crime against humanity of apartheid requires the intention to create and/or maintain an institutionalized regime for the purpose of the systematic oppression and domination by one racial group over any other racial group or groups. The Rome Statute explicitly requires the existence 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".[44] The Apartheid Convention does not expressly use the term "institutionalized regime", but a similar requirement can be gleaned from its definition of apartheid. Among other things, the convention describes the crime of apartheid as including "similar policies and practices of racial segregation and discrimination as practised in southern Africa,"[45] which indisputably involved institutionalized racial oppression and domination. The definition also specifically includes "legislative measures", clearly an "institutionalized" measure, among the "inhuman acts" constituting offences of apartheid. Thus, it is Amnesty International's assessment that for the proscribed acts listed under both the Apartheid Convention and the Rome Statute to amount to the crime of apartheid, they must be committed in "the context of an institutionalized regime of systematic oppression and domination".

"Systematic oppression" and "domination" are not defined in either the Apartheid Convention or the Rome Statute. The terms are very similar and scholars indicate that they should be read cumulatively to mean ruling or treating people with continual injustice or cruelty while exercising a very strong control or influence over them.[46] Drawing from both the dictionary definitions of oppression and domination and the commentary of experts, these terms should be understood to require the systematic, prolonged, and cruel[47] discriminatory treatment by one racial group of members of another with the intention to control the second racial group. To interpret the term "systematic" in the general definition of crimes against humanity, the ICC,[48] following international criminal tribunals, has used terms such as "non-accidental repetition",[49] "following a regular pattern",[50] "continuous commission of crimes",[51] and "the organised nature of the acts of violence and the improbability of their random occurrence".[52] The word must be read to have the same meaning in the definition of the crime of apartheid, requiring an element of organization and planning in relation to the commission of the crime, which is reinforced by the requirement of the existence of a regime.

The element of an "institutionalized regime" of systematic oppression and domination may entail a wide range of discriminatory and exclusionary laws, policies and practices that are imposed by the state or, in certain circumstances, an armed group for the purpose of maintaining domination (or control) by one racial group over any other racial group or groups. Indeed, "it is this institutionalized element, involving a state-sanctioned regime of

to the human rights prohibition in the ICERD and other treaties and statements of international bodies. In this report, Amnesty International has chosen to modify this definition with the definition of the crime against humanity under the Rome Statute to reflect any modifications to custom that have arisen from the widespread ratification and domestication of the Statute.

[44] Rome Statute, Article 7(2)(h).

[45] Apartheid Convention, Article 2.

[46] Kai Ambos and others, "Article 7 – Crimes against humanity" (previously cited), p. 284.

[47] Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World" (previously cited), pp. 86, 99.

[48] ICC, Situation in the Republic of Kenya, Case ICC-01/09, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 96; ICC, *Prosecutor v. Katanga and Ngudjolo*, Case ICC-01/04-01/07, Pre-Trial Chamber, Decision on the Confirmation of Charges, 30 September 2008, para. 397.

[49] Quoting, among others, the International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Blaškić*, Case IT-95-14, Appeals Chamber judgment, 29 July 2004, para. 101; ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 580, and Appeals Chamber judgment, 12 June 2002, para. 94; and the International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, 2 September 1998, para. 580.

[50] ICTR, *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, 2 September 1998, para. 580. It should be noted, however, that the court refers to this as the "conventional definition" of a racial group rather than expressly endorsing it.

[51] Quoting, among others, ICTR, *Prosecutor v. Kayishema and Ruzindana*, Case ICTR-95-1, Trial Chamber judgment, 21 May 1999, para. 123; and ICTY, *Prosecutor v. Kordić and Čerkez*, Case IT-95-14/2, Trial Chamber judgment, 26 February 2001, para. 17.

[52] ICTY, *Prosecutor v. Mrkšić and Others*, Case IT-95-13/1, Trial Chamber judgment, 27 September 2007, para. 437; ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 429; ICC, *Prosecutor v. Harun and Kushayb*, Case ICC-02/05-01/07, Pre-Trial Chamber, Decision on the Prosecution Application under Article 58(7) of the Statute, 29 April 2007, para. 62 (citing ICTY, *Prosecutor v. Kordić and Čerkez,* Case IT-95-14/2, Appeals Chamber judgment, 17 December 2004, para. 94, which in turn cites *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 429). See also ICC*, Prosecutor v. Ruto and Sang,* Case ICC-01/09-01/11, Pre-Trial Chamber, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 179; ICC, Situation in the Republic of Kenya, Case ICC-01/09, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 96; ICC, *Prosecutor v. Katanga and Ngudjolo*, Case ICC-01/04-01/07, Pre-Trial Chamber, Decision on the Confirmation of Charges, 30 September 2008, para. 394. See also ILC, *Report of the International Law Commission*, 20 August 2019, legal.un.org/ilc/reports/2019/english/a_74_10_advance.pdf

law, policy, and institutions, that distinguishes the practice of apartheid from other forms of prohibited discrimination."[53] A regime in this context is understood to refer to "a method or system of organising or doing [something]".[54] Consequently, apartheid consists of a system of prolonged and cruel[55] discriminatory treatment by one racial group of members of another with the intention to control the second racial group. While the discriminatory treatment must be organized and planned to the extent that it must not merely be the repetition of incidental and unlinked human rights violations, there is no need for an expressly adopted plan to subject one racial group to oppression and domination. This policy element can thus be inferred from the conduct of the perpetrators.[56]

4.3 OPPRESSION AND DOMINATION OF A RACIAL GROUP

The concept of distinct human races has been discredited and it is recognized that all human beings make up one biological race.[57] Nevertheless, states, peoples and individuals continue to discriminate against other nations, peoples and individuals based on socially constructed understandings of racial differences, and it is this unjust prejudicial treatment that international law prohibits. Thus, while there is no objective distinction between different racial groups, international law prohibits discrimination against others based on perceived membership of racial groups. To enforce this law, courts will be called upon to explain and apply subjective understandings of manufactured differences.[58]

Although the prohibition and criminalization of the system of apartheid arose in South Africa, the conventions and treaties that condemn, prohibit and criminalize it are drafted in a universal manner. Nevertheless, some scholars have argued that reference should be made to the definition of race in South Africa,[59] effectively arguing that race should be synonymous with colour. However, even within the South African apartheid regime culture was considered an important determinant of "race".[60]

Indeed, while it appears that in the definition of race in South Africa skin colour was one factor it was not the only way in which the dominant group identified individuals in other racial groups for discrimination.[61] Further, the term "black" was used, both within South Africa and within the international community in its response to the crimes committed in South Africa, to refer to all those groups that suffered the oppression of apartheid (defined broadly and including so-called "Asian", "coloured" and "native" people).[62] The concepts of "race" or "racial group" in South African law were used as subjective tools of oppression and do not establish the basis of a universal definition of the terms, the meaning of which will depend on the context (as seen below).

[53] John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory" (previously cited), p. 881.
[54] Kai Ambos and others, "Article 7 - Crimes against humanity" in *The Rome Statute of the International Criminal Court: A Commentary* (previously cited), p. 264.
[55] Carola Lingaas, "The Crime against Humanity of Apartheid" (previously cited), pp. 86, 99.
[56] See section 4.4 "Crimes against humanity" and ICTY, *Prosecutor v. Tadić*, Case IT-94-1, Trial Chamber, Opinion and Judgment, 7 May 1997, para. 653 (holding that "if the acts occur on a widespread or systematic basis that demonstrates a policy to commit those acts, whether formalized or not"). See also *Prosecutor v. Bemba*, Case ICC-01/05-01/08, Decision to Hold a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence, 15 June 2009, para. 81.
[57] Carola Lingaas, "Jewish Israeli and Palestinians as distinct 'racial groups' within the meaning of the crime of apartheid?", 6 July 2021, ejiltalk.org/jewish-israeli-and-palestinians-as-distinct-racial-groups-within-the-meaning-of-the-crime-of-apartheid
[58] See, for example, ICTY, *Prosecutor v. Jelisić*, Case IT-95-10, Trial Chamber judgment, 14 December 1999: "… to attempt to define a… racial group today using objective and scientifically irreproachable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorisation. Therefore, it is more appropriate to evaluate the status of a… racial group from the point of view of those persons who wish to single that group out from the rest of the community. The Trial Chamber consequently elects to evaluate membership in a… racial group using a subjective criterion. It is the stigmatisation of a group as a distinct… racial unit by the community which allows it to be determined whether a targeted population constitutes a… racial group in the eyes of the alleged perpetrators."
[59] Steven Ratner and others, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, 3rd edition, 2009, p. 126. Neither the Apartheid Convention nor the Rome Statute defines the term "racial group". Indeed, reference to the preparatory work for the Apartheid Convention confirms the approach of leaving the definition of race to relational and contextual analysis. UNGA, Elimination of all forms of racial discrimination: Draft Convention on the suppression and punishment of the crime of apartheid – Note by the Secretary-General, 14 September 1972, UN Doc. A/8768, digitallibrary.un.org/record/756549/files/A_8768-EN.pdf
[60] See, for example, A. B. du Preez, as quoted by Carola Lingaas, *The Concept of Race in International Criminal Law* (cited previously).
[61] See an analysis of the often contradictory apartheid laws on this in Carola Lingaas, *The Concept of Race in International Criminal Law* (previously cited), p. 159. See also Carola Lingaas, "Jewish Israeli and Palestinians as distinct 'racial groups' within the meaning of the crime of apartheid?" (previously cited).
[62] Carola Lingaas, *The Concept of Race in International Criminal Law* (previously cited), p. 158. At the same time "white" was used by the regime in South Africa to define all those who benefited from the system of apartheid, collapsing existing distinctions and demonstrating an evolution of this term within the system of oppression and domination as developed in the country.

Accepting that the definitions under historic South African law give little assistance in understanding the concept of "racial group" under international law, and turning to international law itself, neither public international law nor international human rights law defines the concept of a racial group. International human rights law instruments have, instead, dealt more broadly with "racial discrimination". The ICERD defines "racial discrimination" to mean:

… 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.[63]

In the Namibia case, the International Court of Justice also adopted the broader understanding of racial discrimination. In condemning South Africa's enforcement of apartheid in Namibia, the court stated:

To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.[64]

These definitions therefore allow an understanding of race as a social construct that encompass issues such as "colour, descent, or national or ethnic origin".[65] CERD has held that racial discrimination as defined in the convention covers a wider range of identities to include "caste" and "nationality",[66] although the International Court of Justice has held that "national origin" in the ICERD must be interpreted more narrowly to "denote… a person's bond to a national… group at birth".[67] Thus, when defining apartheid under international human rights law or public international law, any systematic denial of fundamental rights arising from distinctions, exclusions, restrictions and limitations (or any institutionalized regime of oppression and domination) based solely on "colour, descent, or national or ethnic origin" would constitute the international wrong of apartheid.

Turning to international criminal law, the situation is equally complicated. The Apartheid Convention and the Rome Statute both provide that the crime of apartheid relates specifically to the systematic oppression and domination by "one racial group over any other racial group or groups" with the knowledge and intention of maintaining that regime. However, the term "racial group" has not been defined in either of these instruments.

An initial point here is the link between international human rights law and international criminal law. The Apartheid Convention invokes the ICERD in its preamble, and thus the understanding of race and racial discrimination as defined in the ICERD may be relevant to the interpretation of the same term in the Apartheid Convention,[68] even if caution is called for to ensure compliance with the requirements of legality, foreseeability

[63] ICERD, Article1(1).
[64] ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), advisory opinion, 21 June 1971, para. 131.
[65] Indeed, in South Africa the definition of race went beyond colour to include concepts such as culture. See Carola Lingaas, *The Concept of Race in International Criminal Law* (previously cited): "Individuals were categorised on the basis of their appearance, social acceptance, and descent (or blood, as it commonly was called), the purpose being to define their individual social, economic, and political status."
[66] See, for example, CERD, Report: *Admissibility of the Inter-State Communication submitted by Qatar against Saudi Arabia*, 30 August 2019, UN Doc. CERD/C/99/6; and CERD, Concluding Observations: India, 5 May 2007, UN Doc. CERD/C/IND/CO/19, para. 8; CERD, General Recommendation XXX on Discrimination against Non-citizens, 1 October 2002; CERD, General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent), 1 November 2002.
[67] The ICJ has held: "The Court observes that the definition of racial discrimination in the Convention includes 'national or ethnic origin'. These references to 'origin' denote, respectively, a person's bond to a national or ethnic group at birth, whereas nationality is a legal attribute which is within the discretionary power of the State and can change during a person's lifetime… The Court notes that the other elements of the definition of racial discrimination, as set out in Article 1, paragraph 1, of the Convention, namely race, colour and descent, are also characteristics that are inherent at birth…" ICJ, Application of the International Convention on the Elimination of All Forms of Racial Discrimination *(Qatar v. UAE)*, Preliminary Objections, judgment, 4 February 2021.
[68] Carola Lingaas recognizes in *The Concept of Race in International Criminal Law* (previously cited) that international human rights law may assist in the interpretation of international criminal law but argues that the ICERD definition of race would be too broad (noting the circular definition of race as including "race, colour, descent, and national and ethnic origin"). She relies on Steven Ratner and others, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (previously cited), p. 126; and Corsin Bisaz, *The Concept of Group Rights in International Law: Groups as Contested Right-Holders, Subjects and Legal Persons,* 2012, p. 103. Other scholars have emphasized the links between the concepts in international human rights law and international criminal law and advocated adopting the ICERD definition to explain "racial groups" in the Apartheid Convention and the Rome Statute. John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territories" (previously cited), p. 886; UN Economic and Social Commission on West Asia (ESCWA), *Israeli Practices Towards the Palestinian People and the Question of Apartheid: Palestine and the Israeli Occupation*, March 2017, UN Doc. E/ ESCWA/ECRI/2017/1; Evelyne Schmid, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law,* 2015, p. 142.

and specificity in the interpretation of international criminal law.[69] Further, the drafters of the Rome Statute would have been influenced by the meaning of "racial groups" in the Genocide Convention, by the understanding in the Apartheid Convention and by the more subjective understanding of race and "racial group" that had been accepted by both international criminal tribunals and international human rights mechanisms by the late 1990s.[70] It is therefore likely that a court applying the definitions in either the Rome Statute or the Apartheid Convention would give a broad definition to "racial groups".

International criminal tribunals and courts have discussed and interpreted the term "racial group" in the context of other crimes (such as genocide) under international law.[71] The jurisprudence has not been altogether consistent and has recognized the difficulty in conclusively defining "racial groups". Initially, there were attempts to provide a definition of a "racial group" in a way that is largely "objective", for instance as "based on the hereditary physical traits often identified with a geographical region, irrespective of linguistics, cultural, national or religious factors".[72] However, international courts later acknowledged that membership of a racial group is largely "a subjective rather than objective concept".[73] As a result, international courts have increasingly (though not always consistently) referred to such groups in terms of perceptions, at times by victims but more often by perpetrators, since it is the latter that determine who is to be victimized, and on a case-by-case basis.[74]

Racial groups can therefore be considered as groups "who are perceived as being different and possibly inferior by other groups on account of particular physical and/or cultural attributes".[75] This position has been summarized as follows: "the question of race is connected to the labelling and stigmatisation of members of a group, singled out by the perpetrator as targets of his criminal acts. The perpetrator dominates a group he considers and treats as

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[69] See Carola Lingaas, "Jewish Israeli and Palestinians as distinct 'racial groups' within the meaning of the crime of apartheid?" (previously cited), which raises the concern that too broad a definition of "racial groups" in the international criminal law context could violate the principle of legality (particularly related to the requirement of foreseeability). However, the jurisprudence of both international criminal courts and international human rights bodies leads to a definition of "racial group" as a social construct with possible overlap with colour, descent, national or ethnic origin, while being primarily a subjective question in the eyes of the perpetrator. Indeed, the ICTY has cautioned against any attempt to disentangle "national, ethnical, racial or religious groups" as the list appears in the Genocide Convention since the prohibition appeared aimed at what was recognized before the Second World War as "national minorities" and that any "attempt to differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention". See ICTY, *Prosecutor v. Krstić,* Case IT-98-33, Trial Chamber judgment, 2 August 2001. This holistic understanding of race and racial discrimination appears to have influenced the drafting of the ICERD and must be the basis of an interpretation of the Apartheid Convention.

[70] See, for example, ICTY, *Prosecutor v. Jelisić*, Case IT-95-10, Trial Chamber judgment, 14 December 1999, para. 70; and ICTY, *Prosecutor v. Blagojević and Jokić*, Case IT-02-60, Trial Chamber judgment, 17 January 2005, para. 667.

[71] See, for instance, the discussion in Carola Lingaas, "Imagined Identities: Defining the Racial Group in the Crime of Genocide", Genocide Studies and Prevention: An International Journal, June 2016, Volume 10, Issue 1, scholarcommons.usf.edu/gsp/vol10/iss1/9

It is noteworthy that the Apartheid Convention was modelled on the Genocide Convention and neither treaty defines "racial group". See Steven Ratner and others, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (previously cited), p. 126; and Carola Lingaas, *The Concept of Race in International Criminal Law* (previously cited), p. 156.

[72] ICTR, *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, 2 September 1998, para. 514. It should be noted that the phrase "often identified with" introduces an element of subjectivity. In addition, the decision is much criticized. International law expert William Schabas, for example, has noted that the understanding of race expressed in this decision was at odds with the understanding of race that was prevalent in 1948 when the Genocide Convention was adopted (which was much broader and would have included "national, ethnic, and even religious minorities"). See William Schabas, "Groups Protected by the Genocide Convention: Conflicting Interpretations from the International Criminal Tribunal for Rwanda", June 2000, ILSA Journal of International & Comparative Law, Volume 6, Issue 2, nsuworks.nova.edu/ilsajournal/vol6/iss2/10

Indeed, in 1948 the term "racial group" would have included groups such as Germans, Poles and the Jews. See Diane Marie Amann, "Group Mentality, Expressivism, and Genocide", January 2002, International Criminal Law Review, Volume 2, Issue 2, p. 98. In fact, in the context of crimes committed by Nazi Germany, a number of courts considered that Jews constituted a racial group. See, for example, British Military Court, *United Kingdom v. Kramer and Others* ("Belsen Trial"), 1947, 2 L.R.T.W.C. I, para. 106.

[73] ICTR, *Prosecutor v. Rutaganda*, Case ICTR-96-3, Trial Chamber judgment, 26 May 2003, para. 56; ICTY, *Prosecutor v. Jelisić*, Case IT-95-10, Appeals Chamber judgment, 14 December 1999, para. 70. See also Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World" (previously cited), pp. 86-115.

[74] ICTR, *Prosecutor v. Bagilishema*, Case ICTR-95-1A, Trial Chamber judgment, 7 June 2001, para. 65; ICTR, *Prosecutor v. Nahimana and Others*, Case ICTR-99-52, Appeals Chamber judgment, 28 November 2007, para. 496; ICTY, *Prosecutor v. Brđanin*, Case IT-99-36-T, Trial Chamber judgment, 1 September 2004, para. 683. In *Ntaganda*, the ICC Pre-Trial Chamber used terms such as "policy to attack civilians perceived to be non-Hema" and "those perceived to be *non-originaires*" rather than "objective" descriptions of victim groups. See ICC, *Prosecutor v. Ntaganda*, Case ICC-01/04-02/06, ICC Pre-Trial Chamber, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, paras 19-21. However, in the ICC's *Prosecutor v. Al Bashir* case, the Pre-Trial Chamber appeared to adopt a more "objective" approach, although it stated that it need not go into the objective-subjective debate. *Prosecutor v. Al Bashir*, Case ICC-02/05-01/09, Pre-Trial Chamber, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Al-Bashir, 4 March 2009, paras 136-137 and footnote 52. See also the Partly Dissenting Opinion of Judge Anita Ušacka in the latter case, paras 24-26.

[75] Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection,* 2009, p. 369.

inferior."[76] Thus, "if a group is perceived and treated as a distinct racial group, it would qualify as a racial group in the meaning of the crime of apartheid."[77]

It is this subjective understanding of "racial groups" that is applied by Amnesty International in this report with regard to the crime against humanity of apartheid.

4.4 CRIMES AGAINST HUMANITY

Crimes against humanity are offences committed as part of a widespread or systematic attack directed against a civilian population pursuant to, or in furtherance of, a state or organizational policy.[78] Crimes against humanity are among the most serious crimes of concern to the international community as a whole. These crimes constitute crimes under international law, and as such are criminal wherever they are committed, whether or not they are criminal under domestic law, and whether or not the state concerned has ratified the Rome Statute. They are prohibited during war or peace. Since the crime of apartheid under international law is defined as a crime against humanity, those requirements of crimes against humanity developed under conventional and customary international law must apply.[79]

Four legal requirements are common to all crimes against humanity:

1. the underlying offence must be committed as part of a "widespread or systematic attack";
2. the attack must be "directed against the civilian population"[80];
3. the underlying offence must be carried out with knowledge of the attack; and
4. the attack must be carried out as part of state or organizational policy.

These general requirements establish the context in which specific prohibited acts must take place for them to be considered crimes against humanity. In addition, each specific crime against humanity requires proof of additional elements related to the specific underlying offence. Thus, with respect to the crime against humanity of apartheid, in addition to these general requirements, further requirements include the existence of a regime of systematic oppression and domination (see section 4.2 "Institutionalized regime of systematic oppression and domination"), of one racial group over another or others (see section 4.3 "Oppression and domination of a racial group") and the commission of inhuman or inhumane acts (see section 4.5 "Inhuman and inhumane acts") with the specific intention to maintain (under the Rome Statute), or to establish or maintain (under the Apartheid Convention), this regime of systematic oppression and domination (see section 4.6 "Special intent").

An attack does not need to be both widespread and systematic; an attack that is either widespread or systematic will suffice. International criminal case law has helped to define what is required for an attack to be considered widespread or systematic. While one factor involved in determining whether an attack is widespread is the number of victims or magnitude of the acts,[81] the term can also have a geographical dimension.[82] The term "widespread" has been interpreted by various international criminal tribunals to refer to a "multiplicity of victims", and to exclude isolated acts of violence and can have a geographical dimension.[83] The ICC Pre-Trial Chamber has indicated that the assessment of whether an act is widespread "is neither exclusively quantitative nor

[76] Carola Lingaas *The Concept of Race in International Criminal Law* (previously cited), p. 164.
[77] Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World" (previously cited), pp. 101-102.
[78] Rome Statute, Article 7(1).
[79] Rome Statute, Article 7(1); Apartheid Convention, Article II, *chapeau.*
[80] The term "population", in the definition of crimes against humanity, has been interpreted to imply the "collective nature of the crime as an attack upon multiple victims". See ICC, Situation in the Republic of Kenya, Case ICC-01/09, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 82; ICC, *Prosecutor v. Bemba*, Case ICC-01/05-01/08, Decision to Hold a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence, 15 June 2009, para. 77; ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 424; ICTY, *Prosecutor v. Tadić*, Case IT-94-1, Trial Chamber, Opinion and Judgment, 7 May 1997, para. 644. See also ICTY, *Prosecutor v. Gotovina and Others*, Case IT-06-90, Trial Chamber judgment, volume II, 15 April 2011, para. 1704, where the court held that "population" means that "enough individuals were targeted in the course of the attack, or that they were targeted in such a way" as to make it clear that the victims were more than just "a limited and randomly selected number of individuals" who were targeted, but that this does not require an attack against the "entire population" or all members of the population.
[81] See ICTR, *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, 2 September 1998, para. 579; ICTY, *Prosecutor v. Kordić and Čerkez*, Case IT-95-14/2, Trial Chamber judgment, 26 February 2001, para. 179; ICTR, *Prosecutor v. Kayishema and Ruzindana*, Case ICTR-95-1, Trial Chamber judgment, 21 May 1999, para. 123.
[82] ILC, *Yearbook of the International Law Commission 2019*, Supplement No. 10, UN Doc. A/74/10, paras 12 and 13. The ICC has held that an assessment of the quantitative and geographic facts will depend on the facts of each case: ICC, Situation in the Republic of Kenya, Case ICC-01/09, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95. See also ICC, *Prosecutor v. Bemba*, Case ICC-01/05-01/08, Trial Chamber, Judgment Pursuant to Article 74 of the Statute, 21 March 2016, para. 163.
[83] ILC, *Yearbook of the International Law Commission 2019*, Supplement 10, UN Doc. A/74/10, paras 12 and 13.

geographical, but must be carried out on the basis of the individual facts."[84] Therefore, an attack may be "widespread" due to the cumulative effect of multiple inhumane acts or the result of a single inhumane act of great magnitude.[85]

The term "systematic" means that the crimes and other prohibited acts have been committed in an organized manner and that it is unlikely they are merely random events.[86] International courts have commonly held that the systematic threshold is met when there are "[p]atterns of crimes – that is, the nonaccidental repetition of similar criminal conducted on a regular basis".[87]

"Attack directed against any civilian population" is defined in Article 7(2)(a) of the Rome Statute as "a course of conduct involving the multiple commission of acts referred to in [Article 7(1)] against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack."[88] The jurisprudence of the international criminal tribunals has made it clear that there is no requirement for a military attack, and that ill-treatment of the civilian population may suffice.[89] The term "directed" emphasizes the intention of the attack rather than the physical result of the attack,[90] meaning that "civilians" are the *primary* intended targets of the attack rather than incidental victims.[91]

It is rare for governments to express a policy to direct an attack at the civilian population. Thus, the policy element is generally implied from the organized nature of the attack,[92] especially when the crimes consist of "repeated actions occurring according to a same sequence, or… [follow] preparations or collective mobilisation orchestrated and coordinated by that State or organisation."[93]

In the context of the crime against humanity of apartheid the existence of a system of oppression and domination of one racial group over another would appear by its nature to satisfy the requirement that the underlying inhuman or inhumane act be committed as part of a widespread or systematic attack directed against the civilian population.

Individuals are criminally responsible for crimes against humanity when they commit *any* of the underlying offences, as long as they have a degree of knowledge about the contextual elements of the crime. Notably, perpetrators must have known that their actions were part of a widespread or systematic attack.[94] However, an

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[84] ICC, Situation in the Republic of Kenya, Case ICC-01/09, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95. See also ICC, *Prosecutor v. Bemba*, Case ICC-01/05-01/08, Trial Chamber, Judgment Pursuant to Article 74 of the Statute, 21 March 2016, para. 163.

[85] ILC, *Yearbook of the International Law Commission 1996*, Volume II, Part Two, para. 4 of the commentary to Article 18 of the draft Code of Crimes against the Peace and Security of Mankind, p. 47.

[86] ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 429. See also ICTY, *Prosecutor v. Blaškić*, Case IT-95-14, Trial Chamber judgment, 3 March 2000, para. 203; and ICTR, *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, 2 September 1998, para. 580.

[87] ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 429. See also ICTY, *Prosecutor v. Tadić*, Case IT-94-1, Trial Chamber, Opinion and Judgment, 7 May 1997, para. 648.

[88] Rome Statute, Article 7(2)(a)

[89] ICTY, *Prosecutor v. Perišić*, Case IT-04-81, Trial Chamber judgment, 6 September 2011, para. 82. See also ICTY, *Prosecutor v. Gotovina and Others*, Case IT-06-90, Trial Chamber judgment, volume II, 15 April 2011, para. 1702; ICTR, *Prosecutor v. Semanza*, Judgment, Case ICTR-97-20, 15 May 2003, para. 327. See also ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Appeals Chamber judgment, 12 June 2002, para. 86.

[90] See, for example, ICTY, *Prosecutor v. Blaškić*, Case IT-95-14, Trial Chamber judgment, 3 March 2000, para. 208, footnote 401.

[91] See, for example, ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 421: "The expression 'directed against' specifies that in the context of a crime against humanity the civilian population is the primary object of the attack".

[92] ICC, *Prosecutor v. Gbagbo*, Case ICC-02/11-01/11, Decision on the Confirmation of Charges, 12 June 2014, para. 216. The court held (para. 215) that "an attack which is planned, directed or organised – as opposed to spontaneous or isolated acts of violence – will satisfy the policy criterion, and there is no requirement that the policy be formally adopted." The court noted that "… evidence of planning, organisation or direction by a State or organisation may be relevant to prove both the policy and the systematic nature of the attack, although the two concepts should not be conflated."

[93] ICC, *Prosecutor v. Katanga*, Case ICC-01/04-01/07, Trial Chamber, Judgment Pursuant to Article 74 of the Statute, para. 1109. See also ICC, *Prosecutor v. Bemba*, Case ICC-01/05-01/08, Decision to Hold a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence, 15 June 2009, para. 81: "The requirement of 'a State or organizational policy' implies that the attack follows a regular pattern. Such a policy may be made by groups of persons who govern a specific territory or by any organization with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be formalised. Indeed, an attack which is planned, directed or organized - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion."

[94] Rome Statute, Article 7(1). See also ICTY, *Prosecutor v. Kupreškić and Others*, Case IT-95-16, ICTY Trial Chamber judgment, 14 January 2000, para. 556: ("the requisite *mens rea* for crimes against humanity appears to be comprised by (1) the intent to commit the underlying offence, combined with (2) knowledge of the broader context in which that offence occurs."). See also

individual does not need to be personally responsible for the actual widespread or systematic attack to be found guilty; a single act can be sufficient if – and only if – it is carried out in the context of a broader attack of which the perpetrator was aware.[95] Individuals, whether civilian or military, can be held criminally responsible for crimes against humanity for committing, co-perpetrating, indirectly perpetrating, planning, ordering, or aiding and abetting these crimes, as well as for command responsibility.[96]

It is not required that all members of a civilian population (or racial group) be a target of or subject to inhuman or inhumane acts. International tribunals have interpreted the term "population", in the definition of crimes against humanity, to refer to the "collective nature of the crime as an attack upon multiple victims"[97] and is more than just "a limited and randomly selected number of individuals",[98] but not necessarily the "entire population". As such, the system of oppression and domination may be achieved by targeting only part of the group, and subgroups may experience the system of segregation and domination in different ways.

4.5 INHUMAN AND INHUMANE ACTS

The "inhuman acts" defined under Article II of the Apartheid Convention and the "inhumane acts" enumerated under Article 7(1) of the Rome Statute constitute the physical element, or factual circumstances, of the crime against humanity of apartheid, which include the commission of any of the listed acts as long as the contextual elements are present. While the Apartheid Convention uses the term "inhuman" and the Rome Statute uses the term "inhumane", there is no reason to view the two as distinct.

In defining crimes under the Rome Statute, its drafters consistently sought to reflect and reproduce the definitions of existing crimes under existing international treaties rather than create new ones.[99] There is no indication that their intention was different in the case of the crime of apartheid. The drafters of the Rome Statute were clearly aware of the Apartheid Convention, even "copying and pasting" some of its language.[100] When determining which "other inhumane acts" are of such similarity to the prohibited acts under Article 7(1) of the Rome Statute so as to constitute the crime of apartheid, it is logical that these acts should include those that constitute the crime of apartheid under Article II of the Apartheid Convention,[101] a position supported by several legal scholars[102] and one that a reasonable court is likely to adopt.[103] Therefore, when interpreting the list of inhumane acts listed in Article 7(1) for the crime against humanity of apartheid, this report includes the list of inhuman acts from the Apartheid Convention.

ICTY, *Prosecutor v. Tadić*, Case IT-94-1, Appeals Chamber judgment, 15 July 1999, para. 271; ICTR, *Prosecutor v. Kayishema and Ruzindana*, Case ICTR-95-1, Trial Chamber judgment, 21 May 1999, paras 133-34.

[95] See Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, 3rd edition, Chapter 5.

[96] See Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, 3rd edition, Chapter 5.

[97] See ICC, Situation in the Republic of Kenya, Case ICC-01/09, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 82; *Prosecutor v. Bemba*, Case ICC-01/05-01/08, Decision to Hold a Hearing Pursuant to Rule 118(3) of the Rules of Procedure and Evidence, 15 June 2009, para. 77; ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Trial Chamber judgment, 22 February 2001, para. 424; ICTY, *Prosecutor v. Tadić*, Case IT-94-1, Trial Chamber, Opinion and Judgment, 7 May 1997, para. 644. See also ILC, *Yearbook of the International Law Commission 1994*, Volume II, Part Two, p. 40, para. 14: "the definition of crimes against humanity encompasses *inhumane acts of a very serious character involving widespread or systematic violations aimed at the civilian population in whole or in part*."

[98] ICTY, *Prosecutor v. Kunarac and Others*, Case IT-96-23 and IT-96-23/1, Appeals Chamber judgment, 12 June 2002, para. 90.

[99] For instance, the definition of the crime of genocide (Article 8) reproduces, mostly word for word, the definition of the crime under the Convention on the Prevention and Punishment of the Crime of Genocide (adopted by UNGA Resolution 260 A (III) on 9 December 1948, entered into force on 12 January 1951). The same is true of the list of war crimes (Article 8), which by and large reproduces "grave breaches" under the four 1949 Geneva Conventions and their two Additional Protocols.

[100] The phrase "domination by one racial group over any other racial group or groups" in Article 7(2)(h) of the Rome Statute was copied from Article II(c) of the Apartheid Convention.

[101] In other words, "inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" (Rome Statute, Article 7(1)(k)), which in the specific circumstances constitute the crime against humanity of apartheid (Rome Statute, Article 7(1)(j)).

[102] Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law* (previously cited), p. 384; Kai Ambos and others, "Article 7 – Crimes against humanity" (previously cited), p. 284; Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World" (previously cited), pp. 96-97. Further, the provision in Article 7(2)(h) of the Rome Statute that defines "apartheid" indicates that the "inhumane acts" constituting apartheid must be "of a character similar to those referred to in paragraph 1 [of Article 7]" rather than specifying that they must be limited to precisely such acts, and therefore confirms that the definition includes acts not contained within the strict confines of paragraph 1. See, for example, Mark Klamberg (editor), *Commentary on the Law of the International Criminal Court*, 2017, cmn-kh.org/clicc, p. 59. In addition, the list of inhumane acts in Article 7(1) is open as it includes "other inhumane acts" in Article 7(1)(k).

[103] Indeed, one of the inhumane acts proscribed as a crime against humanity in Article 7 of the Rome Statute is the crime of persecution, which is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity", and as such matches the more extensive list in the Apartheid Convention. See Miles Jackson, "Expert Opinion" (previously cited), para. 23.

4.6 SPECIAL INTENT

The crime of apartheid under customary international law, the Apartheid Convention and the Rome Statute requires the special intent to establish or maintain[104] a system of racial oppression and domination, in addition to the general knowledge of the commission of the crime required in all crimes against humanity under the Rome Statute. The mental element (*mens rea*) of the crime of apartheid is that the perpetrator committed inhuman or inhumane acts "with the intention of maintaining that regime",[105] or "for the purpose of establishing and maintaining domination"[106] in a "calculated" manner",[107] and more generally committing acts "with intent and knowledge".[108] The legal requirement of "intent" in the Rome Statute provides that each perpetrator means to "engage in the conduct" and "to cause [a] consequence or is aware that it will occur in the ordinary course of events".[109]

Intent here must not be understood to imply motive,[110] especially not a requirement of racial hatred or animosity. The intent required relates merely to creating or maintaining the system. This intent may be the ultimate goal or it may be incidental to or seen as necessary to achieve some other goal.[111] While in some cases the intention to create and maintain a system of oppression and domination will be explicit, in most cases the special intent will need to be inferred from the facts. Indeed, in the context of genocide, international tribunals have had to infer intent in a number of cases where it was not explicit, and it has held that, while this must be done with care,[112] specific intent "may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances". These include "the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts."[113]

4.7 APARTHEID IN SITUATIONS OF BELLIGERENT OCCUPATION

The condemnation, prohibition and criminalization of apartheid extend to situations of occupation.[114] One of the key aims of the law of occupation is to enable the inhabitants of an occupied territory to live as "normal" a life as possible, whilst allowing the occupying power to take measures strictly necessary to maintain order and security.[115] In the words of the International Committee of the Red Cross (ICRC), the occupying power "has a duty to ensure the protection, security, and welfare of the people living under occupation and to guarantee that they can live as normal a life as possible, in accordance with their own laws, culture, and traditions."[116]

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[104] Under the Rome Statute the special intent is to maintain the system; an intention to establish such a regime would not be sufficient.

[105] Rome Statute, Article 7(2)(h).

[106] Apartheid Convention, Article II, *chapeau.*

[107] Apartheid Convention, Article II(c).

[108] Article 30 of the Rome Statute sets out the "mental element" of crimes under the Statute generally.

[109] Rome Statute, Article 30(2)(b).

[110] ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide *(Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment, 26 February 2007, para. 189.

[111] Miles Jackson, "Expert Opinion" (previously cited), para. 49. See also John Finnis, "Intention and side effects", in *Intention and Identity: Collected Essays Volume II,* 2011, pp. 173, 176; and Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law,* 9th edition, 2019, p. 191.

[112] ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide *(Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment, 26 February 2007, paras 189, 373.

[113] ICTY, *Prosecutor v. Jelisić*, Case IT-95-10, Appeals Chamber judgment, 5 July 2001, para. 47.

[114] For an analysis of the applicable international law to the OPT, see Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (Index: MDE 15/027/2009), 27 October 2009, amnesty.org/en/documents/mde15/027/2009/en/; Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (Index: MDE 15/002/2014), 27 February 2014, amnesty.org/en/documents/mde15/002/2014/en

[115] The situation of belligerent occupation is partly governed by international humanitarian law, including specific provisions of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annexed Regulations respecting the Laws and Customs of War on Land (Hague Regulations) of 18 October 1907; the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949; and customary rules of international humanitarian law applicable to belligerent occupation, including the rule protecting persons in the power of a party to the conflict, detailed in Article 75 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). The ICJ and UN human rights treaty bodies have affirmed that an occupying power's conduct in occupied territory is bound not only by international humanitarian law but also by its obligations under the international human rights treaties that it has ratified, as well as customary rules of international human rights law.

[116] ICRC, "West Bank: Israel Must Abide by International Humanitarian Law", 13 September 2018, icrc.org/en/document/west-bank-israel-must-abide-international-humanitarian-law

See also Hague Regulations, Article 43. However, there are some caveats to this obligation, including that where the laws, cultures and traditions of the occupied people constitute a grave violation of international human rights law, the occupying power may be under an obligation to change or prohibit these laws, cultures and traditions, and that failure to do so may lead to its being held responsible. This obligation would include situations where the laws in place establish a regime or system of apartheid; see Miles Jackson, "Expert Opinion" (previously cited), paras 43 and 44.

The Fourth Geneva Convention imposes specific obligations on an occupying power in relation to the inhabitants of the occupied territory, who are entitled to special protection and humane treatment. The occupying power is responsible for the welfare of the population under its control. Among other things, the rules prohibit the occupying power from wilfully killing, ill-treating or transferring or deporting protected persons. The occupying power is prohibited from settling its own civilians in the occupied territory. It is strictly prohibited from depriving the occupied population of the protection of the Fourth Geneva Convention, whether by annexation or other means.

While the law of occupation allows, and in some cases requires, differential treatment between nationals of the occupying power and the population of the occupied territory,[117] it does not allow the occupying power to do this where the intention is to establish or maintain a system of racial oppression and domination as to do so would violate a peremptory norm of international law[118] (the prohibition of apartheid)[119].

Further, Article 85(4)(c) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977 lists "practices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination"[120] as grave breaches of the Geneva Conventions, when committed wilfully. The commentary clarifies that it is not an "on the battlefield" violation but concerns acts prejudicial to the rights of persons in the power of the enemy, which could include civilians, prisoners of war and other persons *hors de combat*.[121] The war crime of apartheid will thus, among others things, be committed where an occupying power establishes and maintains a system or regime of oppression and domination of the occupied population as a racial group with the purpose of benefiting its nationals as a racial group.[122] Prohibited acts perpetrated to maintain systems of apartheid when committed in territories under belligerent occupation would therefore constitute both the crime against humanity of apartheid and the war crime of apartheid.

4.8 SYSTEM AND CRIME OF APARTHEID

Apartheid as condemned by the ICERD and public international law constitutes the (creation and) maintenance of a system or institutionalized regime of oppression and domination by one racial group over another. In practice this means a system of laws, policies and practices that ensure the prolonged and cruel discriminatory treatment by one racial group of members of another with the intention of controlling the second racial group.

The crime against humanity of apartheid under the Rome Statute and customary international law is committed when (a) an inhuman or inhumane act, which is a serious human rights violation, (b) is committed within the context of a system of laws, policies and practices that ensure the prolonged and cruel discriminatory treatment by one racial group of another with the intention to control the second racial group, (c) with the special intent of maintaining that system.[123]

[117] See Hague Regulations, Article 43, and Fourth Geneva Convention, Article 64. The differential treatment is primarily required because international humanitarian law prohibits the occupying power from applying its own laws to the population in the occupied territories and therefore envisages different laws applying to its citizens and the population of the occupied territories.
[118] ILC, Peremptory Norms of General International Law (*Jus Cogens*): Text of the Draft Conclusions and Draft Annex Provisionally Adopted by the Drafting Committee on First Reading, 2019, UN Doc. A/CN.4/L.936, Draft Conclusion 2.
[119] ILC, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Commentary to Article 40, para. (4). See also Miles Jackson, "Expert Opinion" (previously cited), paras 56, 59 and 60.
[120] The substantive elements of the war crime should be considered to be similar to the general prohibition of apartheid under international law. See Miles Jackson, "Expert Opinion" (previously cited), para. 74; and Yves Sandoz and others (editors), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949,* 1987, para. 3511.
[121] ICRC, Protocol I, Commentary, Article 85, para. 4.
[122] See, for example, Miles Jackson "Expert Opinion" (previously cited), para. 74.
[123] As seen above, the Rome Statute definition best reflects the definition of the crime against humanity under customary international law. Since the crime of apartheid is a crime against humanity, these inhuman acts must be committed as part of a widespread or systematic attack directed against the civilian population. This contextual element will be met in most situations where a system of oppression and domination is in existence. Each individual perpetrator accused of the crime against humanity of apartheid will also need to have knowledge of the attack but as this report does not consider individual criminal responsibility there has been no further analysis of this aspect.

5. ISRAEL'S OPPRESSION AND DOMINATION OF PALESTINIANS

As outlined above, apartheid consists of a system of prolonged and cruel discriminatory treatment by one racial group of members of another with the intention to control the second racial group. This chapter examines the extent to which Israel has created such a system of oppression and domination over Palestinians in all areas under its jurisdiction and effective control, as well as over Palestinian refugees whose right of return to their homes remains controlled by Israel. It does so by first establishing Israel's intent to oppress and dominate all Palestinians by establishing its hegemony across Israel and the OPT, including through means of demography, and maximizing resources for the benefit of its Jewish population at the expense of Palestinians. It then analyses the laws, policies and practices which have, over time, come to constitute the main tools for establishing and maintaining this system, and which discriminate against and segregate Palestinians in Israel and the OPT today, as well as controlling Palestinian refugees' right to return. It divides this analysis by the key components of this system of oppression and domination: territorial fragmentation, segregation and control, dispossession of land and property and the suppression of Palestinians' human development and deprivation of their economic and social rights.

The chapter demonstrates how distinct but interlocking administrative and legal systems in different geographic areas have controlled Palestinians' legal status, deprived them of the right to nationality, placed extreme restrictions on their freedom of movement, deprived them of political and civil rights equal to Jewish Israelis, and precluded any possibility of them enjoying equality in access to land, property and resources. These policies have had disastrous consequences for Palestinians and have deliberately prevented them from fulfilling their human potential and accessing equal economic and social rights, further worsening their situation. The chapter concludes that Israel has created a system of oppression and domination over Palestinians in all areas under its effective control and over the rights of Palestinian refugees, which amounts to apartheid as prohibited by public international law and international human rights law.

While Israel's system of control originated with the creation of Israel in May 1948, it has been built and maintained over decades by successive Israeli governments across all territories they have controlled, regardless of the political party in power at the time. Indeed, Israel has subjected different groups of Palestinians to different sets of discriminatory and exclusionary laws, policies and practices at different times, responding to the territorial gains it made first in 1948 and then in 1967, when it annexed East Jerusalem and occupied the rest of the West Bank and the Gaza Strip. Over decades, Israeli demographic and geopolitical considerations have shaped policies towards Palestinians in each of these territorial domains in different ways. This means that, today, Israel's system of control is not applied uniformly across all areas.[124] Palestinians experience this system in different ways and face differing levels of repression based on their status and the area in which they live.

Palestinian citizens of Israel are subject to Israeli civil laws, which allow them to vote in national elections and, in general, afford them greater human rights protections than Palestinians living in the OPT, but nonetheless deny them equal rights with Jewish Israelis (including to political participation) and institutionalize discrimination against them. While Palestinians in annexed East Jerusalem also live under Israeli civil laws, they can only vote in municipal elections, which they routinely boycott in protest at the prolonged occupation, and have a fragile permanent residency status, which can be revoked on a number of discriminatory grounds with devastating consequences for their human rights. On the other hand, Palestinians in the rest of the West Bank remain subject to Israel's military rule and draconian military orders, while those in the Gaza Strip have been placed under an unlawful blockade and remain cut off, under an official "separation" policy, from the rest of the occupied territories as well as the rest of the world, without access to essential services. Finally, as stated above, Palestinian refugees displaced over the years remain barred from returning to their land and their homes under discriminatory laws and policies, and continue to be isolated from other Palestinians in what is today Israel and the OPT.

Israel's rule over the OPT through military orders in the context of its occupation has given rise to a false perception that the military regime in the OPT is separate from "the civil regime in annexed East Jerusalem and pre-1967 Israel".[125] This view ignores the fact that many elements of Israel's repressive military system in the OPT originate in Israel's 18-year-long military rule over Palestinian citizens of Israel, imposed merely months after the creation of the new state in May 1948.[126] Similarly, Israel extended many of its discriminatory laws against Palestinians in Israel to Palestinians in the OPT through military orders "in most cases, by replicating Israeli legislation".[127] Perhaps most importantly, this view ignores the fact that the dispossession of Palestinians in Israel

[124] ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation* (previously cited).
[125] Nathan Thrall, "The Separate Regime Delusion", 21 January 2021, London Review of Books, Volume 43, No. 2, lrb.co.uk/the-paper/v43/n02/nathan-thrall/the-separate-regimes-delusion
[126] Rania Muhareb, "Apartheid, the Green Line and the Need to Overcome Palestinian Fragmentation", 7 July 2021, EJIL:Talk!, ejiltalk.org/apartheid-the-green-line-and-the-need-to-overcome-palestinian-fragmentation
[127] Rania Muhareb, "Apartheid, the Green Line and the Need to Overcome Palestinian Fragmentation", 7 July 2021, EJIL:Talk!, ejiltalk.org/apartheid-the-green-line-and-the-need-to-overcome-palestinian-fragmentation

continues today, with millions of Palestinian refugees and internally displaced people barred from their right to return and denied restitution and compensation. While the human rights situation of Palestinian citizens of Israel has generally improved since the end of the military rule over them, which removed among other things stringent restrictions on movement, the discriminatory laws and policies they were subjected to remain in force today and, crucially, the system that they created was never dismantled.

The full integration of West Bank settlements into Israel's infrastructure, economy, education and court systems also points to the existence of one system of oppression and domination. Israeli citizens can travel unobstructed along major roads linking settlements in the West Bank with Israeli towns across the Green Line, the demarcation line set out in the 1949 Armistice Agreements between Israel and its neighbours that served as the de facto borders of the State of Israel until 1967, and the Israeli authorities provide heavy subsidies, financial and tax incentives and low-cost utilities and resources to encourage Jewish Israelis to live in settlements.[128] In addition, Israeli citizens living inside Israel sustain the settlement enterprise by working or studying in settlements and by visiting attractions and businesses run by them. For both Israelis and Palestinians across all territorial domains, the Israeli Supreme Court remains the court of final appeal.[129]

To date, much of the analysis of the human rights situation faced by Palestinians in Israel and the OPT, including by Amnesty International, has been limited by the existence of these separate legal regimes, and has failed to address Israeli violations against the Palestinian people holistically, despite long-standing calls by Palestinian activists and, more recently, some Israeli NGOs to change this approach. However, as noted in a 2017 report by ESCWA, which concluded that Israel had "established an apartheid regime that dominates the Palestinian people as a whole", "the method of fragmentation" serves precisely "to obscure [the Israeli apartheid] regime's very existence".[130] Indeed, as will be demonstrated in this chapter, Israeli policies aim to fragment Palestinians into different geographic and legal domains of control not only to treat them differently, or to segregate them, from the Jewish population, but also to treat them differently from each other in order to weaken family, social and political ties between Palestinian communities, to suppress any form of sustained dissent against the system they have created, and ensure more effective political and security control over land and people across all territories.[131]

5.1 INTENT TO OPPRESS AND DOMINATE THE PALESTINIAN PEOPLE

Since its establishment in 1948, the State of Israel has pursued an explicit policy of establishing and maintaining a Jewish demographic hegemony and maximizing its control over land to benefit Jewish Israelis while minimizing the number of Palestinians and restricting their rights and obstructing their ability to challenge this dispossession. In 1967, Israel extended this policy beyond the Green Line to the West Bank and Gaza Strip, which it has occupied ever since. Today, all territories controlled by Israel continue to be administered with the purpose of benefiting Jewish Israelis to the detriment of Palestinians, while Palestinian refugees continue to be excluded.

Demographic considerations have from the outset guided Israeli legislation and policymaking. The demography of the newly created state was to be changed to the benefit of Jewish Israelis, while Palestinians – whether inside Israel or, later on, in the OPT – were perceived as a threat to establishing and maintaining a Jewish majority, and as a result were to be expelled, fragmented, segregated, controlled, dispossessed of their land and property and deprived of their economic and social rights.

In May 1948, the Declaration of the Establishment of the State of Israel announced a Jewish state.[132] Although it guaranteed the right to "complete equality of social and political rights to all its inhabitants", this has not been given full effect through legislation, and the right has not been guaranteed in the Basic Laws, which act as constitutional documents in the absence of a written constitution. Across all the Basic Laws, legal provisions on equality are subordinated to those that privilege Jewish Israelis and establish the State of Israel as Jewish (see below).

At the same time as establishing Israel as a Jewish state, the 1948 Declaration appealed to Jewish people around the world to immigrate to Israel and build the country. In 1950, Israel granted every Jew the right to immigrate to Israel under the Law of Return, while two years later, every Jewish immigrant acquired the right to automatic

[128] Amnesty International, "Israel/OPT: A call to states to stop sustaining illegal settlements" (Index: MDE 15/6296/2017), 7 June 2017, amnesty.org/en/wp-content/uploads/2021/05/MDE1562962017ENGLISH.pdf
[129] Nathan Thrall, "The Separate Regime Delusion", 21 January 2021, London Review of Books, Volume 43, No. 2, lrb.co.uk/the-paper/v43/n02/nathan-thrall/the-separate-regimes-delusion
[130] ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation* (previously cited). The report was removed from ESCWA's website shortly after publication following pressure by Israel and other UN member states. See Reuters, "Senior U.N. official quits after 'apartheid' Israel report pulled", 17 March 2017, reuters.com/article/us-un-israel-report-resignation-idUSKBN16O24X
[131] ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation* (previously cited).
[132] State of Israel, Declaration of Establishment of State of Israel, 14 May 1948, mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx

Israeli citizenship under the Nationality Law of 1952.[133] The Israeli authorities saw this partly as a necessary measure to prevent another attempt to exterminate Jews in the wake of the Holocaust and to provide shelter to Jews who faced persecution elsewhere in the world. In 1970, Israel amended the Law of Return to extend these rights to the spouses as well as the children and grandchildren of any Jewish person.[134] Meanwhile, it pursued a clearly discriminatory policy against Palestinian refugees on racial and national grounds. In order to maintain Jewish Israeli domination in the territories it controlled, Israel denied the right to citizenship and residence to hundreds of thousands of Palestinians displaced during the 1947-49 conflict or shortly after from land that became recognized as part of the State of Israel, and to hundreds of thousands more displaced in 1967 from the OPT, as well as to their descendants.

Indeed, Israel considers the existence of the Palestinian refugee population as a potential threat to maintaining a Jewish majority in Israel and therefore the continued existence of Israel as a Jewish state.[135] Under Article 3(a) of the Nationality Law of 1952, Israel conditioned the granting of Israeli citizenship to Palestinians on the requirement that they must have continuously inhabited Israel from the day of its establishment on 14 May 1948 to the day the Nationality Law came into force in April 1952.[136] The Nationality Law effectively became the basis for denying Palestinian refugees, and later their descendants, their right to gain Israeli citizenship or residency status in Israel and thus their right to return to their former places of residence.

Palestinian refugees who left their homes during the 1947-49 conflict or shortly after and are now living in the West Bank or the Gaza Strip are affected by the same laws and policies and are also prevented from gaining citizenship or residency status in Israel. Coupled with the fact that Palestinian residents of East Jerusalem are denied the right to vote, this ensures that Palestinians remain limited in terms of political participation and their ability to challenge systemic discrimination and oppression, including by becoming an electoral power.

Over the years Israel has passed laws with constitutional status that provide some protection of the right to equality while simultaneously reiterating that the State of Israel is Jewish.[137] Israel has also enacted specific laws, for example on equal opportunities at work[138] and equal opportunities for people with disabilities.[139] Other protections against discrimination have been put in place through decisions by the Supreme Court. However, these decisions have focused on discrimination based on sex,[140] sexual orientation[141] and distributive justice,[142] and have not removed discrimination against Palestinian citizens of Israel that is based on their non-Jewish identity. This is due to a provision in the Basic Law: Human Dignity and Liberty that establishes the law's purpose as one of protection of "human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as

[133] See section 5.3.1 "Denial of right to equal nationality and status".
[134] Law of Return (previously cited).
[135] For a history of Israel's perspective, see Jacob Tovy, *Israel and the Palestinian Refugee Issue: The Formulation of a Policy, 1948-1956*, 2014. For an example of a specific statement, see American Friends Service Committee (AFSC), Palestinian Refugees and the Right of Return", afsc.org/resource/palestinian-refugees-and-right-return#_edn9 (accessed on 10 December 2021): "… during an August 9, 1949 meeting between AFSC employee Don Stevenson and Eliahu Elath, the Israeli Ambassador to the US… Stevenson asked Ambassador Elath if Israel would accept the return of Palestinian refugees to their homes [and] Elath told him that Israel would not because 'Israel would commit suicide if she took back all the refugees.'"
Amnesty International uses the term "Jewish state" following the terminology used by the State of Israel since the Declaration of the Establishment of the State of Israel in May 1948. The existing legal construction of Jewish identity as the sole national identity of the State of Israel was enshrined in the 2018 Basic Law: Israel the Nation State of Jewish People, which expressly does not recognize any other national identity (see box below).
[136] State of Israel, Nationality Law, entered into force on 14 July 1952, knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf
[137] State of Israel, Basic Law: Human Dignity and Liberty, 17 March 1992, main.knesset.gov.il/Activity/Legislation/Documents/yesod3.pdf (in Hebrew), Section 1(a); Basic Law: Freedom of Occupation, passed on 3 March 1992, amended on 9 March 1994, main.knesset.gov.il/Activity/Legislation/Documents/yesod1.pdf (in Hebrew), Section 2(a).
[138] State of Israel, Equal Opportunities at Work Law, 3 March 1988, amended multiple times, available at nevo.co.il/law_html/law01/p214m1_001.htm (in Hebrew).
[139] State of Israel, Equal Rights for Persons with Disabilities Law, 23 February 1998, available at nevo.co.il/law_html/law01/p214m2_001.htm (in Hebrew).
[140] State of Israel, High Court of Justice (HCJ), *Alice Miller v. Minister of Defense*, Case HCJ 4541/94, judgment, 8 November 1995, p. 94 (an unofficial English translation is available at versa.cardozo.yu.edu/sites/default/files/upload/opinions/Miller%20v.%20Minister%20of%20Defense.pdf). Israel's Supreme Court sits as the High Court of Justice when it exercises judicial review over executive authorities.
[141] HCJ, *El-Al Israel Airlines Ltd v. Jonathan Danielowitz and National Labour Court*, Case HCJ 721/94, judgment, 30 November 1994 (an unofficial English translation is available at versa.cardozo.yu.edu/sites/default/files/upload/opinions/El-Al%20Israel%20Airlines%20v.%20Danielowitz.pdf).
[142] HCJ, *New Discourse Association HaSiah HaHadash - Mizrahi Democratic Rainbow HaKeshet HaMizrahit v. Minister of National Infrastructure*, Case HCJ 244/00, judgment, 29 August 2002, summarized at HaKeshet HaMizrahit, מאבק הקרקעות [Struggle of the Lands], ha-keshet.org.il/lands (in Hebrew, accessed on 30 August 2021).

a Jewish and democratic state."[143] However, under Article 8 of the same Basic Law, the state's Jewishness is a legal consideration that allows the state to limit the right to equality and violate other rights that are protected within the Basic Law.[144] Attempts to amend the Basic Laws to guarantee equality for Palestinian citizens of Israel have been unsuccessful, on the express grounds that such attempts "seek to deny Israel's existence as the state of the Jewish people".[145]

In 2018, Israel limited the right to equality and non-discrimination even further by enacting the 2018 Basic Law: Israel the Nation State of the Jewish People (see box below).[146] The law enshrined the existing legal construction of Jewish identity as the sole national identity of the State of Israel. It expressly does not recognize any other national identity,[147] affirms that the right of self-determination is exclusive "to the Jewish people",[148] and contains no protection of equality and non-discrimination. Instead, it protects and codifies pre-existing discriminatory legislation and policies, encapsulated in the most salient aspects of Israel's regime of racial and national discrimination against not only its Palestinian citizens but also Palestinians residing in the OPT. Israeli law thus establishes a superior "Jewish nationality" status that is distinct from citizenship and the basis for differential treatment of Jewish and non-Jewish citizens.[149]

BASIC LAW: ISRAEL THE NATION STATE OF THE JEWISH PEOPLE

On 19 July 2018, following extended debate, the Knesset passed Basic Law: Israel the Nation State of the Jewish People,[150] which for the first time enshrined Israel exclusively as the "nation state of the Jewish people" and constitutionally entrenched inequality and racial and national discrimination against Palestinian and other non-Jewish citizens of Israel. The law, known informally as the nation state law, is applicable to the territory of Israel and implicitly covers the OPT, especially under Article 7, which enshrines the development of "Jewish settlement" in Israel as the "historical homeland of the Jewish people".[151]

The law declares: "The exercise of the right to national self-determination in the state of Israel is unique to the Jewish People" (Article 1). It also ascribes the symbols of the state, all of which are Jewish in character (Article 2), and defines Jerusalem as the united capital of Israel (Article 3). The law establishes Hebrew as the official language, while demoting the status of Arabic from an official language to one with "special status" (Article 4).

The nation state law reiterates that Israel "shall be open for Jewish immigration" (Article 5), and shall act, in the diaspora, to preserve the ties between the state and members of the Jewish people (Article 6), further enshrining the privileges granted to Jews in nationality and status under the Law of Return of 1950 and the Nationality Law of 1952. Israel's then prime minister Benjamin Netanyahu stated, during a cabinet meeting on 5 August 2018:

The Nation-State Law, first of all, entrenches the Law of Return. It raises it to another level and this law, of course, grants an automatic right to Jews, and only to them, to come here and receive citizenship. The Nation-State Law, for example, prevents the exploitation of the family reunification clause under which very, very many Palestinians have been absorbed into the country since the Oslo agreement, and this law helps prevent the

[143] State of Israel, Basic Law: Human Dignity and Liberty, passed on 17 March 1992, knesset.gov.il/laws/special/heb/yesod/kk000008.htm (in Hebrew) (an English translation is available at mfa.gov.il/mfa/mfa-archive/1992/pages/basic%20law-%20human%20dignity%20and%20liberty-.aspx).

[144] Basic Law: Human Dignity and Liberty (previously cited), Article 8. See also Aharon Barak (former Chief Justice of Israel's Supreme Court), ערכיה של מדינת ישראל כמדינה יהודית ודמוקרטית [The Values of Israel as a Jewish and Democratic State], December 2012, Academia, Volume 34, academy.ac.il/SystemFiles/21538.pdf (in Hebrew).

[145] Israel Democracy Institute, חוק־יסוד: שוויון [Basic Law: Equality], November 2020, idi.org.il/media/15253/proposed-basic-law-equality.pdf (in Hebrew), p. 22. See also Haaretz, "Knesset Council Bans Bill to Define Israel as State for All Its Citizens", 4 June 2018, bit.ly/2MeIt6S; State of Israel, Knesset Debates, Session 19 of the Joint Committee of the Knesset Committee and the Constitution, Law and Justice Committee, the 20th Knesset on 16 July 2018, cited in Adalah – The Legal Center for Arab Minority Rights in Israel (Adalah), Petition to Israeli Supreme Court against the Nation-State Law, Case HCJ 5866/18, 7 August 2018 (an unofficial English translation is available at adalah.org/uploads/uploads/Jewish_Nation_State_Law_Petition_English_Final_October_2018.pdf), p. 11; State of Israel, Knesset, הוועדה המשותפת אישרה את חוק הלאום לקריאה ראשונה, 13 March 2018, main.knesset.gov.il/News/PressReleases/pages/press13.03.18.aspx (in Hebrew).

[146] Israel Democracy Institute, *Proposed Basic Law: Equality* (previously cited), p. 22.

[147] Roselle Tekiner, "Race and the Issue of National Identity in Israel", International Journal of Middle East Studies, February 1991, Volume 23, Issue 1; Dov Waxman and Ilan Peleg, "The Nation-State Law and the Weakening of Israeli Democracy", Fall 2020, Israel Studies, Volume 25, Issue 3; Amal Jamal and Anna Kensicki. "Theorizing half-statelessness: a case study of the Nation-State Law in Israel", March 2020, Citizenship Studies, Volume 24, Issue 6.

[148] State of Israel, Basic Law: Israel the Nation State of the Jewish People, passed on 18 July 2018, main.knesset.gov.il/Activity/Legislation/Documents/yesod18.pdf (in Hebrew), Section 1(b) (an unofficial English translation is available at main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf).

[149] Roselle Tekiner, "Race and the Issue of National Identity in Israel" (previously cited).

[150] Basic Law: Israel the Nation State of the Jewish People (previously cited).

[151] Adalah, "The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value", March 2019, adalah.org/uploads/uploads/Position_Paper_on_Article_7_JNSL_28.03.19.pdf

continued uncontrolled entry into Israel of Palestinians. It could be that this law will also be able to assist us in blocking the future entry of labor migrants… [W]ithout the Nation-State Law it will be impossible to ensure for [future] generations the future of Israel as a Jewish national state.[152]

Additionally, the law entrenched the racial and national discrimination in Israeli laws and policies related to land and resources, which are discussed in this report, by highlighting the importance of "the development of Jewish settlement as a national value" and asserting that the state "shall act to encourage and promote its establishment and strengthening" (Article 7). This is the first time the term "Jewish settlement" appears in any Israeli legislation.[153] The development of Jewish settlement in the law also includes an underlying intention to develop Jewish settlements in the occupied West Bank. The Israeli government considers the settlements in the OPT as part of Israel and has channelled the application of Israeli law to both settlements and Jewish settlers in the OPT.[154]

The nation state law holds a binding constitutional status, which cannot be modified except by a Basic Law that is passed with a parliamentary majority of 61 Knesset members.

In 2019, both the UN Committee on Economic, Social and Cultural Rights (CESCR) and the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concerns regarding the "possible discriminatory effect" of the law with regard to the enjoyment of human rights in Israel by non-Jewish people. They called on Israel to review it in order to comply with its international human rights law obligations to eliminate discrimination against non-Jews.[155] The CESCR also called on Israel to consider repealing the law and to step up its efforts to eliminate discrimination in the enjoyment of economic, social and cultural rights, particularly the rights of self-determination and non-discrimination.[156]

In November 2020, the magistrates' court in the Krayot, a cluster of towns near Haifa, rejected a petition for schoolchildren's access to education by Palestinian citizens of Israel living in Karmiel, citing the nation state law. The decision said that establishing an Arabic school in the town or funding transport for its Palestinian residents to study in Arabic-medium schools in nearby communities would undermine the town's "Jewish character".[157]

In July 2021, the Supreme Court rejected 15 petitions, including ones submitted by the Joint List of four Palestinian-majority political parties and Meretz, another political party in Israel, as well as human rights groups such as Adalah – The Legal Center for Arab Minority Rights in Israel (Adalah) and the Association for Civil Rights in Israel (ACRI), to strike down the nation state law or any of its components.[158]

In parallel to the laws, policies and practices described above and in the rest of this chapter, statements by leading Israeli politicians over the years confirm that the intention to maintain a Jewish demographic majority and to oppress and dominate Palestinians has guided Israel's policies since the state's creation. In February 1948, David Ben-Gurion, then chairperson of the Jewish Agency for Israel, the operative branch of the World Zionist Organization, before becoming prime minister, openly praised the use of unlawful means to forcibly and cruelly change the demographic composition of the country to the benefit of Jewish Israelis by expelling Palestinians and destroying their homes and properties. The night after visiting Lifta, a Palestinian village in the suburbs of Jerusalem that was completely emptied of Palestinians after they had been expelled from their homes and fled, he reported:

[152] State of Israel, Ministry of Foreign Affairs (MoFA), "PM Netanyahu's remarks at the start of the weekly Cabinet meeting", 5 August 2018, mfa.gov.il/MFA/PressRoom/2018/Pages/PM-Netanyahu-s-remarks-at-the-start-of-the-weekly-Cabinet-meeting-5-August-2018.aspx
[153] Adalah, "The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value" (previously cited).
[154] Adalah, "The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value" (previously cited), pp. 4-6; Eyal Benvenisti and Doreen Lustig, "We the Jewish People – A deep Look into Israel's new law", 24 July 2018, Just Security, justsecurity.org/59632/israel-nationality-jewish-state-law; CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19.
Paragraph 13 of CERD's concluding observations states: "Furthermore, while Israeli settlements in the Occupied Palestinian Territory are not only illegal under international law but also an obstacle to the enjoyment of human rights by the whole population, the Basic Law [nation state law] constitutionally elevates them 'as a national value' (Articles 1, 2 and 5)". Paragraph 14 states: "As regards the expansion of Jewish settlements, the Committee urges the State party to comply with its international legal obligations, including under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War."
[155] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4; CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19.
[156] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 17.
[157] Haaretz, "'It's a Jewish City': Court Rejects Lawsuit by Arab Students, Citing Israel's Nation-state Law", 30 November 2020, haaretz.com/israel-news/.premium-it-s-a-jewish-city-court-rejects-lawsuit-by-arab-students-1.9337764
[158] Adalah, "Israeli Supreme Court upholds the racist and discriminatory Jewish Nation-State Law", 8 July 2021, adalah.org/en/content/view/10379

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 per cent 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.[159]

Since then, successive Israeli politicians – regardless of their political affiliations – have publicly stated their intention to minimize Palestinians' access to and control of land across all territories under Israel's effective control. They have carried this out by seizing Palestinians' homes and properties and effectively restricting them to living in enclaves. When then prime minister Benjamin Netanyahu posted a message on Instagram in March 2019 to say that "Israel is not a state of all its citizens" but rather "the nation-state of the Jewish people and only them",[160] he crystallized a policy that had been seven decades in the making.

Already in December 2003, when he was minister of finance, Benjamin Netanyahu said: "If there is a demographic problem, and there is, it is with the Israeli Arabs who will remain Israeli citizens." He noted the need to balance policies that strove to integrate "Israel's Arabs" while ensuring they did not reach 35% to 40% of the population.[161] While Benjamin Netanyahu was criticized for his 2003 comments, they were not the views of an outlier. When prime minister between 1992 and 1995, Yitzhak Rabin said: "The red line for Arabs is 20 percent of the population; that must not be gone over." He added: "I want to preserve the Jewish character of the state of Israel."[162] Ehud Barak, when he was prime minister between 1999 and 2001, equated a "Muslim majority" with "destruction of Israel as a Jewish state".[163] 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".[164] Ehud Olmert said in 2003, while vice prime minister and 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".[165]

Statements by leading Israeli politicians make it apparent that the discriminatory intent to dominate Palestinians is not only manifested through control over land and dispossession but also through a separate and unequal citizenship structure and the denial of Palestinians' right to family reunification. In 2005, then prime minister Ariel Sharon said when commenting on the renewal of the temporary and discriminatory 2003 Citizenship and Entry Law (see section 5.3.1 "Denial of right to equal nationality and status"): "There's no need to hide behind security arguments. There's a need for the existence of a Jewish state."[166] He later added that the 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".[167] Giora Eiland, a national security adviser who in 2005 served on a committee examining immigration policies, argued that the discriminatory Citizenship and Entry Law "is the way to overcome the demographic demon".[168] The same year, Benjamin Netanyahu, while the finance minister, 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."[169] Asher Grunis, then deputy president of the Supreme Court and later its 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."[170]

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[159] Gershon Rivlin and Elhanan Oren (editors), *The War of Independence: Ben-Gurion's Diary*, 1986, pp. 210–11. Also quoted in Noura Erakat, *Justice for Some*, 2019, p. 48; and in *Ben-Gurion's Diary* (previously cited), Volume 1, entry dated 7 February 1948, pp. 210–211. See also Zochrot, "Lifta", zochrot.org/en/village/49239

[160] Benjamin Netanyahu, @b.netanyahu, Instagram post, 10 March 2019, instagram.com/p/Bu0U2TABMNI (accessed on 1 June 2020).

[161] Haaretz, "Netanyahu: Israel's Arabs Are the Real Demographic Threat", 18 December 2003, haaretz.com/1.4802179
See also Haaretz, "MKs Slam Netanyahu's Remarks about Israeli Arabs", 17 December 2003, haaretz.com/1.4789108

[162] Rhoda Ann Kanaaneh, *Birthing the Nation: Strategies of Palestinian Women in Israel*, 2002, p. 50.

[163] Benny Morris, "Camp David and After: An Exchange (1. An Interview with Ehud Barak)", New York Review of Books, 13 June 2002, nybooks.com/articles/2002/06/13/camp-david-and-after-an-exchange-1-an-interview-wi

[164] Jonathan Cook, *Blood and Religion: The Unmasking of the Jewish and Democratic State*, 2006, p. 16.

[165] Haaretz, "'Maximum Jews, Minimum Palestinians'", 13 November 2003, haaretz.com/1.4759973

[166] Haaretz, "PM Backs Temporary Law Enforcing Tougher Citizenship Regulations", 4 April 2003, haaretz.com/1.4786928

[167] Haaretz, "PM Defends Tighter Immigration Laws", 23 May 2005, haaretz.com/1.4845852

[168] Haaretz, "Eiland Proposes Citizenship Limitations for Palestinians", 3 March 2005, haaretz.com/1.4760697

[169] Haaretz, "Cabinet Okays Limits on Citizenship for Palestinians", 16 May 2005, haaretz.com/1.4685395

[170] HCJ, *MK Zahava Galon - Meretz-Yahad and Others*, Case HCJ 466/07, judgment, 11 January 2012; +972 Magazine, "Citizenship Law prefers discrimination over human rights", 24 January 2012, 972mag.com/citizenship-law-compels-us-to-protect-human-rights-from-rule-of-law/33723

This view was echoed at the time by Eli Yishai, while serving as minister of interior affairs, who welcomed the Supreme Court's decision, similarly stating that approving a larger number of family unification applications from the West Bank would constitute "national suicide".[171]

Reporting on 2003 and 2004 statistics that showed a drop in the Israeli birth rate, primarily driven by a decline among Palestinian citizens of Israel, the Haaretz newspaper in January 2005 attributed to the finance ministry the view that "the drop of birth rate is a clear result of the cutbacks in child support allocations over the past two years". Haaretz quoted a senior finance ministry official, who asked not to be named, citing the "internal demographic threat" and expressing concern over "the high birth rate of the Arabs, and especially the Negev Bedouin". The official said, "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/Naqab region in southern Israel, which would have the effect of undermining the Jewish majority.[172]

The perception of Palestinians inside Israel as an internal demographic threat or enemies who must be either expelled, excluded or controlled has also shaped discriminatory housing and zoning policies in areas of strategic importance that include a large Palestinian population. For example, in December 2000 Ariel Sharon, just before he became prime minister, 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.[173]

The State of Israel, regardless of which party is in power, has continued the policy of dominating Palestinians through the seizure of lands and the segregation of Palestinian communities. As will be demonstrated in this chapter, this intention to seize the lands of the Bedouin, to make them homeless, and to replace them with Jewish Israelis, was implemented by Ariel Sharon as prime minister and continues to be implemented to this day (see section 5.4.4 "Discriminatory urban planning and zoning system"). In 2009, Israel's housing minister Ariel Atias warned against "the spread" of Palestinian communities, saying, "if we go on like we have until now, we will lose the Galilee."[174] At the same time deputy foreign minister Danny Ayalon said, "we are losing the Negev and the Galilee", and that "in many places there is no contiguous Jewish presence", confirming that the government's aim was "to Judaize the Negev and the Galilee".[175] This corroborates the conclusion that can be inferred from the facts documented in this report that the restrictions on Palestinian communities inside Israel that lead to them living in enclaves are not accidental but the result of a deliberate policy of the Israeli government to control and dominate the Palestinian population to the benefit of Jewish Israelis.

Some Israeli politicians who have opposed settlements in parts of the West Bank have made clear their opposition is based on the fear that this will lead to enfranchisement of Palestinians there, which they see as a threat to the Jewish nature of the State of Israel. Shimon Peres, while serving as president in 2012, said, "Israeli settlements in [parts of the West Bank] densely populated with Arabs... can lead to a threatening demographic change" that "places a Jewish majority in the state of Israel at risk".[176]

The intention to discriminate against and control the Palestinian population in the OPT through discriminatory land, planning and housing policies is equally clear. Since 1967, successive Israeli governments have repeatedly indicated their intention to preserve a Jewish demographic majority in Jerusalem through planning policies, laws and measures in the city.[177] The first geo-demographic dilemma facing Israel as an occupying power arose with the decision to redraw the new Jerusalem boundaries and the areas that would be de facto annexed in 1967, as the new annexed area included Palestinian villages and communities way beyond the boundaries of the Jordanian-ruled East Jerusalem municipality. Some Israeli officials criticized the annexation on 27 June 1967, saying the

[171] Los Angeles Times, "Israeli High Court Upholds Controversial Citizenship Law", 12 January 2012, latimesblogs.latimes.com/world_now/2012/01/israel-passes-laws-restricting-arabs-asylum-seekers.html

[172] Haaretz, "Arab Birthrate Drops for First Time in Years", 24 January 2005, haaretz.com/1.4711279

[173] Ariel Sharon, "Land as an Economic Tool for Developing Infrastructure and Significantly Reducing Social Gaps", December 2000, quoted in Adalah, "Land Disputes in Israel: The Case of the Bedouin of the Naqab", April 2006, adalah.org/uploads/oldfiles/newsletter/eng/apr06/ar2.pdf

[174] Haaretz, "Housing Minister: Spread of Arab Population Must Be Stopped", 2 July 2009, haaretz.com/1.5072677

[175] Israel National News, "Strengthen the Jewish Periphery", 22 December 2009,

[176] Jerusalem Post, "Peres: Settlement Building Threatens Jewish State", 10 July 2012, jpost.com/Diplomacy-and-Politics/Peres-Settlement-building-threatens-Jewish-state

[177] State of Israel, Municipality of Jerusalem, Local Outline Plan – Jerusalem Master Plan 2000, Chapter 7, "Population and Society", on file with Amnesty International.

demographic "price" was high because the number of Palestinians in the expanded municipality would affect the city's demographic ratio of Jews to Palestinians.[178] As noted by the Jerusalem Center for Public Affairs, an independent research institute specializing in public diplomacy and foreign policy, "The main consideration guiding the decision makers was to take control over the maximum area with a minimal Arab population and to prevent the possibility of the city's partition in the future."[179]

In 1975, Israel Kimhi, then director of planning policy at the Interior Ministry, said that "one of the cornerstones in the planning of Jerusalem is the demographic question" and that preservation of a Jewish majority would serve as "one of the yardsticks for the success of the solidification of Jerusalem's status as the capital of Israel".[180] In June 1984, Teddy Kollek, then mayor of Jerusalem, expressed his concerns on this question, saying: "Like all of us here, it seems to me, I am worried about the balance of power and Arab growth within and around Jerusalem."[181]

Since the 1967 annexation of East Jerusalem, Israeli governments have set targets for the demographic ratio of Jews to Palestinians in Jerusalem as a whole. Successive Israeli government decisions endorsed a target ratio of 70% to 30%. In 2006, the target was revised to 65% to 35% within the framework of the regional zoning plan 30/1. In 2009, a new target of 60% Jews to 40% Palestinians, which was set in the "Jerusalem 2000" Local Outline Plan, was deposited with the Regional Planning Committee.[182] Whereas the demographic increase of the Palestinian population of Jerusalem was based on natural growth, the Jewish demographic growth would be primarily from internal migration and absorption of Jewish immigrants.[183]

Statements by Israeli politicians suggest also that the denial of economic and social rights to Palestinians in East Jerusalem is not merely a consequence of Israel's dispossession and segregation policies but rather that it is intentional. For example, Teddy Kollek, then mayor of Jerusalem, said in 1990:

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.[184]

Meanwhile, in the rest of the West Bank, already on 7 July 1967, only one month after the Israeli army occupied the West Bank, Israel's then prime minister Levi Eshkol said, "The security and the land are in Israeli hands."[185] In a meeting of the Labor Party, which he led, that year, he stated that authorities "covet the dowry, not the bride", an apparent reference to wanting the West Bank without the Palestinians who live there.[186] In 1996, shortly after becoming Israel's prime minister and during a visit to Ariel settlement, located in the north of the West Bank with nearly 20,000 settlers,[187] Benjamin Netanyahu declared that settlements were "permanently forever".[188]

[178] Jerusalem Center for Public Affairs, *Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan*, 2010, jcpa.org/wp-content/uploads/2012/04/Jerusalem-Master-Plan.pdf, p. 12.
[179] Jerusalem Center for Public Affairs, *Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan* (previously cited), p. 12.
[180] Bimkom - Planners for Planning Rights (Bimkom), "Trapped by Planning: Israeli Policy, Planning, and Development in the Palestinian Neighborhoods of East Jerusalem", 2014, bimkom.org/eng/wp-content/uploads/TrappedbyPlanning.pdf, p. 18.
[181] B'Tselem (Israeli Information Center on Human Rights in the Occupied Territories), *A policy of discrimination: Land expropriation, planning and building in East Jerusalem*, January 1997, btselem.org/sites/default/files/publications/199505_policy_of_discrimination_eng.pdf, pp. 44-45.
[182] Municipality of Jerusalem, Local Outline Plan – Jerusalem 2000 (previously cited), Chapter 7, "Population and Society", Jerusalem Center for Public Affairs, *Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan* (previously cited), jcpa.org/wp-content/uploads/2012/04/Jerusalem-Master-Plan.pdf, pp. 11-12.
[183] Jerusalem Center for Public Affairs, *Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan,* (previously cited), p. 13.
[184] Quoted in B'Tselem, *A policy of discrimination* (previously cited), pp. 44-45.
[185] Haaretz, "The 'Jordanian Option,' the Plan That Refuses to Die", 25 July 2007, haaretz.com/1.4954947
[186] Orna Ben-Naftali and others, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory*, 2018, p. 519.
[187] B'Tselem, Statistics on Settlements and Settler Population, btselem.org/settlements/statistics (accessed on 26 August 2021).
[188] New York Times, "Netanyahu and the Settlements", 12 March 2015, nytimes.com/interactive/2015/03/12/world/middleeast/netanyahu-west-bank-settlements-israel-election.html

The intention to control the lands and territories of the West Bank to the exclusive benefit of Jewish Israelis, and with the express exclusion of Palestinians, continues. 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.[189]

Prior to national elections in May 2019, then prime minister Benjamin Netanyahu vowed to annex Israeli settlements in the West Bank, stating: "I will impose sovereignty, but I will not distinguish between settlement blocs and isolated settlements." He added: "From my perspective, any point of settlement is Israeli, and we have responsibility, as the Israeli government. I will not uproot anyone, and I will not transfer sovereignty to the Palestinians."[190] Two months later, he publicly revealed Israel's intention to continue to control the entirety of Israel and the OPT: "Israeli military and security forces will continue to rule the entire territory, up to the Jordan [River]."[191] Further, when speaking about plans to annex the Jordan Valley, in May 2020, he stated that "Palestinians have to recognize that we are dictating security rules over the entire territory," describing Jericho residents as "subjects".[192]

The proposals to annex the Jordan Valley to Israel are not new. In fact, such plans were advanced at the outset of the occupation in 1967 in the Allon Plan, named after Yigal Allon, the then minister of labour. Its main objective was to ensure "Jewish presence" and avoid annexing areas densely populated by Palestinians.[193]

Israel's intention to control Palestinians in the West Bank to facilitate the seizure of their land is also apparent in statements by Israeli leaders over the decades. For example, in a July 1981 meeting of the Ministerial Committee for Settlement Affairs, then minister of agriculture Ariel Sharon justified designating additional land in the West Bank as military "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, an NGO that conducts archival research. Ariel Sharon added, "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."[194] 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", a reference to the Israeli government-designated administrative territory that encompasses the occupied West Bank excluding East Jerusalem.[195]

Further, Israeli politicians have made it clear that the OPT would not be allowed to develop for the benefit of Palestinians. For example, in 1985, then defence minister Yitzhak Rabin said, "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."[196]

Israel's withdrawal of its settlers from Gaza, while it maintained control over the people in the territory in other ways, was also expressly linked to demographic questions, and a realization that a Jewish majority could not be

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[189] Women in Green and the Forum for Sovereignty, "Prepare the Constitutional Ground for the Application of Sovereignty", Sovereignty Journal, Issue 1, January 2014, ribonut.co.il/images/Ribonut%202%20English.pdf, p. 7.
[190] Associated Press, "Netanyahu vows to annex West Bank settlements if re-elected", 4 July 2019, politico.com/story/2019/04/07/benjamin-netanyahu-israel-west-bank-1260173
[191] Haaretz, "At West Bank Event, Netanyahu Promises No More Settlers, Arabs Will Be Evicted", 10 July 2019, haaretz.com/israel-news/.premium-at-west-bank-event-netanyahu-promises-no-more-settlers-arabs-will-be-evicted-1.7490113
[192] Haaretz, "Netanyahu Says Palestinians in Jordan Valley Won't Get Citizenship After Annexation", 28 May 2020, haaretz.com/israel-news/.premium-netanyahu-says-palestinians-in-jordan-valley-won-t-get-citizenship-after-annexation-1.8879420
[193] B'Tselem, *Land Grab: Israel's settlement policy in the West Bank*, May 2002, btselem.org/download/200205_land_grab_eng.pdf
[194] State of Israel, Government Secretariat, פרוטוקול: ישיבת הועדה להתישבות המשותפת לממשלה ולהסתדרות הציונית העולמית [Minutes: Meeting of the Joint Settlement Committee for the Government and the World Zionist Organization], 12 July 1981, available at bit.ly/3gPubpK (in Hebrew); Haaretz, "40-Year-Old Document Reveals Ariel Sharon's Plan to Evict 1,000 Palestinians from Their Homes", 9 August 2020, haaretz.com/israel-news/.premium-40-year-old-document-reveals-ariel-sharon-s-plan-to-expel-1-000-palestinians-1.9057519
[195] Ynet, האג מחיר [The Hague Price], 11 February 2021, yediot.co.il/articles/0,7340,I-5885532,00.html (in Hebrew).
[196] Edward H. P. Brans and others (editors), *The Scarcity of Water, Emerging Legal and Policy Responses*, International Environmental Law and Policy Series, 1997, bit.ly/2CvpSAI, pp. 146-147; UN Conference on Trade and Development (UNCTAD), *Recent Economic Developments in the Occupied Palestinian Territories*, 30 June 1986, UN Doc. TD/B/1102, unctad.org/meetings/en/SessionalDocuments/tdbd1102_en.pdf

achieved there. On 15 August 2005, the day the Israeli government set as a deadline for settlers to voluntarily leave Gaza, then prime minister Ariel 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 with every generation."[197] The same month, then deputy prime minister Shimon Peres said, "We are disengaging from Gaza because of demography."[198]

Meanwhile, as Israel prepared to withdraw from Gaza it also increased efforts to dispossess Palestinians in the Galilee and the Negev/Naqab – both areas with a large Palestinian population. Haaretz quoted an adviser to Ariel Sharon as saying in 2003 that the then prime minister "reached the conclusion that following the enormous investment in settling the territories, it is now necessary to settle the Galilee and the Negev."[199]

Finally, the Ministry of Foreign Affairs' website make it obvious that Israel's long-standing policy to deprive millions of Palestinian refugees of their right to return to their homes is also guided by demographic considerations. An article published in 2001 explains: "If Israel were to allow all of [the refugees] to return to her territory, this would be an act of suicide on her part, and no state can be expected to destroy itself."[200]

5.1.1 PALESTINIANS AND JEWISH ISRAELIS AS RACIAL GROUPS

The question of race and the existence of racial groups is a fraught one, but one that must be engaged with to understand the international wrong that is apartheid.

Any attempt at racial categorization is distasteful and complicated, since perceived racial differences often coincide with other grounds of differentiation such as religion, culture and nationality. For the purpose of this report, we consider the modern conception of race under international criminal law as primarily a subjective one, dependant on the perception of the groups but especially that of the alleged perpetrators. The overriding question here is therefore whether Israel, in its law and practice, and individual Israeli politicians and officials, in their actions maintaining domination, consider and treat Jewish Israelis and Palestinians as separate racial groups. This report demonstrates that Jewish Israelis and Palestinians self-identify as different groups, and crucially that the laws of Israel perceive and treat Palestinians as a separate and inferior group.

The understanding of the existence of two distinct groups is implicit in findings by CERD, which has expressed concerns with regards to the nation state law of 2018. It stated that Israel maintains segregation both in Israel and in the OPT, including segregation among "Jewish and non-Jewish sectors". In Israel, this is manifested through two systems of education with unequal conditions, as well as separate municipalities, namely Jewish municipalities and the so-called "municipalities of the minorities". In the OPT, segregation results in the existence of "two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand."[201]

In its 2019 review of Israel, the CESCR called on Israel to amend and/or repeal the nation state law of 2018, noting the "possible discriminatory effect [of the law]… on non-Jewish people", and to step up its efforts to eliminate discrimination faced by non-Jews in their enjoyment of economic, social and cultural rights, and rights to non-discrimination and self-determination.[202]

As a matter of legal fact, Jewish Israelis form a group that is unified by a privileged legal status embedded in Israeli law, which extends to them through state services and protections regardless of where they reside across the territories under Israel's effective control. The Jewish identity of the State of Israel has been established in its laws and the practice of its official and national institutions. Israeli laws perceive and treat Jewish identity, depending on the context, as a religious, descent-based, and/or of national or ethnic identity.[203] An example of the

[197] Cable-Satellite Public Affairs Network (C-Span), "Israeli Disengagement from Gaza", 15 August 2005.
[198] Irish Times, "Sharon Maintains Control in Face of Demographic Shift", 20 August 2005, irishtimes.com/opinion/sharon-maintains-control-in-face-of-demographic-shift-1.482484
[199] Haaretz, "PMO Issues Rush Order for 30 New Towns in Negev, Galilee", 20 July 2003, haaretz.com/1.5347089
[200] Israel Ministry of Foreign Affairs, "Do Palestinians have the right to return to Israel", 15 January 2001, mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/do%20palestinian%20refugees%20have%20a%20right%20to%20return%20to.aspx
[201] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, paras 21 and 22.
[202] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, paras 16 and 17.
[203] Human Sciences Research Council of South Africa, *Occupation, colonialism, apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law*, 2009, hsrc.ac.za/en/research-data/view/4634; John Dugard and John Reynolds, "Apartheid, International Law, and the occupied Palestinian territory", European Journal of International Law, Volume 24, Issue 3, August 2013.

overlap between race, religion and descent is evident in Israel's Law of Return, which defines "Jew" to include "a person who was born of a Jewish mother".[204]

Palestinians on the other hand are treated by the Israeli state differently based on its consideration of them as having a racialized non-Jewish, Arab status and, beyond that, as being part of a group with particular attributes that are different from other non-Jewish groups. With respect to Palestinian citizens of Israel, the Israeli Ministry of Foreign Affairs officially classifies them as "Arab citizens of Israel", an inclusive term that describes a number of different and primarily Arabic-speaking groups, including Muslim Arabs (this classification includes Bedouins), Christian Arabs, Druze and Circassians.[205] However, in public discourse, Israeli authorities and media generally refer only to Muslim Arabs and Christian Arabs – those who generally self-identify as Palestinians – as Israeli Arabs and associate them with Palestinians living in the OPT and beyond, using the specific terms Druze and Circassians for those other non-Jewish groups. The authorities also clearly consider Palestinian citizens of Israel as a single group different from Druze and Circassians since they exempt this group alone from military service in "consideration for their family, religious, and cultural affiliations with the Arab world (which has subjected Israel to frequent attacks), as well as concern over possible dual loyalties."[206]

As will be demonstrated in the subsequent sections of this chapter, Israeli law, policy and practices, as exercised differently but consistently in all areas and in all situations under its control, privilege those identified as Jewish Israelis and discriminate against, exclude and segregate those identified as non-Jewish people, in general, and, to the deepest extent, those considered as Palestinians. This status is treated in practice as an immutable characteristic. For example, while Israel recognizes conversion to Judaism,[207] and establishes mechanisms to give effect to such conversion,[208] in practice the state rejects all applications by Palestinian citizens of Israel on the basis of "ethnicity" or "security".[209]

Palestinians who live or have family origins in the territory of British mandate Palestine perceive their Palestinian identity primarily as one of national origin[210] (and as part of the Arab people).[211] There is currently no Palestinian citizenship, although it was formally recognized under the British mandate.[212]

Regardless of whether individual Palestinians are citizens of Israel living in Israel, or Palestinians living under Israeli military rule in the OPT, or Palestinian refugees, they overwhelmingly regard themselves as Palestinian and have deep and shared political, ethnic, social and cultural ties.[213] Palestinians share a common language and have similar customs and cultural practices, despite having different religions, regardless of the territory in which they reside.[214] Palestinian refugees currently living elsewhere may, and often do, have genuine links to their host states but this does not diminish or reduce their self-identification as Palestinians.[215] The Palestine Liberation Organization (PLO) defines Palestinians as "Arab nationals who, until 1947, normally resided in Palestine

[204] Human Rights Watch (HRW), *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#; Law of Return (previously cited). Indeed, even in South Africa where race was more closely linked to "colour" the question of membership of a "racial group" included questions of descent. See, for example, Carola Lingaas, *The Concept of Race in International Criminal Law*, 2020, p. 159: "Individuals were categorised on the basis of their appearance, social acceptance, and descent (or blood, as it commonly was called), the purpose being to define their individual social, economic, and political status."
[205] State of Israel, MoFA, People: Minority Communities, mfa.gov.il/mfa/aboutisrael/people/pages/society-%20minority%20communities.aspx (accessed on 4 August 2021).
[206] State of Israel, MoFA, People: Minority Communities (previously cited), "Arab Community Life".
[207] See, for example, ITIM - The Jewish Life Advocacy Center, Guide to Converting to Judaism in Israel, itim.org.il/en/itim-guide-to-converting-to-judaism-in-israel (accessed on 27 August 2021).
[208] State of Israel, Prime Minister's Office (PMO), Conversion Authority, gov.il/en/departments/Units/conversion_to_judaism_services (accessed on 27 August 2021).
[209] Jerusalem Post, "'Palestinian requests to convert to Judaism rejected automatically'", 1 April 2016, jpost.com/arab-israeli-conflict/palestinian-requests-to-convert-to-judaism-rejected-automatically-449987; Michal Kravel-Tovi, *When the state winks: The performance of Jewish conversion in Israel*, 2017, pp. 84-90.
[210] As recognized by the ICJ the concept of "national origin" denotes "a person's bond to a national… group at birth" and thus must also be understood with respect to the Palestinians as a status that is regarded as immutable. This is not nationality that can be gained or lost depending on the whims of a state. See ICJ, Application of the International Convention on the Elimination of All Forms of Racial Discrimination *(Qatar v. U.A.E.)*, Preliminary Objections, judgment, 4 February 2021.
[211] Human Sciences Research Council of South Africa, *Occupation, colonialism, apartheid?* (previously cited), pp. 162-163.
[212] British Mandate Government of Palestine, Palestinian Citizenship Order, 1 August 1925, cited in Mutaz M. Qafisheh, "Genesis of Citizenship in Palestine and Israel: Palestinian Nationality in the 1917-1925 Period", March 2009, Journal of the History of International Law, Volume 11, Issue 1.
[213] Carola Lingaas, *The Concept of Race in International Criminal Law* (previously cited), p. 158: ethnicity and race were closely linked especially at the time when the Apartheid Convention was being drafted.
[214] Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness*, 1997.
[215] Amnesty International, *The Right to Return* (previously cited).

regardless of whether they were evicted from it or have stayed there," and considers that this Palestinian nationality is transmitted to children, regardless of whether their parents reside inside or outside of Palestine.[216]

As will be demonstrated in the subsequent sections of this chapter, Israeli law, policy and practices, as exercised differently but consistently in all areas and in all situations under its control, privilege those identified as Jewish Israelis and discriminate against, exclude and segregate Palestinians. This evidence demonstrates that the State of Israel perceives Palestinians as "different and… inferior… on account of particular… cultural attributes."[217] Considering the definition of "racial group" under international criminal law,[218] which emphasizes identification and the intent of the alleged perpetrators, Jewish Israelis and Palestinians constitute racial groups for the purposes of customary international law, the ICERD, the Apartheid Convention and the Rome Statute.

5.2 FRAGMENTATION INTO DOMAINS OF CONTROL

At the beginning of 1948, Palestinians constituted a majority in British mandate Palestine, comprising some 1.2 million out of a population of some 2 million, and owning about 90% of the privately owned land in the territory.[219] During the 1947-49 conflict before and after the May 1948 declaration of the State of Israel, hundreds of thousands of Palestinians were forcibly displaced in what amounted to ethnic cleansing. Some were internally displaced from their villages, towns and cities to other parts of what became Israel. Others fled to different parts of what was then British mandate Palestine (22% of which fell under the control of Jordan and Egypt following the 1947-49 conflict – what is now the OPT). Most of the rest fled to the neighbouring Arab countries of Jordan, Syria and Lebanon.[220] Israel prevents these Palestinian refugees, and their descendants, as well as internally displaced persons within Israel, from returning to their former places of residence (see section 5.2.3 "Palestinians outside Israel and OPT").

Palestinians became fragmented even further after the June 1967 war, which resulted in Israel's military occupation of the West Bank, including East Jerusalem, and the Gaza Strip, the creation of a separate legal and administrative regime to control the occupied territories, and another wave of Palestinian displacement – from areas that became known as the OPT.

The new military regime in the OPT was established on top of a pre-existing multi-layered legal system made up of Ottoman, British, Jordanian (in the West Bank) and Egyptian (in Gaza) laws – the legacy of the powers that had previously controlled the area.[221] Since then, the Israeli authorities have issued hundreds of military orders that continue to govern many aspects of Palestinian life in the OPT today including access to land and natural resources as well as the rights to freedom of assembly, expression and movement. These orders, however, do not apply to Palestinians in East Jerusalem, which Israel annexed in 1967, and nor do they apply to Israeli settlers living in the occupied West Bank, who are afforded the same rights and protections under Israeli civil and criminal law as other Jewish Israeli citizens. By contrast, Palestinians in the West Bank are subjected to a military court system, which falls short of international standards for the fair conduct of trials and administration of justice.

In 1994, the Oslo Accords between Israel and the PLO created the Palestinian Authority and granted it limited control over Palestinian civil affairs in urban centres, but failed to end the occupation. The establishment of the Palestinian Authority and the admission of Palestine as a non-member observer state at the UN General Assembly in 2012 did not change the status of the OPT under international law. Nor was this status changed by the withdrawal of Israeli settlers living illegally in Gaza in 2005. The entirety of the West Bank and Gaza Strip remains under Israeli military occupation, with Israel retaining effective control over these territories, including the Palestinian population living there, their natural resources and, with the exception of Gaza's short southern border with Egypt, their land and sea borders and airspace.[222] As a result, two sets of complementary legal frameworks continue to apply to the conduct of Israel, as the occupying power with effective control over the OPT: international human rights law and international humanitarian law.

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[216] Palestinian Liberation Organization (PLO), Palestinian National Charter: Resolutions of the Palestine National Council July 1-17, 1968, Articles 5 and 4 (an English translation is available at avalon.law.yale.edu/20th_century/plocov.asp). The PLO is recognized as the "sole legitimate representative" of the Palestinian people by over 100 states with which it holds diplomatic relation. It represents the rights of all Palestinians, wherever they reside, including the right of Palestinian refugees to return to their homes in Israel and receive compensation for lost property.

[217] To paraphrase the definition of racial group set out by Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (previously cited), p. 369.

[218] A similar conclusion would be reached in any application of the ICERD, especially since the definition of racial discrimination includes differentiation based on national or ethnic origin.

[219] UN Conciliation Commission for Palestine, Palestine Population Estimates for 1946, 22 March 1949, un.org/unispal/document/auto-insert-210930; Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, 2006.

[220] UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), Palestine Refugees, unrwa.org/palestine-refugees (accessed on 4 August 2021).

[221] Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (previously cited).

[222] Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited).

However, while preserving the OPT's status as occupied territory under international law, the Oslo Accords have added another layer of administrative and legal complexity to the governance of Palestinians in the OPT, fragmenting and segregating them even further to Israel's benefit,[223] while internal Palestinian political divisions have exacerbated this separation even further. Today, Palestinians in the OPT live under separate jurisdictions and require permits from the Israeli authorities to cross between them – from and to the Gaza Strip, annexed East Jerusalem and the rest of the West Bank and– and are also separated from Palestinian citizens of Israel, both geographically and on the basis of their status. Meanwhile, Palestinian refugees displaced during the 1947-49 and 1967 conflicts continue to be physically isolated from those residing in Israel and the OPT through Israel's continuous denial of their right to return to their homes, towns and villages.

This section focuses on Israel's role in fragmenting the Palestinian population between Israel, the OPT and neighbouring countries and the resulting situation for Palestinians in each of these areas, as determined by successive historical events.

5.2.1 PALESTINIANS IN ISRAEL

Early proponents of a state of Israel stated that they would establish a Jewish national home without undermining the rights of the native population,[224] but this did not come to pass. Instead, as mentioned above, the establishment of a Jewish state led to the mass expulsion of more than 800,000 Palestinians.[225]

The number of Palestinians who remained in what became Israel in May 1948 was about 150,000,[226] out of a total population of some 1.2 million non-Jews, mostly Palestinians, counted by the UN in 1946.[227] They became entitled to Israeli citizenship under Israel's Nationality Law of 1952.[228] However, from 1948 to 1966, Palestinian citizens of Israel were arbitrarily placed under military administration in Israel, with their fate subordinated to the needs and interests of Jewish immigrants and Israeli security considerations (see section 5.3.4 "Use of military rule").[229] Even though they regained their freedom of movement and other rights after the military rule over them ended in 1966, they continue to be subjected to a system of oppression and domination through discriminatory policies that affect their legal status, access to land, resources and services, and ultimately their human development (see sections 5.3 "Segregation and control" and 5.4 "Dispossession of land and property").

According to the Israeli Central Bureau of Statistics (ICBS), at the end of December 2019 there were 6.7 million Jews, comprising 74% of the population in Israel and occupied East Jerusalem; 1.9 million Arabs, including citizens and permanent residents of Israel, comprising 21% of the population; and 448,000 others (non-Arab Christians and people not classified by religion), comprising nearly 5% of the population.[230]

As mentioned above, the Israeli Ministry of Foreign Affairs states that "Arab citizens of Israel" is an inclusive term that describes a number of different and primarily Arabic-speaking groups, including Muslim Arabs (this classification includes Bedouins), Christian Arabs, Druze and Circassians.[231] According to the ICBS, at the end of 2019, the Druze population stood at approximately 145,000,[232] while according to the Ministry of Foreign Affairs, the Circassian population totalled 4,000 people.[233] Considering the number of those defined as Muslim Arabs and Christian Arabs together, the population of Palestinian citizens of Israel amounted to around 1.8 million, that is some 20% of the total population in Israel and occupied East Jerusalem.

[223] ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation* (previously cited).
[224] UK Foreign Office, "The Balfour Declaration", official correspondence, 2 November 1917, unispal.un.org/UNISPAL.NSF/0/E210CA73E38D9E1D052565FA00705C61: "it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine."
[225] Ilan Pappé, "Between the Day of the Land and the First Intifada, 1976-1987", *The Forgotten Palestinians*, 2011, Chapter 4, pp. 135-169; Meron Benvenisti, *Sacred landscape: The buried history of the Holy Land since 1948*, 2000.
[226] Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1998*, 1999, p. 259.
[227] UN Conciliation Commission for Palestine, Palestine Population Estimates for 1946, 22 March 1949, un.org/unispal/document/auto-insert-210930
[228] Yitzhak Reiter, *National Minority, Regional Majority: Palestinian Arabs Versus Jews in Israel*, 2009, pp. 21-22.
[229] Charles Smith, *Palestine and the Arab-Israeli conflict: A history with documents*, 6th edition, 2007, pp. 229-230. State of Israel, Knesset Debates, Volume 36, 20 February 1963, p. 1217, cited in John Quigley, *Palestine and Israel: A Challenge to Justice*, 1990, p. 109.
[230] Israeli Central Bureau of Statistics (ICBS), "Population of Israel on the Eve of 2020", 31 December 2019, p. 1, cbs.gov.il/he/mediarelease/DocLib/2019/413/11_19_413e.pdf
[231] State of Israel, MoFA, People: Minority Communities (previously cited).
[232] ICBS, "The Druze population of Israel", 23 April 2020, cbs.gov.il/en/mediarelease/pages/2020/the-druze-population-of-israel.aspx
[233] State of Israel, MoFA, People: Minority Communities (previously cited).

Today, about 90% of Palestinian citizens of Israel live in 139 densely populated towns and villages in the Galilee and Triangle regions in northern Israel and the Negev/Naqab region in the south. The remaining 10% live in "mixed cities", including Haifa, Ramla, Lod, Jaffa and Acre. As will be seen below, this has been the result of deliberate policies by the government of Israel to segregate Palestinian citizens of Israel into enclaves as part of the wider goal of ensuring the Jewish settlement and control of as much of Israel's territory as possible.

5.2.2 PALESTINIANS IN OPT

Following the 1967 war, Israel extended its control by means of military occupation to the Palestinian territories of the West Bank, including East Jerusalem, and the Gaza Strip. Together, these areas are known today as the OPT. Israel has administered these territories in different ways. It has unilaterally (and unlawfully under international law) annexed East Jerusalem, and the Israeli military has governed the rest of the West Bank and the Gaza Strip as occupied territories. The 1967 war also resulted in the occupation of the Golan Heights, belonging to Syria, and the Sinai peninsula, belonging to Egypt. Approximately 350,000 refugees were displaced from these newly occupied areas, most of whom were Palestinians.[234] Of these refugees, 117,000 had already been registered with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the UN agency mandated to provide humanitarian assistance to Palestinian refugees, between 1947 and 1952.[235] Jordan received about 200,000 Palestinians, of whom some 24,600 returned to the OPT in the decades that followed.[236] The vast majority of Palestinian refugees from 1967 and their descendants are prevented from returning to their former places of residence (see section 5.2.3 "Palestinians outside Israel and OPT").

EAST JERUSALEM

In 1967, Israel unilaterally annexed East Jerusalem and included Palestinian parts of the city, as well as a surrounding area of 64km^2, within the boundaries of the Israeli Jerusalem Municipality.[237] The new municipal boundaries of Jerusalem formed an area of 70km^2 and its eastern part was nearly 12 times larger than the former East Jerusalem municipal area under Jordanian rule. The additional lands belonged to about 28 Palestinian villages from surrounding areas, with the new boundaries being delineated to ensure the inclusion of the maximum amount of land with the minimum number of Palestinians.[238]

On 27 June 1967, Israel passed Amendment 11 to the Law and Administration Ordinance of 1967, which provided that the "law, jurisdiction and administration" of Israel shall be extended to any area designated by a government decree.[239] The next day, Israel passed the Law and Administration Decree (No. 1) of 1967, under which it extended its law, jurisdiction and administration to the annexed 70km^2 of East Jerusalem and surrounding areas.[240] In 1980, the Israeli Knesset (parliament) passed the Basic Law: Jerusalem, Capital of Israel, declaring Jerusalem as the "complete and united" capital of Israel. The law declares that the jurisdiction of Jerusalem includes all the areas annexed to the municipality in 1967 under the Law and Administration Decree (No. 1) of 1967.[241] The law further prohibits the transfer of the authority of the State of Israel or the Jerusalem Municipality to a foreign body.[242] On 1 January 2018, the Knesset adopted a second amendment to the Basic Law: Jerusalem, Capital of Israel, which required a vote by an increased majority of at least 80 (out of 120) Knesset members to make any changes to Israel's sovereignty in Jerusalem.[243] The approved amendment did not include a clause on redrawing the municipal boundaries of Jerusalem that had been added in a previous draft and

[234] UN Secretary-General (UNSG), Report of the Secretary-General under General Assembly Resolution 2252 (ES-V) and Security Council Resolution 237 (1967): *The Gussing Report*, 15 September 1967, UN Doc. A/6797 (also issued under the symbol S/8158), para. 159.
[235] UNSG, *The Gussing Report* (previously cited), para. 159.
[236] UNSG, *The Gussing Report* (previously cited), para. 159; and UNSG, Report: *Persons Displaced as a Result of the June 1967 and Subsequent Hostilities*, 14 July 2004, UN Doc. A/59/151.
[237] B'Tselem, *A policy of discrimination: Land expropriation, planning and building in East Jerusalem* (previously cited).
[238] B'Tselem, *A policy of discrimination: Land expropriation, planning and building in East Jerusalem* (previously cited), pp. 20-24; and Terry Rempel, "The Significance of Israel's Partial Annexation of East Jerusalem", Middle East Journal, Autumn 1997, Volume 51, Issue 4, jstor.org/stable/4329118, pp. 520-534.
[239] State of Israel, Law and Administration Ordinance, Amendment 11, 27 June 1967 (an English translation is available at mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/13%20law%20and%20administration%20ordinance%20-amendment%20no.aspx).
[240] Ir Amim, *Permanent Residency: A temporary status set in stone*, May 2012, ir-amim.org.il/sites/default/files/permanent%20residency.pdf
[241] State of Israel, Basic Law: Jerusalem, Capital of Israel, passed on 30 July 1980, main.knesset.gov.il/Activity/Legislation/Documents/yesod2.pdf (in Hebrew), Article 1 (an English translation is available at mfa.gov.il/mfa/mfa-archive/1980-1989/pages/basic%20law-%20jerusalem-%20capital%20of%20israel.aspx).
[242] Basic Law: Jerusalem: Capital of Israel (previously cited), Articles 5 and 6.
[243] Al-Haq – Law in the Service of Man (Al-Haq), *Legal Brief on Jerusalem: A Legal Analysis of Bills and Legislation to Revoke the Permanent Residencies of Palestinians and Alter the Status of Jerusalem*, 7 March 2018, alhaq.org/cached_uploads/download/alhaq_files//images/thumbnails/images/stories/Images/Legal_Brief_Jerusalem_6%20March%202018_Final.pdf

would have enabled the Israeli government to remove Palestinian neighbourhoods located beyond the fence/wall (the construction of which began in mid-2002) from the municipal boundaries of Jerusalem.[244]

As of July 2021, there were 358,800 Palestinian residents within the boundaries of the Jerusalem Municipality, comprising 38% of the city's population.[245] Around 150,000 of them live in areas segregated from the rest of the city by the fence/wall and other military checkpoints. In order to maintain a Jewish majority and domination over Jerusalem, Israeli authorities have systematically conducted mass land expropriation to build Jewish settlements while applying discriminatory and restrictive policies against Palestinian residents of East Jerusalem, mainly through zoning and planning policies. These severely impede Palestinian urban and demographic growth and the development of their neighbourhoods, with dire impacts on the enjoyment of socio-economic rights for the local Palestinian population.

Palestinians living in the annexed East Jerusalem area who were present at the time of the 1967 census conducted by the Israeli army – around 69,000 people – were given the status of "permanent residency" as per the Entry into Israel Law of 1952. As "permanent residents", Palestinians in East Jerusalem are entitled to similar rights enjoyed by citizens of Israel, except the right to vote in the national legislative elections. In practice, however, they face discrimination in all aspects of their lives. The Ministry of Interior can easily revoke residency status, unlike citizenship (see sections 5.3.1 "Denial of right to equal nationality and status" and 5.5.3 "Discriminatory provision of services").

Israel maintains and expands settlements in East Jerusalem and allows 225,178 Israeli settlers to live in 13 settlements,[246] which are illegal under international law.[247]

The status of East Jerusalem as occupied territory under international law was not altered by Israel's unilateral annexation of it, or by the US government's recognition of the annexation in 2017.[248] Israeli settlements are deemed illegal under international humanitarian law, and condemned as illegal by most states and international bodies, including the UN Security Council.[249]

REST OF WEST BANK

In September 1967, just a few months into the start of its occupation, Israel began constructing settlements in the occupied West Bank, moving Jewish citizens into them and applying its civil law to them.[250] There are currently more than 441,600 Jewish settlers in the West Bank excluding East Jerusalem.[251] Their presence is illegal under international law.[252] They live in 132 settlements that have been officially established by the Israeli government, as well as 140 unauthorized outposts that have been established since the 1990s without

[244] Ir Amim, "Amendment to Basic Law: Jerusalem approved but in modified form; Will not enable changes to Jerusalem municipal boundaries", 2 January 2018, ir-amim.org.il/en/node/2146
[245] Peace Now, Jerusalem, peacenow.org.il/en/settlements-watch/settlements-data/jerusalem (accessed on 4 August 2021).
[246] Peace Now, Jerusalem (previously cited).
[247] B'Tselem, East Jerusalem, 11 November 2017 (updated on 27 January 2019), btselem.org/jerusalem (accessed on 30 August 2021).
[248] US Embassy in Israel, Statement by Former President Trump on Jerusalem, 6 December 2017, il.usembassy.gov/statement-by-president-trump-on-jerusalem (published on 7 December 2020). In response to the US declaration, on 21 December 2017, the UNGA overwhelmingly adopted Resolution A/ES-10/L.22 on the status of Jerusalem. The resolution reaffirmed that all "decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded", thereby echoing UNSC Resolution 478 (1980) and calling on all states to refrain from establishing diplomatic missions in Jerusalem. UNGA, Resolution ES-10/19: Status of Jerusalem, adopted on 21 December 2017, UN Doc. A/RES/ES-10/19, para. 1.
A draft UNSC resolution calling for the withdrawal of US recognition was not adopted on 18 December 2017 following a veto by the USA, but all other 14 members of the council voted in favour. See UN News, "Middle East: Security Council fails to adopt resolution on Jerusalem", 18 December 2017, news.un.org/en/story/2017/12/639772-middle-east-security-council-fails-adoptresolution-jerusalem
[249] In 1967, the UNSC adopted a resolution calling for the "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict" and emphasized member states' commitments under Article 2 of the UN Charter. UNSC Resolution 242 (1967), adopted on 22 November 1967, UN Doc. S/RES/242.
In 1980 the UNSC adopted a resolution that further provided that "all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent 'basic law' on Jerusalem, are null and void and must be rescinded forthwith". UNSC Resolution 478 (1980), adopted on 20 August 1980, UN Doc. S/RES/478.
Article 47 of the Fourth Geneva Convention explicitly states that, in the event of unilateral annexation, the principles of international law, which apply in the situation of belligerent occupation, remain in effect. See ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion, 9 July 2004.
[250] Neve Gordon, "Civilian control", in *Israel's Occupation*, 2008, Chapter 5.
[251] Peace Now, Population, peacenow.org.il/en/settlements-watch/settlements-data/population (accessed on 3 December 2021).
[252] UNSC, Resolution 2334 (2016), 23 December 2016, UN Doc. S/RES/2334.

government approval and are considered illegal even under Israeli law.[253] Approximately 3 million Palestinians live in the same territory.[254]

In 1981, Israel established the Civil Administration, a military unit that oversees all civilian matters for Jewish Israeli settlers and Palestinian residents in the West Bank excluding East Jerusalem, such as zoning and building permits.[255] It also has powers over administrative matters for Palestinians in the OPT, including the population registry; travel and work permits; archaeology and nature reserves; natural resources management; agriculture; trade and industry; and environmental protection.[256]

Between 1993 and 1995, negotiations between Israel and the PLO led to a series of agreements, known as the Oslo Accords, between the two parties. These established the Palestinian Authority and divided the West Bank (excluding East Jerusalem and Hebron) into Areas A, B and C. The Oslo Accords transferred limited and nominal jurisdiction of some civil affairs (such as health, education and internal security) to the Palestinian Authority, but Areas A, B and C have all effectively remained under overall Israeli control and continue to be militarily occupied. Israel gave the Palestinian Authority varying degrees of administrative responsibility over Areas A and B. These two areas include Palestinian towns and villages where 90% of the Palestinian population live (around 2.8 million people). Meanwhile, Palestinian rural areas were classified as Area C, comprising about 60% of the West Bank, subjected to full Israeli civil and security authority, and are today home to around 300,000 Palestinians in addition to almost all of the 441,600 Israeli settlers living in the occupied West Bank excluding East Jerusalem. A separate agreement saw the division of the city of Hebron into Palestinian- and Israeli-administered sectors, known respectively as H1 and H2.[257] Some 700 Israeli settlers live in H2.[258] The Oslo Accords were intended to act as a "transitional arrangement" lasting not more than five years until further negotiations of a final agreement. However, its terms and implications remain in force today.[259]

In April 2020, Israel's coalition government formed by then prime minister Benjamin Netanyahu and his political rival Benny Gantz agreed to start the domestic process of annexing, in violation of international law, parts of the occupied West Bank that include Israeli settlements and the area known as the Jordan Valley.[260] On 13 August 2020, following a deal with the United Arab Emirates, brokered by the USA, Israel declared in a joint statement by the three countries that it "will suspend declaring sovereignty" in the West Bank and instead "focus its efforts now on expanding ties with other countries in the Arab and Muslim world."[261] Although the annexation plan has been suspended, it offered further evidence of Israel's intent to maintain control over Palestinians in the West Bank.[262]

GAZA STRIP

Israel seized control of the Gaza Strip from Egypt in June 1967 and the Israeli military governed it as occupied territory from 1967 onwards. Following the Oslo Accords, the Palestinian Authority gained limited jurisdiction over

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[253] Peace Now, Population, peacenow.org.il/en/settlements-watch/settlements-data/population (accessed on 3 December 2021).
[254] State of Palestine, Palestinian Central Bureau of Statistics (PCBS), حوالي 13.5 مليون فلسطيني في فلسطين التاريخية والشتات [Around 13.5 Million Palestinians in Historical Palestine and the Diaspora], 11 July 2020, pcbs.gov.ps/postar.aspx?lang=ar&ItemID=3773 (in Arabic).
[255] State of Israel, Military Order 947 concerning the Establishment of a Civilian Administration (Judea and Samaria), 8 November 1981.
[256] State of Israel, Government, המנהל האזרחי ביהודה ושומרון [The Civil Administration in Judea and Samaria], gov.il/he/departments/civil_administration_in_judea_and_samaria/govil-landing-page (in Hebrew, accessed on 4 August 2021); Yesh Din, "Through the lens of Israel's interests: The Civil Administration in the West Bank", December 2017, s3-eu-west-1.amazonaws.com/files.yesh-din.org/Minhal+Ezrahi/YeshDin+-+Haminhal+-+English.pdf
[257] UN Peacemaker, Protocol Concerning the Redeployment in Hebron, 17 January 1997, peacemaker.un.org/israelopt-redeploymenthebron97
[258] B'Tselem, Hebron City Center, 11 November 2017 (updated on 26 May 2019), btselem.org/hebron (accessed on 14 December 2021).
[259] UN Peacemaker, Oslo I Accord, 13 September 1993, peacemaker.un.org/israelopt-osloaccord93, Article 1.
[260] Amnesty International, "Israel/OPT: Unlawful 'annexation' plan promotes 'law of the jungle' and must be stopped", 1 July 2020, amnesty.org/en/latest/news/2020/07/israelopt-unlawful-annexation-plan-promotes-law-of-the-jungle-and-must-be-stopped
[261] US Government, White House Archives, "Joint Statement of the United States, the State of Israel, and the United Arab Emirates", 13 August 2020, trumpwhitehouse.archives.gov/briefings-statements/joint-statement-united-states-state-israel-united-arab-emirates
[262] On 13 June 2021, a new Israeli government was formed by a coalition led by Naftali Bennett, who replaced Benjamin Netanyahu as prime minister. Naftali Bennett heads the Yamina (Rightwards) party and supports construction of Israeli settlements in the OPT. As a minister in Benjamin Netanyahu's government, Naftali Bennett was one of the drivers of the annexation plan of the Jordan Valley. The parties of the new coalition government do not have a uniform position on the annexation plan, which has been frozen rather than stopped. See Jerusalem Post, "Israel's gov't votes down opposition-backed West Bank annexation bill", 28 July 2021, jpost.com/breaking-news/knesset-votes-down-west-bank-annexation-bill-675155
Ayelet Shaked, the interior minister of the new government, said on 22 July 2021 that settlement construction would continue as before. See Makor Rishon, "איילת שקד: "בסוף מי שיפיל את הממשלה זו לא האופוזיציה [Ayelet Shaked: "In the end, whoever overthrows the government is not the opposition"], 22 July 2021, makorrishon.co.il/news/377937 (in Hebrew).

the Gaza Strip, but that did not change its status as occupied territory under international law.[263] Some 2 million Palestinians live in the Gaza Strip today; of these, some 1.4 million (over 70% of the population) are registered refugees with UNRWA.

In 2005, as part of what it termed "disengagement" from the Gaza Strip, Israel dismantled its 21 settlements and removed some 8,000 settlers, who then mainly moved to settlements in the West Bank, and redeployed its ground troops. However, the Israeli army has retained effective control over Gaza. In 2007, following Hamas's victory in parliamentary elections the previous year and the infighting among the Palestinian political factions, the Fatah-led Palestinian Authority suspended operations of its security forces and official institutions in Gaza while Hamas established a parallel security and law enforcement apparatus there.

Following Hamas's takeover, Israel declared the Gaza Strip a "hostile entity", citing security concerns, and imposed an air, land and sea blockade on it, preventing any movement of people or goods in or out of Gaza by air or sea.[264]

Since then, Israel has also restricted the entry of goods and fuel supplies into Gaza and used "mathematical formulas" to determine how much food to allow into Gaza, limited to what is deemed "essential for the survival of the civilian population".[265] Israel has also severely restricted movement of people from Gaza to the West Bank to "exceptional humanitarian cases".

For 14 years, Israeli authorities have isolated Palestinians living in the Gaza Strip from the rest of the OPT and Israel through a "separation policy", as it has been termed by a number of Israeli officials.[266] During a parliamentary question regarding the official status of the separation policy in 2014, then deputy defence minister Danny Danon said:

Starting in the summer of 2007, following the takeover of the Gaza Strip by terrorist organizations, Israel has been implementing a separation policy between the Gaza Strip and Judea and Samaria [West Bank excluding East Jerusalem]. This policy is backed by the decisions of the Government of Israel.[267]

This status was confirmed in March 2019 by then prime minister Benjamin Netanyahu, who stated that "maintaining a separation policy between the Palestinian Authority in the West Bank and Hamas in Gaza helps prevent the establishment of a Palestinian state".[268]

5.2.3 PALESTINIANS OUTSIDE ISRAEL AND OPT

During the 1947-49 conflict, more than 800,000 Palestinians (who were citizens of British mandate Palestine) were expelled or fled from Israel and became refugees in the West Bank, Gaza Strip or neighbouring countries – an experience that Palestinians refer to as the *nakba* (catastrophe). The land and properties of the Palestinian refugees and those internally displaced in Israel by the war were confiscated[269] and, as mentioned above, some 500 villages were destroyed. Israel replaced names of Palestinian villages with Hebrew ones.[270]

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[263] Amnesty International, *The conflict in Gaza: A briefing on applicable law, investigations, and accountability* (Index: MDE 15/007/2009), 19 January 2009, amnesty.org/en/documents/mde15/007/2009/en; Shane Darcy and John Reynolds, "An enduring occupation: the status of the Gaza Strip from the perspective of international humanitarian law," Journal of Conflict & Security Law, Volume 15, Issue 2, 11 August 2010.

[264] State of Israel, MoFA, "Security Cabinet declares Gaza hostile territory", 19 September 2007, mfa.gov.il/mfa/government/communiques/2007/security+cabinet+declares+gaza+hostile+territory+19-sep-2007

[265] Gisha – Legal Center for Freedom of Movement (Gisha), *Separating Land, Separating People: Legal Analysis of Access Restrictions between Gaza and the West Bank*, 28 June 2015, gisha.org/UserFiles/File/publications/separating-land-separating-people/separating-land-separating-people-web-en.pdf; Haaretz, "Amira Hass / Israel bans books, music and clothes from entering Gaza", 17 May 2009, haaretz.com/1.5053317

[266] For a list of references of official Israeli statements on the separation policy, see Gisha, *Area G: From Separation to Annexation Israel's isolation of the Gaza Strip and how it serves annexationist goals in the West Bank*, June 2020, gisha.org/UserFiles/File/publications/Area_G/From_Separation_to_Annexation_2020_EN.pdf, "Annex II"; Gisha, *What is the "separation policy"?*, June 2012, gisha.org/UserFiles/File/publications/Bidul/bidul-infosheet-ENG.pdf

[267] State of Israel, Deputy Minister of Defense, "Response to question concerning the marketing of goods from the Gaza Strip via Kerem Shalom Crossing (to MK Zehava Gal-On)", 4 February 2014, gisha.org/userfiles/File/HiddenMessages/parliamentary_question/galon/Danon_response_to_parliamentary_question_on_movement_of_goods.pdf

[268] Jerusalem Post, "Netanyahu: Money to Hamas part of strategy to keep Palestinians divided", 12 March 2019, jpost.com/Arab-Israeli-Conflict/Netanyahu-Money-to-Hamas-part-of-strategy-to-keep-Palestinians-divided-583082

[269] Hussein Abu Hussein and Fiona McKay, *Access denied: Palestinian land rights in Israel*, 2003, p. 69; Alexandre Kedar, "The legal transformation of ethnic geography: Israeli law and the Palestinian landholder 1948-1967", 2000, New York University Journal of International Law & Politics, Volume 33.

[270] Oren Yiftachel, "Territory as the kernel of the nation: space, time and nationalism in Israel/Palestine", 2002, Geopolitics, Volume 7, Issue 2; Meron Benvenisti, *Sacred landscape: The buried history of the Holy Land since 1948*, 2000.

While Israel only considers those who were forced to leave or fled in 1948, but not their descendants, as refugees, it denies these Palestinians their right of return as well as the return of their descendants.[271] Palestinian refugees who fled to the West Bank and Gaza Strip, neighbouring Arab countries or other states were prohibited, and are still prohibited, from returning to their homes or lands in Israel. About 350,000 people, mostly Palestinians, were displaced as a result of the Six-Day war between Israel and Egypt, Syria and Jordan in June 1967.[272] Israel also prohibits these Palestinians from returning to their homes. [273]

Palestinians who were displaced from land that became Israel in the 1947-49 conflict and shortly after and from the OPT in 1967, as well as their descendants, are considered Palestinian refugees.[274] There are currently 5.6 million such refugees registered with UNRWA.[275] Some 2.2 million of them are refugees residing in the OPT, while the remaining 3.4 million continue to be displaced mainly in Jordan, Syria and Lebanon, where many face dire conditions in overcrowded camps, denial of access to essential services and human rights violations by the host governments.[276]

5.3 SEGREGATION AND CONTROL

Parallel to imposing measures that fragment Palestinians into distinct territorial, legal and administrative domains, Israel has pursued a strategy of establishing domination through discriminatory laws and policies that segregate Palestinians into enclaves based on their legal status and residence. In order to maintain Jewish Israeli domination in Israel and the OPT, Israel also continues to deny millions of Palestinian refugees displaced in the 1947-49 conflict or shortly after from land in the territory that became recognized as the State of Israel and subsequently Palestinian refugees displaced in 1967 from the OPT, as well as their descendants, the right to citizenship and residence by denying them their right of return to their homes in Israel and/or the OPT.

This section covers Israel's denial of Palestinians' rights to equal nationality and status, and to freedom of movement; its restrictions on their right to family unification and, for Palestinian citizens of Israel and residents of East Jerusalem, to extend citizenship or residency to spouses from the OPT; and its undue limitations on their civil and political rights as a means of suppressing dissent.

5.3.1 DENIAL OF RIGHT TO EQUAL NATIONALITY AND STATUS

As mentioned above, Israel exercises authority over all Palestinians in all territories under its effective control and over the right of Palestinian refugees to return to their homes in Israel and the OPT. While Palestinian citizens of Israel are allowed to vote in Israeli national elections, they are denied a nationality, establishing a legal differentiation from Jewish Israelis, and are discriminated against in their access to civic space. This is linked, in part, to their exemption from military service. Limitations on the civil and political rights of Palestinian citizens of Israel further limit the extent to which they can participate in the political and social life of Israel.

Palestinians in the OPT, on the other hand, remain without citizenship and are considered stateless, except for those who have obtained a citizenship from a third country. At the same time, Israel has controlled the population registry in the West Bank and Gaza since 1967 and imposed policies, restrictions and measures to control the demography of the territories.

[271] Jerusalem Post, "Israel says Palestinian refugees number in the thousands, not millions", 15 October 2018, jpost.com/Arab-Israeli-Conflict/Israel-says-Palestinian-refugees-number-in-the-thousands-not-millions-569407; State of Israel, MoFA, "Do Palestinian refugees have a right to return to Israel?", 15 January 2001, mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/do%20palestinian%20refugees%20have%20a%20right%20to%20return%20to.aspx

[272] BADIL Resource Centre for Palestinian Residency and Refugee Rights (Badil), *Survey of Palestinian Refugees and Internally Displaced Persons 2004-2005*, May 2006, badil.org/phocadownload/Badil_docs/publications/Survey-04-05.pdf

[273] This refusal to allow Palestinian refugees the right to return constitutes an infringement of the right under Article II(c) of the Apartheid Convention to the right to "leave and to return to their country, the right to a nationality, the right to freedom of movement and residence." The fact that this violation is enforced systematically contributes to the system of oppression and domination of Palestinians. For more details, see sections 5.2.3 "Palestinians outside Israel and OPT" and 6.4.2 "Israeli policies and practices".

[274] UNRWA, Palestine Refugees, unrwa.org/palestine-refugees (accessed on 25 August 2021).

[275] UNGA, Resolution 302 (IV): Assistance to Palestine Refugees, 8 December 1949, UN Doc. A/RES/302.

[276] Amnesty International, Seventy+ Years of Suffocation (previously cited); Amnesty International, *Lebanon: Exiled and Suffering: Palestinian Refugees in Lebanon* (previously cited); Amnesty International, *Iraq: Human Rights Abuses Against Palestinian Refugees* (previously cited); Amnesty International, *Lebanon: Denied Refuge: Palestinians from Syria Seeking Safety in Lebanon* (previously cited); UNRWA, Commissioner General, "Palestine Refugees in Syria: A Tale of Devastation and Courage", 14 March 2019, un.org/unispal/document/palestine-refugees-in-syria-a-tale-of-devastation-and-courage-unrwa-commissioner-general-op-ed

UNEQUAL AND SEPARATE CITIZENSHIP STRUCTURE IN ISRAEL

While Palestinian citizens of Israel have Israeli citizenship, this has not been translated into their full societal integration into Israel. This is partly because Israeli law defines Jewish Israelis as national citizens, whereas Palestinian citizens of Israel are considered citizens but not nationals of Israel and as such they enjoy different and inferior rights and privileges in law and practice (see also section 5.3.5 "Restrictions on right to political participation and popular resistance").[277]

The requirements to become an Israeli citizen are set out in the Nationality Law of 1952, which covers Jewish people and non-Jewish people.[278] Article 2(a) of the law grants automatic citizenship rights to every Jewish immigrant under the Law of Return of 1950. As outlined above (see section 5.1 "Intent to oppress and dominate the Palestinian people), the Law of Return is effectively a nationality law that grants every Jew, regardless of where they reside in the world, the distinct right to settle in Israel with full legal and political rights.[279] An amendment to the law, which was added in 1970, defined a Jew as a "person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion."[280]

By contrast, Palestinian citizens of Israel are granted citizenship rights based on residence in Israel. Article 3(a) of the Nationality Law stipulates:
A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under Article 2, shall become an Israel national with effect from the day of the establishment of the State.

Article 3(a) granted citizenship rights only to those who were registered as residents in the Registration of Inhabitants Ordinance of 1949, or were residents in the territory that became the State of Israel, or entered Israel legally from the day of its establishment in May 1948 until the Nationality Law was enacted in April 1952. While the law granted Palestinians who remained in Israel an Israeli citizenship status, it stripped Palestinian refugees who fled during the 1947-49 conflict and shortly after of their Palestinian citizenship granted under the Palestinian Citizenship Orders of 1925-1942.[281] Israel's policy since 2002, which was enshrined in law in the form of the Citizenship and Entry into Israel Law, a temporary order that lasted from 2003 to 2021, denies citizens and residents of Israel who marry Palestinians from the OPT from passing on their legal status in Israel, including residency and citizenship (see section 5.3.3 "Separation of families through discriminatory laws").[282]

This unequal and separate citizenship structure has resulted in stark discrimination against Palestinian citizens in several ways and their segmentation from other Palestinians in the OPT (through imposing constraints on family life), and has hindered their political and voting rights. The Israeli Ministry of Foreign Affairs claims that "Arab Israelis are citizens of… Israel with equal rights" and the "only legal distinction between Arab and Jewish citizens is… civic duty", because Palestinian citizens are exempt from military service.[283] Military service is mandatory for Jewish Israeli men and women, as well as the men of the Druze and Circassian minorities. Whilst Palestinians largely refuse to join the Israeli army for national and political reasons, the exemption of Palestinian citizens of Israel from military service has resulted in their discriminatory exclusion from substantial economic benefits and opportunities guaranteed under Israeli law to those who have completed military service.

EXEMPTION OF PALESTINIANS FROM MILITARY SERVICE, EXCLUSION FROM ECONOMIC BENEFITS

Military service is mandatory in Israel for Jewish Israeli men and women, as well as Druze and Circassian men.[284] Palestinian citizens of Israel are exempt and, since the establishment of the State of Israel in 1948, have largely not served in its army for national and political reasons.[285] The exemption is not based on law but was established

[277] At the same time Palestinians have been and continue to be subjected to an oppressive regime of property confiscation and discrimination in access to resources (including housing) that has resulted in their segregation from Jewish Israeli society.
[278] Nationality Law (previously cited).
[279] Roselle Tekiner, "Race and the Issue of National Identity in Israel" (previously cited); Law of Return (previously cited).
[280] Law of Return (previously cited).
[281] Nationality Law (previously cited).
[282] State of Israel, Citizenship and Entry into Israel Law (Temporary Order), passed on 31 July 2003 (a Knesset vote extended the law annually until it expired on 6 July 2021).
[283] State of Israel, MoFA, "Arab Israelis", 20 August 2001, mfa.gov.il/MFA/MFA-Archive/2001/Pages/Arab%20Israelis.aspx
[284] State of Israel, Defense Service Law (Consolidated Version), passed on 30 January 1986 (an English translation is available at mfa.gov.il/mfa/mfa-archive/1980-1989/pages/defence%20service%20law%20-consolidated%20version--%205746-1.aspx).
[285] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel*, March 2011, adalah.org/uploads/oldfiles/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf
Army service would put them in an untenable position, as a people "whose country is at war with their nation", as their situation was famously described in a line attributed to the late Knesset member and former Nazareth mayor, Abd El-Aziz El Zoubi. See Tablet Mag, "Arabs in Israel: No Service?", 13 June 2012, tabletmag.com/sections/israel-middle-east/articles/arabs-in-israel-no-service

as an administrative practice based on the discretionary powers of Israel's army under the provisions of the Defense Service Law of 1986.[286]

To Israeli citizens who complete military service, the state affords substantial economic compensation and access to employment in certain fields such as the military and security industries, as well as access to housing subsidies. The Absorption of Discharged Soldiers Law of 1994 and its later amendments enumerate a broad range of benefits exclusively available to former soldiers, including educational grants and housing.[287]

By linking benefits to military service, the state ensures that the overwhelming majority of Palestinian citizens of Israel are excluded from them. While the minority of Jewish Israelis who do not serve in the army are also denied these benefits, they are at least presented with a meaningful choice. It is inconceivable for almost any Palestinian citizen of Israel to serve in any army that is occupying Palestinian land and systematically repressing Palestinians' rights. The link between benefits and military service has been the subject of public debate in Israel for decades, focused on the idea of creating a mandatory alternative national service for Palestinian citizens of Israel or to use exclusion of Palestinians from military service in order to justify the privileges that their Jewish Israeli counterparts can enjoy for serving in the army.[288] For example, during the 1988 elections, three right-wing Jewish political parties demanded that Palestinians perform some sort of national service, in parallel to the military service, before considering their claims for equal rights.[289] In 2012, the Knesset considered a new national service law under which Palestinian citizens would be expected to do mandatory national service.[290] These proposals have been abandoned.

FRAGILE PERMANENT RESIDENCY STATUS OF EAST JERUSALEM PALESTINIANS

Under Israeli law, Palestinian residents of East Jerusalem are not Israeli citizens and are not residents of the West Bank. Instead, they are granted fragile permanent residency status that allows them to reside and work in the city, enjoy social benefits provided by the Israeli National Insurance Institute and the national health insurance, and vote in municipal elections but not in national elections. [291] This status may be revoked on a number of discriminatory grounds affecting a wide range of social and economic rights. While permanent residents can acquire Israeli citizenship if they desire, they must swear allegiance to Israel, prove they are not citizens of any other country, and demonstrate some knowledge of Hebrew. Over the years, there has been an increase in the number of residents requesting Israeli citizenship, but they face a long wait before the Israeli Population and Migration Authority processes their applications.[292]

Following its annexation of East Jerusalem in 1967, Israel applied its "law, jurisdiction and administration", but it did not grant Palestinians living in the annexed area Israeli citizenship under the Nationality Law of 1952. Instead, it conferred permanent residency status on residents of East Jerusalem under the Entry into Israel Law of 1952, and maintained that such residents could only acquire Israeli citizenship through naturalization.[293] People with this status can live and work in Jerusalem and Israel provided they maintain a presence in the city or Israel. The Entry into Israel Law grants Israel's minister of interior discretion to "cancel any permit of residence" granted under the law.[294]

The permanent residency status is not permanent in reality. Israel has enacted legislation and several policies and measures that have resulted in Palestinians with this status losing their right and ability to live in the city. By contrast, Jewish Israeli settlers residing in East Jerusalem enjoy Israeli citizenship and are exempt from laws and measures enacted against Palestinian residents of East Jerusalem. In this way, Israel has consolidated its sovereignty over the city and restricted the number of Palestinians living in East Jerusalem to maintain a Jewish majority in the city – a key policy objective in Jerusalem since the outset of the occupation.[295]

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[286] Defense Service Law (previously cited), Article 36 ("Power to exempt from or defer service").
[287] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[288] Rhoda Ann Kanaaneh, *Surrounded: Palestinian soldiers in the Israeli Military*, 2008, p. 32.
[289] Rhoda Ann Kanaaneh, *Surrounded* (previously cited), p. 32.
[290] Tablet Mag, "Arabs in Israel: No Service?" (previously cited).
[291] HaMoked: Center for the Defence of the Individual (HaMoked) and B'Tselem, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*, April 1997, hamoked.org.il/items/10200_eng.pdf
[292] Association for Civil Rights in Israel (ACRI), *East Jerusalem: Facts and Figures 2019*, May 2019, fef8066e-8343-457a-8902-ae89f366476d.filesusr.com/ugd/01368b_20dc66c3a088465286ce4c6d5a87c56c.pdf; B'Tselem, *A policy of discrimination: Land expropriation, planning and building in East Jerusalem* (previously cited).
[293] Jerusalem Institute for Policy and Research, *Residents, not citizens: Israeli policy towards the Arabs in East Jerusalem, 1967-2017*, May 2017, jerusaleminstitute.org.il/wp-content/uploads/2019/06/PUB_Amnon-Ramon-Residents-Not-Citizens-Abstract_eng.pdf; State of Israel, Entry into Israel Law, adopted on 5 September 1952, amended in 1985, 1994, 1995, 1996 and 2006 (an unofficial English translation is available at hamoked.org/files/2011/2240_eng.pdf).
[294] Entry into Israel Law (previously cited), Article 11(a).
[295] For more details on the revocation of resident permits of Palestinian residents of Jerusalem, see HaMoked and B'Tselem, *The Quiet Deportation* (previously cited); B'Tselem and HaMoked, *The Quiet Deportation Continues: Revocation of Residency and*

The Israeli Ministry of Interior has used its discretion to revoke the residency status of thousands of Palestinian residents of Jerusalem through various policies and measures, affecting a total of 14,701 Palestinians between 1967 and 2020.[296]

In 1996, the Ministry of Interior began implementing a measure known as the "centre of life" policy that has led to the revocation of the residency status of thousands of Palestinian residents of East Jerusalem over the years.[297] Under the policy, which many local human rights organizations have labelled a "quiet deportation", the minister of interior can revoke the permanent residency status of Palestinians if they are unable to prove that Jerusalem is their "centre of life".

Under Regulation 11A of the Entry into Israel Regulations of 1974, a person is considered to have settled "outside Israel" if they have lived outside Israel for at least seven years, received a permanent residency status in a foreign country, or become a citizen of another country.[298] These and other conditions are taken as proof that a resident's "centre of life" is no longer in Israel. In some cases, the procurement of residency or citizenship in another country, even if the permanent resident has lived outside Jerusalem for less than seven years, has been a basis for revocation.

The Ministry of Interior places the burden of proof on Palestinian residents of East Jerusalem to prove that Jerusalem is their "centre of life"; they must provide a set of documents to the Ministry, such as confirmation of payment of taxes and national insurance bills, rental or home ownership contracts, electricity and water bills, and proof that their children are in schools in Jerusalem.[299]

Permanent residency status does not guarantee that the holder's children or non-resident spouse will be granted the same status. Since 2002, children whose parents are Palestinian residents of East Jerusalem but are born in the OPT outside of East Jerusalem can no longer be automatically registered on their parents' identification cards as Jerusalem residents; their parents must submit an application for their children.[300] Under Israel's policy since 2002, which was enshrined in law in the form of the Citizenship and Entry into Israel Law, a temporary order that lasted from 2003 to July 2021, Palestinian residents of Jerusalem who marry Palestinians from the rest of the OPT cannot secure residency status for their spouse to live with them in Jerusalem. This has forced many couples to leave Jerusalem and lose their residency status under the "centre of life" policy.[301] The Israeli Ministry of Interior has also placed onerous conditions on the registration of children of these "mixed couples", requiring the parents to apply to register children under the age of 12 with proof that Jerusalem was their "centre of life" (see section 5.3.3 "Separation of families through discriminatory laws").[302]

Israeli authorities can also cancel the residency status of East Jerusalem Palestinians for "breach of allegiance" based on a 2018 amendment to the Entry into Israel Law that grants the minister of interior broad discretionary powers to revoke a permanent residency status "if it has been proven to the Minister's satisfaction that the status holder performed a deed which involves breach of allegiance to the State of Israel."[303] The amendment defined such a breach to include committing an act of terror as defined in the Counter-Terrorism Law of 2016, or an act of treason or aggravated espionage under the Penal Code of 1977.[304] The Israeli human rights organization HaMoked: Center for the Defence of the Individual (HaMoked) has warned that the law has no clear criteria for its

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Denial of Social Rights of East Jerusalem Palestinians, September 1998, btselem.org/sites/default/files/sites/default/files2/the_quiet_deportation_continues.pdf; HaMoked and B'Tselem, *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*, July 2006, btselem.org/sites/default/files/sites/default/files2/publication/200607_perpetual_limbo_eng.pdf; and Amnesty International, *Israel and The Occupied Territories: Torn Apart: Families split by discriminatory policies* (Index: MDE 15/063/2004), 12 July 2004, amnesty.org/en/documents/mde15/063/2004/en; Amnesty International, "Israeli Supreme Court ruling continues to tear families apart", 13 January 2012, amnesty.org/en/latest/campaigns/2012/01/israeli-supreme-court-ruling-continues-to-tear-families-apart

[296] 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", 9 March 2021, hamoked.org/Document.aspx?dID=Updates2224

[297] HaMoked and B'Tselem, *The Quiet Deportation* (previously cited).

[298] State of Israel, Entry into Israel Regulations 5734-1974, adopted on 17 July 1974, Regulation 11 (an unofficial English translation is available at hamoked.org/files/2018/3050_eng.pdf).

[299] HaMoked and B'Tselem, *The Quiet Deportation* (previously cited).

[300] Amnesty International, *Torn Apart* (previously cited).

[301] Amnesty International, *Torn Apart* (previously cited).

[302] Citizenship and Entry into Israel Law (previously cited), Article 3: a permit to reside or stay in Israel may be granted "… in order to prevent a child under 12 years of age from being separated from his parent who is lawfully staying in Israel" (an unofficial English translation is available at knesset.gov.il/laws/special/eng/citizenship_law.htm).

[303] State of Israel, Entry into Israel Law, Amendment 30, passed on 7 March 2018 (an unofficial English translation is available at hamoked.org/files/2018/1162702_eng.pdf).

[304] Entry into Israel Law, Amendment 30 (previously cited).

application, which in effect may enable the arbitrary revocation of the permanent residency status of Palestinians on the grounds of "breach of allegiance".[305]

The amendment was originally proposed by then interior minister Roni Bar-On in 2006 in order to revoke the residency status of four people elected to the Palestinian Legislative Council (PLC). In January 2006, the four – all Palestinian residents of Jerusalem – were elected after running for the Change and Reform party, a list affiliated with Hamas that took part in the PLC and municipal elections in various West Bank cities. Five months later, Roni Bar-On ordered the revocation of their residency status. Israeli authorities then forcibly transferred the four Palestinians to the West Bank and have not allowed them to enter Jerusalem since then.

The amendment was eventually enacted into law in September 2017. This followed a verdict by the Supreme Court of Israel on a petition against the revocation of the residency permits of the four elected PLC members. The Supreme Court ruled that there was no law that granted the Israeli Interior Ministry authority to revoke residency status for "breach of allegiance", and that the minister's decision was therefore illegal.[306] However, the Supreme Court suspended its decision for six months to allow the minister to seek the Knesset's support in adopting a new law that would authorize the minister to revoke the residency status of Palestinian Jerusalemites based on "breach of allegiance".[307]

The Ministry of Interior revealed that it had revoked the residency status of 13 Palestinians for "breach of allegiance" between 2007 and 2017 (it would not reveal the total number of such revocations).[308] The ministry also applied the legislation retroactively against at least two Palestinians for alleged participation in attacks against Israelis.[309] In September 2019, HaMoked petitioned the Supreme Court of Israel to repeal the law and to reinstate the permanent residency status of those affected.[310] The petition was ongoing as of July 2021.

The revocation of the permanent residency of Palestinian residents of East Jerusalem means they must leave the city, resulting in them losing associated social benefits and access to national health insurance. In some cases, other family members, such as children or spouses whose residency rights are dependent on the person whose residency has been revoked, also lose their residency status in Jerusalem and are expelled from the city.[311] In other instances, Israel has punitively revoked the permanent residency status of family members of Palestinians involved in attacks against Jewish Israeli civilians or soldiers.[312]

CONTROL OF DEMOGRAPHICS IN REST OF WEST BANK AND GAZA STRIP THROUGH POPULATION REGISTRY

Palestinians in the rest of the West Bank and Gaza Strip remain without a citizenship and are considered stateless, except for those who obtained a citizenship from a third country. The Israeli military issues them with identification cards that enable them to permanently live and work in the territory.

After Israel's victory in the 1967 war, it took control of the population registry in the West Bank and imposed policies, restrictions and measures to control the demography of the territory. It immediately declared the West Bank and Gaza Strip a "closed military area" and required Palestinian residents to obtain permits for entry and exit.[313] Within three months, Israel had conducted a census of Palestinians in the OPT, including East Jerusalem,

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[305] See, for example, HaMoked, "HaMoked contests revocation of status of four East Jerusalem residents for "breach of allegiance to the State": retroactive application of unconstitutional legislation", 9 April 2018, hamoked.org/Document.aspx?dID=Updates1974

[306] Amnesty International, "Palestinians at risk of losing residency status", 26 April 2018, amnesty.org/en/documents/mde15/8277/2018/en

[307] Amnesty International, "Palestinians at risk of losing residency status" (previously cited).

[308] The Al-Quds University's Community Action Center submitted a freedom of information request to the Israeli Ministry of Interior inquiring about the number of residencies revoked for "security" and "breach of allegiance" criteria. The ministry replied on 15 October 2017 that they did not retain the number revoked for "security" reasons. The ministry did divulge that 13 residencies were revoked based on "breach of allegiance" between 2007 and 2017. See Al-Haq, "Punitive Residency Revocation: The most recent tool of forcible transfer", 17 March 2018, alhaq.org/advocacy/6257.html

[309] HaMoked, "HaMoked petitions the HCJ to repeal the law that allows the Minister of Interior to revoke permanent residency status for 'breach of allegiance to the State of Israel' and to cancel its implementation regarding two East Jerusalem men", 15 September 2019, hamoked.org/Document.aspx?dID=Updates2101

[310] HaMoked, "HaMoked petitions the HCJ to repeal the law that allows the Minister of Interior to revoke permanent residency status for 'breach of allegiance to the State of Israel'" (previously cited).

[311] HaMoked and B'Tselem, *The Quiet Deportation* (previously cited).

[312] Amnesty International, "Palestinians at risk of losing residency status" (previously cited).

[313] State of Israel, Chief of Staff of the Israel Defense Forces, Proclamation 1, 7 June 1967: "curfew is imposed and all movement forbidden"; State of Israel, Military Order 5, 8 June 1967: "the entire West Bank is a closed military area"; State of Israel, Military Order 18, 13 June 1967: "anyone entering the areas requires a permit"; State of Israel, unnumbered military order, 6 November 1967: "I hereby grant an entry or exit permit to anyone above the age of 60 who is a resident of Israel and/or a foreign resident who is staying legally in Israel. As for those below the age of 60, they are permitted to enter together with a companion aged over 60, but they must take certain roads, avoid refugee camps, military zones and camps or closed areas

and only registered the 954,898 Palestinians who were physically present. At least 270,000 Palestinians, who were absent at the time for various reasons, such as work or residence in another country, or had been forcibly displaced or had left as a result of the war, were denied the right to return to their homes or to live in the OPT.[314]

The Israeli military issued those who were present with identification cards as a condition for permanent residency in the OPT. Those who wanted to leave were required to obtain special "exit permits" and leave their identification card behind with the Israeli military. Palestinians who exceeded the period of their exit permits or people who resided outside the OPT for more than seven consecutive years were deleted from the population registry.[315] The Israeli military cancelled the residency status of about 140,000 West Bank Palestinians as a result of this procedure between 1967 and 1994,[316] and imposed further restrictions on the registration of foreign spouses of Palestinians and their children during this period.[317] Some 108,000 Palestinians from Gaza also lost their residency status during the same period because they had resided abroad for more than seven years and were considered to have transferred their "centre of life", or because they had failed to participate in the population censuses in 1981 and 1988.[318] After the signing of the Oslo Accords in 1995, Israel re-registered 10,000 of the West Bank Palestinians and stopped using this procedure to revoke the residency status of Palestinians in the OPT.[319]

In 1981, the Israeli Civil Administration was established and became the body responsible for administering the population registry, including the registration of births, deaths, changes of address, marriages and divorces in the OPT. In 1995, under the Oslo Accords, the newly established Palestinian Authority was to take over the administration of the population registry, including the conferring of residency status and the registration of spouses and children of Palestinian residents who were born in the West Bank and Gaza Strip or abroad. The Palestinian Authority was required to regularly share information on the population registry with Israel, while Israel would maintain a copy.[320] However, in practice, the Israeli military continued its effective control of the West Bank, including the control of the population registry and residence in the OPT. The Palestinian Authority took on the administrative responsibility of accepting requests relating to the population registry and processing relevant fees before transferring the applications to the Israeli Civil Administration for approval.[321] Only following Israel's approval can the Palestinian authorities issue residents with an identification card, which became known as the Palestinian identification card.

After the outbreak of the Palestinian *intifada* at the end of 2000, the Israeli Civil Administration froze most changes to the population registry without notifying the Palestinian Authority in advance. The only changes Israeli authorities continue to regularly process are requests for the registration of children aged under 16 if at least one of their parents holds a Palestinian identification card and they are physically present in the West Bank. These measures remain in effect.[322]

The freeze included the suspension of all "family unification" procedures for Palestinian residents of the OPT who had married foreign nationals. Israel continues to deny the conferring of residency status to tens of thousands of foreign nationals who are married to Palestinians from the West Bank and Gaza Strip.[323] This is profoundly discriminatory; Jewish settlers residing in settlements in the West Bank face no restrictions in obtaining authorization from the Israeli authorities for their spouses to enter the occupied territory and reside with them.

within certain hours." See also Norwegian Refugee Council (NRC), *Legal Memo, Revocation of Residency in the Occupied Palestinian Territories*, December 2016, nrc.no/globalassets/pdf/legal-opinions/legal_memo_residency_revocation.pdf

[314] HRW, *"Forget About him, He's Not Here"*, 4 February 2020, hrw.org/sites/default/files/reports/iopt0212webwcover.pdf

[315] HaMoked and B'Tselem, *Perpetual Limbo* (previously cited).

[316] HRW, *"Forget About him, He's Not Here"* (previously cited).

[317] HaMoked and B'Tselem, *Perpetual Limbo* (previously cited).

[318] HaMoked, "'Ceased Residency': between 1967 and 1994 Israel revoked the residency of some quarter million Palestinians from the West Bank and the Gaza strip", 12 June 2012, hamoked.org/Document.aspx?dID=Updates1175

[319] HaMoked and B'Tselem, *Perpetual Limbo* (previously cited).

[320] The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip Annex III – Protocol Concerning Civil Affairs, Article II(28) "Population registry and Documentation", 28 September 1995, as published by the Israeli MoFA, mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20iii.aspx: "the Palestinian side shall maintain and administer a population registry and issue certificates and documents of all types" (para. 2), and is obliged to "provide Israel, on a regular basis," with information regarding the residents to whom it granted passports and identification cards. The Palestinian side must also "inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident" (para. 10a-b).

[321] HaMoked and B'Tselem, *Perpetual Limbo* (previously cited).

[322] HRW, *"Forget About Him, He's Not Here"* (previously cited).

[323] Amnesty International, "Israel/Occupied Palestinian Territories: Right to family life denied: Foreign spouses of Palestinians barred" (Index: MDE 15/018/2007, 21 March 2007, amnesty.org/en/documents/MDE15/018/2007/en

Meanwhile, it is not clear whether the Palestinian authorities in the West Bank have continued to submit applications for new entries to be included in the population registry and follow up on the matter.[324] According to media reports, thousands of individuals have applied for residency status in the West Bank and have been left in limbo.[325] Some affected families have recently held weekly protests in front of the Palestinian Ministry of Civil Affairs and sometimes in front of the headquarters of the Israeli Civil Administration to demand they be granted the residency status needed to live together in the occupied West Bank.[326] The protests have been joined by Palestinians who are originally from Gaza and have been unable to change their residency status to the West Bank even though many have lived there for years.[327]

FAMILY LIVES DISRUPTED

Alia Khalil

Alia Khalil is a Jordanian citizen who has been living without documentation in the West Bank town of Huwara, south of the city of Nablus, because for 27 years Israel has refused to include her in the population registry and thereby allow her to live legally with her family. This has devastated her life as she is unable to commute freely between cities or travel abroad for fear of being caught by the Israeli army and deported.

Alia Khalil's family is originally from Salfit, south of Nablus, but have lived in Jordan since 1991.[328] She married a Palestinian from the West Bank in 1994 and moved to the West Bank from Jordan straight away. She immediately started the family reunification process that would include her in the population registry and allow her residency in the West Bank. She has received a permit from the Israeli authorities to leave the West Bank only twice, first following the death of her father in Jordan in 2006, and again for a family visit in 2007. In 2010, she received a tourist visa that would allow her to stay with her family. This expired after a few months. She told Amnesty International:

I have been waiting to get my ID [residency status] for the past 27 years. I have been here since 1994, been stuck here really… My husband and children have been able to go see my family in Jordan [as they have Palestinian identification papers and passports], while I haven't. I'll be honest with you, it breaks my heart every time I see my husband leave with the kids to Jordan. Their [the Israeli authorities'] continuous decision to refuse to approve our family unification applications keeps on hindering our stability further. Normally people get married so they can settle down, build a new life together, and have some kind of stability in their lives. I haven't tasted that feeling of stability once, not once since 1994. Imagine living a lifetime of uneasiness and terror. I am upset, I am mad, and I am distressed, and I want my right to exist in peace. Is this too much to ask?[329]

Alia Khalil described how Israel's denial of residency status has prevented her from registering for college or university, opening a bank account, accessing health insurance, being added to her husband's health insurance plan, or obtaining a driver's licence:

My husband was able to add his parents to his health insurance plan while I was left out. I consider myself lucky as I have not had to deal with any serious illness. But for the past 27 years every time I needed a doctor it was all at our own expense, which is rather costly.[330]

D. Z.

D. Z., a Jordanian citizen who married a Palestinian resident from the West Bank in 1997, lives on the outskirts of the city of Ramallah. She has been waiting to have her family reunification application approved for the past 23 years. As soon as she married in 1997, her husband applied for family unification. She first entered the West Bank on a "visit permit" that she had to renew every seven months. In order to renew it, she had to leave the West Bank, travelling to Jordan and then entering the West Bank again from there. She continued to do this until 2000, when the second *intifada* erupted and the Israeli authorities stopped providing entry permits. She told Amnesty International:

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[324] Haaretz, "Questions for the Palestinian Minister of Civil Affairs", 2 August 2021, haaretz.com/israel-news/.premium-questions-for-the-palestinian-minister-of-civil-affairs-1.10068000

[325] Haaretz, "'When I Fight With My Husband, I Have Nowhere to Go': What It's Like Living as an 'Illegal Resident' in the West Bank", 23 July 2021, haaretz.com/middle-east-news/palestinians/.premium-when-i-fight-with-my-husband-i-have-nowhere-to-go-1.10022740

[326] لم الشمل حقي, Facebook post, 25 July 2021, facebook.com/106476038079682/videos/231259642184470: "Family Reunification Campaign Demonstration (video)".

[327] HRW, "*Forget About Him, He's Not Here"* (previously cited).

[328] Though originally from Salfit, West Bank, Alia Khalil was born in Kuwait. Her parents migrated to Jordan after her birth and have been there ever since. Her parents died, but the rest of her family members remain in Jordan.

[329] Amnesty International, interview by voice call with Alia Khalil, 22 March 2021.

[330] Amnesty International, interview by voice call with Alia Khalil, 22 March 2021.

That year it was the intifada*, the second one, when I left [the West Bank to Jordan] as normal to re-enter and obtain a permit from the Israeli authorities, but they didn't let me in because they froze entry permits for everyone during that time. That's when I got stuck in Jordan for 12 years without being able to go back to Palestine.*

D. Z.'s husband continued to visit her regularly in Jordan, but he could not move there because of his job. Their two children stayed with her in Jordan. During that period they had two more children. The children were unable to obtain her Jordanian nationality due to the "foreign nationality" of her husband, in accordance with Jordanian law. This meant that the couple had to bear the financial burden of education fees and medical services at private schools and clinics.

In 2012, the Israeli authorities provided what were referred to as "Ramadan permits" and D. Z. obtained one. She entered the West Bank and has been there ever since, overstaying her entry permit. This has left her in constant fear of being caught by the Israeli authorities during random checks or at checkpoints between different cities and villages. If she were stopped, she could be detained and then deported to Jordan as she is not a legal resident of the West Bank.

This fear and instability have affected every part of her life, including her access to healthcare, her ability to work legally and her freedom of movement. Her exhausting situation reached a new level when she realized she could not be with one of her daughters at a critical moment:

The past 20 years have been one form of torture and these coming ones are another. The straw that broke the camel's back was my 20-year-old daughter getting sick. On December 2020, her kidneys failed and she started undergoing kidney dialysis. She has dialysis three times a week in a hospital in Ramallah and I have to accompany her. These weekly trips are extremely difficult as they are; we also undergo the terror of being caught by random Israeli checkpoints that would probably lead to my deportation, that is with us being merely 20 minutes away by car. Her doctors determined that she needs a transplant – she needs to undergo this procedure in Jordan where she will require a six-month recovery period. Six months of me, her mother, not being able to be with her to support her during this extremely difficult period.[331]

In 2008, as a one-time diplomatic gesture towards the Palestinian authorities, Israel committed to granting 50,000 family reunification requests. According to reports, Israel granted requests only to those physically present in the OPT at the time,[332] whereby around 35,000 requests were approved.[333] However, there is no information publicly available on how many of the 35,000 were actually granted permanent residency status.[334]

In addition to the restrictions Israel imposed on the Palestinian population registry in the OPT following the second *intifada*, in early 2003 Israel began prohibiting Palestinians registered in Gaza from residing in the West Bank. This policy is based on Military Order 34 of 1967, which declared the West Bank a "closed military area".[335] Under this policy, Israel has arrested thousands of Palestinians and forcibly removed them from the West Bank to Gaza, even if they had been living in the West Bank for years and had families and work there.[336]

In 2009, an estimated 25,000 Palestinians with registered addresses in Gaza were living in the West Bank. Israel refused to recognize their right to live there, labelling them as "infiltrators". Many of them are effectively locked in their local areas as they could not travel freely within the West Bank or abroad.[337] In 2011, Israel announced that it would allow 5,000 Palestinians to change their address from the Gaza Strip to the West Bank, which it implemented partially over subsequent years.[338] In October 2021, the Israeli Ministry of Defense authorized changes to the population registry for 4,000 people as another "gesture" to the Palestinian authorities, in a move, which fell far short of the expectations of activists campaigning for family unification. Only 1,200 of these 4,000

[331] Amnesty International, interview by voice call with D. Z., 23 March 2021.
[332] B'Tselem, "Israel approves some 32,000 requests for family unification 90,000 Palestinians still waiting", 11 August 2008, btselem.org/family_separation/20080807_family_runification_gesture
[333] HRW, *A Threshold Crossed* (previously cited), p. 190.
[334] According to some reports, about two thirds of couples were given permanent joint status, in a unique instance. See, for example, Haaretz, "He's Palestinian, she's German, but only an Israeli stamp lets them live together in the West Bank", 16 March 2019: "In 2008, Israel approved more than 23,000 family-unification requests (out of 32,000 applications) in what was termed a 'diplomatic gesture'", haaretz.com/middle-east-news/palestinians/.premium-he-s-palestinian-she-s-german-but-only-an-israeli-stamp-lets-them-live-together-1.7023336
[335] State of Israel, Military Order 34 regarding Closure of Areas (West Bank Area), 2 July 1967.
[336] Gisha, *Restrictions and Removal: Israel's Double Bind Policy for Palestinian Holders of Gaza ID Cards in the West Bank,* November 2009, gisha.org/userfiles/File/Hidden%20messages/Final%20Restrictions%20and%20Removal.pdf
[337] HRW, *"Forget About Him, He's Not Here"*; and Gisha, *Restrictions and Removal* (both previously cited).
[338] Gisha, *Separating Land, Separating People* (previously cited).

people were actually granted residency status. The remaining 2,800 were merely allowed to change their registered addresses from the Gaza Strip to the West Bank.[339]

IBTIHAL JABER

Ibtihal Jaber, from the Gaza Strip, married O. K., from Hebron, in March 2020 in Egypt because they could not meet or marry in the OPT. Their plan was to obtain their documents together and apply for a permit to settle in the West Bank. After the pandemic hit and travel restrictions were imposed, their plans became near impossible. When their visas in Egypt were about to expire, O. K., who was not allowed to enter Gaza, returned to the West Bank. Ibtihal Jaber, pregnant and not allowed to enter the West Bank, returned to Gaza. She told Amnesty International at the time: "I am terrified of giving birth in Gaza, having a baby, and being stuck in Gaza all alone without my husband. And God knows when I'll be able to reunite with him. It is terrifying."[340]

She delivered a baby boy, Muhammed, on 1 January 2021. By this time, she had also lost touch with her husband: "New Year is supposed to be a symbol for a new beginning and new chapters in life. Mine started with a new baby without his father by his side. What kind of new chapter is this?"[341]

Due to her special circumstances, the Palestinian authorities in Gaza registered her as married despite her husband not being with her. This allowed her to obtain documentation for her child, but she remains uncertain about how she can obtain a divorce or child support from her husband after they agreed to separate because they could not live together.

My father has taken on all of the financial responsibilities regarding my son. He wanted me to have a stable life. Now he has to carry not only my burden but also that of my son. And I want to make my husband pay his dues by the rule of the law, but how can we do it? Which courts should I resort to? Courts in Gaza? They will be useless as they have no jurisdiction in the West Bank, and I have no one in the West Bank to follow my case, or even present it. I am lost; I have no idea what to do.

In addition, there are approximately 5,000 Palestinians in the Gaza Strip who remain undocumented because the Israeli authorities have continuously refused to regularize their status since 2008.[342] While the de facto authorities in Gaza have taken steps to improve their daily lives by issuing them with temporary identity cards, which are accepted by most employers, healthcare providers and UNRWA, they are not recognized by the Ramallah-based Palestinian authorities. As a result, these Palestinians in Gaza still experience difficulties opening a bank account or making any bank transactions given that banking mechanisms continue to be linked to the Palestinian authorities in the West Bank and, ultimately, to Israel.[343] Due to the lack of a legal status, they experience even greater travel restrictions than the rest of Gaza's population, and are automatically denied employment and educational opportunities in the rest of the OPT and abroad in the rare cases they arise. Most importantly, these added complications mean that those without residence or identity cards cannot access potentially life-saving medical treatment outside of the Gaza Strip, even in cases of emergency.[344]

Israel's control of the population registry has thus further facilitated the fragmentation of the Palestinian people and restrictions on their freedom of movement based on their legal status and residence, or lack thereof. It has serious consequences on the ability of Palestinians in the OPT to lead a normal life: those in the West Bank who are not registered face the imminent threat of deportation, are unable to access healthcare, education and social benefits, open a bank account and have legal jobs, and are effectively prisoners in their homes because they fear ID checks and arrests at Israeli checkpoints (see section 5.3.2 "Restrictions on Palestinians' freedom of movement").[345] Undocumented Palestinians in Gaza are also denied their freedom of movement, and access to healthcare and education in other parts of the OPT and abroad. Overall, restrictions on family unification in effect interfere with Palestinians' enjoyment of their rights to privacy, to family life and to marry, blocking them from conferring residency status to their spouses and children.

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[339] Haaretz, "Israel's 'Gesture' to Palestinians Reveals the Extent of Its Control Over the West Bank and Gaza", 20 October 2021, haaretz.com/israel-news/.premium.HIGHLIGHT-israel-s-gesture-to-palestinians-reveals-the-extent-of-their-control-1.10309373

[340] Amnesty International, interview by voice call with Ibtihal Jaber, 25 September 2020.

[341] Amnesty International, interview by voice call with Ibtihal Jaber, 24 March 2021.

[342] Euro-Med Human Rights Monitor, *The Gaza Strip: Undocumented Citizens*, March 2021, available at reliefweb.int/sites/reliefweb.int/files/resources/undocumentedcitizensingazaENG.pdf

[343] NRC, *Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip*, January 2012, nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf

[344] NRC, *Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip* (previously cited).

[345] Al Jazeera, "'Not a life': Israel keeps many Palestinians without legal status", 26 October 2021, aljazeera.com/features/2021/10/26/not-a-life-israel-keeps-many-palestinians-without-legal-status

CITIZENSHIP AND RIGHT TO RETURN DENIED

As stated above, Israel continues to deny Palestinian refugees – displaced in the 1947-49 and 1967 conflicts – and their descendants their right to gain Israeli citizenship or residency status in Israel or the OPT. By doing so, it denies them their right to return to their former places of residence and property – a right, which has been widely recognized under international human rights law.[346] The right to return to one's own country is guaranteed under international human rights law.[347] The right to return applies not just to those who were directly expelled and their immediate families, but also to those of their descendants who have maintained "close and enduring connections" with the area.[348] Lasting connections between individuals and territory may exist independently of the formal determination of nationality held by the individuals.[349] Israel's failure to respect the right of return for Palestinians refugees is thus a flagrant violation of international law that has fuelled decades of suffering on a mass scale for Palestinian refugees across the region.[350]

INTERNATIONAL HUMAN RIGHTS LAW AND RIGHT OF RETURN

The Apartheid Convention lists the inhuman acts to which the term "the crime of apartheid" applies, including, in Article II(c):

Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms... the right to leave and to return to their country...[351]

The Universal Declaration of Human Rights provides in Article 13: "Everyone has the right to leave any country, including his own, and to return to his country." Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR) codifies the right of return: "No one shall be arbitrarily deprived of the right to enter his own country."

The UN Human Rights Committee has asserted that the right to return to one's "own country" also applies in relation to disputed territories or territories that have changed hands:

The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them.[352]

The right to return applies not just to those who were directly expelled and their immediate families, but also to those of their descendants who have maintained "close and enduring connections" with the area.[353] Lasting connections between individuals and territory may exist independently of the formal determination of nationality (or lack thereof) held by the individuals, as explained by the Human Rights Committee:

The right of a person to enter his or her own country recognizes the special relationship of a person to that country... It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality).[354]

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[346] Palestinian refugees' right of return, repatriation, restitution, and compensation for their property is recognized by the UNGA. UNGA, Resolution 194 (III): Palestine – Progress Report of the United Nations Mediator, adopted on 11 December 1948, UN Doc. A/RES/194, para. 11. See also Amnesty International, *The Right to Return* (previously cited).

[347] The Universal Declaration of Human Rights grants the right to return in Article 13: "Everyone has the right to leave any country, including his own, and to return to his country." Article 12(4) of the ICCPR codifies the right to return: "No one shall be arbitrarily deprived of the right to enter his own country." The HRC has asserted that the right to return to one's "own country" also applies in relation to disputed territories, or territories that have changed hands. See Amnesty International, *The Right to Return* (previously cited).

[348] HRC, General Comment 27: Freedom of Movement (Article 12), 2 November 1999, UN Doc. CCPR/C/21/Rev.1/Add.9. See also Amnesty International, *The Right to Return* (previously cited).

[349] HRC, General Comment 27: Freedom of Movement (previously cited), para. 19.

[350] Amnesty International, "Seventy+ years of suffocation" (previously cited).

[351] Apartheid Convention, Article II(c).

[352] HRC, General Comment 27: Freedom of Movement (previously cited), para. 20.

[353] HRC, General Comment 27: Freedom of Movement (previously cited); Amnesty International, *The Right to Return* (previously cited).

[354] HRC, General Comment 27: Freedom of Movement (previously cited), para. 19.

The International Court of Justice delineated a standard for measuring the existence of a "close and enduring connection" between a person and their "own country". In the landmark Nottebohm case of 1955, which focused on the determination of nationality, the court held that "genuine" and "effective" links between an individual and a state were based on *"... a social fact of attachment, a genuine connection of existence, interests and sentiments..."* The court also noted:

Different factors are taken into consideration, and their importance will vary from one case to the next: there is the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.[355]

Other criteria suggested by the court include cultural traditions, way of life, activities and intentions for the near future. The criteria established by the International Court of Justice are likewise appropriate when determining a person's "own country" in that they are regarded as a standard measure of the effective existence of ties between the individual and the state in question.[356]

5.3.2 RESTRICTIONS ON FREEDOM OF MOVEMENT AS A MEANS OF CONTROL OVER LAND AND PEOPLE

Since the mid-1990s the Israeli authorities have imposed a closure system within the OPT and between the OPT and Israel, gradually subjecting millions of Palestinians who live in the West Bank and Gaza Strip to ever more stringent restrictions on movement. These restrictions are another tool through which Israel segregates Palestinians into separate enclaves, isolates them from each other and the rest of the world and, ultimately, enforces its domination regime.

Israel controls all entry and exit points in the West Bank and controls all travel between the West Bank and abroad. Israel also controls all movement of people into and out of the Gaza Strip to the rest of the OPT and Israel through the Erez crossing, the passenger crossing between Israel and the Gaza Strip. With the exception of East Jerusalemites, who have a permanent residency status in Israel, Palestinians from the OPT cannot travel abroad via Israeli airports, notably Ben Gurion airport, Israel's main international airport located near Tel Aviv, unless they obtain a special permit, which is issued only to senior businesspeople and individuals with exceptional humanitarian needs.[357] An international airport was officially inaugurated in Gaza in 1998 as part of the Oslo Accords, but Israel halted flights there shortly after the start of the second *intifada* in 2000 and then bombed it in 2001. Since then it has in effect prevented its reconstruction, as well as the construction of a seaport.[358] This means that Palestinians in the OPT must rely on land crossings to travel abroad, and, with the exception of the Rafah crossing with Egypt, which is regularly shut by the Egyptian authorities, are dependent on Israel to enter and exit the OPT.

Nearly all Palestinians living in the OPT face restrictions or difficulties travelling abroad. When they manage to do so, Palestinians must return to the OPT through the same crossing they used to exit the territories.[359] Palestinians from the West Bank, including those who hold foreign passports, can only travel abroad via the Allenby / King Hussein crossing with Jordan, which is controlled by Israel. However, Israeli military and security forces can ban West Bank Palestinians from doing so, often on the basis of "secret information" that Palestinians cannot review and therefore challenge.[360] In most cases, they find out about such bans only upon their arrival at the crossing when they attempt to leave the West Bank. These bans have affected human rights defenders and activists who travel abroad to advocate for Palestinians' rights, among others.

For Palestinians in Gaza, travel abroad is nearly impossible under Israel's illegal blockade, which Israel imposes on Gaza's entire population as a form of collective punishment (see section 5.5.1 "Suppression of Palestinians' human development"), citing general security concerns, in the absence of specific, concrete and time-bound

[355] ICJ, Nottebohm case (*Liechtenstein v. Guatemala*), Second phase, Judgment, 6 April 1955.
[356] Amnesty International, *The Right to Return* (previously cited).
[357] State of Israel, Coordination of Government Activities in the Territories (COGAT), *Unclassified status of authorizations for entry of Palestinians into Israel, for their passage from Judea and Samaria into the Gaza Strip, and for their departure abroad, Up to date as of 17 December 2020*, gisha.org/UserFiles/File/LegalDocuments/procedures/general/50en.pdf
[358] Gisha, *Scale of control: Israel's Continued Responsibility in Gaza Strip*, November 2011, gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf
[359] COGAT, *Unclassified status of authorizations for entry of Palestinians into Israel, for their passage from Judea and Samaria into the Gaza Strip, and for their departure abroad, Up to date as of 17 December 2020*, gisha.org/UserFiles/File/LegalDocuments/procedures/general/50en.pdf
[360] B'Tselem, "A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid", 12 January 2021, btselem.org/publications/fulltext/202101_this_is_apartheid; B'Tselem, Restrictions on Movement, 11 November 2017, btselem.org/freedom_of_movement (accessed on 30 August 2021).
For a recent example of Israel's policy of travel bans, see Amnesty International, "Israel/OPT: Court to rubber stamp travel ban on Amnesty campaigner, a bitter blow for justice and human rights", 31 May 2020, amnesty.org/en/latest/news/2020/05/israelopt-court-to-rubber-stamp-travel-ban-on-amnesty-campaigner-a-bitter-blow-for-justice-and-human-rights

evidence. Indeed, travel through the Erez crossing is limited to rare exceptions (see below). With tight Egyptian restrictions maintained on the Rafah crossing, Gazans must obtain official permits from the Israeli Civil Administration to exit Gaza. This has effectively segregated Palestinians in the Gaza Strip from the rest of the OPT, Israel and the rest of the world.

While Palestinian citizens of Israel and Palestinian residents of East Jerusalem are allowed to travel abroad via Israel's ports, until recently the Israeli authorities banned approximately 4,000 Palestinian spouses from the OPT with Israeli temporary residency status granted to them under the family reunification process from enjoying the same right. This policy was reversed through a decision issued by the Supreme Court in June 2019 following a petition filed by HaMoked three years earlier. However, in November 2019, the court failed to grant the same rights to Palestinian spouses lawfully residing in Israel and the OPT with military "stay permits", continuing to segregate over 9,000 families.[361]

Despite their ability to leave and enter Israel via the same crossings as Jewish citizens, Palestinian citizens of Israel and residents of East Jerusalem continue to report being subjected to separate discriminatory and humiliating security checks and interrogations at Israel's airports based on their national identity, despite some improvements introduced as a result of a legal petition filed in 2007 by ACRI.[362] The petition had sought to remove "national identity" as a criterion for assessing the level of security screening for passengers at Israeli airports;[363] argued that "Arab" passengers are forced to undergo humiliating treatment that is "not applied to Jewish passengers; and called for all passengers to be subjected to the same security criteria, regardless of nationality". After an eight-year-long legal battle, in 2015, the Supreme Court eventually rejected the petition, arguing that the changes made to the screening process, which were aimed at "alleviating the sense of discrimination" and subjecting all passengers to an automated luggage checking system, had rendered a ruling on the petition inappropriate. By refusing to rule on the systematic distinction between Jewish and Palestinian citizens in the screening process, the court effectively condoned the discriminatory policy, stating:

We must wait and see whether the significant changes that have been implemented will truly help and decrease the differentiation between Israeli citizens of different groups for the purpose of security checks in Israeli airports.[364]

Meanwhile, Palestinian refugees and their descendants continue to be denied their right to enter Israel and the OPT and to return to their homes and other property.

With regards to movement within the West Bank, between 1967 and 1991 Palestinians could move freely within the OPT and between the OPT and Israel. In early 1991, Israel started to require Palestinians from the West Bank and Gaza Strip to obtain individual permits from the Israeli Civil Administration to enter Jerusalem and Israel for any purpose, even to receive healthcare.[365] It was relatively easy for Palestinians to obtain permits until early 1993, when the Israeli army began gradually to erect military checkpoints and impose a closure system within the OPT and between the OPT and Israel.

Israel imposed a comprehensive closure system on the movement of Palestinians in the West Bank following the outbreak of the second *intifada* at the end of 2000, which remains in effect in various forms.[366] This closure system includes a web of Israeli military checkpoints, blockades, blocked roads, gates and the winding fence/wall. In addition to curtailing movement between Palestinian communities, it separates Palestinians from their agricultural land, and hampers Palestinians' access to basic services, such as education and healthcare, and to work. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), between January and February 2020 the Israeli military maintained 593 fixed permanent obstacles, such as checkpoints, earth mounds and road gates in the West Bank.[367]

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[361] HaMoked, "A court-facilitated arrangement allows Palestinians with temporary Israeli residency through family unification to fly through Israel's international airport; the court rejects demand for a similar arrangement for those with family unification stay permits", 24 November 2011, hamoked.org/Document.aspx?dID=Updates2113

[362] Sanaa Ibn Bari, "'Code 43': This is how I was racially profiled at Israel's Ben Gurion Airport", Haaretz, 10 May 2017, haaretz.com/opinion/.premium-code-43-this-is-how-i-was-racially-profiled-at-israel-s-airport-1.5470140

[363] ACRI, "Profiling results: Screening Practices Have Improved but Court Rejects Appeal", 12 March 2015, law.acri.org.il/en/2015/03/12/profiling-result

[364] +972 Magazine, "High Court greenlights racial profiling at Israel's airports", 11 March 2015, 972mag.com/high-court-greenlights-racial-profiling-at-israels-airports

[365] Applied Research Institute – Jerusalem (ARIJ), *The Israeli Permit Regime: Realities and Challenges*, 2018, arij.org/files/arijadmin/2018/permits1.pdf

[366] B'Tselem, Restrictions on Movement (previously cited).

[367] UN Office for the Coordination of Humanitarian Affairs (OCHA), "Longstanding Access Restrictions Continue to Undermine the Living Conditions of West Bank Palestinians", 8 June 2020, ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living–conditions-west-bank--palestinians

Since March 2015, Israel has generally allowed women aged over 50 and men aged over 55 from the West Bank to enter Jerusalem or Israel without permits, but only if they have no "security" record or ban.[368] Meanwhile, Palestinians from the Gaza Strip can enter the West Bank, including East Jerusalem, only for urgent and life-threatening medical conditions, essential business and exceptional humanitarian reasons under Israel's military "separation policy" between the West Bank and Gaza Strip, where movement between the two areas has been severely restricted over the years and is considered to be the most extreme separation in the OPT.[369] Palestinians must obtain Israeli military permits – which has become virtually impossible to do – in order to travel between the areas, with no clear procedure for making an application or obtaining an outcome.

The permits regime, part of the multi-layered closure system, is a military, bureaucratic and arbitrary procedure that involves the Israeli Civil Administration issuing over 100 types of permits.[370] The regime applies only to Palestinians in the West Bank and Gaza Strip. It does not apply to Jewish settlers, Israeli citizens or foreign nationals, who generally can move freely within the West Bank and between the West Bank and Israel except when Israeli authorities temporarily restrict their movement for specific reasons, such as Israeli national or Jewish religious holidays. In such cases, the Israeli army declares "general closures" in the West Bank, and no movement is allowed for Palestinians through checkpoints into East Jerusalem and Israel, as well as through other checkpoints between Palestinian areas near Israel, except for emergencies. However, when checkpoints are closed it is difficult and time-consuming for Palestinians to contact the appropriate Israeli army officials to notify them of an emergency and obtain authorization to pass.

Within the West Bank, Palestinians are prohibited from entering Israeli settlements except as workers bearing required permits.[371] The Israeli military declares the jurisdictional boundaries of settlements as closed or restricted areas, which only Palestinians are prohibited from entering. At the same time, the 700km fence/wall that Israel began constructing in 2002 mostly illegally on Palestinian land inside the occupied West Bank, of which 465km is completed,[372] has isolated 38 Palestinian localities that together cover 9.4% of the area of the West Bank,[373] and has trapped them in enclaves known as "seam zones". These are sections of Palestinian land within the West Bank that fall between the fence/wall and the Green Line and are therefore severed from the OPT. Israel's military commander declared "seam zones" as closed military zones.[374] As a result, all Palestinian residents of these localities or Palestinians who want to visit have to obtain special permits for entry and exit to their homes and acquire separate permits to access their agricultural land (see section 5.5.2 "Discriminatory allocation of resources").[375] In the declaration, the military commander exempted Jewish settlers, Israeli citizens and foreign nationals from these restrictions. Israel also maintains a network of roads in the West Bank where Palestinian vehicles are either fully or partially restricted from passage. In Hebron's Old City, Palestinians are barred from accessing certain streets even on foot, which are open only to Jewish settlers and foreign nationals.[376]

As such, these restrictions on movement are unlawful, disproportionate and discriminatory as they only apply to Palestinians. They are also maintained in order to specifically ease and facilitate the movement of Jewish Israeli settlers, whose presence in the territory is illegal under international law.[377]

5.3.3 SEPARATION OF FAMILIES THROUGH DISCRIMINATORY LAWS

In addition to measures that separate families inside the OPT, Israel has enacted discriminatory laws and policies that disrupt family life for Palestinians across the Green Line. They affect Palestinians across all domains of Israeli control, in particular Palestinian citizens of Israel and residents of occupied East Jerusalem who are married to Palestinians from the West Bank and Gaza Strip and vice versa, and are a clear example of how Israel fragments and segregates Palestinians through a single system.

In 2002, the Israeli government passed Government Resolution 1813 prohibiting Palestinians from the West Bank and Gaza from gaining status in Israel or occupied East Jerusalem through marriage, thus preventing family

[368] ARIJ, *The Israeli Permit Regime* (previously cited).
[369] Gisha, *Separating Land, Separating People* (previously cited).
[370] ARIJ, *The Israeli Permit Regime* (previously cited).
[371] State of Israel, Military Order 378 concerning Security Directives (Judea and Samaria), 1970; and Declaration Concerning Closure of an Area (Israeli Settlements), 6 June 2002 (first issued in 1995), available at nevo.co.il/law_word/Law70/zava-0199.pdf (in Hebrew).
[372] B'Tselem, The Separation Barrier, 11 November 2017, btselem.org/separation_barrier (accessed on 30 August 2021).
[373] ARIJ, *The Israeli Permit Regime* (previously cited).
[374] State of Israel, Military Declaration 2/03/S concerning the Closing of an Area, 2 October 2003, "Seam Zone".
[375] ARIJ, *The Israeli Permit Regime* (previously cited).
[376] B'Tselem, "West Bank Roads on which Israel forbids Palestinian vehicles", 31 January 2017, btselem.org/freedom_of_movement/forbidden_roads
[377] Amnesty International, *Israel and the Occupied Palestinian Territories: Enduring occupation: Palestinians under siege in the West Bank* (Index: MDE 15/033/2007), 4 June 2007, amnesty.org/en/documents/mde15/033/2007/en

unification.[378] A year later, Israel passed the Citizenship and Entry into Israel Law, which barred family unification for thousands of Palestinians in Israel and East Jerusalem with their Palestinian spouses from the West Bank and Gaza.[379] Then minister of interior Avraham Poraz stated that the government decision to freeze family unification in March 2003 was taken because "it was felt that it [family unification] would be exploited to achieve a creeping right of return… That is tens of thousands of Palestinian Arabs are coming into the State of Israel."[380]

The law, which was a temporary order, had to be extended annually by the Knesset. This happened successfully until 6 July 2021 when, for party political reasons, the opposition in parliament led by former prime minister Benjamin Netanyahu voted against an extension to undermine the governing coalition.[381] In justifying voting against the extension of the law, Benjamin Netanyahu said the vote "halted [prime minister Naftali] Bennett and [interior minister Ayelet] Shaked's attempt to sell the country to [Ra'am chair] Mansour Abbas and grant citizenship to thousands of Palestinians."[382] This was in reference to a deal Naftali Bennett had reached with the Islamic Party of the South (Ra'am) whereby the latter agreed to support the extension of the law in return for the proposed extension being reduced to six months, the approval of 1,600 applications from Palestinian families for temporary residency in Israel and the establishment of a committee to look into granting military-issued permits to 9,700 Palestinians residing in Israel.[383]

However, the government's failure to pass the extension did not change the policy. Following the vote, interior minister Ayelet Shaked issued instructions not to accept family unification applications from Palestinians until new or similar legislation was put in place.[384] She also vowed to bring the temporary law back to the Knesset for another vote to extend it.[385] Members of the opposition who support the policy of barring Palestinian family unification but had tactically voted against the extension said they intended to legislate a Basic Law for immigration that would ensure that Palestinians from the West Bank and Gaza are permanently prevented from obtaining citizenship.[386] Indeed, a first attempt at passing such a law was made soon after the vote against extending the temporary order, although it failed.[387]

In line with the instructions, applications by Palestinian couples for family unification were not processed by the Ministry of Interior, according to media reports in October 2021.[388] Meanwhile a petition filed by Israeli human rights organizations urging the Court for Administrative Affairs to compel the Ministry of Interior to process "requests for status" was still pending as of the end of August 2021.[389]

The 2003 law, which was in effect for 18 years, did not allow spouses from the occupied West Bank and Gaza Strip to receive permanent residency or Israeli citizenship. Instead, "successful" applicants would receive temporary six-month permits to enter Israel or East Jerusalem to live with their spouses. The law was blatantly discriminatory against Palestinian citizens of Israel and residents of East Jerusalem by denying their right to live with their spouses and families in their own country if they married a Palestinian from the OPT, while explicitly excluding residents of Jewish settlements in the West Bank.[390]

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[378] State of Israel, Ministry of Interior, "The treatment of illegal aliens and the family unification policy regarding residents of the Palestinian Authority and foreigners of Palestinian origin", Government Resolution 1813, adopted on 2 May 2002 (an unofficial translation is available at hamoked.org/files/2018/2690_eng.pdf).
[379] Amnesty International, *Torn Apart* (previously cited).
[380] Cited in B'Tselem and HaMoked, *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004, p. 18, btselem.org/sites/default/files/sites/default/files2/publication/200401_forbidden_families_eng.pdf
[381] Adalah, "The Israeli Knesset did not extend the ban on Palestinian family unification", 6 July 2021, adalah.org/en/content/view/10376
[382] Times of Israel, "Right-wingers slash [sic] at each other after citizenship ban extension fails", 6 July 2021, timesofisrael.com/right-wingers-slash-at-each-other-after-citizenship-ban-extension-fails
[383] Jerusalem Post, "Bennett to opposition: Show 'national responsibility' on Citizenship Law", 5 July 2021, jpost.com/breaking-news/likud-mk-party-to-vote-unanimously-against-family-unification-law-672908
[384] Times of Israel, "Interior Ministry said told to stop processing Palestinian reunification bids", 11 July 2021, timesofisrael.com/interior-ministry-said-told-to-stop-processing-palestinian-reunification-bids
[385] Times of Israel, "Shaked vows to bring downed [sic] Palestinian family unification law to another vote", 7 July 2021, timesofisrael.com/shaked-vows-to-bring-downed-palestinian-family-unification-law-to-another-vote
[386] Jerusalem Post, "Why is the Citizenship Law dividing the gov't? – explainer", 5 July 2021, jpost.com/israel-news/why-is-the-citizenship-law-dividing-the-govt-explainer-672967
[387] Jerusalem Post, "Basic Law for Immigration bill fails in Knesset vote", 14 July 2021, jpost.com/breaking-news/basic-law-for-immigration-bill-fails-in-knesset-vote-673854
[388] Times of Israel, "Months after Citizenship Law lapses, ban on Palestinian spouses still in place", 7 October 2021, timesofisrael.com/months-after-citizenship-law-falls-ban-on-palestinian-spouses-still-in-place
[389] HaMoked, "HaMoked together with other Israeli human rights organizations petition the court", 15 September 2021, hamoked.org/Document.aspx?dID=Updates2257
[390] Article 1 of the Citizenship and Entry into Israel Law defined "resident of the region" as residents of the West Bank and Gaza Strip, specifically excluding residents of Jewish settlements in these areas. According to Article 2 of the law: "… the Minister of the Interior shall not grant citizenship to a resident of the region pursuant to the Citizenship Law and shall not give a resident of the region a permit to reside in Israeli pursuant to the Entry into Israel Law, and the regional commander shall not give such residents a permit to stay in Israel pursuant to the defense legislation in the region".

In 2005, Israel introduced an amendment to the law permitting the Ministry of Interior to reject applications if the "… applicant is liable to constitute a security risk to the State of Israel…"[391] Based on this amendment, in June 2008 Israel imposed a sweeping prohibition on the approval of residency permits for people registered as Gaza residents, even if they lived in the West Bank, and for anyone else residing in the Gaza Strip, based on the argument that "the Gaza Strip is a region where activity which may endanger the security of the State of Israel and its citizens takes place", and as such it is difficult for the government to conduct individual security assessments of family unification applicants.[392]

Additional amendments over the years broadened the law's scope to limit and deny family reunification for Palestinian citizens of Israel.[393] In 2007, an amendment expanded the ban on family unification to spouses from Syria and Lebanon, both of which have substantial Palestinian refugee populations, as well as Iraq and Iran, all of which Israel considers to be "enemy states". The exclusion included spouses from these states with dual nationality. The amendment also allowed the Israeli minister of interior to grant permits and temporary residence in Israel for exceptional humanitarian reasons. The Exceptional Cases Committee was set up to consider individual cases on a "humanitarian" basis, but it was not made clear what this entailed.[394] The five-person committee, which included representatives from the Ministry of Defense, the General Security Services (Shin Bet) and the Population Registry, interpreted the law very narrowly. In fact, the committee only granted relief in a few cases, after very long delays and usually only because the case had been brought before the Supreme Court of Israel.[395]

According to information from the Israeli Ministry of Interior dated September 2013, between January 2000 and July 2013 some 43% of family unification applications were rejected. Of these, 20% were rejected for security reasons and 13% because of lack of proof of "centre of life". Palestinian residents of East Jerusalem submitted a total of 12,284 family unification applications, of which 5,629 were approved and 4,249 were rejected. The rest were postponed or delayed.[396]

As stated above (see section 5.3.1 "Denial of right to equal nationality and status"), the Ministry of Interior also requires children under the age of 12 of these "mixed couples" to be registered, with proof that Israel is their "centre of life".[397] According to the Society of St Yves, a legal support centre in East Jerusalem, from January 2004 to July 2013 the ministry received 17,616 applications for registering children of "mixed marriages". Of these, 12,247 were approved and 3,933 were rejected. As a result, nearly 4,000 children live separated from at least one of their parents for bureaucratic reasons. The number of children who live in Jerusalem or elsewhere in the OPT without any official administrative status is likely to be much higher, since the statistics above only represent cases where the parents attempted to complete the residency procedures. Many parents are discouraged by the complexity and uncertainty of the process, so do not attempt to resolve the status of their children.[398]

Although Israeli authorities have traditionally justified the policy as necessary on "security grounds", they continue to implement it in a blanket manner without specific evidence-based reasons after almost two decades.[399] Statements by Israeli officials have made it clear that demographic – rather than security – considerations underpin the policy.[400] For example, in its presentation to the Israeli cabinet ahead of the government vote on the decision to freeze family unification for Palestinian spouses in May 2002, the Population Administration referred

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[391] State of Israel, Citizenship and Entry into Israel Law (Temporary Order), Amendment 2, passed on 28 March 2007, Article 3(d) (an unofficial translation is available at hamoked.org/files/2010/8880_eng.pdf).
[392] Citizenship and Entry into Israel Law (Temporary Order) (previously cited); HaMoked, "The HCJ rejected HaMoked's petition against Government Resolution 3598: the judgment closes the door on family unification between Israelis and Gaza Strip residents", 15 June 2015, hamoked.org/Document.aspx?dID=Updates1501
[393] Amnesty International, "Israel/OPT: Israel must repeal the discriminatory citizenship and entry into Israel law" (Index: MDE 15/5737/2017), 19 February 2017, amnesty.org/en/documents/mde15/5737/2017/en; Adalah, Discriminatory Laws in Israel: 'Ban on Family Unification' - Citizenship and Entry into Israel Law (Temporary Order), adalah.org/en/law/view/511 (accessed on 8 August 2021).
[394] Amnesty International, "Israel/OPT: Israel must repeal the discriminatory citizenship and entry into Israel law" (previously cited).
[395] Amnesty International, "Israel/OPT: Israel must repeal the discriminatory citizenship and entry into Israel law" (previously cited).
[396] Society of St Yves, *Palestinian families under threat: 10 years of family unification freeze in Jerusalem*, December 2013, saintyves.org/uploads/d450c02766ff53363d7e583c00c7c5de.pdf, p. 10.
[397] Al-Haq, *Annexing a City: Israel's Illegal Measures to Annex Jerusalem Since 1948,* 11 May 2020, alhaq.org/publications/16855.html
[398] Society of St Yves, *Palestinian families under threat* (previously cited), p. 10.
[399] Amnesty International, "Israel/OPT: Israel must repeal the discriminatory citizenship and entry into Israel law" (previously cited).
[400] Amnesty International, "Israel/OPT: Israel must repeal the discriminatory citizenship and entry into Israel law" (previously cited); Amnesty International, with HRW and International Commission of Jurists, "Israel/OPT: Joint letter to Israeli Knesset members – discriminatory family reunification law must not be extended" (Index: MDE 15/032/2005), 22 May 2005, amnesty.org/en/documents/mde15/032/2005/en

to "the immigration of non-Jews from around the world and primarily from neighbouring Arab countries and areas of the Palestinian Authority" as "an economic burden on the State of Israel and primarily a demographic burden." It concluded: "The growing number of alien Palestinians obtaining legal status in Israel requires review and statutory change."[401] In a debate in the Knesset after the government decision to freeze family unification, government minister Dani Naveh stated that family unification of Palestinians was "… an attempt to realize the so-called right of return through the back door" and that the State of Israel "… clearly has the elemental right to protect itself and preserve its character as a Jewish state, as the state of the Jewish people…"[402]

Politicians who consider themselves centrist are among those who oppose granting family unification to Palestinians and voted for the extension of the law.[403] In the run-up to the vote on 6 July 2021, foreign minister Yair Lapid, head of the Yesh Atid political party, said approvingly: "There is no need to hide from the essence of the reunification law. It is one of the tools designed to ensure a Jewish majority in the State of Israel."[404] Defence minister Benny Gantz, head of the Kahol Lvan (Blue and White) political party, said: "This law is essential for safeguarding the country's security and Jewish and democratic character."[405]

The law reflected Israel's long-standing policy aimed at restricting the number of Palestinians who are allowed to live in Israel and East Jerusalem.[406] Several petitions by local human rights organizations challenging the constitutionality of the law before the Supreme Court of Israel in 2006 and 2012 failed.[407] The court concluded that the law was justified for "security reasons" and was constitutional.[408] In effect, these judgments enabled the renewal of a temporary order for 18 years. Meanwhile, international human rights bodies, including CERD and the CESCR, for years expressed concerns over the discriminatory nature of the law and called on Israel to revoke it.[409]

Israel's implementation of the policy barring Palestinian family unification in a blanket manner constitutes a systematic denial of basic rights, including the rights to nationality and status, freedom of movement, work, health, education, and family life. The policy has affected thousands of families and forced them to live apart, abroad or in constant fear of being arrested, expelled or deported. The implementation of this discriminatory policy is a clear example of how Israel fragments Palestinians into different domains of control to treat them differently, or segregate them, from the Jewish population, and subjugates their rights to the aim of maintaining a Jewish majority in Israel.

FAMILY LIVES DISRUPTED

H. S. (Israel and the West Bank)

H. S. an NGO worker, was born and raised in Ramallah in the occupied West Bank. Her family has lived there since Jewish paramilitary groups forced residents of Lod to flee in 1948 and many found refuge in and around Ramallah. In 2003, she married her husband, who is a Palestinian citizen of Israel from Lod, and moved there to live with him. The couple have four children. She told Amnesty International: "I am a refugee from Lod and grew up in Ramallah, so when I got married and moved to Lod it felt like going back home in a sense."[410]

H. S. married when she was 18 and, in accordance with the Citizenship and Entry into Israel Law, had to wait until she turned 25 to apply for family unification. During these years, she stayed without documentation in Lod, unable to freely move or access healthcare or other social rights. She lived every day fearing arrest, expulsion and/or separation from her spouse. Later, this dread of being separated from her spouse extended to her children. It was during this time that she gave birth to her first two sons. She told Amnesty International:

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[401] Cited in B'Tselem and HaMoked, *Forbidden Families* (previously cited), p. 18.
[402] Cited in B'Tselem and HaMoked, *Forbidden Families* (previously cited), p. 18.
[403] Jerusalem Post, "Palestinians start applying for citizenship under family unification laws", 8 July 2021, jpost.com/israel-news/palestinians-start-applying-for-citizenship-under-family-unification-laws-673271; Times of Israel, "Interior Ministry said told to stop processing Palestinian reunification bids" (previously cited); Al-Haq, *Annexing a City (previously cited).*
[404] Times of Israel, "Government reaches agreement on six-month extension on family unification law", 6 July 2021, timesofisrael.com/government-reaches-agreement-on-six-month-extension-on-family-unification-law
[405] Ynet, "With clock ticking, MKs row over law targeting Palestinians married to Israelis", 5 July 2021, ynetnews.com/article/HkczSNg6d
[406] Adalah, "Israel extends validity of Citizenship Law that prevents unification of Palestinian families in Israel", 1 June 2020, adalah.org/en/content/view/10022
For more analysis of the law, see Amnesty International, *Torn Apart* (previously cited).
[407] Adalah, "Israel extends validity of Citizenship Law" (previously cited).
[408] HCJ, *MK Zehava Galon and others v. Attorney General*, Case HCJ 466/07, judgment, 11 January 2012 (an unofficial English translation is available at versa.cardozo.yu.edu/opinions/gal-v-attorney-general-summary).
[409] CERD, Decision 2 (63): Israel, 14 August 2003, UN Doc. CERD/C/63/Misc.11/Rev. 1; CERD, Concluding Observations: Israel, 14 June 2007, UN Doc. CERD/C/ISR/CO/13. See also CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19; CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4.
[410] Amnesty International, interview by voice call with H. S., 10 November 2020.

There was a constant fear in my life. I was terrified of getting sick for example, because of this fear of having to go to the hospital without the necessary documents, getting caught [by Israeli authorities], and paying lots of money to cover for any kind of procedure or treatment… How was I expected to navigate all of that pressure while being recently married and about to have my first and second children?

H. S. also described her constant state of fear and anxiety while visiting her family in the West Bank:

When I wanted to visit my family in the West Bank, sometimes I would go there and spend a month or two, as that is much easier than having to keep going back and forth. I remember once during the Eid holiday, Israeli soldiers put up a "flying checkpoint"[411] *right before we were supposed to enter Ramallah. At the time I did not have a permit and we were stopped – it was a disaster. We had taken a taxi at the time since we did not have a car, and we did not want to risk using public transport, for the same reason we were stopped, to avoid random checks. I was eight months pregnant at the time. They [Israeli officers] stopped us and realized that I had no legal documents to be in this area, so they penalized the taxi driver and I was detained at the military base near Qalandia checkpoint.*

When she turned 25, H. S. applied for family unification. In 2009, she received a permit allowing her to live with her family in Israel, which she is required to renew every year. She told Amnesty International:

Even though it technically lasts a year, as early as after the first six months elapse, we will have to start gathering papers, documents, [and] proofs in order to apply for a new permit. We have folders with documents on top of documents with monthly bills, receipts, rent payments, health insurance papers, work pay slips for my husband, registration of my kids in schools, phone bills, and more.

N. J. (East Jerusalem and the rest of the West Bank)
N. J., a Palestinian resident of Jerusalem from Silwan, married A. F, from Al-Arroub refugee camp near Hebron in the south of the West Bank, in 1983. They have six children, all of them now adults. The family lived in Al-Arroub refugee camp and in 1994 they filed a family unification request in order to live in Jerusalem. Their application was rejected on security grounds. They hired a lawyer to appeal, but their appeal was also rejected. As a result, N. J. had to quit her job in Jerusalem and went to live with her family in Al-Arroub.

In 2008, the couple divorced and N. J. moved back to live in Jerusalem. While trying to renew her permanent residency card that year, the Israeli Ministry of Interior rejected her application and informed her that her residency has been revoked because she failed to meet the "centre of life" requirements. Since then, N. J. has been engaged in a legal process to renew her permanent residency status – without success as of 31 July 2021. Having no permit to stay in Jerusalem or move freely, she has been confined to Jerusalem and is unable to go to the rest of the West Bank for fear of being arrested and expelled from Jerusalem if she is stopped at any of the numerous Israeli checkpoints surrounding the city. The revocation of her permanent residency has also severely restricted her ability to see her children, all of whom carry West Bank Palestinian identity cards, which do not grant them access to Jerusalem to visit their mother. Prior to 2008 and her divorce, she was able to see her children at their paternal grandmother's house in the West Bank city of Jericho. This is no longer an option. N. J. told Amnesty International:

Since 2008, I have not been able to see my children as I please, because I cannot cross Israeli military checkpoints. I can only see my children and grandchildren through video calls. I have spent 12 years of my life trying to solve this, but the [Israeli] authorities keep stalling. I have spent half of my life either at the Ministry of Interior offices or gathering papers for them. This is exhausting. I am unable to see my sons and daughters enough and this makes it harder. Seeing them makes everything better, and I cannot have that. I keep reminding myself that at least I was able to be with them while they were growing up, when most of them attended university, and I was lucky enough to attend some of their weddings.[412]

Bassam Allan (East Jerusalem and the rest of the West Bank)
Bassam Allan, rom the West Bank village of Sawahreh, married Sawasan Allan, a Palestinian resident of Jerusalem, in 2008. That year, he obtained a permit to reside in East Jerusalem, and they lived in the neighbourhood of Jabal Al-Mukabbir until 2017. The couple have five children aged under 18.

Sawasan Allan is a distant relative of Fadi Al-Qunbar, a Palestinian from East Jerusalem who killed four Israeli soldiers in a ramming attack in Jerusalem on 8 January 2017. In the aftermath of the attack, then Israeli interior minister Aryeh Deri revoked the residency permits of 14 family members of Fadi Al-Qunbar, including Bassam

[411] A temporary military checkpoint. See, for example, Haaretz, "Flying Checkpoints and Traffic Jams: The Genius of the Israeli Occupation's Architecture", 15 June 2020, haaretz.com/israel-news/the-idiot-who-cut-me-off-did-not-build-the-checkpoint-that-ruined-our-day-1.8922173
[412] Amnesty International, interview by voice call with N. J., 26 September 2020.

Allan, stating: "Let this be known to all who are plotting, planning or considering carrying out an attack, that their families will pay a heavy price for their actions and the consequences will be severe and far-reaching."[413]

On 12 January 2017, just four days after the attack, Bassam Allan was called into the Abu Ghniem police station in Jerusalem where he was questioned about his relationship to Fadi Al-Qunbar. He was then summoned to the Ministry of Interior in January 2017 where he was accused of being a member of the Islamic State armed group and subsequently had his residency permit cancelled. He told Amnesty International:

I have been living in Jabal Al-Mukabbir for 12 years on the basis of my residency permit. I had to renew my permit every six months, and for each renewal I needed to go to the Ministry of Interior with my bills and paperwork to prove that I was living in Jabal Al-Mukabbir. It is a very tiring and very costly process.[414]

He added:

Israeli forces also raided our house several times, including in 2017 claiming they were searching for security threats. The Ministry of Interior is using the deterrence excuse to kick us out. I remember when I signed the papers for the residency permit, there were clauses that said that permits will be cancelled if the permit holder or first-degree relative commits a security offence. But they are now doing this to me, even though my wife is a distant relative [of Fadi Al-Qunbar].

On 12 December 2017, an Israeli court found the allegations that Bassam Allan was a member of Islamic State to be baseless and allowed him to remain in Jerusalem on an interim order that permits him to stay in Jerusalem and move freely but not to work or enjoy benefits associated with residency until the end of the legal proceedings. Another court order, issued on 6 August 2020, enabled him to move within Jerusalem without the risk of arrest until the end of the legal proceedings. Bassam Allan has no right to work, receive national health insurance or obtain a driver's licence in Jerusalem, which are rights reserved to people with residency status. He said:

Although I have an order allowing me to stay in Jerusalem, Israeli officers sometimes do not care or maybe do not understand what it means. I was arrested several times, even after showing the order, and was taken to a police station before being dropped off at a checkpoint on the West Bank side [behind the wall where it separates East Jerusalem from the rest of the West Bank]. The last time I was stopped by the police was [in April 2020], when I was just a few metres away from my home. I showed my order and tried to explain to the officers, but they did not care. They first took me to the police station in Jabal Al-Mukabbir [where Bassam lives with his family] and then to a checkpoint in Bethlehem [which is 9km from his home], although Sheikh Sa'ed checkpoint was closer, but I think they wanted to punish me.

Nowadays, I have been staying home a lot. I do not even go out to buy groceries, because even though I have the necessary papers to allow me to stay, the police do not care and are looking for people like me.

This situation has cost me a lot. If the legal proceedings do not end in my favour, I have nowhere to go. But I will stay in my house with my kids. My mother and siblings live in Sawahreh, but I do not have my own place there. I used to go visit a lot before 2017 but now I arrange for my elderly and ill mother to come and visit me in Jerusalem. I only see my siblings when they have permits [to access Jerusalem] and are able to visit. Otherwise, I do not see them.

Bassam Allan explained the implications of the revocation of his residency permit on his life and his ability to find employment:

Since it began, this whole situation with the family unification process has been extremely difficult, but nothing compares to the suffering I am going through now without a permit. Since my permit was cancelled in 2017, I have not been able to find work in a sustained manner. I work in construction. The drivers who take workers like me in their cars refuse to take me because I do not have a permit. They worry they will get arrested and fined if they are caught with a worker without a permit. It has been especially difficult in the last four months; I have not had any work at all and [have] been borrowing money from friends and relatives just to get by. The debt just keeps on increasing.

5.3.4 USE OF MILITARY RULE

Since Israel's creation in 1948, Israel has used military administration over different groups of Palestinians in the territories that formed British mandate Palestine continuously – with the exception of a seven-month gap in 1967

[413] HRW, "Israel: Jerusalem Palestinians Stripped of Status: Discriminatory Residency Revocations", 8 August 2017, hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status#

[414] Amnesty International, interview by voice call with Bassam Allan, 18 August 2020.

– to advance Jewish settlement in areas of strategic importance and to dispossess Palestinians of their land and property under the guise of maintaining security.

In September 1948, Israel announced the establishment of military rule over those territories that had been designated to form an Arab state under the 1947 UN Partition Plan over which it had taken control. Other areas inhabited by Palestinians were also placed under military rule soon after. Eventually, some 85% of the newly created state's Palestinian population was subjected to military rule in three districts: North, which included the Galilee; Centre, which covered the Triangle region; and South, which comprised the Negev/Naqab.[415] The borders of these districts were drawn up to include as many Palestinian communities and to exclude as many Jewish communities as possible.[416]

David Ben-Gurion, Israel's first prime minister and former head of the World Zionist Organization, explained that "the military regime came into existence to protect the right of Jewish settlement in all parts of the state."[417] A recently published secret annex to a 1956 report on the military rule inside Israel went even further by stating that the army alone could not protect state lands from Palestinians wishing to return to their homes and that, in the long run, these could only be protected through Jewish settlement. As a result, continued military rule over Palestinians was necessary to establish Jewish settlements in all three districts overseen by the military regime.[418]

The military administration of Palestinians was based on the declaration of a state of emergency and the Defence (Emergency) Regulations, enacted by the British Mandate in Palestine in 1945, which were used to control the movement of residents, confiscate property, allow for the closure of villages,[419] house demolitions, and crucially, prevent Palestinians from returning to their homes and repopulating their villages.[420] The imposition of martial law deliberately restricted the movement of Palestinians within Israel, who were subjected to night-time curfews and required to obtain permits to leave their areas of residence, including to access medical care,[421] and excluded Palestinians from employment in security-related jobs,[422] under the pretext of the state of emergency.[423] Israeli state institutions worked during this period to place Palestinians under a system of surveillance and control that also deliberately restricted political freedoms[424] by banning protests, arresting political activists and barring them from their homes (and as a result, their livelihoods as well) under "exile orders" on account of their political activities.[425]

While other non-Jewish Israeli citizens, primarily Circassians and Druze, were also placed under martial law, they were treated more favourably by the Israeli government as some of them fought alongside Israeli forces during the war that led to the creation of Israel.[426] David Ben-Gurion declared in 1949: "In this country there are minorities that are above all suspicion and it is possible to trust them, more or less, like the Circassians and the Druze."[427] The Druze minority was exempted from the restrictions on movement when Israel imposed martial law on them, which it terminated in 1962.[428]

Israel abolished its military rule over Palestinian citizens in December 1966 after it had successfully prevented internally displaced Palestinians from returning to their homes in empty villages by destroying them, and parcelling out their land and subjecting it to forestation, thus removing the need to maintain their status as closed

[415] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection", 30 June 2021, storymaps.arcgis.com/stories/69519057572c44aba1d774e032da8f50
[416] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection" (previously cited).
[417] Cited in John Quigley, *The Case for Palestine: An International Law Perspective*, 2005, p. 109.
[418] Haaretz, "Secret Israeli Document Reveals Plans to Keep Arabs off their Lands", 31 January 2020, haaretz.com/israel-news/.premium-secret-israeli-document-reveals-plan-to-keep-arabs-off-their-lands-1.8473226
[419] Noura Erakat, *Justice for Some: Law and the Question of Palestine*, 2019; Charles Smith, *Palestine and the Arab-Israeli Conflict (*previously cited).
[420] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection" (previously cited).
[421] Haaretz, "Secret Israeli Document Reveals Plans to Keep Arabs off their Lands", 31 January 2020, haaretz.com/israel-news/.premium-secret-israeli-document-reveals-plan-to-keep-arabs-off-their-lands-1.8473226
[422] State of Israel, Knesset Debates, Volume 36, 20 February 1963, p. 1217, cited in John Quigley, *Palestine and Israel: A Challenge to Justice* (previously cited), pp. 109, 137.
[423] Yitzhak Reiter, *National Minority, Regional Majority: Palestinian Arabs Versus Jews in Israel* (previously cited).
[424] Ahmad Sa'di, *Thorough Surveillance: The Genesis of Israeli Policies of Population Management, Surveillance & Political Control towards the Palestinians,* 2014.
[425] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection" (previously cited).
[426] Nitin Rao, "The Circassians of Israel: Maintaining an Exilic Culture in the Zionist Homeland", March 2020, Kedma: Penn's Journal on Jewish Thought, Jewish Culture, and Israel, Volume 2, Issue 5, repository.upenn.edu/kedma/vol2/iss5/5; and State of Israel, Knesset Archives, *Knesset Debates*, Volume 36, 20 February 1963, p. 1217, cited in John Quigley, *Palestine and Israel: A Challenge to Justice* (previously cited), pp. 109 and 134-137.
[427] State of Israel, Protocol of the Foreign and Defense Services Committee, 6 June 1949, cited in Randall S. Geller, "The Recruitment and Conscription of the Circassian Community into the Israel Defence Forces, 1948-58", 2012, Middle Eastern Studies, Volume 48, Issue 3, p. 389.
[428] State of Israel, *Knesset Debates*, Volume 36, 20 February 1963, p. 1217, cited in John Quigley, *Palestine and Israel: A Challenge to Justice* (previously cited), pp. 109 and 135.

military zones.[429] While restrictions on movement were progressively removed, other elements of the system remained. The 1945 Defence (Emergency) Regulations were not repealed and instead were enforced against Palestinian citizens of Israel by Israel's civilian institutions such as the Israel Police, Israel Security Agency (also known as Shabak or Shin Bet) and the Land Administration. Equally, some areas where the appropriation of Palestinian land had not been completed remained closed until they met "certain conditions", which included the "demolition of structures in abandoned villages, forestation and declaration of nature reserves".[430]

Eventually, the situation of Palestinians inside the Green Line improved following Israel's occupation of the West Bank and Gaza Strip, where Israel imposed a brutal military rule through many of the laws and policies used against Palestinians in Israel. According to Akevot, "the experience accumulated from operating the Military Rule inside Israel, which was translated into several operative military plans, along with the Defence (Emergency) Regulations, formed the basis for the Military Administration Israel instituted in the territories occupied in June 1967."[431] Importantly, the unit within the Israeli army which administered military rule over Palestinians in Israel was never disbanded after 1966; it was merely renamed and eventually became the Coordination of Government Activities in the Territories (COGAT), a unit within the Ministry of Defense tasked with administering civilian matters in the OPT until today. Indeed, Akevot notes that "the various incarnations of control over civilians pursuant to military powers (inside Israel until December 1966, a seven-month hiatus and then from June 7, 1967, to the present day in the Occupied Territories) have always been handled by a single organic unit that was never disbanded but merely renamed to suit the circumstances."[432]

Following the occupation of the West Bank and Gaza Strip, the Israeli military authorities issued a proclamation that enabled them to use the 1945 Defence (Emergency) Regulations against the population living in these territories. Over the years, Israel resorted to these regulations extensively to quash resistance to its military occupation by demolishing or sealing hundreds of houses, deporting residents, or administratively detaining tens of thousands of people.[433]

Since the late 1970s, Israel has extraterritorially extended its civil law over Israeli citizens residing in or travelling through the OPT on the basis of the Emergency Regulations Law (West Bank and Gaza – Criminal Jurisdiction and Legal Assistance) 1967. This enables the Israeli authorities to exempt Israeli citizens from the military orders governing Palestinians.[434] This law is also applicable to foreign nationals who move to settlements even if they are not Israeli citizens.[435] Jewish settlers in the occupied West Bank are brought before Israeli civilian courts, rather than Israeli military courts, as a matter of policy.

More than 1,800 Israeli military orders[436] continue to control and restrict all aspects of the lives of Palestinians in the West Bank: their livelihoods, status, movement and access to natural resources.[437] Further, Israeli military orders severely and arbitrarily violate the enjoyment of their rights to freedom of expression, association and peaceful assembly, particularly when Palestinians protest against the policies of the occupation.

For example, just two months after its occupation of the Palestinian territories, Israel issued Military Order 101: Order Regarding Prohibition of Incitement and Hostile Propaganda Actions, which punishes and criminalizes Palestinians for attending and organizing a procession, assembly or vigil of 10 or more people without a permit for an issue that "may be construed as political". The order, which does not define what is meant by "political", effectively bans protests, including peaceful protests.[438] It also prohibits the display of flags or emblems or the publication of any material "having a political significance" without a permit from an Israeli military commander. Anyone breaching the order faces up to 10 years' imprisonment and/or a hefty fine. The order continues to apply in the West Bank.

[429] Haaretz, "Declassified: Israel Made Sure Arabs Couldn't Return to Their Villages", 27 May 2019, haaretz.com/.premium-israel-lifted-military-rule-over-arabs-in-1966-only-after-ensuring-they-couldn-t-ret-1.7297983
[430] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection" (previously cited).
[431] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection" (previously cited).
[432] Akevot, "The Military Rule 1948-1966: A glimpse into Akevot's annotated document collection" (previously cited).
[433] Al-Haq, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories*, 1989, alhaq.org/cached_uploads/download/2021/03/24/perpetual-emergency-pdf-1616579593.pdf
[434] Sharon Weill, "Reframing the Legality of the Israeli Military Courts in the West Bank: Military Occupation or Apartheid?" in *Threat: Palestinian Political Prisoners in Israel,* 2011, pp. 140-141.
[435] B'Tselem, *Land Grab* (previously cited).
[436] Military Court Watch, Military Orders, militarycourtwatch.org/page.php?id=SNHdhRow9Pa30432AKJqGwVetO9 (accessed on 6 December 2021).
[437] Jerusalem Media and Communication Center, *Israeli Military Orders in the Occupied Palestinian West Bank (1967-1992)*, 2nd edition, 1995, jmcc.org/Documentsandmaps.aspx?id=622
[438] State of Israel, Military Order 101 regarding Prohibition of Incitement and Hostile Propaganda Actions, 27 August 1967 (an unofficial English translation is available at btselem.org/download/19670827_order_regarding_prohibition_of_incitement_and_hostile_propaganda.pdf).

Israeli military legislation in the West Bank is enforced by the military justice system, particularly military orders defining criminal "security offences". Israeli military courts, which had been used to try Palestinian citizens of Israel when they were subjected to military rule between 1948 and 1966, were established for the OPT on the first day of Israel's military occupation on 7 June 1967 under the Defence (Emergency) Regulations.[439] In 2010, Military Order 1651 came into effect, consolidated a number of military orders relating to the establishment and legal procedures of military courts, and defined criminal "security offences".[440] The military justice system has a very high conviction rate. According to data in the military courts' annual report for 2010, 99.74% of cases heard in military courts in the occupied West Bank ended in conviction.[441]

Meanwhile, Palestinians from the Gaza Strip were subjected to Israeli military legislation and tried before military courts until Israel dismantled its settlements in 2005, and ground forces were withdrawn. This marked the end of most aspects of Israeli military rule of Gaza's civilian population, although elements of Israeli military law continue to apply to the area with regards to the movement of people and goods in and out of Gaza, access to territorial waters and the "buffer zone" along the fence separating Israel from Gaza. Since 2005, however, Gaza's residents arrested by Israel are prosecuted under security legislation before civil courts.[442]

Hundreds of thousands of Palestinians in the OPT have been arrested in the context of military rule, including many protesting against Israel's military laws and policies. According to an estimate released by Addameer Prisoner Support and Human Rights Association (Addameer) in 2016, Israel's authorities had arrested over 800,000 Palestinians in the West Bank, including East Jerusalem, and Gaza Strip since 1967.[443]

Israel has also maintained a policy of forcibly transferring Palestinian prisoners from the OPT to prisons inside Israel, a flagrant violation of international humanitarian law (see section 6.1 "Forcible transfer").[444] Some 4,236 Palestinians from the OPT, including 267 from the Gaza Strip, were held in Israeli prisons at the end of May 2020, according to the Israel Prison Service.[445]

5.3.5 RESTRICTIONS ON RIGHT TO POLITICAL PARTICIPATION AND POPULAR RESISTANCE

As a result of their citizenship status, Palestinian citizens of Israel are the only group of Palestinians living under Israel's rule who can vote in its national and municipal elections and be elected as members of the Knesset. However, while Israeli laws and policies define the state as democratic, the fragmentation of the Palestinian people ensures that Israel's version of democracy overwhelmingly privileges political participation by Jewish Israelis.[446] In addition, the representation of Palestinian citizens of Israel in the decision-making process, primarily in the Knesset, has been restricted and undermined by an array of Israeli laws and policies.

Most importantly, Israel's constitutional law prevents Israeli citizens from challenging the definition of Israel as a Jewish state and in effect any laws that establish such an identity. Under Israel's Basic Law: The Knesset of 1958, the Central Elections Committee can disqualify a party or candidate from participation in elections if their objectives or actions are meant to negate the definition of Israel as a Jewish and democratic state; incite racism; or support armed struggles by a hostile state or a terrorist organization against Israel.[447] In addition, the 1992 Law on Political Parties prohibits the registration of any party whose goals or actions deny either directly or indirectly "the existence of Israel as a Jewish and democratic state".[448] These provisions prevent Palestinian lawmakers from challenging laws that codify Jewish Israeli domination over the Palestinian minority, unduly limit their freedom of expression and, as a result, impede their ability to represent the concerns of their constituents effectively. They have also been the basis for repeated and persistent attempts to disqualify Palestinian parties and candidates

[439] State of Israel, Military Proclamation 3 concerning the Entry into Force of the Order concerning Security Provisions (West Bank Area), (undated) 1967. See also Yesh Din, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, yesh-din.org/en/backyard-proceedings
[440] State of Israel, Military Order 1651 regarding Security Provisions (Consolidated Version) (Judea and Samaria)", 1 November 2009 (an unofficial English translation is available at hamoked.org/files/2017/1055_eng.pdf).
[441] Haaretz, "Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns", 29 November 2011, haaretz.com/1.5214377
[442] Military Court Watch, Military Orders (previously cited).
[443] Addameer Prisoner Support and Human Rights Association (Addameer), "Palestinian Political Prisoners in Israeli Prisons", June 2016, addameer.org/sites/default/files/briefings/general_briefing_paper_-_june_2016_1.pdf
[444] Article 49 of the Fourth Geneva Convention prohibits an occupying power from forcibly transferring or deporting people from an occupied territory. See also Amnesty International, "Israel must end 'unlawful and cruel' policies towards Palestinian prisoners", 13 April 2017, amnesty.org/en/latest/news/2017/04/israel-must-end-unlawful-and-cruel-policies-towards-palestinian-prisoners
[445] B'Tselem, Statistics on Palestinians in the custody of the Israeli security forces, btselem.org/statistics/detainees_and_prisoners (accessed on 12 August 2021).
[446] Mazen Masri, *The Dynamics of Exclusionary Constitutionalism: Israel as Jewish and democratic state*, 2017.
[447] State of Israel, Basic Law: The Knesset, passed on 12 February 1958, main.knesset.gov.il/Activity/Legislation/Documents/yesod4.pdf (in Hebrew). The provision regarding the prohibition of support for armed struggle was added by a 2002 amendment to Section 7(a) on prevention of participation in elections, p. 7.
[448] HRW, *A Threshold Crossed* (previously cited), p.150.

from running in successive legislative elections, although these have generally not been successful.[449] Over the years the Central Elections Committee has taken decisions to ban Palestinian parties and disqualify Palestinian candidates for violating these provisions and then seen the Supreme Court overturn them.[450] The committee has also rejected requests to disqualify Jewish Israeli members of the Knesset for incitement to racism and then seen the Supreme Court order their disqualification.[451]

In 2014, the Knesset raised the electoral threshold from 2% to 3.25%, primarily affecting parliamentary representation of Palestinians and other minority groups in Israel. Adalah and ACRI argued that raising the electoral threshold for parties to gain seats at the Knesset violated Palestinian citizens' voting rights and enabled the disqualification of their candidates and parties.[452] CERD also noted that raising the electoral threshold in Israel considerably weakens "the right to political participation of non-Jewish minorities".[453]

Palestinian Knesset members have been subjected to repeated smear campaigns and intimidation by government ministers, in addition to judicial harassment in their struggle for equality, and for expressing support for popular resistance to the Israeli occupation and other political views that challenge the established narrative of Israel as a Jewish and democratic state.[454] They have also faced discriminatory disciplinary measures that violate their freedom of opinion and expression. For example, in 2016, the Ethics Committee suspended three Palestinian Knesset members for meeting families of Palestinian civilians who had been killed by Israeli forces for attacking or allegedly attacking Israelis even though the purpose of the meeting was to help these families retrieve the dead bodies of their relatives. Meanwhile, Jewish members of the Knesset have not faced such repercussions for meeting families of Jewish civilians who carried out violent attacks against Palestinians.[455]

The Knesset also regularly disqualifies bills related to Palestinians' rights or political aspirations in Israel.[456] For example, during the legislative process leading to the adoption of the nation state law on 19 July 2018, Palestinian members of the Knesset proposed a bill in June 2018 offering an alternative definition of Israel as "a country for all its citizens". The bill included several articles that were meant to alter the character of Israel from a state of the Jewish people to a state in which Jews and Arabs enjoy equal status in terms of nationality. In response, the Knesset Presidium, a body comprising the Knesset's speaker and deputy speakers, prevented the bill from even being discussed, arguing that it would negate Israel's definition as a Jewish state.[457] In June 2018, Adalah challenged the decision to disqualify the bill, but the Supreme Court of Israel dismissed the challenge on 30 December 2018.[458] The court determined that the dissolution of the Knesset days earlier, on 26 December 2018, had rendered the petition theoretical and refrained from criticizing or commenting on the disqualification.

[449] Haaretz, "Disqualify Israel's Central Elections Committee", 18 February 2021, haaretz.com/opinion/editorial/disqualify-israel-s-central-elections-committee-1.9548003

[450] Most recently, in the run-up to the elections in March 2020, the Supreme Court rejected a decision by the Central Elections Committee to disqualify Palestinian member of Knesset Heba Yazbak of the Joint List from running in the legislative elections, following a petition filed by a member of the Likud party claiming that she had "systematically, for years, supported terrorists and spies who have committed horrific crimes against the State of Israel and its residents". See Adalah, "Israeli Supreme Court rejects Central Election Committee's decision to disqualify Palestinian MK Heba Yazbak from running in March national election", 10 February 2020, adalah.org/en/content/view/9905; Times of Israel, "Elections committee votes to bar Arab MK Yazbak; Supreme Court to have final say", 29 January 2020, timesofisrael.com/elections-committee-votes-to-bar-arab-mk-yazbak-supreme-court-to-have-final-say

[451] For example, ahead of the March 2019 national elections, the Central Elections Committee rejected a petition against Michael Ben Ari, chairman of the Otzma Yehudit (Jewish Power) party, thereby approving him to run in the election. However, the Supreme Court disqualified him and banned him from running for the Knesset on grounds of incessant incitement against Arabs. See Haaretz, "Israel's top court bans Kahanist leader from election run, okays Arab slates, far-left candidate", 17 March 2019, haaretz.com/israel-news/elections/israel-s-top-court-bans-kahanist-leader-from-running-approves-arabslate-1.7018590

[452] Adalah, "Israeli Supreme Court rejects petition against raising electoral threshold", 14 January 2015, adalah.org/en/content/view/8401

[453] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, para. 36.

[454] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited); Electronic Intifada, "Supreme Court Dismisses Criminal Charges Against Knesset Member Azmi Bishara", 14 February 2006, electronicintifada.net/content/supreme-court-dismisses-criminal-charges-against-knesset-member-azmi-bishara/2333

[455] Amnesty International, *Elected but restricted: Shrinking space for Palestinian parliamentarians in Israel's Knesset*, September 2019, amnesty.org/en/wp-content/uploads/2021/05/MDE1508822019ENGLISH.pdf

[456] According to the Knesset's Rules of Procedures, the Presidium "shall not approve a bill that in its opinion denies the existence of the State of Israel as the state of the Jewish People, or is racist in its essence". See State of Israel, Knesset Rules of Procedure, 14 June 2018, Section G, Chapter 2, para. 75(e) (an English translation is available at knesset.gov.il/rules/eng/ChapterG2.pdf).

[457] Haaretz, "Knesset council bans bill to define Israel as state for all its citizens", 4 June 2018, haaretz.com/israel-news/.premium-knesset-council-bans-bill-to-define-israel-as-state-for-all-citizens-1.6145333

[458] Adalah, "Adalah heads to Supreme Court after Knesset speaker, deputies nix legislation of Arab MKs' bill declaring Israel 'state of all its citizens'", 11 June 2018; HCJ, *MK Jamal Zahalka v. Knesset Speaker*, Case HCJ 4552/18, judgment, 30 December 2018; Adalah, "Israeli Supreme Court refuses to allow discussion of full equal rights & 'state of all its citizens' bill in Knesset", 30 December 2018, adalah.org/en/content/view/9660

These measures have impacted Palestinian parliamentarians in a discriminatory manner and consequently have eroded their right to equal political participation in Israel.

Limitations on the right of Palestinian citizens of Israel to participate in elections are accompanied by other infringements of their civil and political rights that limit the extent to which they can participate in the political and social life of Israel. This has included racialized policing of protests, mass arbitrary arrests and the use of unlawful force against protesters during demonstrations against land dispossession inside Israel or Israeli violations against Palestinians in the OPT. Such measures, which target peaceful protesters, are aimed to deter further demonstrations and stifle dissent. Upon arrest, Palestinians are routinely placed in pretrial detention; by contrast, Jewish protesters are generally granted bail. This points to a discriminatory treatment of Palestinians by the criminal justice system, which appears to treat Palestinians as "suspects" instead of assessing the individual threat they pose.

In one such example, in September and October 2000, Israeli forces killed 13 Palestinian citizens, and injured hundreds of others during mass demonstrations that erupted across the country in protest at Israel's brutal actions in the OPT following the outbreak of the second *intifada*. Although Israeli police forces, including snipers, were alleged to have used live ammunition, rubber-coated bullets and tear gas and a commission of inquiry found that the police used excessive force, the Israeli authorities failed to effectively investigate these killings and, to Amnesty International's knowledge, no one was ever brought to justice (see section 6.3.2 "Israeli policies and practices").[459] Over 1,000 demonstrators were arrested, many of them only for their peaceful participation in the protests. Palestinians constituted the vast majority of those detained and were accused of throwing stones, assaulting police officers, damaging property or public order offences such as participating in an unlawful assembly. Many, including children, were subjected to beatings and other ill-treatment during arrest and interrogation. Although the attorney general stated that all detainees regardless of their nationality were being remanded in custody, in reality, 89% of Palestinian detainees were denied bail until the end of proceedings, while only 11% of Jewish Israelis arrested were detained until the end of their trials.[460] This exemplified Israel's approach to its Palestinian citizens as a "'fifth column' to be controlled and contained".[461] Similarly, in December 2008-2009 Israeli police forces violently dispersed largely peaceful mass demonstrations against Israel's military offensive in Gaza, arresting some 832 protesters. Many of them, including children, were targeted solely for their participation in the protests. Importantly, while 80% of all detainees, including children, were denied bail and held in custody until the end of the trial, the overwhelming majority were Palestinian citizens and residents of East Jerusalem. According to Adalah, not a single detainee from the Tel Aviv district, which included the vast majority of Jewish protesters, was similarly detained until the end of legal proceedings, pointing to a pattern of discriminatory treatment of Palestinians detainees.[462]

In a more recent example, during demonstrations and protests that began in May 2021 – primarily against Israel's plan to forcibly evict seven more Palestinian families from Sheikh Jarrah in East Jerusalem and its military operation in Gaza – the Israeli police carried out mass arrests, used excessive force against peaceful protesters, and tortured and otherwise ill-treated detainees.[463] This prompted solidarity protests by Palestinians to spread, including to towns with Palestinian populations inside Israel, and intercommunal violence broke out. Scores of people were injured, and two Jewish citizens of Israel and one Palestinian citizen were killed. Synagogues and Muslim cemeteries were vandalized. Armed hostilities broke out on 10 May as Palestinian armed groups fired rockets into Israel from Gaza, and Israel launched an 11-day military offensive against the Gaza Strip. On 24 May, Israeli authorities launched "Operation Law and Order" primarily targeting Palestinian protesters. Israeli media said the operation aimed to "settle scores" with those involved and to "deter" further demonstrations.[464] Israeli police also failed to protect Palestinians from organized attacks by groups of armed Jewish individuals, whose plans were often publicized in advance.[465]

[459] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[460] Amnesty International, *Israel and the Occupied Palestinian Territories: Mass arrests and police brutality* (Index: MDE 15/58/00), November 2000, amnesty.org/en/wp-content/uploads/2021/06/mde150582000en.pdf
[461] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[462] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[463] Amnesty International, "Israeli police targeted Palestinians with discriminatory arrests, torture and unlawful force", 24 June 2021, amnesty.org/en/latest/news/2021/06/israeli-police-targeted-palestinians-with-discriminatory-arrests-torture-and-unlawful-force
[464] For more details, see Amnesty International, "Israeli police targeted Palestinians with discriminatory arrests, torture and unlawful force" (previously cited).
[465] Amnesty International verified 29 text and audio messages from open Telegram channels and WhatsApp, revealing how the apps were used to recruit armed men and organize attacks on Palestinians in "mixed cities" with Jewish and Arab populations, such as Haifa, Acre, Nazareth and Lod, between 10 and 21 May. Messages included instructions on where and when to gather, types of weaponry to use and even clothing to wear to avoid confusing Jews of Middle Eastern heritage with Palestinian Arabs. Group members shared selfies posing with guns and messages such as: "Tonight we are not Jews, we are Nazis". For more details, see Amnesty International, "Israeli police targeted Palestinians with discriminatory arrests, torture and unlawful force" (previously cited).

According to the Mossawa Center – the Advocacy Center for Palestinian Arab Citizens in Israel (Mossawa Center), a human rights organization based in Haifa, between 10 May and 10 June 2021, Israeli police arrested more than 2,150 people, more than 90% of them Palestinian citizens of Israel or residents of East Jerusalem. The group also said 184 indictments were filed against 285 defendants. According to Adalah, a representative of the State Attorney's Office said on 27 May that only 30 Jewish citizens of Israel were among those indicted. Most Palestinians arrested were detained for offences such as "insulting or assaulting a police officer" or "taking part in an illegal gathering" rather than for violent attacks on people or property, according to the Follow-Up Committee for Arab Citizens of Israel.[466]

PALESTINIAN POPULAR RESISTANCE IN OPT

As stated above, Israel places severe restrictions on Palestinian civil and political rights particularly in the West Bank, where military orders are still enforced. Israeli authorities have since 1967 outlawed more than 400 Palestinian organizations, including all major political parties and several prominent civil society organizations widely recognized for the provision of vital services such as legal aid and medical care as well as the quality of their human rights reporting and advocacy, most recently in October 2021. In addition, the Israeli authorities often prosecute Palestinians for "membership and activity in an unlawful association", a charge frequently levied against anti-occupation activists.[467] Over the years, they have arrested scores of Palestinian lawmakers, particularly following Hamas's electoral victory in 2006, placing them under administrative detention or prosecuting them in military courts in trials that fail to meet international standards, thus undermining Palestinian political life.

Palestinians in East Jerusalem, on the other hand, are neither able to participate in political life in Israel nor in the West Bank. Although they can vote and run in municipal elections in Jerusalem, they have traditionally boycotted them in protest at Israel's ongoing occupation and illegal annexation of East Jerusalem,[468] and they remain excluded from national elections. Meanwhile, the Israeli authorities prevent any Palestinian political presence, including campaigning, in East Jerusalem, and have opposed Palestinian general elections being held in the city, despite this being guaranteed under the Oslo Accords. Most recently, they arrested two Hamas candidates and dispersed meetings in Jerusalem held ahead of elections to the Palestinian Legislative Council, which were scheduled to take place in May 2021 before President Mahmoud Abbas decided to postpone them indefinitely.[469]

As a result, protests remain for Palestinians the only means to influence Israeli politics and challenge the political reality in the OPT. Palestinians in the OPT have, over the years, mobilized and organized popular resistance against Israel's military occupation and expansion of settlements,[470] which has been systematically met with Israeli excessive and unlawful force, arbitrary arrests and prosecution in military courts, as well as undue restrictions on freedom of movement.

Most notable is the first *intifada* of 1987-93, which was brutally repressed.[471] A new and continued wave of popular mobilization began around 2002 when Israel began building the fence/wall, expanding illegal Israeli settlements and expropriating large swathes of land from Palestinian communities near the fence/wall and/or settlements. Communities in these areas began organizing protests against the land grab and the military rule that facilitates it on the one hand and oppresses Palestinian communities on the other. Some of the mobilizations in the villages took the form of weekly peaceful demonstrations.

NABI SALEH

The village of Nabi Saleh near Ramallah has been a focus of demonstrations and activism against Israel's military occupation and land appropriation for settlements. The neighbouring Israeli settlement of Halamish expropriated

[466] Amnesty International, "Israeli police targeted Palestinians with discriminatory arrests, torture and unlawful force" (previously cited).
[467] Sahar Francis, "Israel's military courts are a stain on international justice", Guardian, 6 March 2021, theguardian.com/commentisfree/2021/mar/06/israel-military-courts-palestinians-law-uk; Amnesty International, "Israel/OPT: Designation of Palestinian civil society groups as terrorists a brazen attack on human rights", 22 October 2021, amnesty.org/en/latest/news/2021/10/israel-opt-designation-of-palestinian-civil-society-groups-as-terrorists-a-brazen-attack-on-human-rights; Amnesty International, "Israeli shutdown of health organization will have catastrophic consequences for Palestinian healthcare", 9 June 2021, amnesty.org/en/latest/press-release/2021/06/israeli-army-shutdown-of-health-organization-will-have-catastrophic-consequences-for-palestinian-healthcare
[468] Foreign Policy, "Why There's no Palestinian Protest Vote in East Jerusalem", 19 November 2018, foreignpolicy.com/2018/11/19/why-theres-no-palestinian-protest-vote-in-jerusalem-israel-municipal-palestinian-authority-ramadan-dabash-aziz-abu-sarah
[469] International Crisis Group, "Why Palestinian Elections Should Get Back on Track", 30 April 2021, crisisgroup.org/middle-east-north-africa/eastern-mediterranean/israelpalestine/why-palestinian-elections-should-get-back-track
[470] American Friends Service Committee, Popular Resistance in Palestine, afsc.org/resource/popular-resistance-palestine-0 (accessed on 12 August 2021).
[471] HRW, *The Israeli Army and the Intifada: Policies that Contribute to the Killings*, August 1990, hrw.org/legacy/campaigns/israel/intifada-intro.htm

land from the village, including a water source. Israeli forces have repeatedly used excessive force in response to the protests and during search and arrest raids. Such actions have, since 2009, caused the deaths of four people in the village – Mustafa Tamimi, in December 2011; Rushdie Tamimi, in November 2012; Izz Al-Din Tamimi, in May 2017; and Saba' Obaid, in June 2018 – and wounded hundreds of others, including children.

The Israeli authorities frequently declare the area a closed military zone, particularly during demonstrations, and close roads leading in and out of the village. This forces residents and visitors to enter and leave the village via military checkpoints, where many complain that Israeli soldiers harass them. Israeli soldiers have also deliberately damaged property such as residents' water storage tanks located on rooftops.

The army frequently arrests local political activists and human rights defenders, and conducts night raids in the village, often arresting children accused mostly of throwing stones at Israeli troops. Israeli forces have also frequently attacked medics seeking to assist people who have been wounded in the response to the protests and journalists who are reporting on them, including by firing tear gas canisters and rubber-coated metal bullets.

The combined impact of the army's repressive and restrictive policies and practices in Nabi Saleh appears to amount to collective punishment, whereby the population as a whole is penalized, including those who play no active part in the activism against Israeli rule. Collective punishment of protected persons in an occupied territory is prohibited under international humanitarian law and when imposed constitutes a war crime. It is also a serious violation of international human rights law.

Palestinians in the Gaza Strip have also faced Israeli repression for their popular resistance against the occupation. As stated above, following the 2005 "disengagement", they are no longer prosecuted under sweeping military orders that prohibit demonstrations and restrict free expression. However, they have been subjected to excessive and, often lethal, force during protests near the fence that separates Gaza from Israel. For example, between March 2018 and December 2019, Israeli forces killed some 214 Palestinians, including 46 children, and wounded 36,100 others during Great March of Return protests that demanded an end to Israel's illegal blockade and the right of Palestinian refugees to return to their homes.[472] While some protesters attempted to approach the fence and damage it, and threw stones, Molotov cocktails and incendiary kites in the direction of the fence, Israeli snipers and other soldiers shot protesters who were not posing an imminent threat with rubber bullets and live ammunition using high-velocity military weapons designed to cause maximum harm (see section 6.3 "Unlawful killings and serious injuries").[473]

5.4 DISPOSSESSION OF LAND AND PROPERTY

Since 1948 the Israeli state has enforced massive and cruel land seizures to dispossess and exclude Palestinians from their land and homes. Although Palestinians in Israel and the OPT are subjected to different legal and administrative regimes, Israel has used similar land expropriation measures across all territorial domains under the Judaization policy. This seeks to maximize Jewish control over land while effectively restricting Palestinians to living in separate, densely populated enclaves. It does not completely block Palestinian citizens of Israel from moving to predominantly Jewish localities, as demonstrated by the fact that some mainly young Palestinians have done so, at least in recent years, but it has managed to minimize their presence there. This policy has been continuously pursued in Israel since 1948 in areas of strategic importance that include a significant Palestinian population such as the Galilee and the Negev/Naqab, and has been extended to the OPT following Israel's military occupation in 1967. Today, ongoing Israeli efforts to coerce the transfer of Palestinians in the Negev/Naqab, East Jerusalem and Area C of the West Bank under discriminatory planning and building regimes are the "new frontiers of dispossession" of Palestinians, and the manifestation of the strategy of Judaization and territorial control.[474] The land regime established soon after Israel's creation, which was never dismantled, remains a crucial tool in these efforts.

This section focuses on the different land and expropriation laws and policies that Israel has continuously pursued since 1948 in Israel and as of 1967 also in the OPT to dispossess Palestinians for the sole benefit of its Jewish population. They include a selective registration of ownership rights through the land title settlement process, a discriminatory allocation of expropriated Palestinian land for Jewish settlement and the use of a discriminatory urban planning and zoning regime to forcibly transfer Palestinians from their land and properties.

[472] OCHA, "Two Years On: People Injured and Traumatized During the 'Great March of Return' are still Struggling", 6 April 2020, un.org/unispal/document/two-years-on-people-injured-and-traumatized-during-the-great-march-of-return-are-still-struggling
[473] Amnesty International, "Israel: Arms embargo needed as military unlawfully kills and maims Gaza protesters", 27 April 2018, amnesty.org/en/latest/news/2018/04/israel-arms-embargo-needed-as-military-unlawfully-kills-and-maims-gaza-protesters
[474] UN Office of the High Commissioner for Human Rights (OHCHR), "Israel's policies violate right to housing and need urgent revision – UN independent rights expert", 13 February 2012, un.org/unispal/document/auto-insert-199086

5.4.1 LAND EXPROPRIATION LAWS AND POLICIES

Until 1948, the total land purchased by Jewish individuals and institutions in mandate Palestine amounted to about 1.6 million dunams (160,000 hectares), constituting around 6.5% of its total area.[475] Palestinians owned about 90% of the privately owned land in the territory.[476] At that time, Jews comprised around 30% of the population and Palestinians around 70%. Within the relatively short period of just over 70 years, a deliberate Israeli state policy has reversed this situation, often using brutal means, to ensure Jewish Israeli control over resources.

While much of the seizure of Palestinian land and property and the destruction of their villages inside Israel occurred in the late 1940s and 1950s, massive and racially motivated dispossessions continued into the 1970s. The effects continue to severely impact Palestinians. They are still excluded from their families' lands, prohibited from accessing and using land and property that belonged to them or their families in 1948, discriminated against in access to resources, and effectively restricted to living in enclaves within the state.

Indeed, the definition of Israel as the state of the Jewish people and the commitment to Jewish settlement of the land has precluded any possibility of Palestinians enjoying equality in access to land, property and resources, with disastrous consequences for their enjoyment of social and economic rights. It has also contributed to the isolation and exclusion of Palestinian citizens from Israeli society, marking them as a group with perpetual lesser rights and with no right to claim access to lands and properties that have been in their families for generations. In this way, it has segregated Palestinian citizens of Israel in a particularly cruel manner. This process continues until today, and was most recently reaffirmed by the 2018 nation state law (see section 5.1 "Intent to oppress and dominate the Palestinian people"), which reiterated that Israel views "the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and strengthening."[477]

ESTABLISHMENT OF DISCRIMINATORY LAND REGIME

The massive land appropriation took place through a legal regime designed to effect the transfer of lands from Palestinian hands to Jewish Israeli hands, and to keep them in Jewish Israeli hands while enabling the Jewish domination and control of these lands to the exclusion of Palestinians.

Following the 1947-49 conflict and the forced displacement of a large proportion of the Palestinian population, Israel proceeded to institute a land regime that aimed to place as much land as possible under state control in pursuit of an explicit policy of ensuring Jewish control over land. The Israeli land regime consisted of land legislation, reinterpretation of British and Ottoman laws, governmental and semi-governmental land institutions, and a supportive judiciary that enabled the acquisition of Palestinian land and its discriminatory reallocation.

Between 1948 and the early 1950s, Israel instituted a series of emergency regulations and laws to seize the land and property belonging to the Palestinian population and to formally transfer the ownership of this land to the State of Israel, and from the state to the Jewish National Fund (JNF), known in Hebrew as Keren Kayemeth LeIsrael (KKL), municipal councils, Jewish localities and Jewish individuals and companies.

Three main pieces of legislation made up the core of the Israeli land regime and played a major role in this process: 1) the Absentees' Property Law (Transfer of Property Law) of 1950; 2) the Land Acquisition Law of 1953; and 3) the British Land (Acquisition for Public Purposes) Ordinance of 1943. The laws and their subsequent amendments, which remain in force, were instrumental in expropriating and acquiring Palestinian land and property, leading over the years to their exclusive ownership by the Israeli state and Jewish national institutions.[478] Since East Jerusalem's annexation in 1967, the entire Israeli land regime, with its various laws, land institutions and judicial interpretations, has been utilized in East Jerusalem for the expropriation of Palestinian land and its conversion mainly to state land. Israeli authorities have also enacted additional legal tools and amendments that affect Palestinian land and housing rights in East Jerusalem.

Israel also operates a complex system of land laws to expropriate land, including private Palestinian land, and allocate it to the illegal settlement enterprise in the occupied West Bank (and, until its unilateral withdrawal in 2005, in the Gaza Strip as well). In addition to the land laws enforced by the Israeli military in the West Bank,

[475] Anglo-American Committee of Inquiry, *A Survey of Palestine*, 1946, p. 244, bjpa.org/content/upload/bjpa/a_su/A%20SURVEY%20OF%20PALESTINE%20DEC%201945-JAN%201946%20VOL%20I.pdf The remainder of the land was the property of religious institutions, such as churches, foreigners, including Arabs, and other public land not privately owned.

[476] Rashid Khalidi, *The Iron Cage* (previously cited).

[477] Basic Law: Israel the Nation State of the Jewish People (previously cited), Article 7.

[478] On the Israeli land regime as analysed in this section, see Ahmad Amara and Zinaida Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab" in Ahmad Amara and others, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Negev/Naqab,* 2012, pp. 68-125.

including military regulations and orders that in some cases mirrored existing provisions under Israeli civil law used to dispossess Palestinian citizens of Israel, and emergency and security regulations relating to land and property, some Ottoman, British and Jordanian laws that were applicable in the territory have been applied but subjected to Israeli adjustments or cancellations.[479]

The main laws which were adopted over the years and apply to the different domains of control are discussed below.

ABSENTEES' PROPERTY LAW OF 1950

In September 1948, following the proclamation of statehood, the Israeli Provisional State Council enacted emergency regulations to take over properties of Palestinian refugees and internally displaced persons (IDPs). In 1950, the Absentees' Property Law regulated the question of the property of Palestinian refugees.[480] It effectively gave the state control over all movable and immovable property of all Palestinians who were expelled or fled their homes, regardless of whether or not they became refugees outside the country or IDPs in Israel, by defining the latter as "absentee owners". According to Article 1(b) of the law:

(b) "absentee" means –

(1) a person who, at any time during the period between the 16th Kislev, 5708 (29 November 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, 5708-1948, that the state of emergency declared by the Provisional Council of State on the 10th Iyar, 5708 (19 May 1948) has ceased to exist, was a legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period –

(i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or

(ii) was in one of these countries or in any part of Palestine outside the area of Israel, or

(iii) was a Palestinian citizen and left his ordinary place of residence in Palestine.[481]

Hence, all Palestinians who fled or were expelled from their homes after 29 November 1947, and Arab nationals of the Arab states mentioned in the article, became "absentees" and their movable and immovable properties became eligible for confiscation and possession by the Custodian of Absentee Property, the head of an entity appointed by the Israeli minister of finance that manages absentees' property.[482] Their status as "absentees" still applies because the "state of emergency" in Israel, which was declared on 19 May 1948, remains in force.[483]

Under this law, Israel appropriated between 4.2 and 6.6 million dunams (420,000 to 666,000 hectares) of land.[484] According to Michael Fischbach, who relied on the records of the UN Conciliation Commission for Palestine (UNCCP), Israel took over 4.45 million dunams of land in private ownership (1954),[485] 59,000 apartments and houses (1956), 11,000 businesses (1956),[486] 6,246 bank accounts,[487] and vehicles and other properties.

In order to prevent the return of Palestinians and to use the available land, Israeli authorities demolished the vast majority of the nearly 500 Palestinian villages deserted during the 1947-49 conflict and enabled the Custodian of Absentee Property to transfer Palestinian properties to third parties. In the same year, Israel enacted the 1950 Development Authority Law (Properties Transfer),[488] which founded the Development Authority, a body established

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[479] B'Tselem, *By Hook and by Crook: Israeli Settlement Policy in the West Bank*, July 2010, btselem.org/download/201007_by_hook_and_by_crook_eng.pdf; Yesh Din, *The Road to Dispossession: A Case Study - The Outpost of Adei Ad*, 18 April 2013, bit.ly/3ogkuqz; Badil, *Ruling Palestine* (previously cited).

[480] See, for example, Geremy Forman and Alexander Kedar, "From Arab Lands to Israel Lands: The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948", 1 December 2004, Environment and Planning D: Society and Space, Volume 22, law.haifa.ac.il/images/documents/From%20Arab%20Land%20to%20Israel%20Lands.pdf, pp. 809-830.

[481] State of Israel, Absentees' Property Law, passed on 14 March 1950 (an English translation is available at knesset.gov.il/review/data/eng/law/kns1_property_eng.pdf).

[482] Absentees' Property Law (previously cited).

[483] State of Israel, Knesset, הכרזה על מצב חירום [Declaring a State of Emergency], לקסיקון הכנסת [Lexicon of the Knesset], m.knesset.gov.il/about/lexicon/pages/emergency-announcment.aspx (in Hebrew, accessed on 29 August 2021).

[484] For different estimates, see Geremy Forman and Alexander Kedar, "From Arab Lands to Israel Lands: the Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948" (previously cited), p. 812: "While estimates of Arab researchers and organizations have typically been between 5.7 million and 6.6 million dunams, former mandate and UNCCP land official Sami Hadawi reached a figure of 19 million dunams by classifying 'state' and 'public' land within Arab village boundaries as refugee land. Israeli officials and researchers have consistently estimated between 4.2 million and 6.5 million dunams".

[485] Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*, 2000, p. 52.

[486] Michael Fischbach, *Records of Dispossession* (previously cited), p. 77.

[487] Some of the accounts were later released by Israel: Michael Fischbach, *Records of Dispossession* (previously cited), pp. 197-208.

[488] State of Israel, Law of the Authority for Development (Transfer of Properties), passed on 31 July 1950, fs.knesset.gov.il/1/law/1_lsr_209516.PDF (in Hebrew).

to administer the property of the Palestinian refugees and other property confiscated by the state (under the 1953 Land Acquisition Law – see below) for the benefit of the state.

The Development Authority was responsible for "developing" the State of Israel through the use of Palestinian property. It settled immigrant Jewish families in Palestinian refugees' houses and made land available to state authorities for the development of new Jewish localities. The 1950 Development Authority Law authorized the Development Authority to own, sell, lease, build and renovate property, and conduct property transactions only with the state, the JNF/KKL or a body that was authorized for this purpose by the state, such as municipal authorities.[489]

Another major transfer of Palestinian refugees' land was from the Israeli government to the JNF/KKL, known as the "two million deal". The first million dunams (more precisely 1,109,769 dunams) were transferred in January 1949, a month after the passage of UN Resolution 194 on the right of return for Palestinian refugees. The second million dunams (more precisely 1,271,734 dunams) were transferred in October 1950.[490] The JNF/KKL worked with the Israeli government to make these lands available for Jewish settlement and forestation. Thus, the land of the Palestinian "absentees" was transferred to various Jewish institutions, governmental bodies and municipal councils, and then leased to individual Jewish Israelis who either lived in the houses or apartments of Palestinians, or leased the land for industrial or agricultural purposes. By 1950, the JNF/KKL owned 2.1 million dunams and the state claimed ownership of 16.7 million dunams of land.[491]

The Absentees' Property Law included in its definition Palestinian IDPs, numbering about 30,000 people in 1948. These people had been internally displaced from their villages and homes and had settled mostly in nearby Palestinian villages inside Israel. They were deemed "absentees" even though they never crossed an international border and, in many cases, remained within a few kilometres of their homes and land. (For example, Palestinians from Saffuryi settled in Nazareth, Palestinians from Ma'lul settled in Yafat Al-Nasira, and Palestinians from Iqrit settled in Al-Jish.) These IDPs became known as the "present absentees". In 1973, the Knesset passed legislation to compensate the "present absentees", but not to allow their return to their lands or villages, even if their lands were still empty and not possessed by a third party.[492] However, few Palestinians applied to receive compensation, refusing to surrender their historical claim to the land, forcing the Knesset to extend the three-year period to claim compensation.[493]

The case of IDPs from the village of Iqrit is a prime example of Israel's use of military rule to dispossess Palestinians and prevent them from returning to their homes and villages – undermining the official narrative at the time that military rule was necessary to maintain security – while simultaneously allowing the state to confiscate Palestinian property under the Absentees' Property Law.

JUDAIZATION OF GALILEE: DESTRUCTION OF IQRIT

In 1948, the Israeli army instructed the nearly 600 residents of Iqrit,[494] a Palestinian village north-east of Acre in northern Israel, to leave their residences "temporarily". The village was declared a military zone under the Defence (Emergency) Regulations, and they were never allowed to return.[495] The residents petitioned the Supreme Court of Israel to be granted their right of return to their lands, and won the case. The Israeli Ministry of Defense refused to implement the decision. Instead, it issued a new military order and destroyed the village in 1951 except for the church and cemetery, which remain intact until today. These actions were taken to ensure that Iqrit did not create a precedent for the return of other Palestinians to their villages.[496] The former residents of Iqrit appealed to the Supreme Court several times and lobbied politically for their return. Their last petition was in 2003 when they asked to return to their original homes or at least to nearby areas unused by the state.[497] The court rejected their petition to return to their original lands, based on the state's claim that the security situation could not justify

[489] Absentees' Property Law (previously cited), Article 3(4).
[490] Michael Fischbach, *Records of Dispossession* (previously cited), pp. 63-65; Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel,* 2003, p. 72.
[491] Geremy Forman, "From Arab Land to 'Israel Lands': The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948" (previously cited).
[492] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 73. The law entitles the IDPs who are Israeli residents only to compensation and not restitution of their original land. See State of Israel, Absentees' Property Law (Compensation), passed on 6 July 1973, available at nevo.co.il/law_html/law01/313_006.htm (in Hebrew).
[493] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 73.
[494] Al Jazeera, "The Return to Iqrit", 9 June 2013, aljazeera.com/features/2013/6/9/the-return-to-iqrit
[495] Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory: Towards Legal Governance of History*, 2017, p. 359.
[496] Noura Erekat, *Justice for Some*: *Law and the Question of Palestine* (previously cited), p. 56.
[497] Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory: Towards Legal Governance of History* (previously cited), p. 359.

their return, and instead offered them compensation.[498] The government again expressed its concern that accepting the petition would have far-reaching implications for other internally displaced citizens, who would also demand to return to their original villages.[499]

The community of Iqrit now comprises around 1,500 individuals, many of whom live in the village of Al-Rameh 20km away. Despite Israel's refusal to grant them their right to return to their original village, the community has, since the 1970s, held religious and social events at the church there. Shadia Murqos Sbeit, an Iqrit community activist who has been involved in organizing for the return to Iqrit, told Amnesty International: "The cemetery and the church play a crucial role, because marriage and death ceremonies take place in the village, keeping the cycle of life alive."[500]

Shadia Murqos Sbeit has been involved in the struggle to return to Iqrit since the 1990s when, along with other young members of the community, she started setting up camps in the village as a way to return. She said:

We launched the "return camps" as another form of struggle [against our displacement]. We wanted a struggle that was different, one which did not care about the government or the court and which made the return and the belonging to the village as central to the struggle, so we moved to live in the village. We wanted to fight for our community and not only lands. This struggle continues until today.

The community's campaign to return to the village continues despite Israel's continual denial and actions to stop it. Shadia Murqos Sbeit added:

Our children are now part of the struggle. But [Israeli] authorities continually try to prevent them from setting up anything outside the church grounds. Some activists are targeted by the police and some were given orders to stay away from the village. The authorities would confiscate anything they find outside the church and have uprooted what the activists planted. One time the authorities handed down an order to remove a donkey they had brought and another for a chicken pen [they had] set up. Despite all of this, people continue the struggle to return.

The Absentees' Property Law also deemed as "abandoned" *waqf* property in Israel, *waqf* being an endowment under Islamic law by which an institution holds property for charitable purposes, often as the result of a donation by an individual or group. This included Muslim holy sites, houses, trade centres and other buildings, businesses and farm lands. These were then appropriated by the state and transferred to the Custodian of Absentee Property.[501] As much as 85% of *waqf* properties were transferred to the Custodian of Absentee Property.[502] Until 1948, the Supreme Muslim Council had administered *waqf* properties. Israel considered the council as an "absentee" since most of its members became refugees. While there are no specific statistics on the confiscated *waqf* properties, such properties had been substantial and a well-established tradition in Palestine since the Ottoman era. According to one academic study, up to 20% of the cultivated lands in Palestine constituted *waqf* land in 1948.[503]

Challenges to this mass appropriation of *waqf* properties reached the Israeli courts. Due to the sensitivity and complexity of the matter, including the fact that some of the *waqf* properties were also registered under the name of the trustees (persons or committees) and that some were religious sites, the Custodian of Absentee Property released the administration of some *waqf* sites to the Israeli Ministry of Religious Affairs. However, to circumvent this decision, in 1965 the Knesset passed a legal amendment that retroactively authorized the transfer of *waqf* ownership directly to the Custodian of Absentee Property free of any claims or conditions that were put in place when it was endowed.[504]

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[498] Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, *Law and Memory: Towards Legal Governance of History* (previously cited), p. 359; Haaretz, "High Court Rejects the Right of Ikrit Refugees to Return Home", 26 July 2003, haaretz.com/1.5486435

[499] Haaretz, "High Court Rejects the Right of Ikrit Refugees to Return Home" (previously cited).

[500] Amnesty International, interview by voice call with Shadia Murqos Sbeit, 10 August 2020.

[501] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), pp. 76-80.

[502] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 77.

[503] Michael Dumper, *Islam and Israel: Muslim Religious Endowments and the Jewish State,* 1994, p. 29. See, for example, Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), pp. 76-80; Michael Fischbach, *Records of Dispossession* (previously cited), pp. 39-40.

[504] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 78; State of Israel, Absentees' Property (Amendment 3) (Release and Use of Endowment Property) Law, passed on 2 February 1965, available at nevo.co.il/law_html/law14/law-0445.pdf (in Hebrew) (an unofficial English translation is available at web.archive.org/web/20091028101706/geocities.com/savepalestinenow/israellaws/fulltext/absenteepropertyl650202.htm). Cemeteries, in particular, were subjected to extensive violations following their expropriation. For example, the Mamilla or Maman Allah cemetery in Jerusalem was largely destroyed for construction of the Museum of Tolerance. The cemetery was expropriated as absentees' property and then allocated to a company to build the museum. See Campaign to Preserve Mamilla

Following Israel's annexation of East Jerusalem, the Israeli authorities gradually applied the Absentees' Property Law to further the dispossession of Palestinian land and refugee property in the city. In 1968, the Israeli State Attorney issued a guideline to the Israeli authorities in charge not to confiscate the properties of Palestinians who remained in the rest of the West Bank, but allowed the confiscation of properties of Palestinians and other Arabs who ended up as refugees outside the OPT.[505] Two years later, Israel passed the Legal and Administrative Matters Law, which regulated the application of Israeli laws in annexed East Jerusalem, including the application of the Absentees' Property Law.[506] Until 1977, there was limited application of the law in Jerusalem. However, when the Likud Party came to power that year, the government of prime minister Menachem Begin changed this policy. It passed a decision in December 1977 that allowed for the confiscation of all "absentees' properties", including of those Palestinians who were still in the OPT.

Israel's decision to move the municipal boundaries of Jerusalem to encompass East Jerusalem impacted Palestinians living in the West Bank who had property or parts of property in the newly annexed area. The Israeli authorities designated these as "absentees' properties" and as such subject to confiscation by Israel, even though in some cases they were located only a few metres from the Palestinian owners' homes.

It was not until 1992 that the application of the law drew public attention following the founding of an inter-ministerial commission to investigate the state's role, including the use of state funds, in confiscating properties in East Jerusalem and passing them to private individuals and Jewish settler organizations, mainly Ateret Cohanim (formally known as Ateret Yerushalayim) and Elad-Ir David Foundation (Elad).[507] Both organizations play a central role in the process of ensuring Jewish control in East Jerusalem, mainly by seeking to settle Jews in the Old City and in Palestinian neighbourhoods (see section 5.4.3 "Discriminatory allocation of expropriated Palestinian land for Jewish settlement"). The inter-ministerial commission looked into 68 such properties, a significant proportion of which were confiscated as "absentees' properties".[508]

Despite the Israeli Supreme Court's approval of the legality of the application of the Absentees' Property Law in the 1980s and 1990s,[509] in 2005 then Israeli attorney general Menachem Mazuz said that the "absence" of Palestinians who lived in the West Bank and owned property in East Jerusalem was merely "technical" and that there were several legal difficulties arising from the application of the law to such cases.[510] The authorities therefore decided that there should be a special commission under the law to approve the confiscation or the release of "absentees' properties" in East Jerusalem.[511] However, this position was changed in 2010 when a subsequent attorney general, Yehuda Weinstein, concluded that the law should be applied as before. In April 2015, the Israeli Supreme Court reaffirmed the applicability of the Absentees' Property Law to properties in East Jerusalem owned by Palestinians living in the West Bank, and approved all preceding expropriations carried out under the law.[512] As a result, the Absentees' Property Law continues to be used to confiscate properties in East

Jerusalem Cemetery, "Petition for Urgent Action on Human Rights Violations in Mamilla Cemetery by Israel", 10 February 2010, ccrjustice.org/files/MAMILLA%20_FinalSubmission.pdf
Another example is the cemetery of Al-Sheikh in Haifa. See Globes Magazine, "מדינת ישראל שמה את עצמה במקום אלוהים": הקרב על המתים [The Battle over the Dead: "The State of Israel is Taking God's Role"], 18 January 2018, globes.co.il/news/article.aspx?did=1001219181 (in Hebrew).

[505] Adalah, בקשת רשות להצטרף כידידי בית המשפט לכמה עתירות נגד החלת חוק נכסי נפקדים בירושלים המזרחית [Request for permission to join as amici curiae in petitions against the application of the Absentees' Property Law in East Jerusalem], 4 July 2013, adalah.org/uploads/oldfiles/Public/files/Amicus%20Opinion_August_2013.pdf (in Hebrew).

[506] State of Israel, Legal and Administrative Matters (Regulation) Law (Consolidated Version), passed on 5 August 1970 (an English translation is available at nevo.co.il/law_html/law150/laws%20of%20the%20state%20of%20israel-24.pdf).

[507] Ateret Yerushalayim, About the Yeshiva, ateret.org.il/english/about (accessed on 27 August 2021).

[508] HaMoked, החלת חוק נכסי נפקדים בירושלים המזרחית [The Application of the Absentees' Property Law in East Jerusalem], 1 October 2013, hamoked.org.il/Document.aspx?dID=Documents3449 (in Hebrew).

[509] State of Israel, Supreme Court, *Levi and others v. Afaneh and others*, Civil Appeal 54/82, decision, 19 February 1986; HCJ, *Golan v. The Special Committee*, Case HCJ 4713/93, judgment, 7 September 1994, referring to Article 29 of the Absentees' Property Law. It should be noted that the Jerusalem District Court ruled in one case against the legality of the law, and the decision was appealed by the state. However, both parties reached an agreement and the appeal was cancelled. Thus no new decision on the legality of the law was made: State of Israel, Supreme Court, *The Custodian of Absentee Property v. Daqa Noha and others*, Case Civil Appeal 2250/06, decision, 13 February 2014.

[510] Adalah, "Request for permission to join as friend of the court in petitions against the application of the Absentee Property Law in East Jerusalem" (previously cited).

[511] State of Israel, Ministry of Justice, הודעת עדכון מטעם המדינה לביהמש העליון בעניין נכסי נפקדים [Announcement of update regarding absentee property on behalf of the State to the Supreme Court], Position of the State Attorney, 29 August 2013, justice.gov.il/Pubilcations/NewsOld/Pages/NichseyNifkadim.aspx (in Hebrew).

[512] Supreme Court, *The Custodian of Absentee Property v. Daqa Noha and others* (previously cited); NRC, *The Absentee Property Law and its Application to East Jerusalem,* February 2017, nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf

Jerusalem whose owners are in the West Bank, despite political criticism.[513] It also continues to be used as a tool by settler organizations to increase Jewish presence in East Jerusalem.[514]

The application of the Absentees' Property Law in East Jerusalem on Palestinian property but not on Jewish property demonstrates a discriminatory policy.[515] This conclusion is reinforced by the far more favourable way in which the Israeli authorities have dealt with property previously belonging to Jewish owners in East Jerusalem. In 1973, the Knesset passed an amendment to the 1970 Legal and Administrative Matters Law to address the question of pre-1948 Jewish properties in East Jerusalem. Under the amendment, the law transferred all pre-1948 Jewish properties in annexed East Jerusalem held by the Jordanian Custodian of Enemy Property to the Israeli Custodian General, the head of an entity under the authority of the Israeli Ministry of Justice that manages all property in Israel when the owners cannot manage it or are untraceable, but also plays a significant role regarding properties in East Jerusalem owned by Israelis before 1948.[516] Further, the law stated that, upon the request of the original Jewish owner or their lawful heirs, the Custodian General will release such properties back to them.[517] The law applies only to Jewish property owners, not to Palestinians whose properties, for example in West Jerusalem, were confiscated after 1948. It is a clearly discriminatory compensation scheme that only benefits Jewish property owners. It should also be noted that the original Jewish owners, mainly Jews displaced in the wake of the 1947-49 conflict, received alternative housing from the State of Israel after 1948.[518]

According to one estimate considering Israel and East Jerusalem together, the Israeli authorities have expropriated over 10,000 shops, 25,000 buildings and almost 60% of the fertile land belonging to Palestinian refugees under the Absentees' Property Law.[519]

LAND ACQUISITION LAW OF 1953

The mass confiscation of land was not limited to the property of Palestinian refugees and IDPs. In the early years following Israel's creation, there remained a sizeable amount of cultivable lands privately owned by Palestinian citizens of Israel who were not affected by the Absentees' Property Law. The authorities looked for other means to confiscate these lands and transfer ownership to the state. To that end, the 1953 Land Acquisition Law retroactively "legalized" expropriation of lands that the state, newly established Jewish localities and the Israeli army had taken control of using emergency regulations after the 1947-49 conflict. The law also laid the legal basis for further land expropriation.

The Israeli authorities had initially used the British-enacted 1945 Defence (Emergency) Regulations to declare certain areas as "closed zones" to prevent Palestinians from returning to their lands there or from farming them.[520] Together with the restrictions of the military administration over the movement of Palestinian citizens of Israel, these were an essential component of ensuring Jewish control over land (see section 5.3.4 "Use of military rule"). The Israeli-enacted Emergency Regulations (Security Zones) of 1949 then authorized the defence minister to declare security zones and order people to leave such areas. For example, the eviction of Palestinians from the villages of Iqrit and Biraim was conducted under these regulations.[521] The Emergency Regulations (Cultivation of Waste Lands and Use of Unexploited Water Resources) of 1948 authorized the minister of agriculture to take over uncultivated lands.[522] The 1949 Emergency Land Requisition (Regulation) Law permitted the "requisition" of land or buildings "for the defence of the state, public security, the maintenance of essential supplies or essential public services, the absorption of immigrants of the rehabilitation of ex-soldiers or war invalids."[523]

The land and property taken over under these emergency regulations were controlled and used by Jewish localities and institutions. However, the original Palestinian owners still held legal title to the land. Consequently, the Knesset passed the 1953 Land Acquisition Law that allowed the land to be confiscated and the legal title of the Palestinian owners to be terminated. Under this law, land could be registered as state land if:

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[513] Ir Amim, חוק נכסי נפקדים בירושלים [Absentees' Property Law in Jerusalem], bit.ly/2VuCh1I (in Hebrew).
[514] NRC, *The Absentee Property Law and its Application to East Jerusalem* (previously cited); Ir Amim, *Absentees against their will: Property expropriation in East Jerusalem under the Absentee Property Law* (previously cited).
[515] Ir Amim, *Absentees against their will: Property expropriation in East Jerusalem under the Absentee Property Law*, July 2010 ir-amim.org.il/sites/default/files/Absentees_against_their_will.pdf
[516] This is a separate role from the Custodian of Absentee Property, who is an appointee of Israel's minister of finance.
[517] Peace Now, *Systematic dispossession of Palestinian neighborhoods in Sheikh Jarrah and Silwan*, January 2019, peacenow.org.il/wp-content/uploads/2019/01/Legal-papaer-batan-sheikh-jarrah-eng.pdf
[518] Peace Now, *Systematic dispossession of Palestinian neighborhoods in Sheikh Jarrah and Silwan* (previously cited).
[519] Jewish News, "Why we need to speak about the Absentee Property Law", 5 July 2020, blogs.timesofisrael.com/why-we-need-to-speak-about-the-absentee-property-law
[520] British Mandate Government of Palestine, Defence (Emergency) Regulations, 1945, Regulation 125, imolin.org/doc/amlid/Israel/The_Defence_Emergency_Regulations_1945.pdf
[521] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 81.
[522] These regulations were repealed in 1984. See Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 81.
[523] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 81.

(1) it was not in possession of a third party on the 1st of April 1952;
(2) it was used or allocated by the state between 14 May 1948, and 1 April 1952, for development, settlement or security purposes; and
(3) it was still required for any of these purposes.

With a certificate issued by the minister of finance that these conditions applied, the land would be transferred to the Development Authority. Some 1.25 million dunams were expropriated in Israel under the Land Acquisition Law, 137,400 dunams of which were expropriated from Bedouins in the Negev/Naqab.[524] A small amount of compensation was proposed under this law, but few Palestinians applied for it. By 2000, Palestinians had filed only 15,975 compensation claims for 205,669 dunams that had been confiscated under both the Land Acquisition Law and the Absentees' Property Law.[525] The main reason for the low number of applicants was Palestinians' refusal to legitimize the Israeli confiscation of their lands. Further, the offered compensation was much lower than the real value of the land.[526]

LAND (ACQUISITION FOR PUBLIC PURPOSES) ORDINANCE OF 1943

Another legal tool used to confiscate land still in the hands of Palestinian citizens in Israel and, as of 1967, land in the hands of Palestinian residents of East Jerusalem was the British-era Land (Acquisition for Public Purposes) Ordinance of 1943. Under the ordinance, the minister of finance was given broad powers to expropriate land for "public purposes", which are any purposes defined as such by the minister. The minister is not required to provide details of the purpose and, upon the payment of compensation, the state takes permanent ownership or temporary use of the land.[527]

The ordinance laid the groundwork for confiscation of lands that still remained in the hands of Palestinians, allowing confiscation for a range of public purposes beyond those provided in other laws and regulations. Confiscation for "public purposes" has been abused to transfer land from Palestinians to the state and for the exclusive benefit of Jewish Israelis and institutions.

The major use of the ordinance began in the mid-1950s as part of the government's plans for "Judaizing the Galilee".[528] Major Jewish Israeli cities and towns (such as Upper Nazareth, Ma'alot and Karmiel) were planned to be built in the midst of predominantly Palestinian areas in the Galilee to obstruct any Palestinian geographic contiguity there.[529]

From the late 1950s, Israel used the ordinance to expropriate massive areas of privately owned Palestinian land and transfer it for the building and development of Jewish cities, towns and settlements by allocating it to the JNF/KKL. For example, in 1957 the Israeli authorities used the legislation to expropriate 1,200 dunams from Palestinian landowners in Nazareth and surrounding villages to be used to establish the Jewish town of Upper Nazareth.[530] The law was also used to expropriate over 20,000 dunams of land surrounding Palestinian villages in the Galilee, triggering protests in which six Palestinian protesters were killed and more than 100 were injured by Israeli forces on 30 March 1976.[531] Palestinians in Israel and the OPT commemorate the event each year as Land Day.

Under the ordinance, Israel expropriated at least 1.2 to 1.3 million dunams of land from the Palestinian population in Israel.[532] According to one academic study, a 1992 report of the Israel Land Administration, the Israeli government body then responsible for managing state land in Israel, indicates that the ordinance was invoked in the confiscation of 1.85 million dunams, 92% of which were privately owned by Palestinians.[533]

In 2001, for the first time, the Israeli Supreme Court challenged, in a landmark precedent, the law of land expropriation in Israel when examining the confiscation, under the 1943 ordinance, of land previously owned by Jewish Israeli owners. The *Karsik* case was brought by the heirs of the original Jewish owner. The precedent, delivered by a nine-judge bench each with different reasoning, ruled that if the public purpose that served as the basis for the land expropriation ceased to exist, as a rule the expropriation is to be cancelled, and the original

[524] Negev Coexistence Forum for Civil Equality (NCF), *The Bedouin-Arabs in the Negev-Naqab Desert in Israel*, August 2009, tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_NGO_ISR_99_9205_E.pdf, p. 36.
[525] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 82.
[526] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 82.
[527] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), pp. 86-89; and David Kretzmer, *The Legal Status of The Arabs in Israel*, 1990.
[528] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 86.
[529] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), pp. 86-87.
[530] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), pp. 86-89.
[531] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), pp. 86-89.
[532] Adalah, Land Acquisition Law (Actions and Compensation), adalah.org/en/law/view/533 (accessed on 15 September 2021).
[533] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 88.

owner is entitled to the return of the land subject to exceptions and rules that are to be formulated.[534] Following the decision, and fearing the large impact this might have regarding land confiscated from Palestinian owners, the Knesset passed legislation to circumvent the *Karsik* decision. The 2010 amendment to the Land (Acquisition for Public Purposes) Ordinance of 1943 affirmed the legality of Israel's ownership of the land expropriated under this law, even when the land was not used for the original purpose of the expropriation.[535] The amendment also authorized the minister of finance to sell the expropriated land to third parties, such as Jewish national institutions.[536] Adalah has documented that the aim of the amendment was primarily to block claims from Palestinian landowners to land confiscated from them for "public purposes" and which later was not used for that purpose.[537]

MILITARY ORDERS IN OPT

As mentioned above, Israel resorted to emergency and military legislation to confiscate Palestinian land in the West Bank beyond East Jerusalem and, until its unilateral withdrawal in 2005, in the Gaza Strip as well, in order to establish and maintain its control over the territory by building and expanding settlements and their related infrastructure, setting up national parks, archaeological sites and military "firing zones". In the first decade of the occupation of the West Bank and Gaza Strip, the Israeli authorities proceeded to confiscate privately owned Palestinian land mainly through requisition (or land seizure) orders, in addition to expropriation orders, absentee property orders and military orders declaring specific areas as "closed military zones".[538] These measures were legitimized by the Supreme Court of Israel, which ultimately rendered the question of the legality of the settlements non-justiciable.[539] The court held that the expropriation of private land to establish civilian settlements was legal as long as the expropriation was necessary for security reasons and temporary.[540]

Under requisition orders, Palestinian private owners were forced to "lease" their land to the Israeli state to build military bases and Jewish settlements, which the Israeli authorities claimed were needed for security reasons. While the orders were issued for limited periods, and as such were deemed temporary, the fact that they were renewable, on the one hand, and that they often failed to include an expiry date, on the other, meant that the requisition was in fact permanent. By contrast, expropriation orders forcibly transferred Palestinian private ownership rights to the state permanently. Given the permanent nature of the procedure, expropriation under military orders is authorized only if carried out for "public purposes" to serve the "local" population through infrastructure such as roads and public buildings. However, much of Palestinian land in the OPT was expropriated for the sole benefit of settlers to build settler-only bypass roads. Tens of thousands of dunams were also expropriated for the construction of Ma'ale Adumim and Ofra settlements near Jerusalem and Ramallah, respectively, under the guise of constructing an industrial zone and "workers' accommodations" in these areas.[541] In addition, vast parts of the OPT were declared as "closed military zones" under military orders, which prevented any Palestinians, including their legal owners, from accessing them without a special permit. Such areas include parts of the Jordan Valley and the South Hebron Hills, which are used primarily for military training, as well as land around settlements.[542]

Mirroring the provisions included in the 1950 Absentees' Property Law, which the Israeli authorities used to confiscate land and property belonging to Palestinian refugees and IDPs from the 1947-49 conflict, military orders and regulations concerning absentee property became another tool for the authorities to seize land and property left behind by Palestinian refugees who fled the West Bank and Gaza Strip during the 1967 conflict and have in most cases been barred from returning to their homes. Under Military Order 58 of 1967, "property whose

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[534] HCJ, *Karsik and Others v. Israel Lands Authority and Others*, Case HCJ 2390/96, judgment, 13 February 2001, versa.cardozo.yu.edu/sites/default/files/upload/opinions/Karsik%20v.%20State%20of%20Israel.pdf

[535] Adalah, "Knesset Enacts New Amendment to the Land Ordinance of 1943 to Block Palestinian Claims for Land Previously Confiscated by the State", 25 February 2020, adalah.org/en/content/view/7677

[536] Adalah, Land (Acquisition for Public Purposes) Ordinance – Amendment No. 10, adalah.org/en/law/view/502 (accessed on 29 August 2021).

[537] Adalah, "Knesset Enacts New Amendment to the Land Ordinance of 1943 to Block Palestinian Claims for Land Previously Confiscated by the State" (previously cited).

[538] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, nrc.no/globalassets/pdf/reports/a-guide-to-housing-land-and-property-law-in-area-c-of-the-west-bank.pdf

[539] HCJ, *Salama and Others v. Minister of Defense and Others*, Case HCJ 834/78, judgment, 15 January 1979, p. 471; HCJ, Beit El case, *Ayub and Others v. Minister of Defense and Others*, Case HCJ 606/78, 15 March 1979 (see also ICRC, Casebook, "Israel, Ayub v. Minister of Defence", casebook.icrc.org/case-study/israel-ayub-v-minister-defence); HCJ, *Amira and Others v. Minister of Defense and Others*, Case HCJ 258/79, judgment, 24 August 1979, para. 90; HCJ, Elon Moreh case, *Dweikat v. Government of Israel*, Case HCJ 390/79, judgment, 22 October 1979, in HaMoked, "Seizure of Private Land for the Purpose of Building Settlements: HCJ 390/79 *Dweikat v. Government of Israel,* Judgment, 22 October 1979", 1 January 2010, hamoked.org/Document.aspx?dID=Documents1240

[540] B'Tselem, "Israeli Settlement in The Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects", March 1997, btselem.org/sites/default/files/publications/199703_settlements_eng.pdf

[541] Bimkom and B'Tselem, *The Hidden Agenda: The Establishment and Expansion Plans of Ma'ale Adummim and their Human Rights Ramifications*, December 2019, btselem.org/download/200912_maale_adummim_eng.pdf

[542] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited)

legal owner, or whoever is granted the power to control it by law, left the area prior to 7 June 1967 or subsequently" is declared "absentee" or "abandoned" property. The order and its subsequent amendments transferred the administration of all "absentee" land and property to the Custodian of Absentee Property (and later on to the Custodian for Government and Abandoned Property in Judea and Samaria, the head of an entity under the authority of the Israeli Civil Administration charged with managing land and property in the occupied West Bank excluding East Jerusalem) until the return of its legal owners, who are allowed to claim it back. In practice however, in the rare cases where Palestinian owners were able to either prove that they were not absentees or return to the OPT under family unification procedures, they were for the most part unable to retrieve their land and businesses on the basis that any transaction relating to their transfer, and which was authorized by the Custodian of Absentee Property, was done in "good faith".[543] Indeed, thousands of dunams of absentee land in the Jordan Valley were allocated for settlement construction and the establishment of military bases. In 2006, Israeli officials admitted that owners of absentee land had been placed on a special list to prevent their return to the OPT and bar them from claiming their property.[544]

In 1979, a Supreme Court decision regarding the Elon Moreh settlement near Nablus forced the Israeli authorities to change their policy of requisitioning land for military purposes. The court ruled that the settlement was illegal because its purpose was not military after hearing arguments by both settlers and the serving army chief of staff at the time challenging the state's position of military necessity, which they advanced for ideological and strategic reasons. Since then, the use of requisition orders has dropped drastically but has not stopped altogether, while land requisitioned until then has never been returned to its Palestinian owners.

Following the court decision, the Israeli authorities started confiscating large parts of land unregistered in the Land Registry by declaring them state land based on Military Order 59 of 1967 Concerning State Property.[545] Under the order, "state property" is defined as any property that belonged to a "hostile state" before 7 June 1967, "or any property belonging to an arbitration body connected to a hostile state". This includes land that was unregistered, or land whose ownership was in the process of being determined by the courts (see section 5.4.2 "Land title settlement: registration of land rights") as well as both movable and immovable property. The order placed all such property under the authority of the Custodian for Government and Abandoned Property in Judea and Samaria and empowered them to enter into transactions related to that property which, even if that property was shown subsequently not to belong to the state, would still stand provided that they were done in "good faith". As in the case of "absentee property", the "good faith" provision prevented the overwhelming majority of Palestinian owners from retrieving their land even when they had legal claims.[546]

5.4.2 LAND TITLE SETTLEMENT: REGISTRATION OF LAND RIGHTS

The land title settlement process, which was initiated in 1928 under the British mandate, became an additional tool for Israel's dispossession of Palestinians across all domains of control and, ultimately, enabled the Israeli authorities to transfer millions of dunams of state land for Jewish settlement.[547] On the basis of their Land (Settlement of Title) Ordinance of 1928, the British authorities aimed to register land titles based on surveyed maps that divided land into identified blocs and parcels.[548] However, by the end of their mandate, they had only registered the title of some 5.5 million of Palestine's 26 million dunams, 5 million of which fell within what became Israel.[549] The British began the process selectively, mostly in Jewish areas or in areas where land disputes between Jews and Arabs existed.[550] The British ordinance, with a few amendments, was incorporated into the Israeli legal system and became known as the Land (Settlement of Title) Ordinance (New Version) or Land Law in 1969.[551] Through the legal reinterpretation of Ottoman and British law and, in the case of the OPT, Jordanian law, changes in the evidentiary rules, together with minor legal amendments, the Israeli government was able to exploit

[543] Badil, *Ruling Palestine* (previously cited).
[544] Haaretz, "Ministry Admits 'Blacklist' of Palestinians who left W. Bank", 5 July 2006, haaretz.com/1.4855904
[545] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).
[546] Badil, *Ruling Palestine* (previously cited).
[547] Alexandre Kedar and others, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev,* 2018; Dov Gavish, *Land and Map: The Survey of Palestine: 1920-1948*, 1991.
[548] British Mandate Government of Palestine, Land (Settlement of Title) Ordinance, Land Settlement Ordinance 9, 30 May 1928.
[549] Dov Gavish and Ruth Kark, "The Cadastral Mapping of Palestine, 1858–1928", 1 March 1991, the Geographical Journal, Volume 159, Issue 1, jstor.org/stable/3451491, pp. 70–80; Geremy Forman, "Settlement of Title in the Galilee: Dowson's Colonial Guiding Principles", 2002, Israel Studies, Volume 7, Issue 3, jstor.org/stable/30245596, pp. 61-83.
[550] Yitzhak Oded, "Land Losses among Israel's Arab Villagers", September 1964, New Outlook, pp. 7, 10, 13; Dov Gavish, *Land and Map*, The Survey of Palestine 1920-1948, pp. 201, 203, 205.
[551] State of Israel, Land (Settlement of Title) Ordinance (New Version), known as Land Law, passed on 17 July 1969 (an English translation is available at knesset.gov.il/review/data/eng/law/kns6_land_eng.pdf). See also Haim Sandberg, "Jerusalem: land title settlement and expropriation", Autumn 2004, Journal of Israeli History, Volume 23, Issue 2.

the unfinished land rights registration process to appropriate further Palestinian lands across all territorial domains and declare them to be state land.[552]

After 1948, Israel continued the land registration process, starting in the Galilee, where thousands of land disputes emerged in the second half of the 1950s as a result, and in deserted Palestinian villages and neighbourhoods in West Jerusalem (Lifta, Ein Karem and Qatamon). The purpose of this process was to transfer Palestinian refugee land and state land for Jewish settlement. First, the Knesset amended the rules of adverse possession, the process by which a land's possessor was able to gain a title to it following a particular period of time.[553] Adverse possession was central to Ottoman land law and to Palestine's land regime given the general lack of formal title registration until 1948. Under the Ottoman Land Code, to gain a title by adverse possession, claimants were required to show that they had possessed and cultivated the land for 10 years without dispute.[554] The Knesset extended the period required for a claimant to gain a title by adverse possession more than once and finally stated that the mere declaration of the settlement process over particular areas would freeze time for the purpose of making a claim by adverse possession, thereby preventing Palestinians from gaining titles to lands they had possessed before the founding of Israel.[555]

At the same time, the Israeli judiciary developed restrictions on the type and admissibility of evidence required to prove adverse possession. Whereas the actual possession of land was deemed central to prove rights during the British mandate, its significance declined dramatically during the 1950s.[556] The judiciary imposed rules that required a higher standard of proof for demonstrating that land was cultivated, setting a new condition that 50% of land had to be under cultivation and using mandate-era aerial photos taken in 1945 by the British as proof of lack of cultivation.[557] It also rejected tax payment records as evidence of cultivation or to prove rights in land settlement processes.[558] These judicial rules and precedents were applied in the Galilee in the 1950s and 1960s, and then applied both in the Negev/Naqab and, after 1967, in the West Bank (see below).[559] As pointed out in 1957 by Yosef Weitz, a pivotal JNF/KKL official who became the first director of the Israel Land Administration: "The aim of work until now has been to secure state ownership of its lands. The aim now is Yihud ha-Galil [Judaization of the Galilee]..."[560]

Similarly, the head of the Ministry of Justice's Registration and Settlement Department stated in 1959 that "[t]he work today is not done for settlement of title purposes only... but especially for clarifying the prospects of [Jewish] settlement in areas that are mainly inhabited by Arabs, mostly on land claimed by the State."[561] Many land disputes between the state and Palestinian landholders reached the Israeli courts. However, in 85% of the cases, the courts ruled in favour of the Israel Land Administration.[562]

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[552] State of Israel, Provisional Government, Law and Administration Ordinance, adopted on 19 May 1948, knesset.gov.il/review/data/eng/law/kns0_govt-justice_eng.pdf
This ordinance was adopted to maintain legal continuity after the establishment of the State of Israel on 14 May 1948. It provides for all existing laws to remain in force, subject to legal modifications resulting from either the state's establishment or subsequent legislation.

[553] Under the Ottoman Land Code, possession of land was allocated directly by the government through a title deed (*kushan*), which was proof of the individual's right to use the land, but not of actual ownership. The Ottomans had a clear interest in guaranteeing the cultivation of the land, which was reflected in Article 78 of the Land Code: "Everyone who has possessed and cultivated *miri* [state agricultural land]... land for ten years without dispute acquires a right by prescription and whether he has a valid title deed or not, the land cannot be regarded as abandoned, and he shall be given a new title deed free of charge." The British Mandate Government treated the title deed (*kushan*) as a proof of full ownership of the land. See NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).

[554] Richard Tute, *The Ottoman Land Laws with a commentary on the Ottoman Land Code of 7th Ramadan 1274*, 1927, ra.smixx.de/media/files/Ottoman-Land-Code-1858-(1927).pdf, Article 78.

[555] Alexandre Kedar, זמן של רוב, זמן של מיעוט: קרקע, לאום, ודיני התיישנות הרוכשת בישראל [Minority Time, Majority Time: Land, Nation, and the Law of Adverse Possession in Israel] (in Hebrew), 1998, Tel Aviv University Law Review, Volume 21, Issue 3.

[556] Alexandre Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967", 12 December 2001, New York University, Journal of International Law and Politics, Volume 33, Issue 4, pp. 923-1000, law.haifa.ac.il/images/documents/theLegalTransformation.pdf

[557] Alexandre Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967" (previously cited).

[558] Alexandre Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967" (previously cited).

[559] Supreme Court, *State of Israel v. Salah Badaran*, Civil Appeal 518/61, judgment, 8 August 1962; *Ahmad Hamda v. Al Kuatli*, Civil Appeal 323/54, judgment, 10 May 1956. The precedent on land rights and reinterpretation of Ottoman and British law in the Negev is *Salim Al-Hawashlih v. State of Israel*, Civil Appeal 218/74, judgment, 2 August 1984. On the land title settlement in the Negev, see Alexandre Kedar and others, *Emptied Lands* (previously cited). On the West Bank, see B'Tselem, *By Hook and by Crook* (previously cited).

[560] State of Israel, Minutes of Supreme Land Settlement Committee, 5 August 1957, cited in Geremy Forman, "Settlement of title in the Galilee: Dowson's colonial guiding principles" (previously cited).

[561] Alexandre Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967" (previously cited).

[562] Alexandre Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967" (previously cited).

In 1951, the Knesset passed the State Property Law, which transferred ownership of all properties of the British Mandate Government of Palestine to the State of Israel (Article 2), as well as ownership of properties with no owners (Article 3). The mandate government claimed ownership of over 1 million dunams, so these were transferred to the State of Israel.[563] Under the process of land title settlement, the Israeli government also transferred close to 10 million dunams of land considered as wasteland so that it was classified as state land. Hence, the Israeli government claimed large tracts of both wasteland and cultivated land. In the Negev/Naqab, the land title registration process was more complex and remains disputed until today, as the Israeli government deems the land cultivated by the Bedouin as *mewat* (dead or waste) land,[564] despite their cultivation by Bedouin communities.[565]

In parallel, following the 1947-49 conflict, the Jordanian authorities continued the British-initiated land registration process in the West Bank, mainly in the Nablus and Ramallah sub-districts and in the Jordan Valley. By 1967, only about 30% of the West Bank was registered under the land title settlement procedure, including 12% registered as state land.[566] In East Jerusalem, Jordan registered only a few land blocs; 90% of the land remained unregistered at the time of annexation.[567] The Israeli land authorities failed to register any of the land transactions in these registered blocs.[568] In 1968, Israel suspended the land settlement process in the OPT, including in East Jerusalem.

As a result, individuals living in the West Bank (excluding East Jerusalem) who wished to register previously unregistered land had to do it privately under a procedure known as "first registration". However, the large amount of evidence required to prove both possession and continuous cultivation of land, the high costs involved and the length of the procedure meant that it was inaccessible for most Palestinians. The procedure therefore mostly benefited Israeli settlers and companies who wanted to register the ownership of land that they had bought, or claimed to have bought, in the West Bank.[569] Amongst such companies are subsidiaries of the JNF/KKL whose presence and activities were facilitated through Israeli military orders and amendments to Jordanian laws (see section 5.4.3 "Discriminatory allocation of expropriated land for Jewish settlement").[570]

Over the years, the Israeli authorities were able to exploit the suspension of the land settlement process and non-registration of individual property rights to gain control over large parts of Palestinian land in the OPT, including in East Jerusalem, for the sole benefit of its Jewish population. As stated above, following the 1979 Supreme Court ruling on the Elon Moreh settlement (see section 5.4.1 "Land expropriation laws and policies") the Israeli authorities largely stopped the requisition of private land in the OPT for the construction of settlements. Instead, they proceeded to declare hundreds of thousands of dunams of unregistered and uncultivated land as state land through a simple procedure defined under the Civil Administration's internal rules, which did not seek to establish individual property rights.[571]

To declare land as state land, the Custodian for Government and Abandoned Property in Judea and Samaria merely had to claim ownership of a specific area before making it public by signing a document specifying its exact location and total area, and delivering it to the *mukhtar* (representative) of the concerned village. Declarations of state land were in most cases not registered in the Land Registry but kept in a separate registration system administered by the Custodian for Government and Abandoned Property in Judea and Samaria. Even though anyone was entitled to submit an objection to a state land declaration within 45 days of its issuance, in

[563] State of Israel, State Property Law, passed on 6 February 1951, Article 2 (an English translation is available at nevo.co.il/law_html/law150/laws%20of%20the%20state%20of%20israel-5.pdf).
Article 2 states that all property, movable and immovable, that belonged to the Palestine government during the Mandate became the property of the State of Israel as of 15 May 1948.
[564] See NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited), p. 23: "*Mewat* land ('dead land') is land that was not allotted to anyone, which is not cultivated, and is 2.5 kilometres or more away from the built-up area of the nearest village. In *mewat* land, all aspects of ownership are held by the state. The individual is allowed to acquire rights to *mewat* land only if he/she revived it (agriculturally speaking) and turned it into fertile land…" See also Richard Tute, *Ottoman Land Laws with a commentary on the Ottoman Land Code of 7th Ramadan 1274* (previously cited), Ottoman Land Code, Articles 6 and 103.
[565] Alexandre Kedar and others, *Emptied Lands* (previously cited).
[566] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).
[567] Ir Amim, "Monitor Report on the Implementation of Government Decision 3790 for Investment in East Jerusalem, Quarterly Report No. 2 for 2021", May 2021, ir-amim.org.il/sites/default/files/3790%20Monitor%20Report_May%202021_English_0.pdf
[568] Sami Ersheid, "Integrity: Legal Aid, Advocacy, Research and Institutional Strengthening", webinar in Land Registration Event: East Jerusalem and the West Bank, 7 April 2021.
[569] Ir Amim, "Monitor Report on the Implementation of Government Decision 3790 for Investment in East Jerusalem, Quarterly Report No. 2 for 2021" (previously cited).
[570] Badil, *Ruling Palestine* (previously cited).
[571] Declarations of state land were also allowed to be made on land that was cultivated but that had not been continuously cultivated for 10 years prior to the declaration. NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).

practice, such objections were submitted only in rare cases due to the high costs and high threshold of evidence required. Further, when examining such cases, the Military Appeals Committees applied the same higher standard of proof for demonstrating cultivation of land as in the case of the dispossession of Palestinian land in Israel in the 1950s.[572] Indeed, the Israeli authorities applied the same interpretation of Ottoman laws as they did inside Israel in order to redefine land registration requirements to confiscate Palestinian lands for the benefit of Jewish Israelis.

As a result, despite the Elon Moreh court ruling in 1979, Israel was able to more than double the amount of state land in the West Bank within 13 years such that it constituted about 25% of the territory by 1992.[573] It had increased it to around 27% of the West Bank by 2010.[574]

Meanwhile, in annexed East Jerusalem, Israel's non-registration of Palestinians' land titles has been one of the key obstacles to urban planning and contributed to home demolitions over the years as registration of ownership is one of the conditions for issuing building permits. The freeze on land settlement persisted until the adoption of Government Resolution 3790 in 2018, a five-year plan apparently aimed at "narrowing socio-economic gaps and economic development in East Jerusalem" (see section 5.5.3 "Discriminatory provision of services"). In addition to deepening Israel's control over East Jerusalem in general, and failing to meet the population's needs, the plan envisages the full settlement and registration of land rights in East Jerusalem by 2025. While some Palestinians could obtain legal ownership of their lands through this process, Israeli organizations have warned that the mechanism could be misused to register lands to the state or Jewish individuals claiming ownership over property purchased before 1948 based on the provisions of the Legal and Administrative Matters Law of 1970 and the Absentees' Property Law, without addressing Palestinian property claims or the rights of long-term Palestinian residents.[575] As a result, it could become another major tool of furthering Palestinian dispossession in the city for the purpose of maintaining a Jewish majority.

Indeed, in 2020, the Israeli authorities initiated land registration procedures in the Umm Haroun area of Sheikh Jarrah based on Government Resolution 3790 in the first land settlement process they had undertaken in East Jerusalem since the beginning of the occupation in 1967. They did so without informing the public or the 45 Palestinian families residing in the area, and exclusively registered properties under the alleged ownership of Jewish owners. The land registration process is being carried out the same time as ongoing eviction lawsuits filed against Palestinian families in Sheikh Jarrah by settler organizations (see section 5.4.3 "Discriminatory allocation of expropriated Palestinian land for Jewish settlement"). A petition by residents and two Israeli human rights group demanding the immediate freeze of land registration in Umm Haroun was pending before the Israeli Supreme Court as of the end of August 2021.[576]

In the Gaza Strip, about 30% of the land remained unregistered in 1949 when Egypt took control over the territory. The Egyptian authorities took some steps to protect land ownership rights, and allowed individuals who were in physical possession of the land to register it under their name upon payment of a tax. Still, many landowners chose to only register parts of their land, or not to register it at all, in order to avoid the tax and, as a result, large parts of Gaza remained unregistered. This also facilitated the Israeli process of land confiscation for the construction of Israeli settlements following the occupation.[577]

5.4.3 DISCRIMINATORY ALLOCATION OF EXPROPRIATED PALESTINIAN LAND FOR JEWISH SETTLEMENT

In parallel to the mass land expropriations from Palestinians to the Israeli state and Jewish organizations, the Israeli government enabled Jewish localities and settlements to use the expropriated lands. In Israel and East Jerusalem, it transferred land from the state to Jewish national organizations and institutions, many of which serve Jews only, while the legal title of the land remained in the state's name. Some 93% of land in Israel and occupied East Jerusalem, comprising around 19.5 million dunams (1.95 million hectares), is now state land. The residual 7% of land in Israel is owned by private individuals.[578] Jewish Israelis own over half of this, that is around 3.5% to 4% of the total land.[579] About 80% of Palestinian citizens of Israel are packed into the remaining 3% to 3.5% of the land.[580]

[572] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).
[573] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).
[574] B'Tselem, *By Hook and by Crook* (previously cited), p. 24.
[575] Ir Amim, "Monitor Report on the Implementation of Government Decision 3790 for Investment in East Jerusalem, Quarterly Report No. 2 for 2021" (previously cited).
[576] Ir Amim and Bimkom, "Israeli initiates land registration procedures in Sheikh Jarrah to advance Jewish settlement", 4 May 2021, ir-amim.org.il/en/node/2639
[577] NRC, *A Guide to Housing, Land and Property Law in the Gaza Strip* (previously cited).
[578] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[579] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited); Adva Center, *Lands, Planning and Inequality: The Division of Space Between Jews and Arabs in Israel,* November 2000.
[580] Ruth Sar Shalom and Ruth Weinschenk-Vennor, "Land Registration in the Arab Society in Israel", sikkuy.org.il/wp-content/uploads/2011/07/land_registration_eng.pdf

In the rest of the OPT, the Israeli government adopted policies that allowed the allocation of state land almost exclusively to Israeli state institutions and organizations, and state and private companies, for the benefit of Jewish Israeli settlers.[581]

LAND ALLOCATION FOR JEWISH LOCALITIES IN ISRAEL

Some 93% of land in Israel and occupied East Jerusalem, comprising around 19.5 million dunams (1.95 million hectares), is now state land. The Israel Land Authority, a state body that succeeded the Israel Land Administration in 2009, administers state land in Israel and its Council determines how the land is managed and allocated.[582] The Council is made up of 14 members including the minister of housing as chair, seven representatives of government ministries and six representatives of the JNF/KKL, making it a national institution that explicitly privileges Jews.[583]

State land in Israel is largely used to develop Jewish towns and other localities. Palestinian citizens of Israel face severe restrictions in accessing state land for their development. They are effectively blocked from leasing land on 80% of state land.[584] This is the consequence of exclusionary and discriminatory policies pursued by Israeli state authorities and Jewish national institutions as well as residence restrictions based on "admissions committees" (see below) to newly established localities and neighbourhoods.[585]

Jewish national institutions in Israel have played a significant role in the expropriation of Palestinian land before and since the creation of Israel in 1948. The World Zionist Organization (WZO) was established in 1897 and "carried the main responsibility for establishing the State of Israel" as the main body representing Jewish communities. In 1901, the WZO established the JNF/KKL specifically to acquire land in Palestine for "the purpose of settling Jews on such lands and properties."[586] The Jewish Agency for Israel, which was set up in 1929 as the operative branch of the WZO, assists and encourages Jewish people to settle in Israel.[587] It was chaired between 1935 and 1948 by David Ben-Gurion, who became Israel's first prime minister.

Under the World Zionist Organization – Jewish Agency (Status) Law of 1952, the WZO retained a formal status as a quasi-governmental institution responsible for handling Jewish immigration, absorption and settlement in Israel.[588] Both the WZO and the Jewish Agency for Israel have been involved since 1948 in managing and leasing state land from the Israel Land Administration, and subsequently the Israel Land Authority, to settle Jewish immigrants in Israel, a use of state land which excludes non-Jews.

Before 1948, the JNF/KKL acquired a little over 800,000 dunams in Palestine.[589] Following the establishment of Israel, the JNF/KKL continued to act as a custodian and trustee of "Jewish national land".[590] The JNF/KKL also played a crucial role as a company registered in Israel that performed certain state functions on the basis of the Jewish National Fund Law of 1953. The law grants the JNF/KKL a special status in designing Israel's land policies in general and entitles it to tax breaks and financial benefits, while retaining semi-governmental functions.[591] Its remit includes the purchase and acquisition of lands and assets in areas in Israel or "in any area subject to the jurisdiction of the Government of Israel" for the purpose of settling Jews on them, and the reclamation and development of land in Israel.[592] After the purchase of 2 million dunams (the "two million deal") from the state in 1949 and 1950, the JNF/KKL became the largest agricultural landowner in Israel, serving Jews only, as per its charter.[593] In addition, the JNF/KKL purchased some 360 properties in the West Bank, and claims to be able to prove ownership for approximately 170 of them. Most of these purchase deals were completed by Himnuta, a

[581] ACRI, "Allocation of State Land in OPT", 23 April 2013, law.acri.org.il/en/2013/04/23/info-sheet-state-land-opt/
[582] State of Israel, Israel Land Authority, About Israel Land Authority, land.gov.il/en/Pages/AboutUs.aspx (accessed on 3 August 2020).
[583] State of Israel, Israel Land Authority, Israel Lands Council, gov.il/he/departments/topics/land_council/govil-landing-page (accessed on 30 November 2021).
[584] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[585] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[586] JNF/KKL, "A Company with Share Capital with No Par Value Memorandum of Association", 30 December 1953, kkl.org.il/files/HEBREW_FILES/odotenu/Memorandum-of-Association-English.pdf, Article 3(a).
[587] Jewish Agency for Israel, Who We Are, jewishagency.org/who-we-are (accessed on 3 February 2021).
[588] World Zionist Organization – Jewish Agency (Status) Law (5713) of 1952, 24 November 1952 (an unofficial English translation is available at adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf); Stefan Berger and Thomas Fetzer, *Nationalism and the Economy: Explorations into a Neglected Relationship*, 10 January 2019.
[589] Moshe Aumann, *Land Ownership in Palestine, 1880-1948*, 1976.
[590] JNF/KKL, Jewish People Land, kkl-jnf.org/about-kkl-jnf/kkl-jnf-id/jewish-people-land (accessed on 31 January 2020).
[591] Adalah, Jewish National Fund Law, adalah.org/en/law/view/531 (accessed on 31 January 2020).
[592] JNF/KKL, "A Company with Share Capital with No Par Value Memorandum of Association" (previously cited).
[593] Yifat Holzman-Gazit, *Land Expropriation in Israel: Law, Culture and Society*, 2007; Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine*, 2006, p. 139.

subsidiary of JNF/KKL (see section 5.4.1 "Land expropriation laws and policies"), following the start of Israel's occupation in 1967. Some were bought before 1948 directly by JNF/KKL.[594]

In 1960, the Knesset passed the Israel Land Administration Law.[595] This established the Israel Land Administration (which became the Israel Land Authority in 2009) to administer state land along with the Development Authority and the JNF/KKL. That same year the Knesset passed the Basic Law: Israel Lands, which prevented the sale of land by the Israel Land Administration but allows the lease of state land to the public, the JNF/KKL or the WZO and the Jewish Agency for Israel for up to 98 years. Under Article 1 of the law, "The ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel [JNF/KKL], shall not be transferred either by sale or in any other manner."[596] A year later, the administration of the JNF/KKL land passed to the Israel Land Administration.[597]

Jewish national bodies generally do not lease land to non-Jews and do not accept them in the housing projects and/or communities they establish and other housing projects on state lands that have been developed specifically for new Jewish immigrants. About 13% of state land in Israel, or over 2.5 million dunams, is owned and administered solely through the JNF/KKL for use by Jews.[598] The discriminatory allocation of state land by the Israel Land Administration to the JNF/KKL, which in turn only developed the land exclusively for Jewish Israelis, was legally challenged in 2000. In the *Ka'adan* ruling, the Supreme Court of Israel held that the state cannot discriminate in the allocation of land on the basis of religion or nationality, after a Palestinian couple attempted to buy land in a Jewish locality established by the JNF/KKL on previously public land that had been allocated to it by the Israel Land Administration.[599] The new village had a committee to admit members who could become residents; one of its admission conditions was military service. The court ruled that this resulted in discriminatory land allocation. However, the decision stated that its impact was not retroactive. Hence, all past discriminatory land dispossession and allocation would not be scrutinized.

Following the *Ka'adan* ruling, the prevention of Palestinian citizens of Israel from leasing land from the JNF/KKL became less categorical, but it remains extremely rare for Palestinians to be able to do so even on new allocations. This is partly because the new allocations are generally for the expansion of Jewish communities and not Palestinian ones. It is partly because new localities began to utilize other means of profiling and selecting the residents. The exclusion of Palestinian citizens of Israel from state land continued, and Jewish national institutions retained their formal status in Israel's land policies and development. In 2007, CERD called on Israel to ensure that the WZO, including the Jewish Agency for Israel, and the JNF/KKL are bound by the principle of non-discrimination in the exercise of their functions.[600]

To circumvent the potential implications of the *Ka'adan* ruling, the Knesset passed in 2011 the Communities Acceptance Law. This allows "admissions committees" to determine who can be admitted to Jewish communities of fewer than 400 households in the Negev/Naqab and Galilee areas. Under the Law to Amend the Cooperative Societies Ordinance (No. 8), the "admissions committees" can base their selection on a set of vague standards, including the candidate's "social suitability" or lack of "compatibility with the social and cultural fabric" of the community, which is determined based on a "professional opinion by someone who is expert in identifying such suitability."[601] An "admissions committee" is made up of five members, including three representatives of the community, one representative of the WZO and the Jewish Agency for Israel, and one representative of the regional council that has jurisdiction over the community.[602] The functioning of the committees is not subject to any supervision by the Israeli authorities.

Adalah has shown that the primary objective of the law is to further marginalize Palestinian citizens of Israel and other marginalized groups in Israel, and to maintain segregation in housing and residence based on national

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[594] Haaretz, "JNF Approves West Bank, Jerusalem Plans that Could Lead to Palestinian Evictions", 2 September 2021, haaretz.com/israel-news/.premium-jnf-approves-west-bank-jerusalem-plan-that-could-lead-to-palestinian-evictions-1.10177648
[595] The name of the law was later changed to the Israel Land Authority Law.
[596] State of Israel, Basic Law: Israel Lands, passed on 25 July 1960, knesset.gov.il/laws/special/heb/yesod/kk000011.htm (in Hebrew) (an English translation is available at main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawIsraelLands.pdf).
[597] JNF/KKL, Memorandum and Articles of Association, 1961.
[598] Adalah, "Land Controlled by Jewish National Fund for Jews Only", 29 July 2007, adalah.org/en/content/view/6787
[599] HCJ, *Aadel Ka'adan v. Israel Land Administration*, Case HCJ 6698/95, judgment, 8 March 2000 (an unofficial English translation is available at escr-net.org/caselaw/2014/hc-669895-aadel-kaadan-v-israel-lands-administration-541-pd-258). See also Yifat Holzman-Gazit, *Land Expropriation in Israel: Law, Culture and Society*, 2007.
[600] CERD, Concluding Observations: Israel, 14 June 2007, UN Doc. CERD/C/ISR/CO/13.
[601] State of Israel, Law to Amend the Cooperative Societies Ordinance (No. 8), 2011 (an unofficial English translation is available at adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/12-Admissions-Committees-Law-2011.pdf). See also Adalah, "Israeli Supreme Court upholds 'Admissions Committees Law' that allows Israeli Jewish communities to exclude Palestinian Arab citizens", 17 September 2014, adalah.org/en/content/view/8327
[602] Law to Amend the Cooperative Societies Ordinance (No. 8) (previously cited), Article 2(B1).

identity.[603] The "admissions committees" operate in 695 agricultural towns and communities in Israel, which are distributed in 53 regional councils throughout the country that control around 81% of state land in Israel (excluding Jewish Israeli settlements in the occupied West Bank and Golan Heights).[604] For instance, in 2017 a new Jewish town scheduled to be built on the ruins of a Palestinian Bedouin village in the Negev/Naqab specified in its bylaws that the town's "admissions committee" would only permit the admittance of individuals to the town "if they meet the following qualifications: a Jewish Israeli citizen or permanent resident of Israel who observes the Torah and commandments according to Orthodox Jewish values…"[605] In 2019, Adalah found that over 20 other villages had established "admissions committees" despite having more than 400 households, in violation of the terms of the Law to Amend the Cooperative Societies Ordinance (No. 8).[606]

SETTLEMENT EXPANSION AND STATE-SUPPORTED LAND GRABS BY SETTLERS IN EAST JERUSALEM

Israel's land policies and practices in East Jerusalem, after its occupation in 1967, reflect similar legal patterns to those in Israel, although it pursued its allocation of land for Jewish settlements and other localities in East Jerusalem with even more intensity due to the special status and significance of the city of Jerusalem in Israeli politics.

By 2017, some 38% of land in East Jerusalem had been expropriated from Palestinians, most of it privately owned.[607] The Israeli government first confiscated close to 4,000 dunams in East Jerusalem to build the Jewish settlements of French Hill – Ramat Eshkol and Ma'alot Dafna – and then in April 1968 confiscated nearly 1,000 dunams to build Neve Ya'aqov, and an additional 116 dunams for the Jewish Quarter in the Old City. In total, it has constructed 13 Jewish Israeli settlements on expropriated; even though Israel refers to them as neighbourhoods of Jerusalem, they are illegal under international law.[608] The settlements were built in strategic locations to surround Palestinian neighbourhoods and therefore disrupt Palestinians' geographic contiguity and urban development.[609] Most of these confiscations took place under the Land Ordinance (Acquisition for Public Purposes) of 1943. As of July 2021, there were 225,178 Jewish Israeli settlers in East Jerusalem and 358,800 Palestinians.[610]

JUDAIZATION OF JERUSALEM: DEMOLITION OF MUGHRABI QUARTER

The first organized mass home demolitions by Israeli forces took place between 10 and 12 June 1967 at the end of the Six-Day War, in the Mughrabi (Moroccan) Quarter of the Old City of Jerusalem. The demolitions were ordered to create what became known as the Western Wall Plaza.[611] On 10 June 1967, Israeli authorities, on the orders of Jerusalem's then mayor Teddy Kolek, instructed 650 Palestinians to leave their homes immediately. The day after, Israeli authorities bulldozed 138 buildings and attempted to erase the Mughrabi Quarter, an area erected eight centuries earlier that included historic buildings and was home to the Moroccan community of Jerusalem.[612] A further 15 Palestinian buildings in the quarter were later destroyed in 1981. The residents were displaced to different places around the world.[613]

This was one of the first steps taken by Israeli authorities to change the geography and demography of the Old City in Jerusalem. Seeking to rebuild and expand the Jewish Quarter and to make the Western Wall Plaza, the Israeli government formally confiscated in April 1968 the lands of the Mughrabi Quarter, Al-Sharaf neighbourhood and

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[603] Adalah, *The Inequality Report: the Palestinian Arab Minority in Israel* (previously cited).
[604] Adalah, *The Inequality Report: the Palestinian Arab Minority in Israel* (previously cited).
[605] Adalah, "No non-Jews allowed: New Israeli Town of Hiran, to be built upon Ruins of Bedouin Village, is Open to Jewish Residents Only Contrary to State's Representations before Supreme Court", 8 August 2017, adalah.org/en/content/view/9186
[606] Adalah, "Adalah demands Israel cancel illegal 'admissions committees' enforcing segregation in dozens of communities across the country", 25 June 2019, adalah.org/en/content/view/9751
[607] Ir Amim and Bimkom, *Deliberately Planned: A policy to thwart planning in the Palestinian neighborhoods of Jerusalem,* February 2017, ir-amim.org.il/sites/default/files/Deliberately%20Planned.pdf; B'Tselem, East Jerusalem (previously cited).
[608] B'Tselem, נתונים על הפקעת קרקעות במזרח ירושלים והשימוש בהן [Data on land expropriation and use in East Jerusalem], 28 August 2013, btselem.org/hebrew/jerusalem/land_expropriation_statistics (in Hebrew).
[609] 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, ir-amim.org.il/sites/default/files/akurim_ENG_for%20web_0.pdf
[610] Peace Now, Jerusalem (previously cited).
[611] Maryvelma Smith O'Neil, "The Mughrabi Quarter Digital Archive and the Virtual Illés Relief Initiative", Jerusalem Quarterly, Issue 81, palestine-studies.org/sites/default/files/jq-articles/The%20Mughrabi%20Quarter%20Digital%20Archive%20and%20the%20Virtual%20Ill%C3%A9s%20Relief%20Initiative.pdf, pp. 52-76.
[612] See Maryvelma Smith O'Neil, "The Mughrabi Quarter Digital Archive and the Virtual Illés Relief Initiative" (previously cited), p. 52.
[613] Nazmi Al-Jubeh, حارة اليهود وحارة المغاربة في القدس القديمة: التاريخ والمصير ما بين التدمير والتهويد [The Jewish Quarter and the Moroccan Quarter in the Old City of Jerusalem: History and Destiny between Destruction and Judaization], 2019, pp. 258-260; Tom Segev, *1967: Israel, the War, and the Year that Transformed the Middle East*, 2008, pp. 422-423.

the Jewish neighbourhood, totalling 116 dunams (about 137 dunams by 2011 following further expropriations).[614] The Israeli authorities prohibited Palestinian families from buying apartments in the newly constructed blocks in the Jewish Quarter.[615]

In addition to the Israeli state's allocation of confiscated Palestinian land for advancing Jewish settlement in Jerusalem, Jewish settler organizations have relied on the Absentees' Property Law and the Legal and Administrative Matters Law to devise a legal scheme to dispossess Palestinians of their properties, allow Jewish settlers to settle in predominantly Palestinian neighbourhoods and further the expansion of Jewish settlements. Land and property grabs by settler organizations have taken place with the assistance of state institutions, including the Custodian General, the JNF/KKL and the judiciary.

In most cases, Jewish settler organizations (for example, Ateret Cohanim and Elad) have reached out to the Jewish owners or their heirs and bought the rights to properties that belonged to Jewish owners in 1948. The settler organizations have then asked the Custodian General to transfer, or release, the management and rights over these properties to them, even if these properties are inhabited by Palestinian families who have lived in them since as far back as 1948. The releases have enabled the settler organizations to initiate eviction lawsuits against the Palestinian families living in the properties.[616]

Tens of properties have been released under this law to Jewish individuals and organizations. According to OCHA estimates in 2019, there were 199 Palestinian families, comprising 877 people, facing eviction cases and at risk of displacement.[617] Most of these cases are in the Old City and the neighbourhoods of Sheikh Jarrah and Silwan. The Israeli government tries to depict such eviction cases as merely civil lawsuits over disputed properties between different individual parties.[618] However, the eviction of Palestinian families and the settling of Jewish settler families in these properties in predominantly Palestinian neighbourhoods brings with it much distress, dire humanitarian consequences and creates a coercive environment for the local Palestinians.[619] Crucially, these eviction lawsuits are part of a coordinated campaign aimed at consolidating Israeli control over the areas, forcibly transferring Palestinians and establishing Jewish Israeli presence in their place. They are based on laws that are inherently discriminatory against Palestinians and offer only limited legal recourse to them, with courts regularly upholding eviction claims by settlers.[620]

In other examples such as the case of the Umm Haroun area of Sheikh Jarrah, the Custodian General has sold lands to Jewish settler groups and initiated eviction cases against Palestinian families.[621]

SHEIKH JARRAH

Sheikh Jarrah is a Palestinian residential neighbourhood to the north of the Old City in East Jerusalem. It has been a target of a sustained campaign to step up forced evictions of Palestinian residents to make way for Israeli settlers. According to OCHA, since 2009 there have been 21 demolitions in Sheikh Jarrah (as of 31 July 2021).[622] Seven Palestinians families in Sheikh Jarrah are facing imminent threat of forced eviction from their homes after the settler company Nahalat Shimon International filed lawsuits in 2008 with the Jerusalem Magistrates' Court to seize their homes, referring to inherently discriminatory laws such as the Legal and Administrative Matters Law and the Absentees' Property Law.[623] Following lengthy legal processes, on 4 September 2020, the Jerusalem

[614] B'Tselem, Data on land expropriation and use in East Jerusalem (previously cited); Nazmi Al-Jubeh, *The Jewish Quarter and the Moroccan Quarter in the Old City of Jerusalem* (previously cited).
[615] HCJ, *Muhammad Said Burkan v. The Minister of Finance and others*, Case HCJ 114/78, judgment, 4 July 1978 (an unofficial English translation is available at hamoked.org/files/2010/112340_eng.pdf).
[616] OCHA, "Settler organization increasing presence in Palestinian neighbourhoods", 9 August 2019, ochaopt.org/content/palestinian-family-evicted-silwan-neighbourhood-east-jerusalem
[617] OCHA, "Settler organization increasing presence in Palestinian neighbourhoods" (previously cited).
[618] Peace Now, *Systematic dispossession of Palestinian neighborhoods in Sheikh Jarrah and Silwan* (previously cited).
[619] OCHA, "Humanitarian Impact of Settlements in Palestinian Neighborhoods of East Jerusalem: The Coercive Environment", 10 July 2018, ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive
[620] Ir Amim, *Old City Basin: Mass Palestinian Displacement & the Settlement Enterprise*, 27 April 2021, ir-amim.org.il/sites/default/files/Mass%20Palestinian%20Displacement%20from%20the%200ld%20City%20Basin%20-%20Full%20Version.pdf
[621] Peace Now, *Systematic dispossession of Palestinian neighborhoods in Sheikh Jarrah and Silwan* (previously cited).
[622] OCHA, Breakdown of Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 24 August 2021), "Breakdown by community".
[623] The company hopes to build a new settlement with some 200 housing units in the area. For more details, see Amnesty International, "Israel/OPT: End brutal repression of Palestinians protesting forced displacement in occupied East Jerusalem", 10 May 2021, amnesty.org/en/latest/news/2021/05/israel-opt-end-brutal-repression-of-palestinians-protesting-forced-displacement-in-occupied-east-jerusalem; NRC, "Stop the provocations and spare Palestinian and Israeli civilians", 12 May 2021, nrc.no/perspectives/2021/stop-the-provocations-and-spare-palestinian-and-israeli-civilians; Ir Amim, *Evictions and Settlement Plans in Sheikh Jarrah: The Case of Shimon HaTzadik,* 1 May 2009, ir-amim.org.il/en/report/evictions-and-settlement-plans-sheikh-jarrah-case-shimon-hatzadik, p. 13.

Magistrates' Court ordered the eviction of three families – the Hammad, Daoudi and Dajani families – by no later than 1 August 2021. The court also ordered the families to pay NIS 30,000 (USD 9,677) for Nahalat Shimon International's court fees and legal expenses. On 4 March 2021, the Jerusalem District Court rejected an appeal by the three families.[624] On 8 October 2020, the court had ordered the eviction of a further four families – the Skafi, Al-Kurd, Abu Hasaneh and Jaouni families. On 10 February 2021, following an appeal by three of the families, the Jerusalem District Court dismissed the appeal and ordered them to vacate their homes by 2 May 2021.[625]

In response to the imminent forced eviction of the seven Palestinian families, Palestinians held nightly demonstrations in the neighbourhood in early May 2021.The families also launched a campaign on social media under the hashtag #SaveSheikhJarrah attracting worldwide attention and mobilizing protesters on the ground. On 18 May 2021, Palestinians across cities and villages in Israel and the occupied West Bank and Gaza Strip closed their offices, shops, restaurants and schools, abandoned construction sites, and refused to report to work for the whole day. In a display of unity not seen for decades, they defied the territorial fragmentation and segregation they face in their daily lives and observed a general strike to protest their shared repression by Israel.

On 19 May 2021, Israeli authorities declared Sheikh Jarrah a closed military zone and limited Palestinians' entry into the neighbourhood, while allowing freedom of movement to Jewish settlers.[626] Palestinian residents continued to demonstrate outside their homes. Israeli security forces responded to the protests with arbitrary arrests of peaceful demonstrators, the use of excessive force, arbitrary use of sound and stun grenades as well as arbitrary spraying of skunk water at demonstrators and homes in Sheikh Jarrah.[627] They also fired concussion grenades at worshippers and protesters gathered in the Al-Aqsa mosque compound of the Old City in East Jerusalem.

The repression generated a wave of solidarity elsewhere in the OPT and amongst Palestinian citizens of Israel, across the Green Line. By coming out to protest, they were expressing unity, and a rejection of Israel's fragmentation of the Palestinian people. A manifesto published on social media by some activists denounced Israel's long-standing practices and policies that "tried to turn [Palestinians] into different societies, each living apart, each in its own separate prison".[628]

Following the nightly demonstrations and international pressure, the Israeli Supreme Court postponed the hearing at the request of the Israeli attorney general, on grounds related to national security and so that he would have sufficient time to weigh his potential involvement in the case on behalf of the state.[629] The attorney general later informed the Israeli Supreme Court that he would not intervene in the eviction case.[630] As of the end of August 2021, the outcome in the case was still pending.

Silwan is another area in East Jerusalem which has been facing immense pressure from ideologically driven Israeli settler organizations that attempt to take over their lands and homes based on inherently discriminatory laws and with the full backing of state institutions. It is also a case which illustrates Israel's use of archaeological sites and nature reserves in East Jerusalem to minimize Palestinian development in the city and consolidate Jewish control over strategic areas.

[624] Palestinian Human Rights Organizations Council, Cairo Institute for Human Rights Studies, Community Action Center, the Civil Coalition for Palestinian Rights in Jerusalem, "Joint Urgent Appeal to the United Nations Special Procedures on Forced Evictions in East Jerusalem", 10 March 2021, alhaq.org/cached_uploads/download/2021/03/10/joint-urgent-appeal-to-the-united-nations-special-procedures-on-forced-evictions-in-east-jerusalem-1615372889.pdf

[625] Ir Amim, "Update: Attorney General declines request to intervene in eviction cases in Sheikh Jarrah", 7 June 2021, ir-amim.org.il/en/node/2671

[626] Middle East Monitor, "Israel declares Sheikh Jarrah a closed military zone", 19 May 2021, middleeastmonitor.com/20210519-israel-declares-sheikh-jarrah-a-closed-military-zone

[627] Amnesty International, "Israel/OPT: End brutal repression of Palestinians protesting forced displacement in occupied East Jerusalem" (previously cited).

[628] بيان الكرامة والأمل [Manifesto of Dignity and Hope], posted on 18 May 2021 (available in Arabic at twitter.com/Majdkayyal/status/1394585550376644611 and in English translation at mondoweiss.net/2021/05/the-manifesto-of-dignity-and-hope).

[629] Haaretz, "Israel's Top Court Postpones Palestinian Eviction Hearing Amid Jerusalem Violence", 9 May 2021, haaretz.com/israel-news/.premium-israel-s-top-court-postpones-palestinian-eviction-hearing-amid-jerusalem-violence-1.9787755

[630] Haaretz, "Israel Won't Intervene in Sheikh Jarrah Case, Making Eviction of Palestinian Families More Likely", 7 June 2021, haaretz.com/israel-news/israel-sheikh-jarrah-east-jerusalem-palestinian-eviction-settlers-1.9880960; OCHA, "Response to the escalation in the oPt (11-17 June 2021)", Situation Report 4, 18 June 2021, ochaopt.org/content/response-escalation-opt-situation-report-no-4-11-17-june-2021

JUDAIZATION OF SILWAN

In 1967, Silwan village, located on the southern outskirts of the Old City of Jerusalem, became part of annexed East Jerusalem. Today, around 40,000 to 45,000 Palestinians live there and it is extremely overcrowded.[631] The village became home to Palestinian refugees from, among other places, West Jerusalem after 1948 and from the Mughrabi Quarter of the Old City after 1967. In recent decades, Silwan – primarily two of its neighbourhoods, Wadi Hilweh and Batn Al-Hawa – has been targeted for Jewish settlement, led mainly by two Jewish settler organizations – Elad and Ateret Cohanim – backed by the Israeli government.[632] Both organizations work to displace Palestinian families living in East Jerusalem through the Custodian of Absentee Property in order to hand over their homes to Jewish settlers, and have spearheaded forced evictions in Silwan.[633]

The first major Judaization project in Silwan was the establishment in 1974 of the Ir David (City of David) National Park in the western part of the neighbourhood of Al-Bustan, instituted by the Israel Nature and Parks Authority as part of a green belt around the Old City of Jerusalem.[634] Elad, together with then housing minister Ariel Sharon, sought to build an additional 200 housing units for Jewish Israeli settlers in 1992 on the archaeological site. The Israel Antiquities Authority objected and the project was stopped. Indeed, archaeologists and the Israel Antiquities Authority accused the director of Elad of destroying historical and archaeological sites.[635] However, in 1997, the Israel Land Administration transferred state lands in Silwan to Elad.[636] Then, in 2005, the Israel Nature and Parks Authority allowed Elad to operate the City of David site. That same year, the Israeli government allocated an annual budget of NIS 50 million over eight years as part of a plan to develop and preserve the Holy Basin around the Old City. A significant part of this plan is carried out in collaboration with Elad. A JNF/KKL report shows the strong connection between the JNF/KKL and Elad in transferring properties to Elad and facilitating its Jewish settlement enterprise in Silwan.[637]

Over the years Elad has closely supported the Israeli government in expanding the settlement compounds in Silwan, especially in the Al-Bustan neighbourhood. The organization hires well-resourced lawyers to file lengthy and exhausting lawsuits against Palestinian families.[638] It has successfully taken over approximately 75 Palestinian homes in the Wadi Hilweh neighbourhood of Silwan.[639]

In its early years, Elad acquired Palestinian-owned buildings in Silwan, evicting Palestinian residents and replacing them with Jewish settlers,[640] with a declared aim of Judaizing East Jerusalem.[641] Elad's settlement activity in Silwan began in 1991 with the confiscation of the property of the Palestinian Abbasi family in Wadi Hilweh neighbourhood as an "absentee property".[642] To this end, years earlier, the founding director of Elad, David Beeri, had taken a friend's tour guide card, changed the photo on it for his own, brought fake tour groups through

631 Amnesty International, email correspondence with Ir Amim, 28 May 2021, on file with Amnesty International.
632 Eyal Benvenisti and others, "The right to housing of long-term occupants and the competing rights of owners in the case of vulnerable communities: Summary", Amicus Curiae Brief to the Israeli Supreme Court, 21 July 2021, peacenow.org.il/wp-content/uploads/2021/07/Opinion_Summary_Batan_Al-Hawa_ENG.pdf; Haaretz, "Court okays eviction of Palestinian family because land was once owned", 20 January 2020, haaretz.com/israel-news/.premium-court-okays-eviction-of-east-j-lem-family-because-their-land-was-once-owned-by-jews-1.8414592; HCJ, *Sirhan and Others v. Custodian General and Others*, Case HCJ 7446/17.
633 OCHA, "Palestinian Family Evicted from Silwan Neighbourhood in East Jerusalem", 9 August 2019, ochaopt.org/content/palestinian-family-evicted-silwan-neighbourhood-east-jerusalem#ftn4
See also B'Tselem, "Batan al-Hawa neighborhood, Silwan: The Next Target for 'Judaization' of E. Jerusalem", 11 December 2016, btselem.org/jerusalem/20161208_batan_al-hawa
634 Ir David Foundation, The Ir David Foundation, cityofdavid.org.il/en/The-Ir-David-Foundation (accessed on 26 August 2021).
635 Ir Amim, *Shady Dealings in Silwan*, 1 May 2009, ir-amim.org.il/sites/default/files/Silwanreporteng.pdf, p. 20.
636 Ir Amim, *Shady Dealings in Silwan* (previously cited), p. 19; Emek Shaveh, "Elad's Settlement in Silwan", 10 September 2013, alt-arch.org/en/settlers
637 +972 Magazine, "Exclusive: Documents reveal decades of close cooperation between JNF and Elad", 19 October 2020, 972mag.com/exclusive-jnf-elad-jerusalem
638 Haaretz, "Right-wing Israeli Group Elad Received Millions From Shadowy Private Donors", 6 March 2016, haaretz.com/.premium-right-wing-israeli-group-elad-received-millions-from-shadowy-private-donors-1.5413604; Haaretz, "Israeli Court Evicts Palestinian Family From East Jerusalem Home, Lets Settlers Take Over", 19 June 2019, haaretz.com/israel-news/.premium-israeli-court-evicts-palestinian-family-from-e-j-lem-home-lets-settlers-take-over-1.7392845
639 Ir Amim, "Old City Basin Watch: Siam Family Evicted from Home in Wadi Hilweh, Silwan", 10 July 2019, altro.co.il/newsletters/show/11589?key=558859a4e0422f27d2e8d33fc907f31f
640 Ir Amim, *Shady Dealings in Silwan* (previously cited), pp. 11-18; Haaretz, "Israel to Give Highest Honor to Leader of Group That Settles Jews in Arab Jerusalem", 16 March 2017, haaretz.com/israel-news/.premium-israel-to-give-highest-honor-to-leader-of-group-that-settles-jews-in-arab-jerusalem-1.5449825; and Emek Shaveh, "Elad's Settlement in Silwan", 10 September 2013, alt-arch.org/en/settlers; Al Jazeera, "Jerusalem simmering over 'Judaisation' plan'", 13 October 2014, aljazeera.com/news/middleeast/2014/10/jerusalem-simmering-over-judaisation-plan-20141013640133133843.html
641 New York Times, "Settlers Move Into 4 Homes in East Jerusalem", 9 June 1998, nytimes.com/1998/06/09/world/settlers-move-into-4-homes-in-east-jerusalem.html
642 Ir Amim, *Shady Dealings in Silwan* (previously cited), p. 13.

the area and, over time, established a friendship with the Abbasi family, who invited him into their home.[643] By gaining the family's trust, David Beeri learned that some family members were "absentees" living in Arab countries. Together with the lawyers of Ateret Cohanim and the Israel Land Administration, he called on the Custodian of Absentee Property to declare the home as an "absentee property".[644] The Custodian of Absentee Property obliged in 1987. In 1991, a joint committee which included the Ministry of Housing and David Beeri, representing Elad, decided to lease the home to Elad. Following the decision, Elad evicted the Abbasi family and David Beeri moved in, despite a court ruling that the declaration of the home as an "absentee property" was based on a false deposition, with "no factual or legal basis" and that the entire process was tainted by "extreme lack of good faith".[645] In 2017, David Beeri was awarded the Israel Prize for special contribution to society and the state for his role with Elad.[646]

Since then, Elad, through its agents and enabled by the Israeli legal system, has continued to take over properties in Silwan, and has initiated plans to expand the area designated for tourism into Silwan, placing some 88 Palestinian homes in al-Bustan neighbourhood at risk of demolition for unlicensed building as a result of discriminatory planning and building policies.[647] In the past 13 years, the Israeli authorities have demolished some 164 structures in Silwan, displacing 260 Palestinians, including 186 children (see section 6.1.2 "Israeli policies and practices").[648]

Elad, with the support of the Israeli government, has further ambitious – and controversial – plans to build a massive new visitor complex and cable car station for the City of David tourist site with the aim of drawing millions of tourists into the area.[649] Elad is also proposing to turn part of the City of David into a large residential complex for Israeli settlers.[650] The use of archaeology and tourism by the Israeli government and Elad as a cover for forcibly displacing the Palestinian residents of Silwan and installing Jewish settlers has been widely criticized.[651] Digital tourism companies have also contributed to the illegal situation created by the presence and growth of settlement enclaves in East Jerusalem.[652]

In parallel, since 2001, Ateret Cohanim has been trying, with the support of Israeli authorities, to forcibly evict 84 Palestinian families from Batn al-Hawa neighbourhood, claiming the land is rightfully owned by a Jewish trust active in the area more than 100 years ago.[653]

In 2001, three people affiliated with Ateret Cohanim were appointed as trustees of an old Jewish endowment and in 2002 the Custodian General transferred land in the Batn Al-Hawa neighbourhood to the settler organization. This allows Ateret Cohanim to make eviction claims on Palestinian families who built their homes lawfully after

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[643] Haaretz, "The Republic of Elad", 23 April 2006, haaretz.com/1.4902353; Emek Shaveh, "Elad's Settlement in Silwan", 10 September 2013, emekshaveh.org/en/settlers

[644] Ir Amim, *Shady Dealings in Silwan* (previously cited), p. 13.

[645] State of Israel, Jerusalem District Court, *Legacy of the late Ahmad Hussein Musa al-Abbasi and Others v. the Jerusalem Development Authority and Others*, Civil Case 895/91, 1991.

[646] State of Israel, Ministry of Education, פרסי ישראל [Israel Prizes], 2017, cms.education.gov.il/EducationCMS/Units/PrasIsrael/winners2017/davidbeeri/DavidBeeryCV.htm (in Hebrew).

[647] Peace Now, *Settlement Under the Guise of Tourism: The Elad Settler Organization in Silwan*, 12 October 2020, peacenow.org.il/en/settlement-under-the-guise-of-tourism-the-elad-settler-organization-in-silwan; Haaretz, "'You Want a Girl? How Many?': Tapes Reveal How Right-wing Group Tried to Make East Jerusalem Jewish", 7 January 2018, haaretz.com/israel-news/.premium-tapes-reveal-how-right-wing-group-tried-to-make-east-jerusalem-jewish-1.5730050; Ir Amim, *The Giant's Garden: The "King's Garden" Plan in Al-Bustan*, May 2012, ir-amim.org.il/sites/default/files/al-Bustan%20ENG.pdf; and Al-Haq, *Parallel Report to the Committee on Economic, Social and Cultural Rights on the Occasion of the Consideration of the Third Periodic Report of Israel*, 1 September 2011, tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ISR/INT_CESCR_NGO_ISR_47_9141_E.pdf

[648] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 26 August 2021), "Community: Silwan".

[649] Emek Shaveh, "Elad's Kedem Center in Silwan was Approved by All the Planning Committees", 19 July 2017, alt-arch.org/en/kedem-center-in-silwan-was-approved-by-all-the-planning-committees

[650] Al-Haq, "88 Palestinian Houses to be demolished for Israeli Park", 11 February 2012, alhaq.org/monitoring-documentation/6931.html; Emek Shaveh, "Change in National Parks Law to Harm Natural and Heritage Sites, Play into Hands of Silwan Settlers, and Perpetuate Harm to Palestinians", 27 June 2018, alt-arch.org/en/change_national_park_law; Haaretz, "Right-wing Group Pushes Bill to Allow Residential Construction at Jerusalem's 'City of David' National Park", 4 July 2018, haaretz.com/israel-news/.premium-bill-to-allow-residential-building-at-city-of-david-national-park-1.6244150

[651] Amnesty International, *Destination: Occupation: Digital Tourism and Israel's Illegal Settlements in the Occupied Palestinian Territories* (Index: MDE 15/9490/2019), January 2019, amnesty.org/en/documents/mde15/9490/2019/en;
UN Human Rights Council, *Report of the Secretary General: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan,* 13 April 2017, UN Doc. A/HRC/34/39, pp. 5-6; Guardian, "Israel using tourism to legitimise settlements, says EU report", 1 February 2018, theguardian.com/world/2018/feb/01/israel-settlements-jerusalem-tourism-un

[652] Amnesty International, *Destination: Occupation* (previously cited).

[653] Ir Amim and Peace Now, *Broken Trust: State Involvement in Private Settlement in Batan Al-Hawa, Silwan,* May 2016, ir-amim.org.il/sites/default/files/Broken%20Trust-Settlement%20in%20Batan%20al-Hawa-Silwan.pdf

1948 and to purchase additional tracts of land previously managed by the Custodian General.[654] Ateret Cohanim has been accused of using methods that include bribery, straw companies and the exploitation of legal technicalities to gain ownership of Palestinian homes.[655]

Today, Ateret Cohanim plays an active role in detecting unlicensed construction and provides information to the relevant municipal units, which later appropriate the land.[656] According to the Israeli NGO Peace Now, Ateret Cohanim has filed eviction lawsuits against 84 Palestinian families living in the Batn Al-Hawa area of Silwan, putting 700 Palestinians at risk of being forcibly evicted.[657] According to Ir Amim, an Israeli rights group that focuses on Jerusalem:

The Ateret Cohanim settler organization is waging one of the most comprehensive state-backed settler takeover campaigns in East Jerusalem through initiating mass eviction proceedings against Palestinian families in Batan Al-Hawa.[658]

On 24 November 2020, Jerusalem Magistrates' Court ordered the eviction of eight Palestinian families in Batn Al-Hawa to be replaced by settlers.[659]

Jewish settlements, houses and compounds in the heart of Palestinian neighbourhoods have a disastrous impact not only on the displaced Palestinian families, but also on the entire neighbourhood and daily life of the Palestinians. Settlers are usually armed, and their compounds are fenced and protected by private security companies, which leads to friction with the local Palestinians. In several cases, these tensions have led to violent confrontations that usually end with the arrest and injury of Palestinians, including children. The settlers' control over land and property in Silwan has also led to the fencing of these sites, blocking passages that served the local Palestinian population and disrupting their lives.

LAND ALLOCATION FOR CONTINUED ILLEGAL SETTLEMENT EXPANSION IN OPT

Establishing and promoting Israeli settlements in the OPT and populating them with Jewish Israeli civilians has been an Israeli government policy since 1967. The first Israeli settlement of Kfar Etzion was created in the south of the occupied West Bank just three months into the occupation, in September 1967.

As explained above, Israeli settlements and their related infrastructure were initially built on privately owned land that was requisitioned for "military needs" or expropriated for "public purposes". Between 1967 and 1979, some 47,000 dunams were requisitioned for the construction of 14 settlements.[660] The settlement enterprise gained pace with the policy shift towards "state land declarations" following the 1979 Elon Moreh Supreme Court ruling (see section 5.4.1 "Land expropriation laws and policies"). Between 1967 and 2009, Israel had increased the total area of state land from some 530,000 dunams to 1.4 million dunams, the vast majority of it located in Area C of the West Bank, and allocated nearly half of it for civilian use. Of this, some 99.76% (674,459 dunams) was allocated for the exclusive benefit of Israeli settlements, according to information provided by the Israeli military in 2018 to Peace Now.[661] According to data obtained by ACRI in 2013, the Israeli Civil Administration allocated approximately a third of state land to the WZO (for the development of settlements), while the rest was allocated

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[654] Peace Now, *Broken Trust: State Involvement in Private Settlement in Batan al-Hawa, Silwan*, May 2016, peacenow.org.il/wp-content/uploads/2016/10/Broken-Trust-Settlement-in-Batan-al-Hawa-Silwan-1.pdf, pp. 4, 8, 9; Peace Now, "The Court Ruled to Evict Another Eight Families in Batan Al-Hawa, Silwan", 6 February 2020, peacenow.org.il/en/the-court-ruled-to-evict-another-8-families-in-batan-al-hawa-silwan

[655] Ir Amim, *Shady Dealings in Silwan*, 1 May 2009, iramim.org.il/sites/default/files/Silwanreporteng.pdf, pp. 15-19. See also T'ruah: The Rabbinic Call for Human Rights, *Rabbis File Legal Complaints in Regard to Israeli Group for Trading in Prostitution*, 17 January 2018, truah.org/press/rabbis-file-legal-complaints-in-regard-to-israeli-group-for-trading-in-prostitution; Haaretz, "'You Want a Girl? How Many?': Tapes Reveal How Right-wing Group Tried to Make East Jerusalem Jewish", 7 January 2018, haaretz.com/israel-news/.premium-tapes-reveal-how-right-wing-group-tried-to-make-east-jerusalem-jewish-1.5730050

[656] Al-Haq, *House Demolitions and Forced Evictions in Silwan: Israel's Transfer of Palestinian from Jerusalem*, 26 August 2020, alhaq.org/cached_uploads/download/2020/08/26/house-demolitions-and-forced-evictions-in-silwan-web-1598440511.pdf, pp. 27-42. See also Peace Now, "Court Rules to Evict Palestinian Rajabi Family in Silwan because of Discriminatory Property Law", 20 January 2020, 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

[657] Peace Now, "The Court Ruled to Evict Another Eight Families in Batan Al-Hawa, Silwan", 6 February 2020, peacenow.org.il/en/the-court-ruled-to-evict-another-8-families-in-batan-al-hawa-silwan

[658] Ir Amim, "Court Rules to Uphold Eviction Order of 8 Families From Batan Al-Hawa", 24 November 2020, ir-amim.org.il/en/node/2569

[659] Peace Now, "District Court Rejects the Appeal of 8 families from Batan Al-Hawa Ordering their Eviction", 24 November 2020, peacenow.org.il/en/district-court-rejects-the-appeal-of-8-families-from-batan-al-hawa-ordering-their-eviction

[660] B'Tselem, *Land Grab* (previously cited)

[661] Peace Now, "State land allocation in the West Bank - For Israelis only", 17 July 2018, peacenow.org.il/en/state-land-allocation-west-bank-israelis

to Israeli ministries, state companies, local and regional councils and mobile phone companies. By contrast, Palestinians have been allocated only 1,625 dunams.[662]

Such a discriminatory allocation of state land was authorized under Government Resolution 730 of 1979, which allowed the use of state land for three purposes only: military facilities, Jewish settlements and housing for Palestinian refugees in the West Bank and Gaza Strip. As a result of this decision, state land in the OPT can be allocated for Palestinian construction only for the benefit of refugees, while the rest of the population must use privately owned land.[663]

Further, much of the state land allocated by Israel for settlement construction and expansion is located on the central mountain ridge in the West Bank, in areas surrounding Palestinian villages. This process therefore contributed hugely not only to dispossessing Palestinians of a vital resource but also to the fragmentation of Palestinian land into separate enclaves, restricting their natural growth, and ensuring a geographic domination of Israeli settlements located on hilltops over Palestinian villages in cultivated valleys.[664]

All Israeli settlements in the OPT are illegal under international law, regardless of their status under Israeli law.[665] As already mentioned, there are currently more than 441,600 Jewish settlers in the West Bank excluding East Jerusalem.[666] Their presence is illegal under international humanitarian law. They live in 132 settlements that have been officially established by the Israeli government, as well as 140 unauthorized outposts that have been established since the 1990s without government approval and are considered illegal even under Israeli law.[667] In practice, the outposts are backed by senior officials and military officers, and Israeli authorities often immediately connect them to services such as water and electricity, to be authorized retroactively.[668] In February 2017, the Knesset adopted the Law for the Regularization of Settlement in Judea and Samaria to allow Israeli authorities to expropriate privately owned Palestinian land and retroactively "regularize" settlements and outposts built on such land.[669] The law was suspended shortly after, and the Supreme Court of Israel ruled in June 2020 that the law was unconstitutional.[670]

Today, Israeli settlements cover nearly 10% of the West Bank, and their regional councils have jurisdiction over 1.65 million dunams of land in Area C – roughly 63% of Area C (or 40% of the West Bank) where most settlers live.[671] Palestinians from the West Bank and Gaza Strip are banned from using this land, which is declared a closed military zone, and can only enter it as workers bearing special military permits.[672] They are also prohibited from entering jurisdictional boundaries of settlements, which the Israeli military also declares as closed or restricted areas. Over 400km of bypass roads that connect Israeli settlements are inaccessible or only partially accessible to Palestinians.[673] Further, the route of the fence/wall has been designed to encircle many Israeli settlements and effectively bars thousands of Palestinians from their agricultural land in addition to fragmenting the West Bank into separate enclaves.[674]

Israeli settlements in the West Bank, including East Jerusalem, are meant to be permanent places of residence or economic activity for Jewish Israelis and are built solely to serve their needs. Successive Israeli governments have unequivocally supported the expansion of Israeli settlements in the OPT, through a combination of legal and

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662 Peace Now, "State land allocation in the West Bank - For Israelis only" (previously cited).
663 NRC, *A Guide to Housing, Land and Property Law in the West Bank* (previously cited).
664 Eyal Weizman, "The Vertical Apartheid", openDemocracy, 13 July 2017, opendemocracy.net/en/north-africa-west-asia/vertical-apartheid
665 UNSC, Resolution 2334 (2016), 23 December 2016, UN Doc. S/RES/2334.
666 Peace Now, Population, peacenow.org.il/en/settlements-watch/settlements-data/population (accessed on 3 December 2021).
667 Peace Now, Population, peacenow.org.il/en/settlements-watch/settlements-data/population (accessed on 3 December 2021).
668 B'Tselem, Statistics on Settlements and Settler Population, 16 January 2019, btselem.org/settlements/statistics (accessed on 30 August 2021); Yesh Din, "Under the Radar: Israel's silent policy of transforming illegal outposts into official settlements", 11 March 2015, yesh-din.org/en/under-the-radar-israels-silent-policy-of-transforming-illegal-outposts-into-official-settlements-2
669 State of Israel, Law for the Regularization of Settlement in Judea and Samaria, 13 February 2017 (an unofficial English translation is available at adalah.org/uploads/uploads/Settlement_Regularization_Law_English_FINAL_05032017.pdf).
670 Adalah, "Initial analysis of the Israeli Supreme Court's decision in the Settlements Regularization Law Case", 15 June 2020, adalah.org/en/content/view/10035; HCJ, *Silwad Municipality and Others v. The Knesset and Others,* Case HCJ 1308/17, judgment, 9 June 2020.
671 OCHA, "Area C of the West Bank: Key humanitarian concerns", 18 August 2014, ochaopt.org/content/area-c-west-bank-key-humanitarian-concerns-august-2014; B'Tselem, Settlements, 16 January 2019, btselem.org/settlements (accessed on 27 August 2021).
672 State of Israel, Order concerning Security Directives – Judea and Samaria, Local command order 378, 1970; State of Israel, Declaration concerning Closure of an Area (Israeli Settlements), 6 June 2002 (first issued in 1995).
673 B'Tselem, Restrictions on Movement, 11 November 2017, btselem.org/freedom_of_movement (accessed on 30 August 2021); OCHA, "West Bank Area C: Key humanitarian concerns", 21 December 2017, ochaopt.org/content/west-bank-area-c-key-humanitarian-concerns
674 Amnesty International, *Israel and the Occupied Territories: Surviving under siege: The impact of movement restrictions on the right to work* (Index: MDE 15/001/2003), 7 September 2003, amnesty.org/en/documents/mde15/001/2003/en

administrative measures.[675] Israel has channelled and applied its own civil legislation through military orders that have enabled the authority of governmental institutions to be extended within the boundaries of the settlements.[676] It also provides subsidies, tax incentives and low-cost utilities and resources to encourage Jewish Israelis to live in these places and to support the settlement economy.[677] The settlement economy, which sustains the presence and the expansion of settlements, straddles the construction, agriculture, manufacturing, services and tourism sectors.

The impact of this discriminatory land regime is perhaps best exemplified in the Jordan Valley where the vast majority of Palestinian land has been allocated to serve Israeli interest and enable authorities to exploit Palestinian resources with even greater intensity than elsewhere in the West Bank in line with their stated intent to fully control and even annex the area (see section 5.1 "Intent to oppress and dominate the Palestinian people").

JORDAN VALLEY

The Jordan Valley constitutes almost 30% of the West Bank and 40% of Area C. Nearly 90% of the Jordan Valley has been designated as Area C, under full Israeli control, where about 65,000 Palestinians live in over 50 communities and some 11,000 Israeli settlers live in 36 illegal Israeli settlements and 18 outposts that are illegal even under Israeli law.[678] The remaining 10% is home to Palestinian towns and cities, including Jericho, located in areas designated as A or B under the Oslo Accords. These Palestinian communities are enclaved by Area C and are effectively cut off from each other and the rest of the Jordan Valley.[679]

The Jordan Valley contains some of the OPT's most fertile lands. In addition, it is scarcely populated and includes the largest land reserves in the West Bank, making it the most suitable area for any future development of urban centres, and economic activity such as agriculture or energy projects. However, the Israeli authorities have effectively turned the Jordan Valley into an Israeli enclave within the OPT.

They have barred Palestinians from using, or even entering, 85% of the area by allocating the land for several different, sometimes overlapping, purposes thus enabling it to consolidate its control over land whilst excluding its Palestinian population. As stated above, in the early years of the occupation, the Israeli authorities allocated thousands of dunams of absentee land for military bases and settlement construction. As of the end of 2017, nearly 50% of the Jordan Valley had been designated as state land, while 46% had been declared a "closed military area", including "firing zones" and settlements' jurisdictional areas, effectively making it off-limits to Palestinians. Some 20% was allocated to nature reserves; two thirds of this land were also declared military "firing zones".[680] Many of these "firing zones" are placed in some of the most marginalized communities in the Jordan Valley.[681] The Israeli army routinely demolishes Palestinian homes and structures in these "firing zones" (see section 6.1.2 "Israeli policies and practices"); by contrast, the Israel authorities have changed the status of some "of these "firing zones" to allow for the expansion of Israeli settlements located partially or completely in them.[682] Palestinian residents face settler violence, harassment by soldiers and access restrictions, all contributing to a coercive environment that puts pressure on Palestinian communities to leave these areas.

Additionally, Israeli authorities have imposed severe building restrictions on Palestinians living in the Jordan Valley and have carried out extensive demolitions of Palestinian structures that "lack building permits", claiming that the demolitions are simply enforcement of planning and building laws (see section 6.1 "Forcible transfer").

Finally, Israeli settlers have also used the complex land system in Area C combined with Israel's severe restrictions on Palestinians' freedom of movement into their agricultural lands to take over uncultivated Palestinian land and

[675] For a timeline of Israeli government policies on settlement expansion see UN Human Rights Council, *Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem*, 7 February 2013, A/HRC/22/63, pp. 24-39.

[676] Two relevant military orders have authorized the Military Commander to regulate the management of municipal local settlement councils: Military Order 892 concerning Administration of Regional Councils (Settlements), 1 March 1981; and Military Order 783 concerning Administration of Regional Councils (Judea and Samaria), 25 March 1979. See also B'Tselem, *Land Grab* (previously cited).

[677] B'Tselem, *By Hook and by Crook* (previously cited), pp. 37-48; UN High Commissioner for Human Rights, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/34/39, 13 April 2017.

[678] B'Tselem, The Jordan Valley, updated on 11 November 2017, btselem.org/jordan_valley (accessed on 30 August 2021)

[679] B'Tselem, The Jordan Valley (previously cited).

[680] B'Tselem, The Jordan Valley (previously cited).

[681] OCHA, *The Humanitarian Impact of Israeli-Declared "Firing Zones" in the West* Bank, August 2012, ochaopt.org/sites/default/files/ocha_opt_firing_zone_factsheet_august_2012_english.pdf

[682] OCHA, *The Humanitarian Impact of Israeli-Declared "Firing Zones" in the West* Bank (previously cited); Haaretz, "IDF Cancels Status of Firing Zone to Enable Expansion of Nearby Settlement", 8 March 2015, haaretz.com/.premium-idf-cancels-firing-zone-to-expand-settlement-1.5333505?lts=1600358118667

unregistered land near settlements. Without authorization, some Israeli settlers have managed to cultivate such lands for three years consecutively, enabling them to claim them in Israeli civil courts.[683] According to Kerem Navot, an Israeli human rights organization, between 1997 and 2012 Israeli settlers took over nearly 24,000 dunams in this way, including 10,000 dunams that were privately owned by Palestinians.[684]

RESTRICTING ACCESS TO 'BUFFER ZONE' AND MARITIME AREAS IN GAZA STRIP

With some 2 million people inhabiting 365km^2, the Gaza Strip is one of the most densely populated areas in the world.[685] The problems linked to that density are compounded by increasingly restricted access to land and substantial destruction of Palestinian residents' property as a result of discriminatory policies by Israel's army.

Historically, Israel established settlements in the Gaza Strip and applied similar discriminatory laws, policies and practices to the territory to seize some of the most fertile land from the Palestinian population. Between 6% and 12% of land confiscated through military orders in the Gaza Strip was allocated to Israeli settlements, fragmenting the geographic continuity of the territory.[686] In 2005, guided primarily by demographic considerations, Israel withdrew its settlers and ground troops and subjected the territory to a land, sea and air blockade, controlling all aspects of Palestinian lives within the territory.

While Israel no longer seizes houses and land from Palestinians in Gaza, it uses unlawful lethal force to control the "buffer zone", or access-restricted area located along the fence separating the territory from Israel, and the similarly access-restricted maritime area off Gaza's coast. Israel's military designated the areas as "high risk" and enforces movement restrictions through the use of force, often including unnecessary lethal force, when Palestinian civilians, often farmers or protesters, pose no threat to life.[687] The precise parameters of the "buffer zone" were not declared by Israel, although in 2009 it warned against going within 300m of the fence.[688] According to human rights organizations, the "buffer zone" extends to a distance between 300m and 1,500m from the fence and covers a total of about 62km^2, or roughly 17% of the total area of the Gaza Strip.[689] It extends over 35% of the agricultural land in Gaza. Meanwhile, the access-restricted maritime area covers 85% of its fishing waters.[690] In 2010, OCHA estimated that Israeli restrictions on access to land and fishing areas directly affect approximately 12% of Gaza's population.[691]

The current Israeli restrictions on land use in the "buffer zone" have been gradually imposed since the outbreak of the second *intifada* in 2000. Since then, the Israeli military started restricting access to agricultural areas near the fence that separates the Gaza Strip and Israel by enforcing a "no go" zone near the fence. By mid-2006, Israeli forces had completely levelled the land and demolished all civilian homes and structures located between 300m and 600m from the Green Line, forcibly displacing all families and communities from this area.[692]

Israel claims that it maintains the "buffer zone" to ensure the security of its soldiers and citizens. While such security concerns are legitimate and international humanitarian law authorizes Israel as the occupying power to prohibit or restrict access to certain areas as a necessary security measure, such measures cannot deprive the occupied population of their fundamental rights and must ensure their safety and well-being.[693] Israel's enforcement of the "buffer zone" does not meet such requirements and often results in violations of international human rights and humanitarian law.

At the same time, Israel's use of force in Gaza has seen massive destruction of houses, property, infrastructure and large swathes of farmland, in addition to many deaths and serious injuries of Palestinian civilians (see section

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683 Kerem Navot, *Israeli Settlers' Agriculture as a Means of Land Takeover in the West Bank*, August 2013, f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/cdb1a7_370bb4f21ceb47adb3ac7556c02b8972.pdf, p. 107.
684 Kerem Navot, *Israeli Settlers' Agriculture as a Means of Land Takeover in the West Bank* (previously cited).
685 Gisha, Gaza Up Close, features.gisha.org/gaza-up-close (accessed on 27 August 2021).
686 NRC, *A Guide to Housing, Land and Property Law in the Gaza Strip* (previously cited).
687 Al Mezan Center for Human Rights (Al Mezan), *Effects of Aerial Spraying on Farmlands in the Gaza Strip*, February 2018, mezan.org/en/uploads/files/15186958401955.pdf, p. 2.
688 Al-Haq, *Shifting Paradigms - Israel's Enforcement of the Buffer Zone in the Gaza Strip,* 23 August 2011, alhaq.org/publications/8080.html, Chapter 2; Palestinian Centre for Human Rights (PCHR), *Gaza Strip: Attacks in the border areas and their consequences,* 2014, reliefweb.int/sites/reliefweb.int/files/resources/ReliefWeb%20Mail%20-%20%5BPchrgaza-e%5D%20Fact%20Sheets_%20Gaza%20Strip_%20Attacks%20in%20the%20border%20areas%20and%20their%20consequences.pdf
689 NRC, *A Guide to Housing, Land and Property Law in the Gaza Strip* (previously cited), p. 16; Al Mezan, *2013 Statistical Report on Israeli Attacks in the Access Restricted Areas,* January 2014, mezan.org/en/uploads/files/18469.pdf, p. 3.
690 Al Mezan, *2013 Statistical Report on Israeli Attacks in the Access Restricted Areas* (previously cited), pp. 3-4.
691 OCHA and World Food Programme (WFP), *Between the Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed Restrictions on Access to Land and Sea in the Gaza Strip*, August 2010, ochaopt.org/sites/default/files/ocha_opt_special_focus_2010_08_19_english_1.pdf
692 Al Mezan, *2013 Statistical Report on Israeli Attacks in the Access Restricted Areas* (previously cited), p. 3.
693 Fourth Geneva Convention, Article 27.

5.5.1 "Suppression of Palestinians' human development" and section 6.3 "Unlawful killings and serious injuries").

5.4.4 DISCRIMINATORY URBAN PLANNING AND ZONING SYSTEM

In tandem with the system of land ownership and allocation, planning and zoning policies have been central in fulfilling Israel's policies of establishing Jewish control while marginalizing Palestinian communities in both Israel and the OPT. Planning has been used to expand the Jewish Israeli presence in strategic locations; build Jewish towns, cities and villages; obstruct the geographical expansion of Palestinian towns and centres; and regulate land use and Palestinian access to land by zoning it as green areas, industrial zones or military zones.

Across Israel and the OPT, Palestinians residing in unrecognized Bedouin villages in the Negev/Naqab, East Jerusalem and Area C of the West Bank are most affected by Israel's discriminatory planning and zoning system, which exposes their houses to a risk of demolition and deprives them of basic services.

PLANNING, BUILDING AND HOUSING POLICIES IN ISRAEL

Discriminatory planning, building and housing policies in Israel, which are linked primarily to the state's policy of large-scale confiscation of land and allocation of state land, as outlined above, affect the 1.9 million non-Jewish citizens of Israel, the vast majority of whom are Palestinian. Restrictive planning and building regulations, and discriminatory enforcement of these, make the homes of Palestinians much more likely to be demolished. Whereas government policies and planning regulations have curtailed the growth and development of Palestinian towns and villages, in the Jewish sector the policy has been to expand existing towns and villages and establish hundreds of new villages. As mentioned above, about 90% of Palestinian citizens of Israel live in 139 localities that control less than 3% of state land in Israel.[694] The vast majority of the remaining 10% live in "mixed cities", including Haifa, Ramla, Lod, Jaffa and Acre. By contrast, there are over 1,000 Jewish localities, with large municipal areas, that have developed infrastructure and low population density.[695]

Since 1948 the state has established more than 700 Jewish localities in Israel, whereas it has not established any new locality for Palestinians except for the state-planned Bedouin townships in the Negev/Naqab, which are designed for the forced urbanization of Bedouins.[696] In fact, nearly 500 Palestinian localities were destroyed by Israel after 1948, and tens of Palestinian villages that predated the state, or to which Palestinians were relocated after 1948, were excluded from the zoning maps and are now deemed illegal under Israeli planning laws. As a result, they are routinely subject to demolition by the Israeli authorities (see below).[697]

In 1965, Israel enacted the Planning and Building Law, which Israeli authorities used to devise planning schemes for Palestinian localities in Israel and create tight jurisdictions for their development and the expansion of their infrastructure.[698] Israeli authorities zoned as non-residential areas most of the privately owned Palestinian land that had not been confiscated under different laws. The law regulated and centralized all building and land use management under the authority of the Ministry of Interior. In 2015, some of this responsibility shifted to the Ministry of Finance.[699] Crucially, the law established a three-tiered system of planning bodies, at the local, district and national levels, each responsible for land use and planning under the different jurisdictions. The law also devised a hierarchy whereby the planning starts at the local level, then moves to district level and ends at the national level.[700]

The local outline (or master) plan serves as the initial step of development of localities in Israel, by setting out the planning policy of the locality through zoning and designation of land use. It is the legal basis for issuing building permits and the main tool through which central government enables local development. Palestinian localities

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[694] Badil, *Forced Population Transfer: The Case of Palestine: Discriminatory Zoning and Planning: Working Paper No. 17,* December 2014, badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf

[695] See, for example, ICBS, יישובים וחלוקות גאוגרפיות אחרות [Localities and Other Geographical Entities], cbs.gov.il (in Hebrew, accessed on 29 August 2021); Oren Yiftachel, "Ghetto citizenship: Palestinian Arabs in Israel" in Mada Center for Applied Research, *Israel and the Palestinians–Key Terms*, 2009.

[696] Adalah, *The Inequality Report: the Palestinian Arab Minority in Israel* (previously cited); Oren Yiftachel, "Ghetto citizenship: Palestinian Arabs in Israel" (previously cited), p. 59; Bimkom and Arab Center for Alternative Planning, *Outline Planning for Arab Localities in Israel,* 2012, bimkom.org/eng/wp-content/uploads/Outline-Planning-for-Arab-Localities-in-Israel-English2.pdf

[697] Hussein Abu Hussein and Fiona McKay, *Access denied* (previously cited), p. 69; Alexander Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967" (previously cited), p. 946. On unrecognized villages and house demolition in the Beersheba region, see, for example, NCF, dukium.org

[698] Sharri Plonski, *Palestinian Citizens of Israel: Power, Resistance and the Struggle for Space,* 2017.

[699] State of Israel, Planning and Building Law, passed on 14 July 1965 (an English translation is available at knesset.gov.il/review/data/eng/law/kns5_planning_eng.pdf); State of Israel, Ministry of Interior, Planning Administration, gov.il/en/departments/iplan (accessed on14 August 2021); State of Israel, PMO, התאמת מבנה ניהול הנדל"ן במשלה להתמודדות עם משבר הדיור [Adapting the Government's Real Estate Management Structure to Deal with the Housing Crisis], Government Resolution 125, 25 June 2015, gov.il/he/departments/policies/2015_dec125 (in Hebrew).

[700] Planning and Building Law (previously cited).

must rely on relevant Israeli ministries to devise and prepare their local outline plans. However, state planners fail to provide adequate plans for Palestinian localities that consider the needs of the residents and often take unreasonable time in preparing and updating local outline plans for Palestinian localities.[701]

According to a survey conducted by Bimkom – Planners for Planning Rights (Bimkom) and the Arab Center for Alternative Planning, two NGOs, of 119 Palestinian localities in Israel at the end of December 2011,[702] 75 had local outline plans initiated between 2000 and 2011 – some of which were up to date and others of which were at various stages of approval – while no updated local outline plan had been initiated for the remaining 44 localities.[703] This means that, prior to 2000, none of the Palestinian localities had been granted permission to expand, construction being allowed only within the municipal residential boundaries of the locality, despite the fact that the Palestinian population had increased 11-fold since the founding of Israel.[704] By contrast, for Jewish localities, the central government promotes and initiates local development plans with an underlying assumption of future expansion, so large land reserves for housing, employment and public lands are zoned for the jurisdiction of the locality.[705] As a result, it has been possible to re-zone agricultural land not just for building houses but also for constructing commercial properties. In addition, over the years, the Israel Land Administration and its successor, the Israel land Authority, have readily approved the re-zoning of land in kibbutzim (Jewish communities organized as collectives, with communal living and wealth held in common, and usually based on agriculture or industry) and moshavim (Jewish agricultural communities organized as cooperatives) from agricultural to commercial use.[706]

In the absence of a statutorily approved local outline plan that includes appropriate allocation of land zoned for housing, or if a locality is not recognized, all residential construction is prohibited. Thus, it is nearly impossible for Palestinians in many localities in Israel to apply for and obtain building permits.[707] This long-standing problem has prompted many Palestinians to build homes without permits, with the constant threat that the Israeli authorities will demolish them. According to an estimate by the Mossawa Center in 2019, around 50,000 structures were built by Palestinian citizens of Israel without a building permit.[708] Under the Planning and Building Law of 1965, any building or development without a building permit can be "demolished, dismantled or removed" by relevant Israeli authorities, and its owner may be liable for the cost of the demolition as well as a fine and/or imprisonment.[709]

Between 2012 and 2014, 97% of administrative demolition orders were issued in what Israeli authorities label the Arab sector, comprising mainly Palestinian citizens of Israel, but also the much smaller Druze minority. For Palestinian Bedouins in the Negev/Naqab, the buildings of whole communities have been repeatedly demolished. At the same time, Israeli courts have retroactively approved Jewish communities built without local outline plans and building permits in the same area (see box below and section 6.1 "Forcible transfer").

In 2017, Israel passed Amendment 116 to the Planning and Building Law of 1965, known as the Kaminitz Law, intended to increase the "enforcement and penalization of planning and building offences",[710] especially in the Arab sector. In 2019, then Israeli minister of justice Ayelet Shaked revealed the actual intent of the law:

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[701] Bimkom, *Outline Planning for Arab Localities in Israel* (previously cited).
[702] The 119 Palestinian localities constituted almost all of the Palestinian localities in the northern and central districts, but excluded Palestinian localities in the Negev/Naqab, "mixed cities" and Palestinian localities that were merged with Jewish cities. See, for example, Bimkom, *Outline Planning for Arab Localities in Israel* (previously cited).
[703] Bimkom, *Outline Planning for Arab Localities in Israel* (previously cited).
[704] ACRI and others, *Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016*, 29 January 2017, law.acri.org.il/en/wp-content/uploads/2017/02/2017.2.5-keminitz-law-position-paper-eng.pdf; Adalah, "Deliberate Obstacles, Not Failures: Adalah's Response to the State Comptroller's Report on the Housing Crisis in Israel", 28 April 2015, adalah.org/en/content/view/8536
[705] Bimkom, *Outline Planning for Arab Localities in Israel* (previously cited).
[706] Amnesty International, *Under the rubble: House Demolition and Destruction of Land and Property* (Index: MDE 15/033/2004), 17 May 2004, amnesty.org/en/documents/MDE15/033/2004/en
[707] See, for example, ACRI, "Before Demolishing – Let People Build Legally!", 17 January 2017, law.acri.org.il/en/2017/01/17/before-demolishing-let-people-build-legally; and HRW, "Israel: Discriminatory Land Policies Hem in Palestinians: Palestinian Towns Squeezed while Jewish Towns Grow", 12 March 2020, hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians
[708] Mossawa Center – the Advocacy Center for Palestinian Arab Citizens in Israel (Mossawa Center), "The 2019 State Budget and Government Resolution 922", 2019, mossawa.org/eng//Public/file/12019%20State%20Budget%20and%20Government%20Resolution%20922.pdf
[709] Planning and Building Law (previously cited), Articles 78, 204 and 205.
[710] Adalah, "Adalah's Objections to Discriminatory 'Kaminitz Bill' for Harsh Enforcement of Planning & Building Law in Israel", 30 March 2017, adalah.org/en/content/view/9068; Ir Amim and others, *Amendment 116 to the Planning and Building Law and the Palestinian Neighborhoods in East Jerusalem*, July 2019, ir-amim.org.il/sites/default/files/REPORT-%20AMENDMENT%20116%20TO%20THE%20PLANNING%20AND%20BUILDING%20LAW.pdf

When we made the Kaminitz Law, the goal was to toughen the enforcement over illegal construction mainly in the Arab sector; the authorities enforce the law on Jewish farmers as well… I do not want to cancel the law because it led to good results in the Arab sector, but we need to see how we can change the law. After all, it is overly onerous toward residents of moshavim.[711]

One of the main consequences of these various policies is an acute housing shortage for Palestinians in Israel. According to estimates by Israel's State Comptroller in 2015, an ombudsperson reporting to the Knesset with the authority to review the policies and operations of government, the Palestinian population needed 13,000 new housing units per year.[712] However, Adalah reported in 2017 that only about 7,000 units were being built, mostly through private construction.[713] This leaves an annual shortfall of 6,000 housing units in Palestinian localities. Yet, the Israel Land Authority and Ministry of Construction and Housing discriminate against Palestinian communities in the allocation of land and housing units in favour of Jewish localities and mixed cities. For example, in 2016, the Israel Land Authority issued tenders for the construction of 49,903 housing units in Jewish Israeli localities (excluding "mixed cities", which have 5,528 housing units), but only of 4,151 housing units in "Arab localities" (6.4% of all new construction tenders).[714]

The Negev/Naqab is a prime example of how Israel's discriminatory planning and building policies are designed to maximize land and resources for Jewish Israelis at the expense of Palestinian land and housing rights (see box below). Since the 1970s, regional and local zoning plans have left the Palestinian Bedouin villages in the Negev/Naqab "off the map" such that they are invisible in Israel's development policies. Instead of zoning such villages as residential areas, the Israeli authorities have zoned them and the lands around them for military, industrial or public use. Over the years, Israel has recognized 11 of these villages but 35 remain "unrecognized" with residents considered to engage in "illegal squatting" (see box below). Residents of these villages cannot apply for a building permit to legalize their established or new homes as the lands are not designated as residential.[715] The lack of official status also means that the Israeli authorities do not provide these villages any essential infrastructure or services such as healthcare or education, and residents have no representation in the different local governmental bodies as they cannot register for or participate in municipal elections (see sections 5.5.3 "Discriminatory provision of services" and 6.1 "Forcible transfer").[716]

The non-recognition of Bedouin villages is related to Israeli policies of concentration and urbanization of the Bedouin, and Israel's denial of Bedouin land rights in the Negev/Naqab.[717] In stark contrast, Israel views the development of the Negev/Naqab for Jewish communities as "one of the most important national tasks".[718] In 2005, the Israeli government adopted the Negev Development Plan and established a new ministry tasked with its implementation. The plan aimed to increase the Jewish population in the region from 535,000 to 900,000 by 2015. In pursuit of the plan's goals, law enforcement agencies increased house demolitions in unrecognized Bedouin villages and intensified legal efforts to take over Bedouin land by declaring it state land.[719] The plan also sought to establish and promote new Jewish towns and retroactively legalize construction by Jewish citizens, even when it did not adhere to planning laws, and include the construction in regional plans.[720] Finally, the Israeli

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[711] Jerusalem Post, "Ayelet Shaked: Kaminitz Law meant for Arabs", 30 December 2019, jpost.com/israel-news/ayelet-shaked-kaminitz-law-meant-for-arabs-612566

[712] State of Israel, State Comptroller and Ombudsman of Israel, משבר הדיור [The Housing Crisis], 2015, mevaker.gov.il/he/Reports/Report_279/f43ab2c3-db98-447c-8e49-8b3977bc660d/003-diur-1-new.pdf (in Hebrew).

[713] Adalah, "Adalah's Objections to Discriminatory 'Kaminitz Bill' for Harsh Enforcement of Planning & Building Law in Israel" (previously cited).

[714] Adalah, נמשכת האפליה השיטתית נגד האזרחים הפלסטינים בתחום הדיור [Systematic discrimination continues against Palestinian citizens in the field of housing], March 2017, adalah.org/he/content/view/9065 (in Hebrew).

[715] Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine*, 2006, pp. 199-200; Ahmad Amara and others, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Negev/Naqab,* 2012.

[716] NCF and Adalah, *NGO Report to the UN Human Right Committee*, 9 April 2018, p. 1.

[717] State of Israel, Israel Land Administration, *The Bedouin of the Negev*, land.gov.il/en/Documents/Beduin_information.pdf (accessed on 24 August 2021).

[718] State of Israel, MoFA, *Regularization of Bedouin Communities in the Negev: Summary of the public hearing on the Draft Law and recommendations for policy and for amendments to the Draft*, 23 January 2013, mfa.gov.il/MFA/PressRoom/Documents/begin-bedouin270113.pdf

[719] Ahmad Amara, قراءة في الموجة الثانية من "الخلاص/التخليص" الصهيوني للأرض: الاستيلاء على الأراضي في قضاء بئر السبع [A Reading of the Second Wave of Zionist Land 'Redemption': Seizing Land in Beersheba], 2019, Istishraf for Future Studies, Issue 4, istishraf.dohainstitute.org/ar/issue004/Pages/Istishraf04_2019_07_Ahmad%20Amara.pdf (in Arabic), pp. 168-196; Ahmad Amara, أم الحيران نموذج لتهجير وإعادة تهجير عرب النقب [Umm Al-Hiran is an example of the displacement and re-displacement of the Arabs of the Naqab], 2018, Journal of Palestine Studies, Issue 114, palestine-studies.org/sites/default/files/mdf-articles/076-085.pdf (in Arabic), pp. 76-85; Ahmad Amara, "The Negev Land Question: Between Denial and Recognition", 2012/13, Journal of Palestine Studies, Volume 42, Issue 4, store.palestine-studies.org/jps/abstract/162935; Adva Center – Information on Equality and Social Justice in Israel, *Current plans for developing the Negev: A critical perspective*. January 2007, adva.org/wp-content/uploads/2014/09/AdvaNegevJanuary2007.pdf, p. 14.

[720] State of Israel, Negev Development Authority Law (Amendment 4), passed on 12 July 2010, clause on "Negev Individual Settlements" (retroactively recognized Jewish farms, but not Bedouin villages); HRW, *Off the Map: Land and Housing Rights*

government appointed several commissions and teams to look into the housing and land questions, leading to the drafting of the Law for Regularizing Bedouin Habitation in the Negev, also known as the Prawer-Begin Bill, in 2013.

The aim of the draft law was to "regularize" the land and housing question, including the 35 unrecognized Bedouin villages, through the forcible relocation of their population.[721] Although the bill was shelved, the body that it established to coordinate and implement demolition orders in the Negev/Naqab continues to operate. The Southern Directorate of Land Law Enforcement, operating under the authority of the Ministry of Public Security, deals solely with the enforcement of land and planning laws in Bedouin localities, and coordinates the administrative home demolitions with other enforcement bodies, including the Israeli police.[722]

There are now more than 100 Jewish towns in the Negev/Naqab.[723] By contrast, municipal councils of Bedouin townships in 2008 had jurisdiction over a mere 1.9% of land in the northern Negev/Naqab region, even though the Bedouins comprise over a quarter of the population in the area.[724]

UNRECOGNIZED VILLAGES IN NEGEV/NAQAB

The Negev/Naqab is home to around 250,000 Palestinian Bedouin citizens of Israel.[725] They live in three types of settlements: 35 unrecognized villages; seven governmental planned townships; and 11 newly recognized villages. Tens of thousands of Bedouin in the Negev/Naqab live in homes under demolition orders because they cannot obtain building permits. For decades, they have struggled to gain ownership and recognition of their villages by Israeli authorities.

Unlike other Bedouin communities, the Negev/Naqab Bedouins have for centuries relied largely on agriculture alongside pastoralism.[726] Prior to the establishment of Israel, over 92,000 Bedouins, who are the Indigenous inhabitants of the region, lived in the Negev/Naqab and owned land under a clearly defined, traditional system of individual and communal land ownership,[727] as well as under applicable local state laws.[728] Following the establishment of Israel, estimates suggest that between 11,000 and 18,000 Bedouins remained in Israel.[729] Like the rest of the Palestinian citizens of Israel, they gained Israeli citizenship. However, Israel declared their ancestral lands as "closed military areas".

Land grabs during Israel's military rule

During the 18-year military rule over Palestinians (1948-1966), starting in 1951 Israel confined 12 of the remaining 19 Bedouin tribes in the Negev/Naqab to the Siyag, an area of approximately 1.5 million dunams (150,000 hectares) known for its poor fertility, compared to the 13 million dunams controlled by the tribes prior to 1948.[730] Bedouins were also prohibited from cultivating their land, and isolated from other tribes in the Negev/Naqab and the rest of the Palestinian population in Israel.[731] They needed special permits from the military governor to search for jobs, pursue education or access grazing lands. The coercive restrictions resulted in the loss of their traditional way of life and accelerated their sedentarization or forced settlement.[732]

Israel utilized the applicable laws to expropriate Palestinian land in the Negev/Naqab, such as the Absentees' Property Law and the Land Acquisition Law, especially Bedouin land outside the Siyag, and declared it as state

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Violations in Israel's Unrecognized Bedouin Villages, 2 March 2008, hrw.org/reports/2008/iopt0308/iopt0308webwcover.pdf; ACRI and others, *Position Paper: Principles for Arranging Recognition of Bedouin Villages in the Negev* (cited previously).

[721] Adalah, "Knesset approves forced displacement of Arab Bedouin", 25 June 2013, adalah.org/en/content/view/8176; Amnesty International, *Israel: Knesset Urged not to Pass Law that would Forcibly Evict Tens of Thousands of Negev/Naqab Bedouin* (Index: MDE 15/008/2013), 20 April 2013, amnesty.org/en/documents/MDE15/008/2013/en; Amnesty International, "Israel: Flawed Consultations Place Bedouin at Risk of Forced Eviction" (Index: MDE 15/006/2014), 24 March 2014, amnesty.org/en/documents/MDE15/006/2014/en

[722] NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited).

[723] ACRI and others, *Position Paper: Principles for Arranging Recognition of Bedouin Villages in the Negev* (cited previously).

[724] HRW, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages* (cited previously), p. 29.

[725] ACRI, "The Unrecognized Bedouin Villages in the Negev – Facts and Figures", 31 December 2019, english.acri.org.il/post/__148

[726] Alexandre Kedar and others, *Emptied Lands* (previously cited). See also, for example, World Directory of Minorities and Indigenous Peoples, Israel: Bedouin, minorityrights.org/minorities/bedouin (accessed on 24 August 2021), "Profile".

[727] World Directory of Minorities and Indigenous Peoples, Israel: Bedouin (previously cited).

[728] Alexandre Kedar and others, *Emptied Lands* (previously cited).

[729] ACRI and others, *Principles for arranging recognition of Bedouin villages in the Negev,* May 2011, reliefweb.int/sites/reliefweb.int/files/resources/Prawer-Policy-Paper-May2011.pdf

[730] Ahmad Amara and others, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Negev/Naqab* (previously cited).

[731] Ahmad Amara and others, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Negev/Naqab* (previously cited).

[732] Ahmad Amara and others, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Negev/Naqab* (previously cited).

land. Today, the combined area of all the recognized Bedouin villages in the Negev/Naqab amounts to just 1% of the total area of the Southern District of Israel, even though Bedouins represent 35% of the population in the district.[733]

Discriminatory zoning and planning

According to the ICBS, approximately half a million Jewish Israelis live in 126 predominantly Jewish communities in the Negev/Naqab.[734] As of 2016, these communities consisted of 38 kibbutzim, 77 cooperative and community settlements, and 11 local councils and towns. An overwhelming majority of these communities – 115 of the 126 – have "admissions committees" that effectively block the Bedouin community and other Palestinian citizens of Israel from residing in them.[735] In recent years, Bedouin residents have slowly been moving to a handful of local councils and towns that do not have an explicit approval process that excludes their residency.

Israeli authorities zoned Bedouin land, including villages that were established before 1948, as agricultural land or for military use, rather than for residential use.[736] They also failed to regularize the planning status of the 46 Bedouin villages under any regional or municipal structure.

Between 1968 and 1990, Israel established seven government-planned townships – Kuseife, Tel Sheva, Rahat, Hura, Laqye, Ar'ara Banegev and Segev Shalom – to force the settlement of Bedouin and 156,000 Bedouins now reside there. The state's deliberate neglect of the seven townships has resulted in the highest poverty and unemployment rates in the country, high crime rates and other socio-economic problems that make them undesirable to the residents of the rural Bedouin villages.[737] Parts of the seven townships are not connected to the water system, the sewage disposal system, the electrical power grid or means of communication.[738] At the same time, Israeli authorities swiftly connect illegal outposts and individual farms for Jewish citizens to the water and electricity grids.[739] According to the ICBS, all seven of the planned townships are ranked in the lowest socio-economic cluster.[740] In comparison, every Jewish locality in the Negev/Naqab ranks in a higher socio-economic cluster.[741]

By 1999, successive Israeli governments had recognized 11 of the 46 Bedouin villages and incorporated them into two Bedouin regional councils – Neve Midbar and Qassum (previously Abu Basma).[742] These villages are home to around 16,000 Bedouins. Although the Israeli authorities recognize these villages, they remain excluded from the state's development plans, making it difficult for residents to acquire building permits or receive state services and infrastructure. Many residents still live with the risk of home demolitions because of a lack of building

[733] ICBS, *Statistical Abstract of Israel, 2018,* 10 September 2018, cbs.gov.il/en/publications/Pages/2018/Statistical-Abstract-of-Israel-2018-No-69.aspx, "2.17 Localities and Population, by Population Group, District, Sub-District and Natural Region". See also Adalah, *Nomads Against their Will,* September 2011, adalah.org/uploads/oldfiles/eng/publications/Nomads%20Against%20their%20Will%20English%20pdf%20final.pdf

[734] NCF, *Discrimination in Numbers Collection of Statistical Data – The Bedouin Community in the Negev/Naqab*, January 2017, Figure 1 and Table 2, dukium.org/wp-content/uploads/2014/07/DINSC_JAN_2017_ENG.pdf

[735] NCF, *Discrimination in Numbers: Collection of Statistical Data – The Bedouin Community in the Negev/Naqab* (previously cited), p. 13; HRW, "Israel: Discriminatory Land Policies Hem in Palestinians", 21 May 2020, hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians#; ACRI, *A Setback in the Fight Against Discrimination in Housing*, 17 September 2014, law.acri.org.il/en/2014/09/17/setback-housing; Adalah, *Israeli Supreme Court upholds "Admissions Committees Law" that allows Israeli Jewish communities to exclude Palestinian Arab citizens*, 19 September 2014, adalah.org/en/content/view/8327

[736] Ahmad Amara and others, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Negev/Naqab* (previously cited).

[737] NCF, *Accessibility of public and private services in Arab localities, and institutionalized discrimination against Arab public sector employees in the Negev*", 21 March 2013, dukium.org/wp-content/uploads/2011/06/racialdisdrimination_English_2013.pdf

[738] State of Israel, State Comptroller and Ombudsman of Israel, דוח שנתי 66ג לשנת 2015 ולחשבונות שנת הכספים 2014 [Annual Report 66c for 2015 and the Accounts for Financial Year 2014], 24 May 2016, mevaker.gov.il/he/Reports/Pages/537.aspx (in Hebrew), pp. 958-959.

[739] HRW, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages* (previously cited). See also +972 Magazine, "The Unequal Right to Water in Unrecognized Bedouin Villages", 1 March 2013, 972mag.com/the-unequal-right-to-water-in-unrecognized-bedouin-villages

[740] ICBS, *Characterization and Classification of Geographical Units by the Socio-Economic Level of the Population, 2015*, 5 August 2019, cbs.gov.il/en/publications/Pages/2019/Characterization-and-Classification-of-Geographical-Units-by-the-Socio-Economic-Level-of-the-Population-2015.aspx, "Localities (Municipalities, Local Councils, and Localities Within Regional Councils), in Ascending Order of the Socio-Economic Index", Table 7,

[741] NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited), p. 9.

[742] Oren Yiftachel and others, "Between Rights and Denials: Bedouin Indigeneity in the Negev/Naqab", *Environment and Planning A*, 20 July 2016, Volume 48, Issue 11, on file with Amnesty International, p. 16.

permits.[743] Although residents in these recognized villages had previous eviction and village demolitions lifted, their circumstances remain extremely complicated, similar to those in the unrecognized villages.[744]

The remaining 35 villages, which are home to around 68,000 people, remain without an official recognized status or planning structure. As a result, it is nearly impossible for residents to acquire building permits or obtain housing plans, forcing many to build without permits under the constant threat of home demolitions and subsequent forced displacement.[745] In 2013, Israel tried to "regularize" the situation through the Law for Regularizing Bedouin Habitation in the Negev, also known as the Prawer-Begin Bill, which aimed at forced relocation of the villages' population in the area.[746] Although the bill was shelved, the body that it established to coordinate and implement demolition orders in the Negev/Naqab, the Southern Directorate of Land Law Enforcement, continues to operate.[747] Since then, Israel has aggressively intensified its use of home demolitions (see section 6.1 "Forcible transfer").

Israeli authorities repeatedly insist that Bedouins in the 35 unrecognized villages can relocate to the recognized villages in the Negev/Naqab. Most residents refuse this "voluntary" displacement and relocation, especially as it would mean giving up their claim to their land.[748]

Alongside the complete denial of any legal rights of land ownership of the Bedouin in the Negev/Naqab, and as part of its policy to forcibly urbanize the community in enclaves, the Israeli government has offered compensation for Bedouin land claims. This approach was first established in 1975 by the Albeck Committee, which suggested that the government should go "beyond the letter of the law" and offer compensation to the Bedouin claimants on the condition that they agree to move to one of the planned townships.[749] Since then, the Israeli government's position has been one of complete legal denial, on the one hand, and partial practical recognition of Bedouin land rights through compensation, on the other.[750] The offer of compensation has been amended several times and framed in different resolutions of the Council of the Israel Land Administration (the predecessor of the Israel Land Authority), while remaining based on the logic of the Albeck Committee's compensation scheme.[751] The Bedouin have generally viewed the offers as insufficient and unjust. Accordingly, as of 2008 only 12% of the original land claims (380 out of 3,220) had been settled, covering an area of 205,670 dunams (about 18% of the total claimed lands).[752] Government attempts have continued in parallel to resolve this matter by appointing other committees that have produced further recommendations.[753] Most significant was the Goldberg Committee, which was appointed in 2007. Its recommendations were later incorporated with several changes into the proposed Prawer-Begin Bill.[754] The state-offered alternatives for the Bedouin are displacement and forced urbanization,

[743] State of Israel, State Comptroller and Ombudsman of Israel, דוח שנתי 66ג לשנת 2015 ולחשבונות שנת הכספים 2014 [Annual Report 66c for 2015 and the Accounts for Financial Year 2014], 24 May 2016, mevaker.gov.il/he/Reports/Pages/537.aspx (in Hebrew), pp. 958-959.
[744] Sharri Plonski, "Material Footprints: The Struggle for Borders by Bedouin-Palestinians in Israel", 13 March 2018, Antipode: A Radical Journal of Geography, Volume 50, Issue 5, onlinelibrary.wiley.com/doi/epdf/10.1111/anti.12388, p. 9.
[745] HRW, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages* (cited previously).
[746] See Amnesty International, "Israel: Flawed Consultations Place Bedouin at Risk of Forced Eviction" (Index: MDE 15/006/2014), 24 March 2014, amnesty.org/en/documents/mde15/006/2014/en; Amnesty International, *Israel: Knesset urged not to pass law that would forcibly evict tens of thousands of Negev/Naqab Bedouin* (Index: MDE 15/008/2013), 20 April 2013, amnesty.org/en/documents/mde15/008/2013/en
[747] State of Israel, Ministry of Public Security, מִנהלת דרום לתיאום אכיפת דיני מקרקעין [Southern Directorate for the Coordination of Land Law Enforcement], gov.il/he/departments/units/unit_land_law_enforcement_negev (in Hebrew), "About"; NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited).
[748] NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited), p. 3.
[749] The Albeck Committee's recommendations offered the Bedouin compensation to the value of 20% of the land in the form of land on a different site, or money, or an agricultural water quota. This compensation was available only to claims of over 400 dunams. State of Israel, Ministry of Justice, Letter to the Legal Adviser to the Government, the Adviser to the Prime Minister on Arab and Druze Matters, and to the Director of the Israel Land Administration, regarding the arrangement of the lands of the Siyag and northern Negev (marked "secret"), signed by Plia Albeck, 17 July 1974 (in Hebrew), on file with Amnesty International), pp. 3-5; NCF, *The Arab-Bedouins of the Naqab/Negev Desert in Israel: Shadow Report to the UN Committee on the Elimination of Racial Discrimination (CERD)*, May 2006, www2.ohchr.org/english/bodies/cerd/docs/ngos/NCf-IsraelShadowReport.pdf, p. 8.
[750] Ahmad Amara, "The Negev Land Question: Between Denial and Recognition", 2013, The Journal of Palestine Studies, Volume 42, Issue 4, p. 37.
[751] See, for example, Israel Land Administration, Resolution 1028, 2 May 2005, apps.land.gov.il/CouncilDecisions/#/canceled-decisions/Decisions/Decision/1028 (in Hebrew); Israel Land Administration, Resolution 996, 4 March 2004, apps.land.gov.il/CouncilDecisions/#/canceled-decisions/Decisions/Decision/996 (in Hebrew); Israel Land Administration, Resolution 932, 24 June 2002, apps.land.gov.il/CouncilDecisions/#/canceled-decisions/Decisions/Decision/932 (in Hebrew); Israel Land Administration, Resolution 813, 9 October 1997, apps.land.gov.il/CouncilDecisions/#/canceled-decisions/Decisions/Decision/813 (in Hebrew).
[752] State of Israel, Goldberg Committee, דוח ועדת השופט גולדברג [Report of the Judge Goldberg Committee], 11 December 2008, gov.il/BlobFolder/reports/goldberg/he/Doch_Vaada_Shofet_Goldberg.pdf (in Hebrew).
[753] The government established seven different committees between 1996-2000, see Ahmad Amara, *The Negev Land Question* (previously cited), p. 38.
[754] Adalah, "Knesset approves forced displacement of Arab Bedouin", 25 June 2013, adalah.org/en/content/view/8176

denial of legal land rights, and alternative lands that were deemed back in 1975 to be unjust and insufficient. Since 1975, the Bedouin community has grown about eightfold and the proposed compensation remains nearly the same.

Meanwhile, new Jewish Israeli communities have been established following a push to Judaize the Negev/Naqab.[755] Plans for these new towns and cities are advanced by Israeli authorities, including the Ministry for Development of the Negev and Galilee[756] and the Ministry of Construction and Housing.[757] The Settlement Division of the WZO serves as the government's arm for planning and implementing the settlement of these communities.[758] Jewish Israeli groups such as the OR Movement, a group dedicated to expanding Jewish settlement in the Negev/Naqab and Galilee, also plays a coordinating role, working closely with Israeli authorities (including 11 ministers) to develop new Jewish communities.[759] Between 2002 and 2021, the OR Movement developed eight new communities and expanded 63 others in the Negev/Naqab and Galilee.[760]

Discriminatory home demolitions and forced evictions

Israeli authorities have enforced home demolitions, forced evictions and other punitive measures disproportionately against Bedouins as compared with Jewish Israelis not conforming to planning laws in the Negev/Naqab.[761] Most unlicensed Jewish buildings and farms built without outlined plans and building permits are retroactively approved or never face a demolition order.[762] Israeli courts have helped entrench this discrimination through retroactively approving dozens of Jewish Israeli communities and farms, contrary to the same planning laws that result in the demolition of Bedouin homes.[763] For example, in 2016 the Beersheba Magistrates' Court ruled in favour of a Jewish Israeli citizen for unlawful construction of guest rooms for a hospitality business in the illegally constructed Jewish village of Azuz in the Ramat Negev Regional Council. The defendant argued that selective law enforcement was taking place as planning and construction enforcement does not apply to the residents of Azuz, using the argument that the entire village was built without permits. The court accepted that the Ramat Negev Regional Council does not enforce planning and construction laws against Jews while it does against Bedouins in the same district.[764] An investigation by the National Unit for Building Inspection in the Southern District revealed that enforcement of the planning and building laws targets Bedouin citizens only.[765] The court's dismissal of the case served as de facto approval of the state's discrimination against the Bedouin.

Forcible transfer under the guise of social and economic development

On 12 February 2017, Israel's cabinet approved Government Resolution 2397, a five-year Socio-Economic Development Plan for Negev Bedouin,[766] and allocated it NIS 3 billion (USD 968 million). The plan was developed under the Authority for the Development and Settlement of the Bedouin (Bedouin Authority), which is a unit of the Ministry of Agriculture and Rural Development. The Bedouin Authority was originally established in 1999 to settle

[755] The Jewish National Fund currently has a major development plan in the Negev/Naqab with hopes to double the population there and settle 500,000 new residents. See, for example, Jewish National Fund, Community Building - Our Blueprint Negev Strategy, jnf.org/our-work/community-building/our-blueprint-negev-strategy (accessed on 24 August 2021). See also, for example, Times of Israel, "Israel Planning 11 New Towns in Negev Desert", 27 November 2014, timesofisrael.com/israel-plans-11-new-towns-in-negevdesert

[756] State of Israel, Ministry for Development of the Negev and the Galilee, gov.il/en/departments/ministry_for_the_development_of_the_negev_and_galilee, "About" (accessed on 24 August 2021).

[757] BBC News, "Israeli Push to Fulfil Desert Dream Unsettles Negev Bedouin", 17 January 2013, bbc.com/news/world-middle-east-20945253

[758] Haaretz, "The Israeli Government's Twilight Zone That Helps Settle the West Bank", 3 March 2015 (updated on 10 April 2018), haaretz.com/israel-news/business/.premium-israeli-twilight-zone-for-settling-w-bank-1.5331046; World Jewish Congress, *Report: Israel considering construction of new settlements in Negev desert*, 16 June 2014, worldjewishcongress.org/en/news/report-israel-considering-construction-of-new-settlements-in-negev-desert

[759] Haaretz, "OR Movement//Planting Seeds for a Better Future", haaretz.com/haaretz-labels/power/1.5724192

[760] OR Movement, Building the Future of Israel, or1.org.il/english/home-old, "Why we exist" (accessed on 21 August 2021); OR Movement, or1.org.il/english/or-communities, "OR Communities" (accessed on 21 August 2021).

[761] HRW, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages* (previously cited).

[762] NCF, *The Arab-Bedouins of the Naqab/Negev Desert in Israel: Shadow Report to the UN Committee on the Elimination of Racial Discrimination (CERD)* (previously cited), p. 15.

[763] State of Israel, Negev Individual Settlements – Negev Development Authority Law, Amendment 4, 2010. The amendment allows for the retroactive recognition of dozens of Jewish individual settlements/farms in the Negev/Naqab that were established without permits and contrary to planning laws. See Adalah, Negev Individual Settlements - Negev Development Authority Law – Amendment No. 4, 2010, adalah.org/en/law/view/500 (accessed on 30 August 2021).

[764] +972 Magazine, "The risk of building while Bedouin", 26 February 2016, 972mag.com/the-risk-of-building-while-bedouin

[765] NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited), p. 5.

[766] State of Israel, PMO, תכנית לפיתוח כלכלי חברתי בקרב האוכלוסייה הבדואית בנגב 2017-2021 [Plan for the socio-economic development among the Bedouin population in the Negev 2017-2021], Government Resolution 2397, 12 February 2017, gov.il/he/Departments/policies/2017_dec2397 (in Hebrew).

Bedouin land claims and regularize "permanent dwellings" for the Bedouin community in the Negev/Naqab.[767] Over the years, however, the Bedouin Authority became the main government body responsible for several Bedouin-related issues, including planning, land agreements, water allocation and health services.[768] The Bedouin Authority has been criticized as a discriminatory body complicit in the forcible displacement of Bedouins from their homes in order to Judaize the Negev/Naqab.[769]

The Bedouin Authority is promoting the Socio-Economic Development Plan for Negev Bedouins as a genuine effort to improve life for Bedouins in the Negev/Naqab. However, the plan conditions the provision of state funding on the execution of forced evictions and home demolitions, including in the 35 unrecognized Bedouin villages that are excluded from the benefits of the plan.[770] Several government ministers refused to even approve the draft plan until additional measures to ensure the destruction of the unrecognized villages were included.[771] The plan fails to offer any way for recognition of the unrecognized villages, and it mandates the Bedouin Authority to prioritize evacuating the Bedouin communities living in the unrecognized villages.

In addition, pressure has increased on Bedouin communities by enforcement agencies working to advance the plan. For example, according to the Negev Coexistence Forum for Civil Equality, "this mechanism of 'enforcement promoting regulation' is exercised through judicial injunctions; imposition of high fines (up to NIS 300,000); the constant presence of inspectors and police forces in the field; threats; and the use of drones."[772] It is also important to note that the Bedouin Authority is primarily run by people from outside the Bedouin community. According to the website of the Bedouin Authority, 13 of the 14 members holding executive positions are Jewish Israelis. Only one member comes from the Bedouin community.[773]

The UN Committee on the Elimination of Discrimination against Women (CEDAW) criticized the plan, noting that it was "accompanied by forced urbanization, evictions and displacements and the State party continues to demolish homes and schools in Bedouin communities such that Bedouins are forced to relocate".[774]

In January 2019, the Bedouin Authority published the Strategic Plan for the Regulation of the Negev, which seeks to forcibly transfer 36,000 Bedouins for the purpose of expanding military training areas and to create "economic development projects".[775] The plan is scheduled to be implemented over several years and has been criticized by UN human rights experts.[776] Israel's Southern District Planning and Building Committee has taken the plan forward and convened to discuss the establishment of camps to temporarily house the tens of thousands of Bedouin citizens of Israel who are meant to be forcibly displaced.[777]

PLANNING, BUILDING AND HOUSING POLICIES IN EAST JERUSALEM

In East Jerusalem, the Israeli authorities have also utilized their zoning and planning laws and practices to further Jewish domination over Palestinians. On the one hand, Israel has confiscated a third of the land in annexed East Jerusalem for Israeli settlements. On the other, its planning, building and housing policies have precluded expansion of Palestinian neighbourhoods and communities by zoning most of their land as green spaces such as

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[767] State of Israel, PMO, "The Establishment of the Authority for Regularization of Bedouin Settlement in the Negev", Government Resolution 1999, 15 July 2007, available at NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited).
[768] NCF, *On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab* , June 2020, dukium.org/wp-content/uploads/2020/07/HDR-2020-Datat-on-2019-Eng.pdf, p. 23.
[769] NCF, *On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab* (previously cited).
[770] State of Israel, Government Resolution 2397 (previously cited), iataskforce.org/sites/default/files/resource/resource-1500.pdf, p. 2.
[771] Marker, גלנט ויריב לוין עיכבו את אישור תוכנית הבדואים במשלה - 3 מיליארד שקל בחמש שנים [Gallant and Yariv Levin Postponed Approval of the Government Bedouin Plan – NIS 3 Billion over Five Years], 15 January 2017, themarker.com/news/1.3236618 (in Hebrew).
[772] NCF, *On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab* (previously cited), p. 4.
[773] State of Israel, Bedouin Development and Settlement Authority in the Negev, אודות [About], last updated on 13 September 2017, gov.il/he/departments/about/odot_harashut (in Hebrew, accessed on 24 August 2021).
[774] UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations: Israel, 17 November 2017, UN Doc. CEDAW/C/ISR/CO/6, para. 54.
[775] State of Israel, Israeli Authority for the Development and Settlement of the Bedouins in the Negev, "Strategic Plan for the Regulation of the Negev: In the Coming Year, a Quarter of the Negev's Scattered Bedouin Population will be Evacuated for the Benefit of National Projects", 28 January 2019 (an unofficial English translation is available at adalah.org/uploads/uploads/The%20Strategic%20Plan%20for%20the%20Regulation%20of%20the%20Negev%20-%2014022019%20-%20FINAL.pdf).
[776] Six UN Special Rapporteurs, Letter addressed to the Representative of the State of Israel (regarding the issue of forced evictions targeting the Bedouin minority), 1 May 2019, spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24545
[777] Adalah, "Israel Launches Plan to Force its Own Bedouin Citizens into Refugee Displacement Camps", 10 October 2019, adalah.org/en/content/view/9826

nature reserves and parks, and restricting the expansion of existing Palestinian neighbourhoods. Zoning and planning policies systematically discriminate against Palestinian residents of East Jerusalem and severely impede the development of their neighbourhoods, with dire impacts on the socio-economic rights of the local population.

Since the annexation of East Jerusalem in 1967, planning for Palestinian neighbourhoods in East Jerusalem has been focused on maintaining a Jewish Israeli majority in the "united city", a policy reflected in official documents and statements by Israeli policymakers.[778] Although the Planning and Building Law of 1965 (see above) required the preparation of a plan for a locality within three years,[779] Israeli planners failed to do this for East Jerusalem, leaving Palestinian neighbourhoods there without a local outline (or master) plan.[780] A local outline plan sets out the policy for use of the land for purposes such as residence, industry and green space, and serves as the legal basis for granting building permits.[781] A local outline plan can only be prepared by an official governmental authority under the Planning and Building Law of 1965.[782] As explained above, the lack of an up-to-date local outline plan can lead to unregulated building and subsequent demolitions.[783]

In August 2004, a national planning committee introduced the "Jerusalem 2000" local outline plan. The plan is considered to be key to shaping Israeli planning policies in East Jerusalem. Even though the plan has not been deposited for public review and is thus non-binding or a basis to issue building permits, the Jerusalem Municipality has stated that it does "constitute the planning policy in the city".[784] The planning authorities have already used it to reject at least two Palestinian zoning plans, maintaining that they are not consistent with the "Jerusalem 2000" plan.[785] Israeli rights groups have concluded that the plan violates Israeli law and bypasses the statutory procedure of the planning regime.[786] In 2013, Bimkom petitioned the Jerusalem administrative court against the unlawful use of the plan, but its case was dismissed.[787]

The "Jerusalem 2000" plan is the first to include East and West Jerusalem in a single plan.[788] It provides that municipal planning in Jerusalem should seek to "maintain a ratio of 70% Jews and 30% Arabs" in the city in accordance with "governmental decisions". Noting that "demographic trends" indicated "a population of approximately 60% Jews and 40% Arabs" in Jerusalem in 2020, the plan proposes to "draw residents from other areas in the country" and "reduce negative migration from the city" in order to maintain a "solid Jewish majority in the city".[789] It will do this by providing "sufficient housing" (more houses) in existing neighbourhoods, building new Jewish neighbourhoods, subsidizing housing units to lower housing costs, and ensuring "the quantity and quality of a number of employment places, services, quality of life, and urban experiences".[790] The plan acknowledges that the "Arab population suffers from housing problems due to the significant size of the population and lack of financial resources". In response to this, the plan recommends the "densification and thickening" of existing neighbourhoods, "rehabilitation of the refugee camps within its borders" and building residential areas for "wealthy Arab households".[791]

In East Jerusalem today, Palestinians comprise 60% of the population but only 15% of the land is designated by the Israeli planning authorities for Palestinian residence, with 2.6% of this land zoned for public buildings.[792] By

[778] B'Tselem, *A policy of discrimination: Land expropriation, planning and building in East Jerusalem,* January 1997, btselem.org/sites/default/files/publications/199505_policy_of_discrimination_eng.pdf
[779] Planning and Building Law (previously cited), Article 62(a). This provision was abolished in 1995 pursuant to Amendment 43 to the Planning and Building Law, 1995.
[780] Bimkom, *Trapped by planning: Israeli policy, planning and development in the Palestinian neighborhoods of East Jerusalem,* 2014, bimkom.org/eng/wp-content/uploads/TrappedbyPlanning.pdf
[781] Bimkom, *Trapped by planning* (previously cited).
[782] Planning and Building Law (previously cited), Articles 61-65, "Local Outline Scheme".
[783] Bimkom and Arab Center for Alternative Planning, *Outline planning for Arab localities in Israel*, 2012, bimkom.org/eng/wp-content/uploads/Outline-Planning-for-Arab-Localities-in-Israel-English2.pdf
[784] State of Israel, Municipality of Jerusalem, תכנית מתאר ירושלים – מס' 2000 [Local Outline Plan – Jerusalem 2000], jerusalem.muni.il/he/residents/planningandbuilding/cityplanning/masterplan (in Hebrew).
[785] HRW, *Separate and Unequal: Israel's discriminatory treatment of Palestinians in the Occupied Palestinian Territories,* 2010, hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf, p. 49.
[786] Bimkom, "Jerusalem District Planning Committee Using Jerusalem 2000 Outline Plan Unlawfully", 21 April 2013, bimkom.org/eng/press-release-jerusalem-district-planning-committee-using-jerusalem-2000-outline-plan-unlawfully; State of Israel, Jerusalem District Court, *Bimkom and Association for Civil Rights in Israel (ACRI) v. Chair of the Jerusalem District Planning and Building Committee and others*, Petition to the Jerusalem District Court acting as Court of Administrative Affairs, 21 April 2013, law.acri.org.il//en/wp-content/uploads/2013/04/Planning-Petition-ENG.pdf
[787] ACRI, "Panel Unlawfully Using Outline Plan for Jerusalem", 1 October 2013, law.acri.org.il/en/2013/10/01/jerusalem-2000-petition
[788] Bimkom, *Trapped by planning* (previously cited).
[789] State of Israel, Municipality of Jerusalem, "Local Outline Plan - Jerusalem 2000", jerusalem.muni.il/he/residents/planningandbuilding/cityplanning/masterplan; Francesco Chiodelli, "The Jerusalem Master Plan: Planning into the conflict", 2012, Journal of Palestine Studies, Issue 51, oldwebsite.palestine-studies.org/jq/fulltext/78505
[790] Municipality of Jerusalem, "Local Outline Plan – Jerusalem 2000" (previously cited).
[791] Municipality of Jerusalem, "Local Outline Plan – Jerusalem 2000" (previously cited).
[792] Ir Amim and Bimkom, *Deliberately Planned* (previously cited).

contrast, since 1967 the Israeli authorities have permitted and actively enabled settlements, built illegally on land expropriated for the exclusive use of Jewish Israelis, to be established and expanded in East Jerusalem.

The deliberate refusal to approve zoning plans for the development of Palestinian neighbourhoods in East Jerusalem has had a ruinous effect on Palestinian communities, making it difficult for them to obtain building permits. According to data from Peace Now, from 1991 to 2018, Israeli authorities approved applications for 9,536 building permits for Palestinians in East Jerusalem (16.5% of the 57,737 applications for building permits approved in Jerusalem), compared to 21,834 applications for permits for settlements in East Jerusalem (37.8%).[793] The remaining 26,367 applications for permits were approved in West Jerusalem. Peace Now also noted that the average number of housing units approved in Israeli neighbourhoods in both East and West Jerusalem was 10.5 units per permit, compared to 3.5 units per permit in Palestinian neighbourhoods.[794] This reality forces many Palestinians to build without permits and therefore risk having their homes demolished (see section 6.1 "Forcible transfer").[795]

The inadequate planning in Palestinian neighbourhoods in East Jerusalem hinders the development of the community as a whole, including the construction of public spaces, schools and commercial zones for employment opportunities.[796] Palestinians live in underdeveloped and densely populated areas in East Jerusalem where the average size of a Palestinian household is six, compared to just over three people per Jewish Israeli household in Jerusalem.[797] The consequence is grinding poverty for Palestinian residents of East Jerusalem (see section 5.5.1 "Suppression of Palestinians' human development").

The Israeli fence/wall is another major obstacle to Palestinians in East Jerusalem and its environs, as it cuts through the city and isolates it from the rest of the West Bank. By the time Israel completed the fence/wall in Jerusalem in 2016, its route had diverged from the municipal boundaries annexed in 1967 to carve out enclaves that were detached from the city and resulted in their severe neglect by Israeli authorities.[798] It has left the Palestinian neighbourhoods of Shuafat refugee camp, Anata (comprising the three adjacent neighbourhoods of Ras Khamis, Ras Shehadeh and Al-Salaam) and Kufr Aqab, within the municipal boundaries of Jerusalem, but beyond the fence/wall. Around 100,000 Palestinians with permanent Jerusalem residency live in these locations, and they must now pass through Israeli checkpoints every time they need to enter the rest of the city or receive essential services.[799] Israeli authorities deliberately neglect these neighbourhoods and do not provide them with municipal services, including waste removal, road maintenance, education and adequate connection to water, electricity and sewerage infrastructure. In 2017, Israeli members of the Knesset tried to pass a bill to split the areas that are detached from Jerusalem's boundaries by the fence/wall from the rest of Jerusalem and place them under a different municipal body in an attempt to alter the demographic ratio in Jerusalem.[800] The "Greater Jerusalem" Bill (known in Hebrew as "Jerusalem and its daughters") was struck off the parliamentary agenda on 29 October 2017 due to international pressure.[801]

PLANNING, BUILDING AND HOUSING POLICIES IN AREA C OF WEST BANK

Israeli authorities have also created a deeply discriminatory urban planning and zoning system in the rest of the OPT, which continues to be applied in Area C of the West Bank. As described above (see section 5.4.3 "Discriminatory allocation of Palestinian land for Jewish settlement"), most settlement construction takes place in Area C, and all aspects of life for Palestinian communities there have remained under full Israeli control since 1967. As already mentioned, Area C is home to around 300,000 Palestinians in addition to almost all of the 441,600 Israeli settlers living in the occupied West Bank excluding East Jerusalem. However, Israeli authorities

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[793] The remaining 45.7% of permits approved in Jerusalem were approved in West Jerusalem. See Peace Now, "Jerusalem Municipal Data Reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem", 12 September 2019, peacenow.org.il/en/jerusalem-municipal-data-reveals-stark-israeli-palestinian-discrepancy-in-construction-permits-in-jerusalem

[794] Peace Now, "Jerusalem Municipal Data Reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem" (previously cited).

[795] Bimkom, *Trapped by planning* (previously cited).

[796] Ir Amim and Bimkom, *Deliberately Planned* (previously cited).

[797] ACRI, "East Jerusalem: Facts and Figures 2019", May 2019, fef8066e-8343-457a-8902-ae89f366476d.filesusr.com/ugd/01368b_20dc66c3a088465286ce4c6d5a87c56c.pdf

[798] ACRI, *Implications of establishing a separate local authority for the neighborhoods beyond the barrier in Jerusalem*, November 2017, law.acri.org.il/en/wp-content/uploads/2017/11/Separate-Municiplaity-Position-Paper-1.pdf

[681] Ir Amim, *Displaced in their own city* (previously cited), p. 26.
B'Tselem gave the figure of 140,000 in 2019, including an unknown number of Palestinians with West Bank IDs. B'Tselem, East Jerusalem (previously cited).

[800] Haaretz, "Bill Would Allow Parts of Jerusalem to Be Transferred to a New Israeli Local Authority", 25 July 2017, haaretz.com/israel-news/.premium-bill-would-allow-parts-of-jerusalem-to-be-transferred-to-new-israeli-local-authority-1.5434517

[801] Reuters, "U.S. pressure delays Israel's 'Greater Jerusalem' bill: legislator", 29 October 2017, reuters.com/article/us-israel-palestinians-settlement-idUSKBN1CY0CB

have allocated 70% of the land in Area C to settlements and less than 1% to Palestinians.[802] In practice, Palestinians are only allowed to build on about 0.5% (roughly 1,800 hectares) of Area C, most of which is already built-up.[803]

Like many other aspects of Palestinian life in the West Bank, zoning and planning in Area C is subject to a combination of selectively applied Ottoman, British and Jordanian laws amended by a series of Israeli military orders issued since 1967 to advance Israeli territorial and demographic objectives in the area. Adopted in 1971, Military Order 418 deprived Palestinians from any decision-making in the planning of their development and land use by cancelling local planning committees in Palestinian villages and transferring licensing powers from Palestinian municipalities to regional planning committees and the Civil Administration's Higher Planning Council, a body made up of Israeli government officials and settler representatives.[804] Under the military order, the council is empowered to cancel or change any plan or licence at any time, as well as to authorize people to build without obtaining a permit. In parallel, the order authorized the military commander to appoint Special Planning Committees for new planning areas provided that they did not include "the jurisdiction of a municipality or a village council" and, as a result, excluded Palestinian communities.[805] By contrast, such committees were appointed for all municipal authorities (local and regional councils) in Israeli settlements in the West Bank given that they were all built in new planning areas. Amongst other things, these committees are empowered to prepare planning schemes based on which they can issue building permits – a right which is denied to Palestinian villages in the same area.[806] Indeed, the Civil Administration's planning system does not allow for any Palestinian representation or meaningful participation and, as a result, does not take account of the Palestinian population's needs, demographic and economic interests, or traditions, while consistently privileging the interests of settlers at the same time.

Further, the Israeli authorities use a selective interpretation of Jordanian law to insist that planning must conform with British mandate outline plans that were drafted in the 1940s and that have never been updated since, making any "legal" construction virtually impossible. Indeed, the British mandate-era plans no longer reflect the needs of the Palestinian population in the West Bank or modern-day planning, and include areas where construction permits have been exhausted. Crucially, they have never been reviewed even though, under Jordanian law, planning authorities must review such plans at least once every 10 years. Rather than enabling Palestinian development, these plans "serve as an effective tool for limiting Palestinian construction, demolishing homes and blocking development", as B'Tselem has argued.[807]

The Israeli Civil Administration has also avoided approving local outline (or master) plans of Palestinian communities in Area C, where 90% of Palestinian communities remained without any outline plan in 2013.[808] Indeed, the Israeli Civil Administration routinely rejects applications for building permits on the basis that they do not match British outline plans, forcing Palestinians to build without permits, which are needed for all basic and livelihood structures, such as a tent or a fence, and exposing them to a risk of demolitions. The Israeli Civil Administration approved just 21 of the 1,485 Palestinian applications for building permits in Area C between 2016 and 2018.[809] In a rare move, in July 2019, the Israeli Security Cabinet vowed to grant building permits to 715 housing units for Palestinians in Area C, in addition to 6,000 housing units for settlers there.[810] By the end of June 2020, only one building permit had been issued for Palestinians, allowing for the construction of six housing units.[811] Meanwhile, 1,094 building permits were issued for Jewish settlements from July 2019 to March 2020.[812]

The dire situation in the villages of Umm al-Khair and Khirbet Susiya in the South Hebron Hills in Area C of the West Bank illustrates the impact of Israel's discriminatory planning, zoning and building policies on Palestinians' rights to adequate housing, adequate standard of living and water.

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[802] Marya Farah, "Planning in Area C: Discrimination in Law and Practice", 2016, Palestine-Israel Journal of Politics, Economics and Culture, Volume 21, Issue 3, pij.org/details.php?id=1685
[803] B'Tselem, *Acting the Landlord: Israel's Policy in Area C, the West Bank*, June 2013, btselem.org/download/201306_area_c_report_eng.pdf
[804] Badil, *Ruling Palestine* (previously cited).
[805] B'Tselem, *Fake Justice: The Responsibility Israel's High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians*, February 2019, btselem.org/sites/default/files/publications/201902_fake_justice_eng.pdf
[806] NRC, *A Guide to Housing, Land and Property Law in Area C of the West Bank* (previously cited).
[807] B'Tselem, *Fake Justice* (previously cited).
[808] B'Tselem, *Acting the Landlord* (previously cited).
[809] Times of Israel, "11 months after announcement, Israeli building permits for Palestinians stalled", 24 June 2020, timesofisrael.com/11-months-after-announcement-israeli-building-permits-for-palestinians-stalled
[810] Peace Now, "On Israel's decision for Palestinian construction permits in Area C", 31 July 2019, peacenow.org.il/en/on-israels-decision-for-palestinian-construction-permits-in-area-c
[811] OCHA, *West Bank demolitions and displacement: An overview*, June 2020, ochaopt.org/sites/default/files/demolition_monthly_report_june_2020.pdf
[812] OCHA, *West Bank demolitions and displacement* (previously cited).

VILLAGES FACING REPEATED DEMOLITIONS IN THE SOUTH HEBRON HILLS

Umm Al-Khair

Umm Al-Khair is a Palestinian village in the South Hebron Hills that is inhabited by people from the Al-Hathaleen tribe, who were displaced from Tel Arad in the Negev/Naqab in 1948 during the 1947-49 conflict. Following their expulsion, they bought the land of Umm Al-Khair from Palestinian residents of Yatta. Umm Al-Khair has a population of approximately 200 people, including around 50 children. Most of the residents are shepherds.

The village has 151 structures with pending demolition orders from Israeli authorities.[813] Nearly every building has already been demolished at least once and rebuilt by residents. According to OCHA, since January 2009 (as of 12 June 2021), Israeli authorities had demolished 40 structures, 29 of which are homes, resulting in the displacement of 155 people.

The adjacent Israeli settlement of Carmel, which was established in 1981 and now has approximately 437 settlers, lies on land confiscated from residents of Umm Al-Khair. Some sections of the settlement are within 100m of Umm Al-Khair. Unlike the settlement of Carmel, which was swiftly provided with modern infrastructure, the village of Umm Al-Khair is not connected to any infrastructure networks and is denied permits to build any. Israeli settlers from Carmel persistently harass, and sometimes attack, residents of Umm Al-Khair, often while they are in the field with their livestock.[814]

Residents of Umm Al-Khair must purchase water through private Palestinian companies, which deliver water to the community. Residents pay around NIS 30 (USD 10) per cubic metre of water, as well as a transportation fee of NIS 150 (USD 48).[815] Some families pay up to NIS 400 (USD 129) per day to provide water for their families and livestock.[816] Residents use solar panels for electricity, many of them given to the community by the German government through a humanitarian project. The solar panels often fail to provide enough electricity for families to adequately heat their homes in the winter.

In 2016, in an effort to stop the ongoing demolitions and seek a way to develop the infrastructure of their community, residents of Umm Al-Khair submitted a local outline (or master) plan to the Israeli Civil Administration. As a result, on 19 December 2016 the Israeli Supreme Court froze pending demolition orders for three years. In June 2019, Israeli authorities rejected the plan, stating that the community had constructed infrastructure without building permits. The same month the community submitted another local outline plan to the Israeli Civil Administration, thus freezing the pending demolition orders for a further three years.

Eid Hathaleen, an artist and activist from the community, told Amnesty International:

For a long time, communities living in the South Hebron Hills were looking for a way to stop or freeze the ongoing demolitions. We know that Israelis [authorities] will never greenlight any master plan we submit, we do it just to buy more time before the next demolition. It is inevitable. It will take a long time until we can live a life without apartheid, and we are positive we will continue to suffer more in the near future. It has taken so long for the world to see our reality. Until the USA and the international community stop supporting Israeli apartheid, the demolitions will not stop. The massive support from governments around the world makes what is not normal seem normal.[817]

Tariq Hathaleen, an English teacher and activist from the community, told Amnesty International:

We know that the confiscations and demolitions are being done to stop the ability of Palestinians in the village to develop and build, even though this is our land. Some families have demolition orders on their homes or barns from over 11 years ago.

On top of the demolition orders, we also face settler harassment. Settler harassment means we suffer constantly, in between the demolitions we are never free from psychological violence. Since 2016 it has come from the settlers living in Carmel as well as by the Israeli settler organization Regavim. They fly drones over our community two maybe three times a week just to survey us. Instead of the settlers sending Israeli soldiers to terrorize us, they send over a drone. We are now always under surveillance.

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[813] Good Shepherd Collective, "Um al-Khair", goodshepherdcollective.org/um-al-khair (accessed on 27 August 2021).
[814] Ta'ayush: Arab Jewish Partnership, *Demand that the Carmel settlement take responsibility and stop the stone-throwing on Umm al-Kheir!,* 1 September 2017, taayush.org/?p=4863; Amnesty International, interview by voice call with Tariq Hathaleen, community activist, 12 October 2020; guybo111, "Settlers of Carmel attacking and chasing away Palestinian shepherds and flocks 24.1.2014", 27 January 2014, youtube.com/watch?v=2Rs51VWqaRs
[815] Amnesty International, interview by voice call with Eid Hathaleen, 12 October 2020.
[816] Amnesty International, interview by voice call with Eid Hathaleen, 12 October 2020.
[817] Amnesty International, interview by voice call with Eid Hathaleen, 12 October 2020.

We live a life of inequality, and all we want is a life with justice. It is simple really. Life should be filled with peace and quiet not fear and terror. Life without apartheid would just be a more normal life, that is all that we want.[818]

Khirbet Susiya

The Palestinian village of Khirbet Susiya is home to around 250 people, who have traditionally earned a living from shepherding and olive trees.[819] In 1983, the Israeli settlement of Susya, which currently has a population of 1,170 settlers, was established near the village on private Palestinian land that Israeli authorities declared to be state land.[820] In 1986, when about 25 families were living on their private land in ancient Khirbet Susiya, the Israeli Civil Administration declared the village's land an "archaeological site" and the land was confiscated "for public purposes". As a result, the Israeli military expelled Palestinian residents from their homes. Having no other option, the families moved to what remained of their land outside the archaeological site, about 500m from their village. They received no offer of alternative residence or compensation, which are key safeguards to ensure respect for their right to adequate housing and to avoid forced evictions. In 1991, the Israeli military forced them from that location, later claiming it was to enforce Israeli planning and building laws in the area.

The Palestinian villagers relocated again to where the village currently stands, and live in tents and temporary shelters. Israeli authorities have issued demolition orders against all 170 structures in the village, which include 32 residential tents and shacks, 26 animal shelters, 66 family utility structures, 20 cisterns, 20 latrine units, two clinics, a school and a kindergarten. Approximately half of these structures have been funded by international donors and provided as humanitarian assistance.[821]

Palestinian residents have repeatedly tried to obtain building permits, but Israeli authorities have refused to issue them and instead, in 1999, 2001 and 2011, demolished many of the Palestinians' new shelters. In 2012, the Israeli Civil Administration issued demolition orders for over 50 structures in Khirbet Susiya. The orders stated that they were renewals of demolition orders originally issued in the 1990s on grounds of lack of building permits. The residents therefore live with the constant fear that their homes will be demolished.[822]

They have been fighting a legal battle for years to prevent this from happening.[823] A petition by the Palestinian residents against the demolition orders was filed at the Supreme Court of Israel in February 2014 and, as of the end of August 2021, was still pending.[824] The Supreme Court refused to issue an interim injunction freezing demolitions until a ruling on the case, as it normally does in such cases. Palestinians therefore live with the constant fear that their homes will be demolished.[825] They have been fighting a legal battle for years to prevent this from happening.[826] In February 2018, the Supreme Court decided that the state could immediately demolish seven other structures, which served 42 people – about half of them children.[827]

Israeli authorities continue to block water cisterns and wells serving the village, severely impacting the Palestinian residents' right to access safe, affordable water.[828] Israel has refused to connect the village to the water and sewerage system and electricity networks. Residents are forced to pay for water to be trucked in from a nearby Palestinian town. In 2015, the UN estimated that about a third of villagers' income was spent paying for water.[829] This situation constitutes a breach of Israel's obligation to provide an affordable supply of water and puts at risk the realization of other human rights, such as the right to an adequate standard of living and food.[830]

By contrast, the nearby Susya settlement has been granted a generous local outline plan that allows Israeli settlers to develop housing and infrastructure.[831] Susya settlement is also connected to the electricity, water and sewerage

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[818] Amnesty International, interview by voice call with Tariq Hathaleen, 12 October 2020.
[819] B'Tselem, Khirbet Susiya – a village under threat of demolition, btselem.org/south_hebron_hills/susiya (accessed on 27 August 2021).
[820] In 2002, settlers also established an "outpost" inside the boundaries of the archaeological site. See Emek Shaveh, "Susya – The Displacement of Residents Following the Discovery of an Ancient Synagogue", 12 September 2016, alt-arch.org/en/susiya-2016; OCHA, "Susiya: a community at imminent risk of forced displacement", June 2015, ochaopt.org/content/susiya-community-imminent-risk-forced-displacement-june-2015
[821] OCHA, "Susiya: a community at imminent risk of forced displacement" (previously cited).
[822] B'Tselem, Khirbet Susiya – a village under threat of demolition (previously cited).
[823] OCHA, "Susiya: a community at imminent risk of forced displacement" (previously cited).
[824] B'Tselem, Khirbet Susiya – a village under threat of demolition (previously cited).
[825] B'Tselem, Khirbet Susiya – a village under threat of demolition (previously cited).
[826] B'Tselem, Khirbet Susiya – a village under threat of demolition (previously cited).
[827] B'Tselem, Khirbet Susiya – a village under threat of demolition (previously cited).
[828] Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (previously cited).
[829] OCHA, "Susiya: a community at imminent risk of forced displacement" (previously cited).
[830] CESCR has stated that water, and water facilities and services, must be affordable for all: "The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights." CESCR, General Comment 15 (previously cited), para. 12(c)(ii).
[831] OCHA, "Susiya: a community at imminent risk of forced displacement" (previously cited).

networks, and has a municipal swimming pool. Meanwhile, its adjacent outpost of Susya North West, which was established in 2001 without building permits and in violation of Israeli law, was connected by the authorities to the water, sewerage and electricity networks and has no pending demolition orders against it.[832]

The loss of land has forced the Palestinian village to cut back the size of its herds. Azam Nawaj'a said he used to have 150 sheep, but now can only manage to look after 25. He also told Amnesty International that settlers often come to destroy the village's olive trees. He said that three years earlier they had cut down 300 of his olive trees.[833] According to OCHA, Israeli settlers vandalized and damaged 800 olive trees and saplings in Khirbet Susiya in 2014 alone.[834]

Restrictions on access to land have also impacted access to water. Fatima Nawaj'a, a resident of Khirbet Susiya, told Amnesty International:

We used to depend on the wells we build and rain-fed water, but they [settlers and Israeli authorities] have kept either taking over our sources of water or destroying them, rendering them unusable. Some of us were able to rebuild our destroyed wells, but they were smaller in size, and so the only way to get water was through rainwater. When we run out of this form of water, we have to buy water. We buy five litres of water for NIS 35. Keep in mind that we are going through all of this while the settlers living on our land have zero restraints on access to water, or anything else for that matter: electricity, healthcare, education and work opportunities.[835]

The most recent demolition in Khirbet Susiya took place on 20 April 2021 when Israeli authorities demolished a tent in which a family lived.[836]

5.5 DEPRIVATION OF ECONOMIC AND SOCIAL RIGHTS

Israel's fragmentation, segregation and land confiscation policies and practices described above have left Palestinians marginalized, impoverished and subject to widespread and systematic socio-economic disadvantage across all domains of control. Decades of discriminatory treatment and allocation of resources by Israeli authorities for the benefit of Jewish Israeli citizens in Israel and Israeli settlers in the OPT have compounded the inequalities on the ground. Overall, Palestinians across all domains of control are denied the same opportunities to earn a living, engage in business and support themselves and their families as Jewish Israelis. Instead, they experience discriminatory limitations on access to and use of farmland, water, gas and oil, amongst other natural resources, as well as restrictions on the provision of health, education and other essential services.

This section focuses on Israeli policies aimed at suppressing Palestinians' human development, the discriminatory allocation of natural and economic resources for the socio-economic development of Jewish Israelis and the discriminatory provision of services to Palestinians across Israel and the OPT with a particular focus on the rights to access to water, to healthcare and to education as emblematic examples.

5.5.1 SUPPRESION OF PALESTINIANS' HUMAN DEVELOPMENT

Palestinians living in Israel and the OPT are unambiguously disadvantaged across all well-being indicators for which measures are available. Their lack of enjoyment of a range of economic and social rights is a direct result not only of their segregation from Jewish Israelis but also from each other through severe restrictions on movement, and the subjugation of Palestinian human development to the socio-economic interests of Jewish Israelis.

Israel has designed policies to maintain Jewish domination over the Palestinian economy through the exclusion of Palestinian communities inside Israel, and the creation of a regime of economic dependency in the OPT in the context of a prolonged military occupation. This has prevented Palestinians from achieving sustainable development in the West Bank and Gaza Strip.[837]

At the same time, Israel has sought to mask this reality. In its 2019 review of Israel, CERD criticized the lack of comprehensive, updated statistics on the socio-economic status of the different population groups living in Israel and in the territories under its jurisdiction or effective control. It recommended that it provide such statistics

[832] B'Tselem, Khirbet Susiya – a village under threat of demolition (previously cited).
[833] Amnesty International, interview in person with Azam Nawaj'a, resident, 7 June 2018, Khirbet Susiya.
[834] OCHA, "Susiya: a community at imminent risk of forced displacement" (previously cited).
[835] Amnesty International, interview by voice call with Fatima Nawaj'a, resident, 23 April 2021.
[836] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 27 August 2021).
[837] In 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Change including 17 Sustainable Development Goals. These goals relate to, amongst others, ending poverty, ending hunger and achieving food security, ensuring healthy lives and promoting well-being for all, ensuring availability and sustainable management of water for all, reducing inequality within and among countries, making cities and human settlements inclusive, safe and sustainable and ensuring quality education for all. For more information, see UN Department of Economic and Social Affairs: sdgs.un.org/2030agenda

disaggregated by, amongst other factors, ethnic or national origin and languages spoken.[838] CERD further criticized Israel for not including information on the socio-economic status of the population living in the OPT, noting that Israel bears obligations as set out in the ICERD and international law towards the population of the OPT.[839]

SEGREGATED PALESTINIAN ECONOMY INSIDE ISRAEL

Israel's long-standing discriminatory policies towards its Palestinian citizens have not only impeded their socio-economic development but also resulted in a large gap between them and their Jewish Israeli counterparts, in terms of standard of living, livelihood opportunities, education, welfare, healthcare and cultural services.[840] These gaps have been created by successive Israeli governments over more than seven decades through policies and practices which have aimed, on the one hand, to restrict Palestinians' access to the labour market in order to protect Jewish Israelis' preferential access to employment and, on the other, to make Palestinians dependent on economic opportunities provided by the state and the Jewish sector by intentionally hampering the development of Palestinian communities and their economy.[841] The resulting subordination of the Palestinian economy "further reinforced the socio-economic inequality between the two population groups"[842] with some researchers arguing that it was an integral part of Israeli state-building "aimed at controlling the [Palestinian] minority".[843]

Historically, Israel adopted socio-economic policies towards its Palestinian citizens that are similar to those it pursues towards Palestinians in the OPT today, such as using them, at different times, as a source of cheap labour in order to preserve the interests of the Jewish majority. As explained above, during the period of military rule in Israel (1948-1966), Palestinians inside the Green Line were subjected to tight restrictions on movement primarily designed to expropriate land. Heavily reliant on agriculture for their livelihoods until 1948 and without access to farmland, Palestinians were forced to seek economic opportunities in the Jewish sector. Their access to work, however, depended on obtaining work permits, a system established to protect Jewish citizens' jobs at a time of unemployment caused by rapid immigration and economic problems. Restrictions were gradually eased as Israel experienced huge economic growth prompting the need for an increased labour force mainly in the construction sector.[844]

Palestinian citizens of Israel were eventually incorporated into the labour market and, following the 1967 occupation of the West Bank and Gaza Strip, replaced by Palestinians from the OPT to perform the majority of the most insecure and lowest paid jobs. However, inequalities persisted and became more entrenched as Israel created jobs for its Palestinian citizens in the sectors it was keen to develop for the benefit of its Jewish population whilst simultaneously pursuing a strategy of neglect and underdevelopment of Palestinian localities. Over the years, in addition to massive land seizures, the following policies have had a particularly detrimental effect on Palestinian communities in Israel: the exclusion of Palestinian localities from high priority areas for development; discriminatory allocation of land and water for agriculture; discriminatory planning and zoning, and the delegation of major infrastructure development projects to Israeli state institutions involved in the expropriation of Palestinian land such as the WZO and the Jewish Agency for Israel, resulting in the prioritization of infrastructure projects in Jewish localities, while failing to put in place a similar mechanism in Palestinian communities (see sections 5.5.2 "Discriminatory allocation of resources" and 5.5.3 "Discriminatory provision of services" for more details). [845]

As a result of these policies Palestinian communities in Israel are segregated from Jewish localities and lack the infrastructure required for economic development, forcing their population to seek employment in the Jewish sector, where they then face institutional discrimination when competing for jobs, particularly those with higher status.[846]

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[838] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, paras 7-8. See also, for example, para. 24 regarding the lack of comprehensive and disaggregated data in respect of employment.
[839] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, para. 9.
[840] See, for example, Mossawa Center, "The 2019 State Budget and Government Resolution 922", 2019, mossawa.org/eng//Public/file/12019%20State%20Budget%20and%20Government%20Resolution%20922.pdf
See also, for example, 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,* undated, mossawa.org/eng//Public/file/0Position%20Paper%20Budget%202016-2020.pdf
[841] Ahmad H. Sa'di, "Incorporation without integration: Palestinian citizens in Israel's labour market", August 1995, Sociology, Volume 29, No. 3, pp. 429-451.
[842] Noah Lewin-Epstein and Moshe Semyonov, *The Arab Minority in Israel's Economy*, *Patterns of Ethnic Inequality*, 2019, Routledge
[843] Nimer Sultany, "The Making of an Underclass, the Palestinian citizens in Israel", *Winter 2012,* Israel Studies Review, Volume 27, Issue 2, pp. 190-200.
[844] Ahmad H. Sa'di, "Incorporation without integration: Palestinian citizens in Israel's labour market", August 1995, Sociology, Volume 29, No. 3, pp. 429-451.
[845] Ahmad H. Sa'di, "Incorporation without integration: Palestinian citizens in Israel's labour market", August 1995, Sociology, Volume 29, No. 3, pp. 429-451.
[846] Noah Lewin-Epstein and Moshe Semyonov, *The Arab Minority in Israel's Economy*, *Patterns of Ethnic Inequality*, 2019.

In noting that average measures alone do not give a complete picture of well-being conditions[847] and that assessing well-being outcomes at the country level requires taking into account differences between people and population groups, the Organization of Economic Cooperation and Development (OECD) highlighted that Arab populations[848] living in Israel are clearly disadvantaged across all well-being dimensions for which measures are available.[849] They experience higher rates of poverty, and lower levels of labour force participation, educational attainment and health. These multiple disadvantages are likely to be mutually reinforcing with, for example, low educational attainment leading to unfavourable labour market outcomes.

One key indicator of this well-being gap is the poverty rate among Palestinian citizens of Israel, which is amongst the highest in Israel. In 2020, 23% of Israeli citizens lived under the poverty line,[850] compared to 35.8% of Palestinian citizens of Israel.[851]

A 2018 socio-economic survey by the ICBS showed that the proportion of individuals who describe themselves as poor is 3.5 times higher among Arab residents (27.6%) compared to Jewish residents (7.6%). (The vast majority of those described as "Arabs" are Palestinians; see section 5.2.1 "Palestinians in Israel".) The same survey found that the average monthly net income per household in the Arab sector is NIS 12,700 (USD 4,097), compared to NIS 18,720 (USD 6,051) in the Jewish sector in Israel.[852] The poverty rate among Arab households with young children is 63%, compared to 32.3% in the whole population.[853]

As described above, Bedouin residents of the unrecognized villages in the Negev/Naqab are amongst the most marginalized populations in Israel (see section 5.4.4 "Discriminatory urban planning and zoning regime"). They live in extreme poverty and have the lowest education levels and incomes, alongside the highest infant mortality and unemployment rates, in the country.[854] In its 2019 review, the CESCR expressed concern "about the high and growing incidence of poverty" in Israel, including among Palestinian citizens of Israel, who include Bedouins. It also noted the high level of income inequality, which is the highest of the 37 member states of the OECD.[855] That same year, CERD expressed concern that non-Jewish minority groups, in particular Palestinian communities, continued to face limitations in the enjoyment of their right to work and were concentrated in low-paying sectors. It called on Israel to "[i]ntensify its efforts to increase the labour market participation of non-Jewish minority groups, in particular Palestinians and Bedouins, especially women belonging to these communities, including by providing education and training tailored to their experience and level of job skills and by considering the establishment of special measures."[856] This was also reflected in the CESCR's 2019 review when it expressed concern that certain groups such as "Bedouins" and "Arab women" continued to be limited in the enjoyment of their right to work and were concentrated in low-paid sectors.[857]

[847] The Organization of Economic Cooperation and Development (OECD) well-being dimensions include income and wealth, jobs and earnings, housing conditions, health status, work and life balance, education and skills, social connections, civic engagement and governance, environmental quality, personal security, and subjective well-being. These are very similar to Israeli well-being frameworks that include material standard of living, employment and work-leisure balance, infrastructure and housing, health, leisure, community and culture, education and skills, personal and social well-being, civic engagement and governance, environment, personal safety, and Information technology. See, for example, OECD, *Measuring and Assessing Well-being in Israel*, January 2016, oecd.org/sdd/measuring-and-assessing-well-being-in-Israel.pdf

[848] The term Arab populations here reflects the classification provided in the OECD report, which sometimes refers to them as "Arab Israelis", which appears to reflect the category of Arab citizens of Israel defined by the Israeli MoFA, which provides that Arab citizens of Israel is an inclusive term that that describes a number of different and primarily Arabic-speaking groups, including Muslim Arabs (this classification includes Bedouins), Christian Arabs, Druze and Circassians. Palestinian citizens of Israel make up the vast majority of this category. See section 5.2.1 "Palestinians in Israel".

[849] OECD, *Measuring and Assessing Well-being in Israel* (previously cited).

[850] Jerusalem Post, "About two million Israelis live below the poverty line – report", 22 January 2021, jpost.com/israel-news/israel-report-about-two-million-people-live-below-the-poverty-line-656317

[851] See section 5.2.1 "Palestinians in Israel".

[852] Physicians for Human Rights – Israel, *20 years since October 2000: structural health discrimination between Arabs and Jews*, October 2020, phr.org.il/wp-content/uploads/2020/11/ArabsReport_Eng_digital.pdf, p. 30.

[853] ICBS, 2018 הסקר החברתי [Social Survey 2018], cbs.gov.il/he/publications/doclib/2020/seker_hevrati18_1788/t12.pdf (in Hebrew), "Social Mobility", Table 12, 20+, by financial concessions and feelings of poverty.

[854] Inter Agency Task Force on Israeli Arabs Issues, The Issue: Negev Bedouin, iataskforce.org/issues/view/2 (accessed on 25 August 2021); Kathleen Abu-Saad, "Indigenous Data Matter: Spotlight on Negev Bedouin Arabs", 22 October 2016, Lancet, Volume 388, Issue 10055, thelancet.com/journals/lancet/article/PIIS0140-6736(16)31866-9/fulltext#back-bib6, pp. 1983-1984.

[855] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 42.

[856] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, paras 38(b) and 39(b).

[857] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, paras 24 and 25.

More broadly, Palestinian citizens' access to the labour market in Israel remains limited even though educational attainment outcomes have improved for both Palestinian men and women in recent years.[858] The gap for Palestinian women is particularly significant as, although more have joined the formal workforce over recent decades, their participation rate remained low at 34% in 2018, and was only half of the equivalent employment rate of Jewish Israeli women (estimated at 68% in 2018). Meanwhile, according to ICBS data, in 2018, some 65% of Palestinian men were formally employed, but the majority (60%) worked in lower-status and lower-skill jobs compared to 27% of Jewish Israelis performing such jobs.[859] The confinement of Palestinians to poorly resourced enclaves, institutional discrimination and "outright prejudice against Palestinians" are amongst the key reasons behind these socio-economic gaps between Palestinian and Jewish Israelis.[860]

FRAGILE AND SUBJUGATED ECONOMY IN OPT

Across the OPT, Israel's discriminatory policies of territorial fragmentation and segregation pursued in the context of a prolonged military occupation have had a hugely detrimental effect on the performance of the Palestinian economy, leaving it disconnected, weak and subordinate to Israel's geo-demographic goals, and crucially, unable to achieve sustainable and equitable development for the Palestinian population. Whilst the situation in the OPT has improved over recent decades with regards to some social rights, including maternal health, literacy and vaccination rates, in general, living standards have been stagnating or deteriorating with access to healthcare, employment, education and housing being particularly affected. [861]

Since 1999, Palestinian gross domestic product (GDP) in the OPT has effectively remained stagnant clearly pointing to the "suppression of human potential" and economic growth resulting from Israel's oppression and domination of Palestinians.[862] In 2019, GDP growth in the West Bank was 1.15%, down from 2.3% in 2018, the lowest rate since 2012.[863] The Palestinian economy suffers from numerous restrictions by Israel on trade that impact on the production of exports and importable goods. Almost all Palestinian imports and exports transit ports and crossing points controlled by Israel, where delays and security measures increase costs by an average of USD 538 per shipment, resulting in a significant and persistent trade deficit. In 2019, the trade deficit was 33.7% of GDP.[864]

DEVASTATING EFFECTS OF 'DUAL USE' POLICY ON ECONOMY OF WEST BANK AND GAZA STRIP

Israel's restrictions on movement in the OPT are not limited to people, but also control the movement of goods into and out of the territories. Israel imposed a "dual use" policy in 2007 that restricts the entry of any goods it deems to potentially have military, as well as civilian, use, including chemicals and technology. This policy only applies to Palestinian importers in the West Bank and Gaza Strip, not to their Israeli counterparts or even to Israeli settlers in the OPT. It has been devastating for Palestinians and their small economy in general, especially for the agriculture, information and communications technology (ICT) and manufacturing sectors, and has had catastrophic effects in the Gaza Strip in particular.[865]

Since 2007, Israel has progressively expanded the list of products and goods liable under the "dual use" policy so that it now comprises 117 items.[866] The "List of Dual-Use Goods requiring Approval for Entry into the Gaza Strip and Judea and Samaria Area" was published for the first time in 2017 following a legal battle, according to Israeli human rights organization Gisha – Legal Center for Freedom of Movement (Gisha).[867] It includes a general list of 56 items for the totality of the OPT, and an additional 61 items specifically for Gaza, which goes well beyond

[858] IZA Institute of Labor Economics, *How is the Covid-19 Crisis Exacerbating Socioeconomic Inequality among Palestinians in Israel?,* September 2020, iza.org/publications/dp/13716/how-is-the-covid-19-crisis-exacerbating-socioeconomic-inequality-among-palestinians-in-israel
[859] IZA Institute of Labor Economics, *How is the Covid-19 Crisis Exacerbating Socioeconomic Inequality among Palestinians in Israel?* (previously cited).
[860] IZA Institute of Labor Economics, *How is the Covid-19 Crisis Exacerbating Socioeconomic Inequality among Palestinians in Israel?* (previously cited).
[861] UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report, 19 October 2016, UN Doc. A/71/554.
[862] UNCTAD, "Fifty years of occupation have driven the Palestinian economy into de-development and poverty", 12 September 2017, unctad.org/press-material/fifty-years-occupation-have-driven-palestinian-economy-de-development-and-poverty
[863] UNCTAD, *Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*, 5 August 2020, UN Doc. TD/B/67/5, para. 2.
[864] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), paras 2 and 11.
[865] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019, documents.worldbank.org/en/publication/documents-reports/documentdetail/942481555340123420/economic-monitoring-report-to-the-ad-hoc-liaison-committee, pp. 14-33.
[866] Gisha, "Controlled dual-use items – in English", undated gisha.org/UserFiles/File/LegalDocuments/procedures/merchandise/170_2_EN.pdf
[867] Gisha, "The dual use list finally gets published but it's the opposite of useful", 20 April 2017, gisha.org/en-blog/2017/04/20/the-dual-use-list-finally-gets-published-but-its-the-opposite-of-useful

standard international practice, according to the World Bank.[868] Relaxing the "dual use" list would lead to an additional, cumulative GDP growth of 6% to the West Bank economy and about 11% in Gaza by 2025, according to a 2019 analysis by the World Bank.[869]

The list is vague, including categories such as "communications equipment, communication support equipment, or equipment with communication functions". These categories can include items that are found in everyday use, such as home appliances and medical equipment.[870] Further, authorization of access to the items requires going through a permit process administered by the Israeli Civil Administration, but final approval is granted by the Israel Security Agency.[871]

Israel controls all aspects of exporting from the Gaza Strip, including the types of goods that can be exported, where they can be exported to and when they can leave the territory. Between 2007 and 2014, Israel only allowed goods from Gaza to be exported abroad and not to Israel or the rest of the OPT.[872] Since late 2014, Israel has permitted a limited list of agricultural and manufactured goods to be sold in the West Bank (such as textiles) and Israel (such as eggplants and tomatoes).[873] There is no security rationale for Israel's punitive restrictions on exports from Gaza,[874] which have resulted in dire economic conditions and violated the human rights of the civilian population.

Between 1 January and 31 October 2020, on average 7,056 trucks per month entered Gaza compared to 10,400 trucks per month in 2005, before Israel significantly restricted the transfer of goods into the Gaza Strip.[875]
In April 2019, the World Bank called on Israel to reform and ease the cumbersome "dual use" policy to align with international standards outlined in various international legal instruments and developed by relevant international organizations.[876] It stated that it had resulted in "severe fiscal shock" on the Palestinian economy and living standards of Palestinians in the OPT.[877]

The 1994 Paris Protocol entrenched the dependence of the Palestinian economy on Israel via a customs union that leaves no space for independent Palestinian economic policies, tying the OPT to the trade policies, tariff structure and value-added tax rate of Israel. Moreover, Israel collects trade tax revenues on behalf of the Palestinian authorities in the West Bank and then transfers them to the Palestinian authorities. This allows Israel to control two thirds of Palestinian tax revenue and entails the leakage of Palestinian fiscal resources to the treasury of Israel, estimated at hundreds of millions of US dollars per year. The UN Conference on Trade and Development (UNCTAD) partially estimates the Palestinian fiscal leakage, from six main sources, to be equivalent to 3.7% of Palestinian GDP or 17.8% of total tax revenue. Between 2000 and 2017, the Palestinian fiscal leakage was estimated to be USD 5.6 billion, or 39% of GDP in 2017.[878]

In addition, every year Palestinians from the OPT lose substantial financial resources in income tax and social security payments made by Palestinians working in Israel, without benefiting from any corresponding public expenditure on services that would serve their communities.[879]

'DE-DEVELOPMENT' IN GAZA STRIP UNDER ISRAEL'S ILLEGAL BLOCKADE

The blockade and Israel's repeated military offensives have had a heavy toll on Gaza's essential infrastructure and further debilitated its health system and economy. Indeed, Israel's collective punishment in Gaza of the civilian population, the majority of whom are children, has created conditions inimical to human life due to shortages of housing, potable water and electricity, and lack of access to essential medicines and medical care, food,

[868] Gisha, "Controlled dual-use items – in English" (previously cited); World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee 2019* (previously cited), Annex II.
[869] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), para. 52.
[870] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), para. 25.
[871] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), para. 29(d).
[872] Gisha, "Exit of goods from Gaza via Kerem Shalom Crossing", 30 June 2021, gisha.org/en/graph/export-from-gaza
[873] Gisha, "Exit of goods from Gaza via Kerem Shalom Crossing" (previously cited).
[874] Gisha, "The dual use list finally gets published but it's the opposite of useful" (previously cited).
[875] Gisha, Entrance of goods to Gaza from Israel 01/2010-10/2020, October 2020, gisha.org/graph/2387 (accessed on 30 August 2021).
[876] For a detailed discussion of the international standards regulating and controlling the use of "dual use" goods, see World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited).
[877] World Bank, "World Bank Calls for Reform to the Dual Use Goods System to Revive a Stagnant Palestinian Economy", 17 April 2019, worldbank.org/en/news/press-release/2019/04/17/world-bank-calls-for-reform-to-the-dual-use-goods-system-to-revive-a-stagnant-palestinian-economy
[878] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 51.
[879] UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential,* 2019, UN Doc. UNCTAD/GDS/APP/2019/1.

educational equipment and building materials.[880] In its 2019 conclusions, CERD expressed concern that the long-standing blockade of the Gaza Strip violates the right to freedom of movement and impedes the ability to access essential services, especially healthcare.[881]

According to UNCTAD, between 2007 and 2018, due to the Israeli blockade, the economy grew by less than 5% and its share of the Palestinian economy decreased from 31% to 18%. As a result, GDP per capita shrank by 27% and more than 1 million people were pushed below the poverty line, with the rate of poverty increasing from 40% in 2007 to 56% in 2017.[882] The proportion of people surveyed in Gaza who said they found it difficult or very difficult to live on their current income increased from 63% in 2011 to 74% in 2016.[883]

The World Bank concluded that, by 2018, Gaza had effectively been reduced to a safety-net state, with over 75% of its households relying on some form of social assistance. It further stated that this reality, combined with a nearly universal lack of access to reliable water and electricity services and restrictions on access to medical services outside the region, was widely recognized as a humanitarian crisis.[884]

This entrenched the dependence of more than 80% of the population on international assistance. However, UNCTAD also noted that such assistance has been insufficient to prevent deep crises of poverty, food insecurity, hygiene and health, as well as electricity shortages and a dearth of safe drinking water.[885] By 2019, GDP growth was virtually at zero, with the territory failing to rebound from two consecutive contractions: minus 7.7% in 2017 and minus 3.5% in 2018. Therefore, the real GDP per capita declined by 2.8%.[886] The unemployment rate in Gaza was 45.1% in 2019.[887]

According to UNCTAD, between 2007 and 2018 the estimated cumulative economic cost of Israel's occupation in Gaza amounted to USD 16.7 billion – six times the value of Gaza's GDP in 2018.[888] The poverty rate increased from 40% to 56% between 2007 and 2017.[889]

The blockade has also had a detrimental impact on food security in the Gaza Strip. Much of the available food is provided by the UN and other aid agencies or smuggled in through tunnels running under the Egypt-Gaza border and then sold on at exorbitantly high prices to Gaza's beleaguered residents.[890] Israeli authorities have severely restricted the entry of goods into Gaza and have been using "mathematical formulas" to determine the entry of food "essential for the survival of the civilian population".[891]

In 2018, OCHA reported a 68% prevalence of food insecurity in Gaza,[892] even though most households in Gaza reported that they received some form of food assistance or social transfers from Palestinian governmental bodies or international organizations.[893] According to UNRWA, before the blockade began in June 2007, 80,000 Palestinian refugees in Gaza received urgent food aid. In 2019, that figure was over 1 million.[894] Further, a 2019

[880] Amnesty International, *Suffocating: The Gaza Strip under Israeli Blockade* (Index: MDE 15/002/2010), 18 January 2010, amnesty.org/en/documents/MDE15/002/2010/en
[881] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, para. 44.
[882] Al Jazeera, "Over 1m Palestinians under poverty line in besieged Gaza: UN", 25 November 2020, aljazeera.com/news/2020/11/25/fifty-six-percent-of-gazan-under-the-poverty-line-un; UNCTAD, *Report on UNCTAD assistance to the Palestinian people* (previously cited), paras 23 and 52.
[883] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 27 September 2018, worldbank.org/en/country/westbankandgaza/publication/economic-monitoring-report-to-the-ad-hoc-liaison-committee-september-2018, para. 41.
[884] World Bank, "West Bank and Gaza Poverty and Shared Prosperity Diagnostic 2011-2017", 14 August 2018, openknowledge.worldbank.org/bitstream/handle/10986/30405/129742-WP-P158731-PUBLIC-3-9-2018-11-9-47-PovertySharedProsperityPalestinefinal.pdf?sequence=1&isAllowed=y, p. 7.
[885] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 21.
[886] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 2.
[887] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 26.
[888] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited).
[889] UNCTAD, *Economic costs of the Israeli occupation for the Palestinian people: The Gaza Strip under closure and restrictions*, 13 August 2020, UN Doc. A/75/310.
[890] Amnesty International, "Israel/OPT: Suffocating Gaza - the Israeli blockade's effects on Palestinians", 1 June 2010, amnesty.org/en/latest/news/2010/06/suffocating-gaza-israeli-blockades-effects-palestinians
[891] Gisha, *Separating Land, Separating People* (previously cited), p. 2; Haaretz, "Israel Bans Books, Music and Clothes From Entering Gaza", 17 May 2009, haaretz.com/1.5053317
[892] OCHA, "2018: More casualties and food insecurity, less funding for humanitarian aid", 27 December 2018, ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid
[893] OCHA, *Food insecurity in the oPt: 1.3 million Palestinians in the Gaza strip are food insecure*, 14 December 2019, ochaopt.org/content/food-insecurity-opt-13-million-palestinians-gaza-strip-are-food-insecure
[894] UNRWA, "More Than One Million People in Gaza – Half of the Population of the Territory – May Not Have Enough Food by June", 13 May 2019, unrwa.org/newsroom/press-releases/more-one-million-people-gaza-%E2%80%93-half-population-territory-%E2%80%93-may-not-have

nutrition needs assessment in Gaza found that 18% of pregnant women and 14% of lactating mothers were malnourished and only 14% of children under five years of age had a minimum acceptable diet.[895]

The collapse of Gaza's economy caused by the blockade has been exacerbated by four Israeli military offensives in the past 13 years, which have caused huge destruction to civilian property and infrastructure in addition to killing at least 2,700 Palestinian civilians as well as injuring and displacing tens of thousands of others. During this period Palestinian armed groups fired thousands of indiscriminate rockets towards cities and towns in Israel killing or injuring dozens of civilians. In 2019, UNCTAD estimated the cost of the three Israeli military operations in Gaza between 2008 and 2014 to be at least three times the GDP of Gaza.[896]

DESTRUCTION OF GAZA'S INFRASTRUCTURE

Between 2000 and 2005, at least 2,500 homes were destroyed along the "buffer zone" outside the context of military offensives.[897] Israel's four major military operations in Gaza between 2008 and 2021, carried out within the context of the illegal blockade devastated civilian housing and essential infrastructure, including electricity, water and sewerage and sanitation plants.[898]

Approximately 60,000 homes and other properties were damaged or destroyed during these military offensives.[899] Only a small proportion of properties destroyed in the conflicts between 2008 and 2014 were reconstructed before the 2021 military offensive. For example, Israeli air strikes destroyed or damaged around 17,800 homes in the 2014 assault on Gaza and, by 2019, around a fifth of the homes destroyed were still either destroyed or heavily damaged, leaving more than 100,000 Palestinians homeless in the largest displacement in the OPT since 1967.[900] In 2019, UNCTAD estimated the cost of the three Israeli military operations in Gaza between 2008 and 2014 to be at least three times the GDP of Gaza.[901]

Prior to the 2014 Israeli attacks there was a shortage of at least 75,000 housing units in Gaza, largely as a result of building stoppages caused by restricted imports. Even when materials are allowed into Gaza, increased shipping, storage and compensation costs raise prices and make construction unaffordable for many. Additionally, blocked access to Gaza of staff and contractors delays or stops building and infrastructure projects.[902]

[895] UNICEF, WFP and Save the Children, *Gaza Strip Nutrition Multi-sectoral Assessment,* 27 May 2019, wfp.org/publications/executive-summary-multisectoral-nutrition-assessment-wfp-unicef-and-save-children

[896] UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (previously cited), p. 12.

[897] HRW, *Razing Rafah*, 17 October 2004, hrw.org/report/2004/10/17/razing-rafah/mass-home-demolitions-gaza-strip; Amnesty International, *Under the rubble: House demolition and destruction of land and property* (Index: MDE 15/033/2004), amnesty.org/en/documents/MDE15/033/2004/en, p. 18.

[898] B'Tselem, *Human Rights Violations during Operation Pillar of Defense,* May 2013, btselem.org/download/201305_pillar_of_defense_operation_eng.pdf; B'Tselem, Fatalities during Operation Cast Lead, btselem.org/statistics/fatalities/during-cast-lead/by-date-of-event (accessed on 12 August 2021); B'Tselem, 50 Days: More than 500 Children: Facts and figures on fatalities in Gaza, Summer 2014, btselem.org/2014_gaza_conflict/en (accessed on 12 August 2021).

[899] About 18,000 residential units were either completely destroyed or heavily damaged during Operation "Protective Edge". See Amnesty International, *Families Under the Rubble: Israeli Attacks on Inhabited Homes* (Index: MDE 15/032/2014), 5 November 2014, amnesty.org/en/documents/MDE15/032/2014/en, p. 5.
More than 2,174 housing units and 207 factories and businesses were damaged or destroyed during Operation "Pillar of Defense". See Al Mezan, *Statistical Report on: Persons Killed and Property Damaged in the Gaza Strip by the Israeli Occupation Forces during "Operation Pillar of Cloud"*, 2013, mezan.org/en/uploads/files/17207.pdf, Tables 17, 20, 21.
More than 3,000 homes and hundreds of other properties were destroyed and more than 20,000 were damaged during Operation "Cast Lead". See Amnesty International, *Israel/Gaza: Operation 'Cast Lead': 22 days of death and destruction* (Index: MDE 15/015/2009), 2 July 2009, amnesty.org/en/documents/MDE15/015/2009/en, p. 54.
According to the Palestinian Ministry of Public Works and Housing, from the start of the escalation until 12pm on 21 May 2021, 1,042 housing and commercial units were destroyed; another 769 units were severely damaged and rendered uninhabitable; and a further 14,536 units suffered minor damage. The Education Cluster (of UN and Palestinian institutions) reported that 53 education facilities had been damaged since the start of the escalation. According to the Health Cluster (of UN and Palestinian institutions), as of 21 May 2021, six hospitals and 11 primary healthcare centres had been damaged, with one centre suffering severe damage. One hospital was not functioning due to lack of electricity. See OCHA, "Escalation in the Gaza Strip, the West Bank and Israel (covering 12:00 20 May – 12:00 21 May)", 21 May 2021, ochaopt.org/content/escalation-gaza-strip-west-bank-and-israel-flash-update-11-covering-1200-20-may-1200-21-may

[900] B'Tselem, *4.5 years after Israel destroyed thousands of homes in Operation Protective Edge: 13,000 Gazans still homeless*, 3 March 2019, btselem.org/gaza_strip/20190303_13000_gazans_homelsess_since_2014_war

[901] UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (previously cited), p. 12.

[902] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee,* 19 September 2016, documents1.worldbank.org/curated/en/474311473682340785/pdf/108205-V2-WP-PUBLIC-SEPT-14-2PM-September-2016-AHLC-World-Bank-Report.pdf

Between 2006 and 2017, there were 297 incidents in which Israeli forces targeted water, energy and agriculture infrastructure in Gaza, usually during military offensives.[903] During the 10-21 May 2021 offensive, Israeli army attacks wrought massive destruction on Gaza's infrastructure yet again, which the ICRC said will take years to rebuild.[904]

Israel's military offensives against the Gaza Strip have also undermined Gazans' access to education. For example, of the seven schools destroyed during Israel's 2014 offensive, only one had been rebuilt by August 2016.[905] While damaged schools have been repaired, even prior to 2014 there was a shortage of over 200 schools in Gaza. This has resulted in severe overcrowding in most of Gaza's schools, many of which function on a double shift basis – hosting one school in the morning and another in the afternoon.[906] The impact of the May 2021 offensive resulted in 331 damaged educational facilities.[907]

Since 2007, Israel has in general refused to allow into Gaza much of the construction materials needed to rebuild civilian infrastructure such as cement and wooden planks under the Israeli military's "dual use" policy (see box above).[908] It allowed such materials to enter Gaza for the first in 2014, following its military offensive, under the Gaza Reconstruction Mechanism (GRM), which was set up that year. The GRM enables the Ramallah-based Palestinian authorities and the government of Israel to approve projects, beneficiaries and vendors of materials for reconstruction, while the UN monitors that the materials have gone to the intended beneficiaries. In 2019, some 80% of cement needed for housing reconstruction was imported through the GRM.[909]

In August 2020, Israel imposed a three-week punitive ban on the entry of construction materials and fuel for Gaza's power plant, which reduced Gaza's power supply and impaired the health, water and sanitation systems.[910]

After the ceasefire that ended the May 2021 conflict, the international community pledged to rebuild Gaza. The US government promised a serious effort to be coordinated with the Palestinian authorities in Ramallah that should not benefit the Hamas de facto administration in Gaza. Despite this, the Israeli authorities have maintained a strict closure of the crossings into and out of Gaza, severely restricting the movement of people and goods.[911] The UN had launched reconstruction efforts by October 2021.[912]

COSTLY RESTRICTIONS ON MOVEMENT IN WEST BANK

According to the Palestinian Central Bureau of Statistics, Israeli-imposed movement restrictions cost Palestinians in the West Bank 60 million lost work hours per year (equivalent to USD 274 million) and about 80 million litres of fuel.[913] The World Bank estimates that easing road obstacles alone, one element of the restrictions, just enough to improve market access by 10%, would increase local output in the West Bank by 0.6% and, therefore, GDP per capita in the West Bank would be 4.1% to 6.1% higher than its current level.[914] In 2019, this was equivalent to a total loss of between USD 589 million and USD 876 million. A 2019 study by the Applied Research Institute – Jerusalem concluded that closures substantially reduce the probability of being employed, hourly wages and the number of days worked, while at the same time increasing the number of working hours per day. The study also concluded that checkpoints alone cost the West Bank economy at least 6% of GDP and that placing a checkpoint

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[903] Erika Weinthal and Jeannie Sowers, "Targeting infrastructure and livelihoods in the West Bank and Gaza", International Affairs, March 2019, Volume 95, Issue 2, pp. 334-340.
[904] ICRC, "The International Committee of the Red Cross welcomes this ceasefire after 11 intense days of torment, death and destruction for civilians in Gaza and in Israel", 21 May 2021, icrc.org/en/document/statement-fabrizio-carboni-icrc-near-and-middle-east-director
[905] HRW, "Gaza's Education in Rubble", 12 September 2014, hrw.org/news/2014/09/12/gazas-education-rubble
[906] HRW, "Gaza's Education in Rubble" (previously cited).
[907] UNICEF, "Education case study: State of Palestine", 19 November 2021, unicef.org/media/111126/file/Addressing%20learning%20loss%20through%20EiE%20and%20remedial%20education%20for%20children%20in%20Gaza%20(State%20of%20Palestine).pdf
[908] State of Israel, MoFA, "Gaza: List of Controlled Entry Items", 4 July 2010, mfa.gov.il/mfa/foreignpolicy/peace/humanitarian/pages/lists_controlled_entry_items_4-jul-2010.aspx
See also Gisha, *Information sheet: Dark-gray lists*, 31 January 2016, gisha.org/UserFiles/File/publications/Dark_Gray_Lists/Dark_Gray_Lists-en.pdf
[909] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), p. 17.
[910] Gisha, "Gaza authorities extend lockdown by 72 hours; Kerem Shalom is operating but Israel continues to block entry of fuel for Gaza's power plant", 27 August 2020, gisha.org/updates/11465; Gisha, "Israel reverses punitive restrictions imposed in recent weeks, including its ban on entry of fuel into Gaza but leaves the regular 'closure' in place", 1 September 2020, gisha.org/en/israel-reverses-punitive-restrictions-imposed-in-recent-weeks-including-its-ban-on-entry-of-fuel-into-gaza-but-leaves-the-regular-closure-in-place
[911] Gisha, "Israel's restrictions at Gaza crossings are impairing civilian infrastructure, crushing the economy, and violating human rights", 12 July 2021, gisha.org/en/pr-2-months-english
[912] UN News, "Build consensus or 'face increasingly desperate reality', warns Middle East envoy", 19 October 2021, news.un.org/en/story/2021/10/1103422
[913] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 19.
[914] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 19.

one minute away from a locality reduces the probability of being employed by 0.41%, the hourly wage by 6.3% and the working day by 2.6%.[915] At the same time, in 2017, the World Bank estimated that the removal of all Israeli restrictions on Area C alone could bring about additional cumulative growth of 33% for the West Bank economy by 2025.[916]

According to the World Bank, the Palestinian agriculture sector's productivity has declined because of Israeli restrictions on accessing water and agricultural land in Area C, and the "dual use" policy that includes key agricultural production items.[917] For instance, the restrictions on imported fertilizers have created a range of problems for the Palestinian agricultural sector, such as low productivity and soil degradation. In 2015, UNCTAD estimated that agricultural productivity in the OPT had declined by 20-30% since the enforcement of importation restrictions on fertilizers.[918] While the ICT sector is one of the fastest growing sectors in the OPT, according to the Palestinian Investment Promotion Agency,[919] the Palestinian ICT sector continues to be forcibly integrated into the Israeli system and also faces severe limitations as a result of this dependency and other Israeli restrictions on the sector, including the "dual use" restrictions on the transfer of ICT equipment.[920] According to the World Bank, the sector has only grown from 0.1% of GDP in 1994 to 4% in 2019.[921] The World Bank also reported that the capacity of the manufacturing sector in the OPT had stagnated as a result of the multi-layered system of Israeli restrictions, including the "dual use" policy, resulting in the decline of the share of the sector in the Palestinian economy.[922] While the manufacturing sector contributed 19% of the Palestinian GDP in 1994, this had dropped to around 10% by 2019, according to the World Bank.[923]

The situation of the OPT as a reservoir of cheap labour for Israel and Israeli settlements constrains the further development of the Palestinian economy. For example, the furniture sector has been significantly inhibited by the continuous flow of skilled workers to competitors in Israel that can afford to pay higher wages.[924] According to UNCTAD, in 2019 nearly 10% of the workforce, comprising 133,000 Palestinians, in the West Bank were employed in Israel and settlements.[925] While a study cited by UNCTAD found that Palestinians working in Israel and settlements increased factor income (income derived from factors of production such as land, capital and labour) received from Israel, it said that this "also decreases labour supply to the domestic market, dampens incentives to invest in human capital and negatively affects GDP growth."[926]

ECONOMY IN LIMBO IN EAST JERUSALEM

Systematic restrictions on the freedom of movement of Palestinians in East Jerusalem, including the fence/wall and the presence of Israeli settlements that segregate and isolate East Jerusalem from the rest of the West Bank (and Gaza Strip) are also a key obstacle to East Jerusalemites' ability to access livelihood opportunities, and drastically hinder their political, economic, cultural and social lives.

On the one hand, the economy of East Jerusalem remains dependent on the West Bank for services and for the production and trading of goods, but, on the other, it is also dependent on Israeli regulatory systems, and subordinated to its demographic imperatives and settlement strategies. As a result, it is not integrated in either system, and finds itself in a "developmental limbo".[927] By physically separating East Jerusalem from the rest of the West Bank, since the second *intifada* the Israeli authorities have considerably reduced the city's role "as the

[915] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 20.
[916] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee,* 18 September 2017, documents.worldbank.org/en/publication/documents-reports/documentdetail/515891504884716866/economic-monitoring-report-to-the-ad-hoc-liaison-committee, p. 19.
[917] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), p. 22.
[918] UNCTAD, *The Besieged Palestinian Agricultural Sector*, 2015, UN Doc. UNCTAD/GDS/APP/2015/1, p. 22.
[919] Palestinian Investment Promotion Agency, ICT, pipa.ps/page.php?id=1b870fy1804047Y1b870f (accessed on 29 August 2021).
[920] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), p. 23; World Bank, *The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development*, 2 January 2016, documents1.worldbank.org/curated/en/993031473856114803/pdf/104263-REVISED-title-a-little-different-WP-P150798-NOW-OUO-9.pdf; and Who Profits, *Signal Strength: Occupied the Telecommunications Sector and the Israeli Occupation*, July 2018, whoprofits.org/wp-content/uploads/2018/09/signal-strength-occupied-the-telecommunications-sector-and-the-israeli-occupation-1-1.pdf, p. 2.
[921] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), para. 47.
[922] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), p. 18.
[923] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 3 April 2019 (previously cited), p. 19.
[924] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 28
[925] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 27.
[926] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 29; Johanes Agbahey and others, "Access to Israeli labour markets: Effects on the West Bank economy", 22 June 2016, Institute of Agricultural Development in Transition Economies (IAMO), 2016 IAMO Forum, econpapers.repec.org/paper/agsiamf16/243992.htm
[927] UNCTAD, *The Palestinian economy in East Jerusalem: Enduring annexation, isolation and disintegration*, 2013, UN Doc. UNCTAD/GDS/APP/2012/1.

mercantile and trading centre for the West Bank".[928] According to UNCTAD, between 1993 and 2013, the Palestinian economy in East Jerusalem had shrunk by approximately 50%, while the fence/wall caused over USD 1 billion of direct losses to Palestinians in East Jerusalem in the first 10 years since the start of its construction mainly through lost trade and employment opportunities.[929]

For East Jerusalem's merchants and other businesses, Israel's permit regime and restrictions on movement have meant limited travel of worshippers for Friday prayers in Al-Aqsa mosque in the Old City or for work and education and a resulting loss of clients. By 2009, 25% of East Jerusalem's businesses were forced to shut down due to the closure system. At the same time, job opportunities in East Jerusalem have remained limited because of, among other things, Israel's land grabs and discriminatory planning and building procedures preventing any Palestinian-led activity in the construction sector, in addition to a rapidly growing labour force.[930]

At the same time, Israel's discriminatory policies relating to land use, planning and housing and residency rights, which are aimed at hampering the natural growth of the city's Palestinian population, have contributed to high poverty rates amongst Palestinians in East Jerusalem. Indeed, every year, Palestinians in East Jerusalem lose between NIS 630 million (USD 203 million)[931] and NIS 1.4 billion (USD 452 million) – approximately NIS 80,000 (USD 25,806) per family – because they cannot prove ownership rights and therefore cannot secure a mortgage.[932] The poverty has been exacerbated even further by a disabling economic environment, restricted investments, and decades of neglect by the municipal authorities in providing essential services (see section 5.5.3 "Discriminatory provision of services"). Today, some 72% of Palestinian families live below the poverty line, compared to 26% of Jewish Israeli families in the city, pointing to the systematic exclusion of Palestinians from the Israeli state despite East Jerusalem's annexation. The picture is even bleaker when it comes to children. As of 2019, 81% of Palestinian children in Jerusalem (most of them residing in East Jerusalem) lived below the poverty line, compared to 38% of Jewish children in Jerusalem.[933]

Employment statistics reflect similar patterns of inequality to those of Palestinian citizens of Israel, with higher labour participation rates among Jerusalem's Jewish residents (77% in 2019) than among its Palestinian population (50%).[934] While more Palestinian men from East Jerusalem were in active employment in 2019 than Jewish men residing in the city (72% versus 78 %) this is mainly due to low levels of employment amongst Jewish ultra-orthodox men, many of whom opt to study in yeshivas instead of working. In addition, the majority of Palestinian men from East Jerusalem tend to work in low paid, lower skill jobs in the construction, transportation and storage services, accommodation and food services sectors and trade. By contrast, the vast majority of Jewish men work in higher skill jobs in education, local and public administration, professional and scientific services, trade and human health and social services.[935] This inequality is even greater when it comes to Palestinian women, of whom only 23% were formally employed in 2019 compared to 81% of Jewish women living in Jerusalem. According to the Jerusalem Institute for Policy Research, the low level of workforce participation among Palestinian women is primarily due to lower levels of education, the non-recognition of Palestinian academic degrees by Israeli employers in the city, limited Hebrew and English language skills and lack of childcare support in East Jerusalem.[936]

IMPACT OF ISRAEL'S DISCRIMINATORY POLICIES ON HEALTH OF PALESTINIANS IN OPT

Israel's occupation and fragmentation of the OPT has detrimentally impacted the enjoyment by Palestinians of their right to the highest attainable standard of physical and mental health,[937] including the underlying

[928] UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report, 19 October 2016, UN Doc. A/71/554.
[929] UNCTAD, *The Palestinian economy in East Jerusalem: Enduring annexation, isolation and disintegration* (previously cited).
[930] UNCTAD, *The Palestinian economy in East Jerusalem: Enduring annexation, isolation and disintegration* (previously cited).
[931] The exchange rate used is NIS 3.10 to USD 1, valid as of 10 December 2021.
[932] International Crisis Group, *Reversing Israel's deepening annexation of occupied East Jerusalem*, 12 June 2019, crisisgroup.org/middle-east-north-africa/eastern-mediterranean/israelpalestine/202-reversing-israels-deepening-annexation-occupied-east-jerusalem
[933] ACRI, 2019 ירושלים המזרחית: עובדות ונתונים [East Jerusalem: Facts and Figures 2019], May 2019, docs.wixstatic.com/ugd/01368b_066f143cb7a245f88d448ef43f4890fb.pdf (in Hebrew), p. 2; and Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports*, 10 November 2019, tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_39700_E.pdf
[934] Michal Korach and Maya Choshen, *Jerusalem Facts and Trends 2021*, 2021, Jerusalem Institute for Policy Research, jerusaleminstitute.org.il/en/publications/jerusalem-facts-and-trends-2021
[935] Michal Korach and Maya Choshen, *Jerusalem Facts and Trends 2021* (previously cited).
[936] Michal Korach and Maya Choshen, *Jerusalem Facts and Trends 2021* (previously cited).
[937] ICESCR, Article 12(1).

determinants necessary for the enjoyment of good health and well-being.[938] In this respect, the World Health Organization (WHO) has highlighted the following:

The underlying conditions of life needed for enjoyment of good health and wellbeing by Palestinians are… detrimentally affected by the situation of ongoing military occupation of the West Bank and Gaza Strip… In addition to death and injury, exposure to violence has longer-term implications for physical and mental health, with Palestinian adolescents having one of the highest burdens of mental disorders in the Eastern Mediterranean Region.[939]

Data collected in 2013 indicated that about 54% of Gaza's children had post-traumatic stress disorder as a result of Israeli military attacks and the blockade.[940] A 2017 study indicated that the OPT had the largest burden of mental disorders in the Eastern Mediterranean Region.[941]

The lack of adequate healthcare services for Palestinians, primarily resulting from Israel's prolonged occupation, has resulted in lower life expectancy and higher infant and maternal mortality rates in comparison to Israeli settlers residing in the West Bank. In 2019, life expectancy at birth for Palestinians in the OPT was 74 years;[942] infant mortality was 17 per 1,000 live births;[943] and maternal mortality was reported to be 27 deaths per 100,000 live births.[944] By comparison, in the same year Israeli settlers had a life expectancy of nearly 83 years;[945] an infant mortality rate of 3 deaths per 1,000 live births;[946] and a maternal mortality rate of three deaths per 100,000 live births.[947]

5.5.2 DISCRIMINATORY ALLOCATION OF RESOURCES

Policies guiding the allocation of resources in Israel, other than those relating to land, as evidenced in the patterns of discriminatory distribution of public resources to localities, have also heavily favoured Jewish Israelis. Meanwhile, these policies deny Palestinian citizens of Israel equal access to resources necessary for the enjoyment of their social and economic rights.

The situation is even more acute in the OPT, where Israeli authorities have systematically and unlawfully appropriated Palestinians' natural resources for the economic benefit of their own citizens in Israel and in the settlements, in violation of international law.[948] Israel's exploitation of Palestinian natural resources of fertile agricultural land, water, oil, gas, stone and Dead Sea minerals deprives Palestinians of equal access to, or the opportunity to administer, develop and benefit from, their own resources. This severely impinges on their access to livelihoods and socio-economic rights, such as the rights to food and an adequate standard of living. In addition, Israeli policies of exclusion, segregation and restrictions on movement prevent Palestinians from accessing the resources that they are in theory able to exploit, and that are essential for their livelihood.

UNEQUAL ALLOCATION OF PUBLIC RESOURCES IN ISRAEL

The income inequality between Palestinian citizens of Israel and Jewish Israelis is reflected in the lack of equal expenditure on public services. According to the ICBS, there were 255 local authorities in Israel in 2018, of which there were 77 municipalities, 124 local councils and 54 regional councils.[949] About 90% of Palestinian citizens of Israel live in 139 localities, of which 112 are under the jurisdiction of 77 Palestinian local councils, 25 under

[938] CESCR, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 12(a), para. 9.
[939] World Health Organization (WHO), *Right to Health in the occupied Palestinian territory: 2018*, 2019, available at reliefweb.int/report/occupied-palestinian-territory/who-right-health-occupied-palestinian-territory-2018, p. 9.
[940] Basel El-Khodary and others, "Traumatic events and PTSD among Palestinian children and adolescents: The effect of demographic and socioeconomic factors", March 2020, Front Psychiatry, Volume 11, Issue 4, ncbi.nlm.nih.gov/pmc/articles/PMC7137754
[941] Raghid Charara and others, "The burden of mental disorders in the Eastern Mediterranean Region, 1990–2013", 17 January 2017, PLOS One, journals.plos.org/plosone/article?id=10.1371/journal.pone.0169575; WHO, Director-General, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan*, 5 November 2020, UN A73/15.
[942] State of Palestine, Ministry of Health, 2019 فلسطين التقرير الصحي السنوي, June 2019, site.moh.ps/Content/Books/HYM2UGrm8hFDOPe1AW6z2W6ZDvbJbuYGykdfV6B1IEulthrx5QMAyC_5WFKDTWWGKW3O7rk4vgIUzRIhJdSYyQXxFKscP6Uqz3UhrxoWLcHIT.pdf, p. 13.
[943] UNICEF, State of Palestine, data.unicef.org/country/pse (accessed on 29 August 2021).
[944] UNICEF, State of Palestine (previously cited).
[945] Macrotrends, Israel Life Expectancy 1950-2021, macrotrends.net/countries/ISR/israel/life-expectancy (accessed on 29 August 2021).
[946] UNICEF, Israel, data.unicef.org/country/isr (accessed on 29 August 2021).
[947] UNICEF, Israel (previously cited).
[948] Hague Regulations, Article 55.
[949] ICBS, "Population in localities, by population group, end of 2019", undated, cbs.gov.il/he/publications/doclib/2017/population_madaf/population_madaf_2019_1.xlsx

regional Jewish authorities, and two are part of Jewish local councils.[950] The remaining 10% live in "mixed cities" under the jurisdiction of their respective municipalities.

Historically, the exclusion of Palestinian localities from national development projects and the lack of authorized zoning plans have been the major obstacles to economic development for Palestinians in Israel. Without such zoning plans, Palestinian communities have been unable to designate land for housing and industrial use or establish the infrastructure needed for economic development.[951] Today, only 2% of industrial zones in Israel, which generate a significant tax income, are located within Palestinian localities, which are poorly connected to other parts of Israel by public transportation or main roads.[952]

Local authorities in Israel provide "local services, such as water supply, sewage systems, garbage disposal, road paving and maintenance, installation and maintenance of public gardens and parks, social services, and establishment of institutions for sports, education, culture and health". Central government remains responsible for "education, health, welfare and religious services".[953] The income of the local authorities comes from the local taxes paid by its residents and budget transferred from the central government.[954] Local authorities with limited resources rely on government subsidies to ensure they can continue to provide services. A 2014 report by the rights groups Sikkuy and Injaz found that, while local taxes make up 66% of the revenue for localities across Israel, they constitute only 31% of the budget for Palestinian localities.[955] Palestinian local authorities collect less tax revenue, largely because of the disparity in income from non-residential or business taxes – the consequence of discriminatory Israeli policies described throughout this report. Palestinian localities also receive lower subsidies from the central government intended for specific expenditures, such as education, welfare, health and cultural services. The subsidies received fail to meet the reasonable and essential needs of the Palestinian localities,[956] and are lower than those received by Jewish localities in Israel and even lower than those received by Israeli settlements in the occupied West Bank.[957]

According to the 2018 ICBS survey, monthly public expenditure on education and culture in the Jewish sector (NIS 3,612 per capita) is nearly three times more than in the Arab sector (NIS 1,250 per capita). The monthly expenditure on housing in the Jewish sector (NIS 4,234 per capita) is nearly 1.5 times higher than in the Arab sector (NIS 2,937 per capita).[958] The discrimination in the agriculture sector is also striking: in 2019, the Ministry of Agriculture and Rural Development allocated only 1% of its budget to the Arab sector while transferring grants to Jewish farmers, according to the Mossawa Center.[959] Current policies compound decades of discrimination in the sector, widening the socio-economic gap between Palestinian and Jewish citizens. In 1981 for example, 81.15% of farmland was located on state land owned by both the Israeli state and the JNF/KKL. Of this, only 0.17% was allocated to Palestinian farmers. Similarly, the Israeli authorities have discriminated against Palestinians when allocating water for farming and irrigation.[960] In a more recent example, in April 2020 the Israeli government allocated an economic recovery budget of NIS 2.8 billion to local authorities amid the Covid-19 pandemic, of which only NIS 47 million or roughly 1.7% of the budget was transferred to Palestinian local authorities in Israel, despite Palestinians making up 19% of the population and being one of the largest groups living in poverty.[961] Palestinian local authorities protested this discriminatory allocation, arguing that a funding total of NIS 70 million per month was needed to enable Palestinian local councils to deal with the effects of the pandemic.[962]

In 2015, Israel decided to allocate about NIS 12.3 billion (USD 3.97 billion) over five years for Arab local authorities in Israel, known as the Economic Development Plan for the Arab Sector 2016-2020 or Government

[950] Badil, *Forced Population Transfer: the case of Palestine,* December 2014, badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf, p. 16.
[951] Noah Lewin-Epstein and Moshe Semyonov, *The Arab Minority in Israel's Economy: Patterns of Ethnic Inequality*, 2019.
[952] HRW, *A Threshold Crossed* (previously cited), p. 156.
[953] Knesset, Local Government in Israel, knesset.gov.il/lexicon/eng/LocalAuthorities_eng.htm (accessed on 27 August 2021).
[954] Knesset, Local Government in Israel (previously cited).
[955] 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, sikkuy.org.il/wp-content/uploads/2014/10/localauthorities_eng.pdf, p. 4; HRW, *A Threshold Crossed* (previously cited), p. 156.
[956] Mossawa Center, "The 2019 State Budget and Government Resolution 922" (previously cited).
[957] Adva Center, *Central Government Subsidies of Municipal Budgets, 1997-2017*, 18 August 2018, adva.org/en/local-authorities-budgets-19972017
[958] ICBS, משקי בית עם שני ילדים או יותר מתחת לגיל שש נתונים מתוך סקר הוצאות משק הבית 2018 [Households with two or more children under six years old, figures from Household Expenses Survey 2018], 9 July 2020, cbs.gov.il/he/mediarelease/DocLib/2020/198/15_20_198b.pdf (in Hebrew).
[959] Mossawa Center, "The 2019 State Budget and Government Resolution 922" (previously cited).
[960] Ahmad H. Sa'di, "Incorporation without integration: Palestinian citizens in Israel's labour market", August 1995, Sociology, Volume 29, No. 3, pp. 429-451.
[961] New Arab, "Arab councils in Israel go on strike to protest coronavirus funding discrimination", 5 May 2020, english.alaraby.co.uk/english/news/2020/5/5/israeli-palestinian-councils-on-strike-to-protest-coronavirus-funding-discrimination
[962] New Arab, "Arab councils in Israel go on strike to protest coronavirus funding discrimination" (previously cited).

Resolution 922. This was focused on closing the gaps in planning and housing, employment, transportation and education in Arab society.[963] The Mossawa Center commented that, while the resolution was a step in the right direction, it scarcely began to narrow or even address the gaps between the Arab community and the Jewish majority in Israel accumulated over years of unequal resource allocation.[964] Indeed, in the early 1960s, Israel allocated merely 0.2% of its national budget for development in Arab localities, rising to 1.3% in the 1970s despite the fact that Arabs constituted well over 10% of Israel's total population at the time. This underfunding has continued since then pointing to a long-standing pattern of institutional discrimination.[965] The Mossawa Center further noted that it was difficult to discern the degree to which the Israeli government fulfilled its commitments in the resolution and that the government only transferred a fraction of the promised budget between 2016 and 2018.

On 4 and 5 November 2021 the Knesset approved the state budget proposed by the coalition government.[966] These votes marked the first state budget approved since March 2018 and provided for investment in public utilities and infrastructures, for welfare, economic and trade reform, and for planning in all state sectors. The budget amounted to NIS 609 billion (USD 196 billion) for 2021 and NIS 573 billion (USD 185 billion) for 2022. The budget included NIS 26.5 billion (USD 8.5 billion) for a five-year plan until 2026 aimed at the socio-economic development of Arab communities. It also included NIS 2.5 billion shekels (USD 806 million) for a national plan to combat crime and violence in those communities, including for the hiring of 1,100 police officers to patrol streets. The plan also promises the creation of a new Bedouin city in the Negev/Naqab and the recognition of three Bedouin villages.[967] The next step for the approved budget will be the breakdown of expenditure in specific areas, with decisions expected from individual ministries in early 2022. For instance, the 2021-22 education budget does not specify how much of the budget for building new classrooms and repair of school buildings will go to schools in Palestinian and other Arab localities in Israel where the medium of instruction is Arabic.[968] The planned investment is significant and welcome, but the outcome will only be clear once there is implementation of a plan to reverse decades of discrimination, rather than to plan development from unequal starting points.

RESTRICTIONS ON USE OF AGRICULTURAL LAND IN WEST BANK

Palestinians in the West Bank have traditionally relied on agriculture to earn a living. Prior to 1967, the agriculture sector employed about a quarter of the labour force and contributed about a third of its GDP and exports.[969] Following the occupation, Israel's various policies – including building settlements and the fence/wall, and severe restrictions on Palestinians' movement and ability to access their land – have deprived Palestinians and their economy of 63% of the most fertile and best grazing land in the West Bank, located in Area C.[970] Today, every aspect of the Palestinian economy is affected by Israeli policies. For example, Palestinian producers must bear costs of exporting and importing that are twice as high as those of their Israeli counterparts, while procedures for importing require four times the amount of time Israeli importers spend on similar activities, due to the different trading costs and duration requirements imposed by Israeli authorities.[971]

The olive harvest is an important aspect of Palestinian agriculture and economy and is considered a cultural and social event. Between 80,000 and 100,000 families rely on the harvest for their income, including unskilled labourers and more than 15% of working women.[972] UNCTAD has highlighted that Palestinian agricultural livelihood is undermined by the uprooting of and damage to olive trees to facilitate settlement expansion. In 2018 alone, Israel uprooted 7,122 olive trees, bringing the total to over 1 million trees destroyed since 2000.[973] In

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963 Arab Center for Alternative Planning, *Follow up on Government Resolution 922,* undated, ac-ap.org/en/category/185/Follow-up-on-Government-Resolution-922

964 Mossawa Center, "The 2019 State Budget and Government Resolution 922" (previously cited).

965 Noah Lewin-Epstein and Moshe Semyonov, *The Arab Minority in Israel's Economy: Patterns of Ethnic Inequality*, 2019.

966 Al-Monitor, "Arab Israeli party celebrates budget passage", 8 November 2021, al-monitor.com/originals/2021/11/arab-israeli-party-celebrates-budget-passage

967 State of Israel, Government, תקציב המדינה הצעה לשנות הכספים 2021-2022: עיקרי התקציב מוגשת לכנסת ה-24 [State budget proposal for the financial years 2021-2022: Budget highlights submitted to the 24th Knesset], August 2021, gov.il/blobFolder/policy/state-budget-main-2021-2022/he/state-budget_2021-2022_state-budget-main-2021-2022-file.pdf (in Hebrew).

968 State of Israel, Government, הצעת תקציב לשנות הכספים 2021-2022 ודברי הסבר מוגשים לכנסת ה-24 משרד החינוך [Budget proposal for the financial years 2021-2022 and explanatory notes submitted to the 24th Knesset by the Ministry of Education], August 2021, m.knesset.gov.il/About/documents/budget/Budget11-Education.pdf (in Hebrew); Mossawa Center, הצרכים של האזרחים הערבים מתקציב המדינה לשנים 2021-2022 והתכנית הרב שנתית לסגירת פערים ופיתוח כלכלי 2022-2026 [The needs of Arab citizens in the state budget for the years 2022-2021 and in the multi-year plan for closing gaps and economic development 2022-2026], November 2021, bit.ly/3oVHbRg (in Hebrew).

969 UNCTAD, *The Besieged Palestinian Agricultural Sector* (previously cited), pp. 9 and 11.

970 UNCTAD, *The Besieged Palestinian Agricultural Sector* (previously cited), p. 16.

971 UNCTAD, *The Besieged Palestinian Agricultural Sector* (previously cited), p. 14.

972 Palestine Trade Center (PalTrade), *The State of Palestine National Export Strategy: Olive Oil Sector Export Strategy 2014 – 2018*, undated, paltrade.org/uploads/1608048895726398816.pdf

973 UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 38.

2019, the rate of such incidents rose by 16% compared to the previous year and by more than 100% compared to 2017.[974] During the 2019 olive season (September-November), 60 incidents were recorded in connection with the uprooting of over 2,700 trees and the destruction of approximately 160 tonnes of produce.[975]

The fence/wall has worsened the situation by isolating more than 10% of the area of the West Bank, directly affecting 219 Palestinian localities, where 2,700 homes and structures were isolated and a further 5,300 homes and structures were damaged as a result of its construction. Some 80% of Palestinian farmers who have land that is between the fence/wall and the Green Line (known as the "seam zone") have lost access to such land.[976] For those who still have some access, the restrictions impede essential year-round agricultural activities impacting both olive productivity and value. A sample of 16 trees on each side of the separation barrier indicated that trees in the "seam zone" were half as productive as trees on the other side of the fence/wall.[977] In total, the fence/wall undermined the livelihood of 35,000 households.[978]

Palestinians wishing to access their farmland in the "seam zone" are required to obtain military permits, which they must renew repeatedly.[979] Those who manage to obtain permits face further obstacles to access and effectively farm their land. Access is only permitted on foot and through the specific agricultural gates that appear on the permits. Israeli soldiers guard the gates, which open two or three times a day. If farmers require a tractor or specific agricultural tools, they must apply for special and additional permits.

In 2019, Israel's military designated 74 gates and five checkpoints to allow access to agricultural land, of which only 11 gates opened daily, 10 opened intermittently and most of the remaining 53 only opened during the olive season, according to OCHA.[980] Meanwhile, that year the Israeli military rejected 4,659 of 7,483 requests for "seam zone" permits by Palestinians, a 62% refusal rate. Of these refusals, only 1-2% were based on security issues. The rest were rejected on bureaucratic grounds or because the Israeli military claimed that the land for which the permit was submitted was not in the "seam zone", in some instances claiming that the land was specified as being in the West Bank.[981]

LOSS OF TRADITIONAL LIVELIHOODS IN GAZA: DESTRUCTION OF AGRICULTURE AND FISHERY SECTORS

Israel also places undue restrictions on movement of people and goods, affecting agriculture and the fishing sector in the Gaza Strip and exacerbating high poverty rates and the food insecurity faced by more than two thirds of Gaza's population.[982] In addition, Israel has carried out acts of wanton destruction that have directly harmed these sectors on which Gazans have historically depended for their livelihoods.

As mentioned above, over 35% of agricultural land in Gaza is off-limits to Palestinians, enforced by the "buffer zone", which makes the activity a high-risk venture (see section 5.5.2 "Discriminatory allocation of resources").[983] An estimated 178,000 people, including 113,000 farmers,[984] can no longer access this area.[985]

According to Al Mezan Center for Human Rights (Al Mezan), from 1 January to 19 November 2020, there were 553 incidents of violations against farmers and agricultural lands in the "buffer zone", which resulted in many Palestinians being injured. On 13 October 2020, for instance, Israeli forces entered 300m into the Gaza Strip with bulldozers and tanks and severely damaged large areas of agricultural land in addition to irrigation systems and piping.[986] According to OCHA, between 1 January and 19 October 2020, many of the 42 Israeli military incursions into the Gaza Strip included bulldozing agricultural land and destroying crops.[987] Gaza's Ministry of

[974] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 38.
[975] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 38.
[976] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 40.
[977] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 40.
[978] PCBS, "H.E. Dr. Awad, highlights the Forty Four Annual Commemoration of Land Day in Statistical Figures", 30 March 2020, pcbs.gov.ps/post.aspx?lang=en&ItemID=3700
[979] OCHA, "Fewer permits granted to access land behind Barrier", 20 March 2019, ochaopt.org/content/fewer-permits-granted-access-land-behind-barrier
[980] OCHA, "Longstanding Access Restrictions Continue to Undermine the Living Conditions of West Bank Palestinians" (previously cited).
[981] HaMoked, "Military data: in 2019-2020, majority of farmers' requests to reach their lands beyond the Separation Barrier are denied and for reasons unrelated to security", 30 June 2020, hamoked.org/Document.aspx?dID=Updates2178
[982] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, para. 44.
[983] OCHA and WFP, *Between the Fence and a Hard Place* (previously cited), p. 5.
[984] Prior to the restrictions policy imposed by the Israeli authorities, farmers and fisherman had access to lands and waters along the Gaza Strip's perimeter. The fishing area restriction policy came into force on the eve of the second *intifada* while the restriction on agricultural land began in late 2008. See OCHA and WFP, *Between the Fence and a Hard Place* (previously cited).
[985] OCHA and WFP, *Between the Fence and a Hard Place* (previously cited), p. 5.
[986] Al Mezan, "Human rights groups demand Israeli military end incursions into Gaza's farmlands, compensate farmers for damages", 11 November 2020; Gisha, "Incursions of Israeli bulldozers into the Strip destroys crops", 18 October 2020, gisha.org/en/incursion-of-israeli-bulldozers-into-the-strip-destroys-crops
[987] OCHA, "Protection of Civilians Report: 6 - 19 October 2020", 23 October 2020, ochaopt.org/poc/6-19-october-2020

Agriculture estimated a USD 27 million loss in the agriculture sector's greenhouses, agricultural lands and poultry farms as a result of the destruction caused by Israel's military offensive in May 2021.[988]

The Israeli army informed Palestinians that they could farm up to 100m from the fence in 2014, yet it has attacked Palestinian farmers in this area, sometimes killing or injuring those present in circumstances suggesting deliberate attacks.[989] According to Gisha, between 2010 and 2017 there were 1,300 incidents involving live fire by Israeli forces against farmers, herders, scrap collectors, demonstrators and other Gaza residents near the fence separating Gaza from Israel; at least 161 Palestinians were killed and more than 3,000 injured.[990]

Nisreen Qudeh's case illustrates the cumulative difficulties faced by farmers in the Gaza Strip resulting from years of restrictions under the illegal blockade, Israeli military attacks on farmland and property in the "buffer zone" and limited water and electricity supply.

NISREEN QUDEH

Nisreen Qudeh is a farmer who lives in Khuza'a, a village in the south of the Gaza Strip adjacent to the fence separating the territory from Israel. She has four brothers; one was killed by Israeli forces in 2002. Her father, Abdul Kareem, died in Jordan during cardiac surgery in 2005. She lives with her mother, who has a disability and needs to have regular medical check-ups. In 2014, the Israeli military offensive on Gaza destroyed her home. She told Amnesty International what happened:

It was a nightmare. The [Israeli] army deployed heavy fire power and was attacking people, residential buildings, roads and public infrastructure. I was watching friends and neighbours dying in front of me. Some of them were torn to pieces. My mother and I had to leave our home in Khuza'a because of the intense shelling. We went to stay at my brother's home in [the nearby city of] Khan Younis on 24 July. We were told then by our neighbours that our house was completely destroyed. We stayed at my brother's home in Khan Younis until the war ended, and then we went back to our home. We were shocked to see how the house was turned to rubble.

They destroyed my life and all of my family's savings and hard work when they destroyed our house. Till now I do not know how they destroyed it so easily. My family invested over NIS 200,000 [USD 64,516] to build the 150m^2 house.[991]

Nisreen Qudeh's plant nursery was damaged during the strike, causing damage worth around USD 10,000. Israeli authorities did not compensate her or her family. She has been farming for the last 20 years, but the Israeli blockade on Gaza has increasingly limited her ability to tend to her land and export her products. Her family owns 2 dunams of land in Khuza'a, 500m from the fence that separates Gaza and Israel. There, she primarily grows tomatoes as they need less water than other crops, she said.

Each plant needs a little over one litre of water per day. Although that does not seem to be much, but with the limited water resources in Gaza, it is too much for us. We have been completely reliant on water pumped from other areas in the Gaza Strip since the high salinity of underground water in our area renders it unsuitable for irrigation. We must pay over NIS 100 [USD 32] per hour to pump water to the area. This is too expensive for us. We sometimes spend as much as 70% of our farming revenue on water and fertilizers alone, leaving us with very little reward for our hard work throughout the year…

The energy crisis is also a big issue for us, and its impact is extremely negative. We sometimes need electricity for irrigation systems, but it is only available four to six hours per day and often during the night, forcing us sometimes to work at night in the dark.

I personally do not export any of what we produce outside of the Gaza Strip because it is extremely difficult to do so due to the blockade. We sell what we produce only to local markets in the Gaza Strip. I know that this option does not make us generate much revenue, but it is a safer option for us.

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[988] Reuters, "Factbox: Palestinians, Israelis count cost of 11-day fight", 20 May 2021, reuters.com/world/middle-east/palestinians-israelis-count-cost-11-day-fight-2021-05-20

[989] See, for example, Al Mezan, "Human rights groups demand Israeli military end incursions into Gaza's farmlands, compensate farmers for damages", 11 November 2020, mezan.org/en/post/23849/Human+rights+groups+demand+Israeli+military+end+incursions+into+Gaza%E2%80%99s+farmlands%2C+compensate+farmers+for+damages; Al-Haq, *Israel Routinely Attacks Palestinian Civilians in the Buffer Zone*, 24 March 2016, alhaq.org/monitoring-documentation/6424.html; B'Tselem, "Military carries on firing at Palestinian farmers by Israel-Gaza border", 29 October 2013, btselem.org/gaza_strip/20131029_shooting_at_farmers_near_gaza_fence

[990] Gisha, Closing In: Life and Death in Gaza's Access Restricted Areas, features.gisha.org/closing-in (accessed on 30 August 2021).

[991] Amnesty International, interview by voice call with Nisreen Qudeh, 4 November 2020.

This situation is unbearable. I do not think that farmers in other parts of the world need to face the same challenges. The blockade on Gaza and the previous wars have had a significant impact on agriculture, severely limiting our access to clean water, land, resources and other markets in the world. These challenges have made the already high levels of food insecurity in Gaza Strip even worse.

Since 2014, the Israeli military has aerial-sprayed herbicides over Palestinian crops along the fence between Gaza and Israel. Israel claims that the spraying is designed to "enable optimal and continuous security operations",[992] yet has not provided any evidence to support this claim. In 2016, Israel admitted to spraying an estimated 12km^2 from the north to the south of Gaza.[993] Israel also takes advantage of westward-blowing winds that carry the herbicides beyond the purportedly targeted area near the fence into the Gaza Strip.[994] However, the herbicides have destroyed crops and farmlands hundreds of metres deep into Gaza, resulting in the loss of livelihoods for Gazan farmers.[995] The ICRC has warned that the damage goes beyond the immediate economic cost as it has far-reaching health implications.[996] One of the herbicides used is the probable carcinogen glyphosate, which poses health risks to Palestinians living adjacent to the fence.[997] In April 2020, Israel's herbicide spraying damaged 588 dunams of farmland in Gaza, harming the livelihoods of 93 farmers and exacerbating the lack of sufficient food, according to Gisha.[998]

In its 2019 review, the CESCR expressed concern about the long-lasting and hazardous impact of the aerial herbicide spraying by private companies hired by Israel's Ministry of Defense in areas adjacent to the fence between Israel and Gaza, particularly with respect to the impact on crop yield and on the soil in nearby areas. [999]

In parallel, restrictions by Israel on access to the sea and on the importation of essential equipment, together with the ban on fish exports, have severely impacted the fishing industry. Israel also restricts how far off the coast fishermen can go, rendering inaccessible to Palestinians 85% of the fishing area agreed with Israel under the Oslo Accords, and prompting the CESCR to express concern in 2019.[1000]

In 1995, Israel agreed to designate a maritime zone stretching 20 nautical miles from the Gaza coastline for "fishing, recreation and economic activities" for Palestinians.[1001] In fact, this agreement has no basis in international law (the State of Palestine, under Article 57 of the UN Convention on the Law of the Sea, can declare an Exclusive Economic Zone of 200 nautical miles and claim permanent sovereignty over natural resources contained within a 60 nautical mile continental slope).[1002] Yet Israel has even broken its 20 nautical mile agreement. It has only allowed Palestinians to fish within 6 nautical miles of Gaza's coastal line, primarily to facilitate Israel's exploitation of Palestinian natural gas and oil discovered 13 nautical miles off the Gaza Strip's coastal line (see below).[1003]

Ever since the discovery of natural oil and gas in 1999, Israel has repeatedly changed the demarcation of Gaza's maritime space, sometimes reducing it to a mere 3 nautical miles,[1004] causing deliberate harm to a sector that is struggling to survive. An Israeli senior naval official outlined the rationale behind this policy: "These fields have strategic significance and could be easily a target for our neighbours… Usually to protect an area, we just make a sterile zone around it. But we can't do that in international territory."[1005]

[992] +972 Magazine, "IDF admits spraying herbicides inside the Gaza Strip", 28 December 2015, 972mag.com/idf-admits-spraying-herbicides-inside-the-gaza-strip/115290
[993] Forensic Architecture, Herbicidal Warfare in Gaza, forensic-architecture.org/investigation/herbicidal-warfare-in-gaza (accessed on 15 August 2021).
[994] Forensic Architecture, Herbicidal Warfare in Gaza (previously cited).
[995] Forensic Architecture, Herbicidal Warfare in Gaza (previously cited).
[996] Haaretz, "Farm Warfare: How Israel Uses Chemicals to Kill Crops in Gaza", 9 July 2018, haaretz.com/middle-east-news/palestinians/.premium-farm-warfare-how-israel-uses-chemicals-to-kill-crops-in-gaza-1.6245475
[997] Adalah, "Human rights groups demand Israel immediately halt renewed aerial herbicide spraying along Gaza fence", 16 January 2020, adalah.org/en/content/view/9890; see also, Haaretz, "Farm Warfare: How Israel Uses Chemicals to Kill Crops in Gaza" (previously cited).
[998] Gisha, "Hundreds of dunams of crops in Gaza destroyed by aerial herbicide spraying conducted by Israel", 7 May 2020, gisha.org/updates/11189
[999] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 44.
[1000] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 44.
[1001] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Annex I, Article XIV.
[1002] Al-Haq, *Israel's Deadly Catch*, November 2015, alhaq.org/cached_uploads/download/alhaq_files/publications/Deadly.Catch.Report.pdf, p. 8.
[1003] Al-Haq, *Israel's Deadly Catch* (previously cited), p. 12; UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (previously cited).
[1004] Al Mezan, *2013 Statistical Report on Israeli Attacks in the Access Restricted Areas* (previously cited).
[1005] Jewish Independent, "Resource Security Plan: Gas Field Protection to Cost Navy $700 million", 15 February 2013, jewishindependent.ca/oldsite/archives/feb13/archives13feb15-03.html

In 2019 alone, Israel changed the Gaza fishing zone nine times and Palestinian fishermen were informed 19 times of changes to Israel's demarcation of the allowed fishing zone,[1006] including full bans on three occasions. To enforce the restrictions, Israel uses lethal force against Palestinian fishermen working off Gaza's coast[1007], and routinely submerges and seizes fishing boats,[1008] and damages other fishing equipment.[1009] Al Mezan's monitoring and documentation shows that, between the start of 2012 and November 2019, the Israeli navy has attacked Palestinian fishermen with live fire 1,483 times. Six fishermen have been killed and 132 injured, including six children. In the same period, the Israeli navy has arrested 547 fishermen, 40 of them children, confiscated 177 boats and damaged and destroyed 101 boats.[1010]

Over the years, the uncertainty and restrictive measures have discouraged Gazans from upgrading and maintaining boats and fishing equipment, so the industry has not been able to take advantage of expanded fishing limits when they are introduced.[1011] The CESCR has expressed concern about the confiscation of and damage to fishing boats, which has deprived Palestinians of their means of subsistence.[1012]

The actions of the Israeli authorities have devastated the economic and social conditions of approximately 4,080 fishermen registered with the Fishermen's Syndicate and approximately 1,000 workers in fishing-related occupations.[1013] This has led to the collapse of the sector and resulted in approximately 95% of the fishermen living below the poverty line in 2018,[1014] According to an earlier source in 2011, nearly 90% of fishermen were "poor" or "very poor" then, a percentage that had sharply increased from 50% in 2008.[1015] The lack of access to sufficient fishing waters is also estimated to affect a total of 65,000 people in Gaza.[1016] The Palestinian Central Bureau of Statistics reported the number of workers in the fishing sector in 1997 at around 10,000.[1017]

ZAKARIA BAKER

Zakaria Baker is a fisherman and the coordinator of Gaza's local Fishermen Committees, part of the Union of Agricultural Work Committees (UAWC), one of the largest civil society organizations supporting fishermen and farmers in the OPT. It was criminalized by Israeli authorities in October 2021 and is now at risk of being shut, its assets confiscated and its workers arrested and prosecuted. Zakaria Baker told Amnesty International that Israel harasses and provokes Palestinian fishermen in Gaza, who are often subjected to arbitrary arrests, spraying of their boats with skunk water and confiscation of or shooting at their boats by Israel's navy at sea. According to UAWC documentation, 18 fishermen were wounded by Israeli attacks on fishermen at sea from January to August 2020 and at least nine others were arrested, including a minor. He added that seven boats were severely damaged, a large amount of fishing equipment was destroyed, and five boats were seized. He told Amnesty International: "The Israeli navy invades our fishing zone anytime at free will, they can confiscate boats which cost from USD 10,000 to 20,000. Imagine the damage this will cause to the fisherman whose boat has been confiscated."[1018]

Israel severely limits the area in which fishermen can work, frequently changing the permissible fishing zone. In 2019 Israel expanded the fishing range allowed for Gaza fisherman to 15 nautical miles,[1019] but Zakaria Baker explained that this expansion was confined to the southern part of the zone that neighbours Egypt, whereas the

[1006] Gisha, *Changes to Gaza's fishing zone implemented by Israel in 2019,* 30 January 2020, gisha.org/publication/10931
[1007] Gisha, "Fisherman shot dead by the Israeli navy, Gaza fishermen go on strike", 18 May 2017, gisha.org/updates/7208; Al-Haq, *Annexing Energy*, August 2015, alhaq.org/cached_uploads/download/alhaq_files/publications/Annexing.Energy.pdf
[1008] Gisha, "High Court rules in favor of Gisha, Adalah and Al Mezan in petition to return boats seized by Israel from Gaza fishermen: 'The description of the boats' condition suggests indifference to their fate'", 1 December 2019, gisha.org/en/high-court-rules-in-favor-of-gisha-adalah-and-al-mezan-in-petition-to-return-boats-seized-by-israel-from-gaza-fishermen-the-description-of-the-boats-condition-suggests-indifference
[1009] Adalah, *Israel to return 65 boats to Gaza fishermen following human rights NGOs' petition to Israeli Supreme Court*, 21 May 2019, adalah.org/en/content/view/9735
[1010] Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (previously cited).
[1011] UNCTAD, *Report on UNCTAD assistance to the Palestinian people*, 5 August 2020 (previously cited), para. 22.
[1012] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 44.
[1013] Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (previously cited), para. 84. See also, for example, Al Mezan, "Fact Sheet: The Human and Financial Losses of Fishing Under Occupation", 15 October 2019, mezan.org/en/uploads/files/15712153571134.pdf
[1014] B'Tselem, "2018: Plight of Gaza fishermen after Israel's gradual destruction of their sector", 11 February 2019, btselem.org/gaza_strip/20190211_gaza_fishermen_plight_due_to_israeli_restrictions
[1015] Al-Haq, *Shifting Paradigms Israel's Enforcement of the Buffer Zone in the Gaza Strip*, 23 June 2011, alhaq.org/cached_uploads/download/alhaq_files/publications/Shifting-Paradigms.pdf, p. 9.
[1016] Al-Haq, *Shifting Paradigms Israel's Enforcement of the Buffer Zone in the Gaza Strip* (previously cited), p. 9.
[1017] Al Mezan, بحر غزة ... خطر الاقتراب [Gaza's sea... the danger in approaching], 4 July 2020, mezan.org/post/30584?fbclid=IwAR13af1RPfaijfDeqLhN75bOBTxBfOPZ2RdUheyoC3QWo-qaL5oObs_56gc (in Arabic).
[1018] Amnesty International, interview by voice call with Zakaria Baker, 20 August 2020.
[1019] OCHA, "COVID-19 Emergency Situation Report 17 (29 August – 8 September 2020)", 8 September 2020, ochaopt.org/content/covid-19-emergency-situation-report-17

northern fishing zone near the border with Israel is still strictly limited to 6 nautical miles. Israel only allows small boats to sail into the expanded part of the fishing zone. He told Amnesty International: "They [Israeli authorities] keep changing the map whenever they want. It's so vague that it needs a surveying engineer to decode it, instead of simple fishermen, who lack basic GPS navigation tools due to Israel's blockade."

He added that in recent years there has been an increase in incidents where the Israeli navy demands that fishermen remove their clothes, jump in the water and swim over to navy vessels:

The navy demands that fishermen swim over to them naked regardless of how cold the water is. In the winter, they need to swim in really cold water. This is not just a violation of their dignity, it also puts their lives at risk for no reason.

According to Zakaria Baker, Israel's navy also uses powerful water cannons to flood their fishing boats, intentionally damaging electrical equipment because it is expensive to fix and without them the boats will not work. He added that this makes many fishermen in Gaza afraid to set out to sea.

The livelihoods of over 3,000 fishermen and other workers in professions associated with the fishing sector have been hugely affected [by Israel's restrictions and attacks]. These people are the main providers for their families. They have no other source of income. Imagine how their lives will look like now.

Fishermen in Gaza pay a heavy price for working in this sector. We suffer from the blockade and severe restrictions on movement by Israel's navy and now with measures taken to stop the spread of Covid-19, there is even a greater economic uncertainty and increased concern for the food security of Gaza's civilian population. For example, it is now sardine season, one of the most profitable fishing seasons of the year. But with the Israeli restrictions on access to the fishing zone it enforces in Gaza's maritime area, the frequent changes it makes to its demarcation, and the violent enforcement methods it employs thwart us from making any profit during this season. All these measures are severely affecting the livelihoods of thousands of fishermen, undermining what was once an important sector in the Gaza Strip's economy.

CONTROL OF WATER IN OPT

Since 1967, Israel has sought to control all water resources and water-related infrastructure in the OPT, which has had a major impact on Palestinian communities and their agricultural activities. The amount of water that Israel makes available to Palestinians is restricted to a level which does not meet their needs and does not constitute a fair and equitable share of the shared water resources. Today, only 10% of Gaza's population has direct access to safe and clean drinking water, while some 660,000 Palestinians in the West Bank are estimated to have limited access to water.[1020]

Two months after the start the occupation, Israel placed all water resources in the West Bank and Gaza Strip under its military control.[1021] In November 1967, the Israeli authorities issued Military Order 158 – Order Amending the Water Supervision Law, which stated that Palestinians throughout the West Bank could not construct any new water installation without first obtaining a permit from the Israeli army. Since then, the extraction of water from any new source or the development of any new water infrastructure requires permits from Israel, which are nearly impossible to obtain. Palestinians living under Israel's military occupation continue to suffer the devastating consequences of the military order. They are unable to drill new wells, install pumps or deepen existing wells, in addition to being denied access to the Jordan River and freshwater springs. Israel even controls the collection of rainwater in most of the West Bank, and the Israeli army often destroys rainwater-harvesting cisterns owned by Palestinian communities.[1022] As a result, according to a report by UNCTAD in 2017, nearly 93% of cultivated Palestinian land was not irrigated.[1023]

While restricting Palestinian access to water, Israel has effectively developed its own water infrastructure and network in the West Bank for the use of its own citizens in Israel and in the settlements. Israel has transferred 82% of Palestinian groundwater into Israel and for the use of Jewish settlements, while Palestinians must

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[1020] UN High Commissioner for Human Rights, *The allocation of water resources in the Occupied Palestinian Territory, including in East Jerusalem*, 23 September 2021, UN Doc. A/HRC/48/43.
[1021] Military Order 92 granted complete authority over all water-related issues in the OPT to the Israeli army. See Military Order 92 concerning Jurisdiction over Water Regulations, 15 August 1967 (an unofficial English translation is available at jmcc.org/documents/JMCCIsraeli_military_orders.pdf).
[1022] B'Tselem, Water Crisis, 11 November 2017 (updated on 3 June 2021), btselem.org/water (accessed on 29 August 2021); World Bank, *Securing Water for Development in West Bank and Gaza*, 2018, documents1.worldbank.org/curated/en/736571530044615402/Securing-water-for-development-in-West-Bank-and-Gaza-sector-note.pdf; Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (previously cited).
[1023] UNCTAD, *UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory*, September 2017, UN Doc. TD/B/64/4, p. 4.

purchase over 50% of their water from Israel.[1024] The Israeli state-owned water company Mekorot has systematically sunk wells and tapped springs in the occupied West Bank to supply its population, including those living in illegal settlements, with water for domestic, agricultural and industrial purposes.[1025] Mekorot does sell some water to Palestinian water utilities, but the amount is determined by the Israeli authorities, which often cut or decrease the amount provided, leaving many Palestinian communities without water or underserved by an essential water supply.

Due to continuous restrictions on tapping water resources, many Palestinian communities in the West Bank, especially in Area C, have no choice but to buy water brought in by trucks at much higher prices, ranging from USD 4 to USD 10 per cubic metre. As a result, Palestinians pay on average at least eight times more for water than Israeli settlers.[1026] Consequently, in some of the poorest communities, such as in the Jordan Valley, water expenses can, at times, use up half of a family's monthly income.[1027] Israeli settlers living in the West Bank face no such restrictions and water shortages, and enjoy and capitalize on well-irrigated farmlands and swimming pools.[1028]

The inequality in access to water between Israelis and Palestinians is striking. Average Palestinian consumption in the OPT is about 70 litres a day per person, with approximately 420,000 people in the West Bank consuming 50 litres a day,[1029] less than a quarter of the average Israeli consumption of about 300 litres. For Israeli settlers residing in Israeli settlements, the average daily water consumption is 369 litres, about six times the amount consumed by Palestinians.[1030]

The devastating impact of Israel's discriminatory allocation of the OPT's natural resources for the benefit of Jewish Israelis is perhaps best exemplified in the Jordan Valley. As an area with extremely fertile lands, abundant water resources – including a third of the underground water reserves in the West Bank – and Dead Sea mineral deposits, it has great potential for agricultural and industrial development and tourism for Palestinians.[1031] Instead, it is home to some of the West Bank's poorest Palestinian communities, who live in an increasingly coercive environment deliberately designed by the Israeli authorities to force them to relocate; they have no access to electricity, running water or their traditional livelihoods, and face an ever-present risk of having their homes and other property demolished by the Israeli army.

JORDAN VALLEY

Although the Jordan Valley contains vital land reserves for the natural expansion of Palestinian towns and cities, Israel has taken over most of the land with a view to enabling its de facto annexation.

As stated already, Israel endeavours to minimize Palestinian presence in the Jordan Valley by barring Palestinians from using 85% of the land, restricting their access to water resources and refusing their application for building homes. Over the years, Israeli authorities have used different legal and coercive measures to enforce this, including the systematic appropriation of Palestinian land for the establishment and expansion of Israeli settlements in the Jordan Valley, as well as the unlawful exploitation of Palestinian natural resources there. Agriculture is the largest economic sector in the Jordan Valley for Israeli settlers, who cultivate 33,000 dunams (3,300 hectares) of land, earning them USD 130 million annually.[1032] Vast mineral deposits in the Dead Sea are also exclusively extracted by Israel, which exercises total control over the northern basin of the Dead Sea that lies in the OPT. The Israeli economy benefits from this by around USD 3 billion annually.[1033]

[1024] UNCTAD, *The Besieged Palestinian Agricultural Sector* (previously cited), p. 29.
[1025] Amnesty International, "The Occupation of Water", 29 November 2017, amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water
[1026] Al-Haq, *Water for one People Only: Discriminatory Access and 'Water-Apartheid' in the OPT*, 2013, alhaq.org/cached_uploads/download/alhaq_files/publications/Water-For-One-People-Only.pdf, p. 49.
[1027] Amnesty International, "The Occupation of Water" (previously cited).
[1028] Amnesty International, "The Occupation of Water" (previously cited).
[1029] UN High Commissioner for Human Rights, *The allocation of water resources in the Occupied Palestinian Territory, including in East Jerusalem* (previously cited).
[1030] Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (previously cited), p. 51.
[1031] Al-Haq, *Settling Area C: the Jordan Valley Exposed*, 2018, alhaq.org/cached_uploads/download/alhaq_files/publications/SettlingAreaCTheJordanValleyExposed.pdf, p. 16.
[1032] HRW, *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*, 19 December 2010, hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied, p. 69.
[1033] World Bank, *Area C and the Future of the Palestinian Economy*, 2014, documents1.worldbank.org/curated/en/257131468140639464/pdf/Area-C-and-the-future-of-the-Palestinian-economy.pdf, p. 22.

Palestinian dispossession continues until today. In March 2016, Israel appropriated a large tract of land in the Jordan Valley for settlement expansion, declaring it to be state land.[1034] The appropriation of the 2,342 dunams was the largest land seizure by Israel in the West Bank since August 2014. In April 2019, Israel also seized over 350 dunams of Palestinian agricultural land in the northern part of the Jordan Valley.[1035]

Historically, the Palestinian communities in the Jordan Valley earned their livelihoods through farming and herding goats and sheep, and selling the milk and cheese they produced. However, various Israeli policies have made it impossible for many of them to farm or keep more than a few animals because they cannot access sufficient water or land. Of the 42 Israeli drillings for extracting groundwater in the West Bank, 28 are in the Jordan Valley. These 28 provide Israel with some 32 million cubic metres of water a year, most of which is allocated to the settlements,[1036] thereby allowing them to intensively farm throughout the year, with most of the produce being exported. Meanwhile, Palestinian farmers are forced to neglect their farmland or switch to less water-intensive crops because of Israel's discriminatory policies on Palestinians' access to water in the Jordan Valley.[1037]

In parallel, Israel has consolidated complete control of all water resources and water-related infrastructure in the Gaza Strip, including the coastal aquifer, which is the only freshwater resource in Gaza. The coastal aquifer is located under the coastal plain of Israel and the Gaza Strip. Its yearly sustainable yield is estimated at up to 450 million cubic metres in Israel and a mere 55 million cubic metres in Gaza.[1038] The aquifer has been depleted by over-extraction and contaminated by sewage and seawater infiltration,[1039] resulting in more than 95% of its water being unfit for human consumption.[1040]

Despite the dire water shortage in the Gaza Strip, Israel not only does not allow the transfer of water from the West Bank to Gaza,[1041] but also diverts water from the southern West Bank, preventing Gaza's coastal aquifer from its natural source of replenishment.[1042]

CONTROL OF PALESTINIAN OIL AND GAS IN OPT

Israel has also deprived Palestinians in the OPT of access to the oil and gas under their land and coastal waters, which has consequently denied them economic development and opportunities to realize other socio-economic rights, such as the right to work. The OPT lies above a sizeable reservoir of oil and natural gas resources in Area C of the West Bank and the Mediterranean coast off the Gaza Strip, according to UNCTAD.[1043] The Levant Basin Province in the Eastern Mediterranean is one of the most important sources of natural gas in the world.[1044]

Yet Palestinians have been prohibited from exploiting these reserves, estimated at 1.525 billion barrels of oil with an estimated value of USD 99.1 billion, to both meet their energy needs and generate fiscal and export revenues.[1045] UNCTAD estimates that since the beginning of the drilling of two natural gas reserves off Gaza's coast in 2000, the Palestinian economy has been deprived (at a conservative estimate) of USD 2.57 billion.[1046]

RESTRICTED ACCESS TO STONE QUARRYING

Stone quarrying is Palestinians' largest export industry, but Israel's control of the OPT has restricted Palestinian access to these resources. In addition, Israel has refused to grant permits for new Palestinian quarries or to renew

[1034] Haaretz, "Israel Seizes Large Tracts of Land in West Bank, Report Says", 15 March 2016, haaretz.com/israel-news/report-israel-seizes-large-tracts-of-land-in-west-bank-1.5418058
[1035] Middle East Monitor, "Israel to seize hundreds of dunams in Jordan Valley", 10 April 2019, middleeastmonitor.com/20190410-israel-to-seize-hundreds-of-dunams-in-jordan-valley
[1036] B'Tselem, *Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea*, May 2011, btselem.org/publications/summaries/dispossession-and-exploitation-israels-policy-jordan-valley-northern-dead-sea, p. 21.
[1037] Amnesty International, "The Occupation of Water" (previously cited).
[1038] Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (previously cited), p. 10.
[1039] UNICEF, "Searching for clean water in Gaza", 10 January 2019, blogs.unicef.org/blog/searching-clean-water-gaza
[1040] B'Tselem, "Water in Gaza: Scarce, polluted and mostly unfit for use", 17 August 2020, btselem.org/gaza_strip/20200818_gaza_water_scarce_polluted_mostly_unfit_for_use
[1041] Amnesty International, "The Occupation of Water" (previously cited).
[1042] UN High Commissioner for Human Rights, *The allocation of water resources in the Occupied Palestinian Territory, including in East Jerusalem* (previously cited).
[1043] UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (previously cited).
[1044] US Department of the Interior, *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean*, March 2010, pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf, p. 1.
[1045] UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (previously cited), p. 25.
[1046] UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (previously cited), p. 26.

existing licences.[1047] Meanwhile, Israel carries out quarrying activities in the OPT, in contravention of the law of occupation. In 2009, Israeli rights group Yesh Din petitioned the Supreme Court of Israel to demand the halt of all Israel's quarrying activities in the OPT. The group found that three quarters of output from quarrying was transferred to Israel, in clear violation of international law.[1048] In 2012, the Court rejected the petition and effectively "legalized" the activities of Israeli corporations.[1049] Multinational corporations are also involved in quarrying activities in the OPT, contributing to the direct funding and maintenance of Israeli settlements, and benefiting from Israel's discriminatory policies against Palestinians.[1050]

CONTROL OF DEAD SEA MINERALS

While the northern basin of the western bank of the Dead Sea lies in the OPT, Israel exerts total control over the area and has been generating revenues from it since 1967. Within 10 years of its occupation, Israel had initiated the establishment of 19 settlements in the Jordan Valley and the Dead Sea area.[1051] Currently, the regional councils of 37 settlements have de facto jurisdiction over 86% of this area.[1052] The six Israeli settlements solely in the Dead Sea area exploit Palestinian fertile lands and extract minerals for their agriculture and tourism.[1053] Jordan controls the eastern side of the Dead Sea. Israel and Jordan have been extracting minerals, primarily potash and bromine, and together reap annual revenue of USD 4.2 billion from selling these products.[1054] Palestinians are not allowed by Israel to exploit the Dead Sea for its mineral wealth.[1055] If they were, they would generate approximately USD 920 million for their economy, or almost 9% of GDP, according to an estimate by the World Bank in 2013.[1056]

EXPLOITATION OF PALESTINIAN CULTURAL HERITAGE AND PROPERTY

Israel has also used archaeological excavations to retain and control more land for the construction of Jewish-only settlements and exploit Palestinians' natural resources, while barring Palestinians from using or accessing the land.[1057] Since the outset of its occupation, Israel has effectively retained control of tourism and archaeological sites in the West Bank. Israeli authorities found and excavated 980 archaeological sites there, including 349 in East Jerusalem, between 1967 and 2007.[1058] Jewish settlers, other Israeli citizens and Israel's military have illegally moved archaeological artefacts unearthed in the OPT and displayed them as Jewish and Israeli in exhibitions in Israel and abroad, in contravention of international law and treaties on cultural property.[1059] Israel's intensive destruction and capture of archaeological sites significantly deprives Palestinians of the right to their cultural heritage and property.[1060] Further, the development of archaeological sites in the occupied West Bank

[1047] Environmental Justice Atlas, Israeli Stone Quarrying in the Occupied Palestinian Territory", ejatlas.org/print/israeli-stone-quarrying-in-the-occupied-palestinian-territory (accessed on 29 August 2021).
[1048] Yesh Din, *Petition to halt all Israeli quarry and mining activities in the West Bank*, 9 March 2009, yesh-din.org/en/petition-to-halt-all-israeli-quarry-and-mining-activities-in-the-west-bank-hcj-216409-yesh-din-volunteers-for-human-rights-v-the-commander-of-the-idf-forces-in-the-west-bank; Hague Regulations, Article 55.
[1049] Yesh Din, *Petition to halt all Israeli quarry and mining activities in the West Bank* (previously cited).
[1050] Yesh Din, *Petition to halt all Israeli quarry and mining activities in the West Bank* (previously cited); Stichting Onderzoek Multinationale Ondernemingen (SOMO) and Al-Haq, *Violations Set in Stone*, February 2020, somo.nl/wp-content/uploads/2020/02/ViolationsSetInStone-EN.pdf
[1051] Aseil Abu-Baker and Marya Farah, "Established Practice: Palestinian Exclusion at the Dead Sea", 1 February 2020, Journal of Palestine Studies, Volume 49, Issue 2, pp. 48–64.
[1052] UN Human Rights Council, *Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem* (previously cited), para. 36.
[1053] Aseil Abu-Baker and Marya Farah, "Established Practice: Palestinian Exclusion at the Dead Sea" (previously cited), pp. 48–64.
[1054] World Bank, *Area C and the Future of the Palestinian Economy*, 2 October 2013, documents1.worldbank.org/curated/en/137111468329419171/pdf/AUS29220REPLAC0EVISION0January02014.pdf, p. 11.
[1055] World Bank, *Area C and the Future of the Palestinian Economy* (previously cited),
[1056] World Bank, "Access to Area C Key to Economic Recovery", 3 December 2013, worldbank.org/en/news/feature/2013/12/03/Palestinian-Access-Area-C--Economics-Recovery-Growth
[1057] Emek Shaveh, "Appropriating the past: Israel's archaeological practices in the West Bank", 26 December 2017, emekshaveh.org/en/appropriating-the-past-israels-archaeological-practices-in-the-west-bank; David Keane and Valentina Azarova, "UNESCO, Palestine and archaeology in conflict", 2013, Denver Journal of International Law and Policy, Volume 41.
[1058] Diakonia International Humanitarian Law Resource Centre (Diakonia), *Occupation Remains: A Legal Analysis of the Israeli Archaeology Policies in the West Bank: An International Law Perspective*, December 2015, apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2021/06/israeli-archeology-policies-ihl-occupation-report.pdf
[1059] Diakonia, *Occupation Remains* (previously cited); Ahmed Rjoob, "The impact of the Israeli occupation on the conservation of cultural heritage sites in the occupied Palestinian territories: The case of 'salvage excavations'", 2009, Conservation and management of archaeological sites, Volume 11, Issues 3-4, palestine-neuchatel.ch/wp/wp-content/uploads/2020/12/article_02_Rjoob.pdf
[1060] Israel has irreversibly destroyed or damaged numerous Palestinian archaeological sites since 1967. For example, Israel destroyed the Mughrabi (Moroccan) Quarter in the Old City of Jerusalem, transferred archaeological finds from the Palestine Archaeological Museum in East Jerusalem to the Israel Museum in West Jerusalem, and enforced the siege of the Church of the

sustains surrounding settlements, mainly through tourism, and exacerbates patterns of human rights violations against Palestinians in nearby communities. Indeed, in recent years, the Israeli authorities have increased their financial support to the tourism industry linked to settlements.[1061]

ABUSE OF ARCHAEOLOGICAL SITES: SHILO SETTLEMENT

Israeli settlers have established several Jewish settlements under the guise of archaeological excavations. For instance, in 1979, Jewish settlers moved into what became the settlement of Shilo, in the north of the West Bank near Nablus, on the pretext that they were there to work as archaeologists.[1062] The settlement later received official government approval and its municipal boundary was expanded in 1992 to include the Palestinian-owned farmland containing the ancient ruins and an archaeological site.[1063] Since the late 1990s, settlers have established more than 10 new settlements on the surrounding hills, and continue to expand them through the confiscation of Palestinian-owned land.[1064] Shilo settlement alone now houses 3,000 Jewish Israeli settlers. The Israeli government and settler organizations have identified the archaeological site in Shilo as one of the most important visitor attractions in the West Bank.[1065]

Palestinians from the neighbouring farming villages of Qaryut and Jalud must acquire special permits from the Israeli military to access their privately owned land close to the settlements. In total, Jalud has lost approximately 35,000 dunams (3,500 hectares) and Qaryut more than 20,000 dunams (2,000 hectares) of land.[1066] This includes farmland and groves that are now included within the boundaries of the archaeological site.[1067] The consequences for Palestinians of these restrictions and the loss of land have been harsh.

Palestinian residents have to endure various Israeli policies, such as barring them from using the main road leading from Qaryut to the south of the West Bank as it passes close to the archaeological site, in addition to state-sponsored settler violence.[1068] Bashar Muammar, a resident of Qaryut, told Amnesty International in 2018,

People are leaving the village now because we are isolated. Many people sold their lands and houses and moved out to Ramallah. The village is not located next to the main road any more so no one would come here, unless they have a reason to. Many shops have recently closed because their business was not working properly.[1069]

In stark contrast to the restrictions placed by Israel on the residents of Qaryut and Jalud, the Israeli government has supported ambitious plans by the settlers to develop the archaeological site into a major tourist attraction. In 2010, the Israeli authorities handed over management of the site to a private organization run by settlers,[1070] which in 2013 opened a new museum and auditorium.[1071] In 2014, the settlers also published plans for the expansion of the tourist facilities, including a vast new visitor and conference centre with a capacity to

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Nativity in Bethlehem in 2004, destroying parts of the Church. See Ahmed Rjoob, "The impact of the Israeli occupation on the conservation of cultural heritage sites in the Occupied Palestinian Territories" (previously cited).
The right of everyone to take part in cultural life is protected by ICESCR, Article 15.

[1061] Amnesty International, *Destination: Occupation* (previously cited).

[1062] The archaeological pretext is narrated in a history of Shilo published on the settlement's website: Shilo Forum, "On the road to Shilo", undated, shilo.org.il/traveller.htm; Emek Shaveh gives an assessment of the heritage of the site, *Tel Shiloh (Khirbet Seilun) Archaeological Settlement in the Political Struggle over Samaria*, November 2014, emekshaveh.org/en/wp-content/uploads/2013/07/13-Tel-Shiloh-Eng-03.pdf

[1063] Yesh Din, "Petition to prevent the transfer of management of the archaeological site Tel Shiloh to the right-wing 'Mishkan Shiloh Association'", 8 October 2016, yesh-din.org/en/petition-prevent-transfer-management-archaeological-site-tel-shiloh-right-wing-mishkan-shiloh-association

[1064] Yesh Din, "Settlement Blocs that Sever the West Bank – the Shilo Valley as a case study", 4 October 2016, yesh-din.org/wp-content/uploads/2016/11/Shilo-valley-brief-Yesh-Din-October-2016_website-version.pdf

[1065] State of Israel, PMO, תכנית מורשת "העצמת תשתיות מורשת לאומית – [Empowerment of National Heritage Infrastructures - "Heritage Plan"], 21 February 2010, Government Resolution 1412, gov.il/he/departments/policies/2010_des1412 (in Hebrew).

[1066] OCHA and others, *Settlement expansion, displacement and fragmentation in the southern Nablus Governorate*, April 2015, globalprotectioncluster.org/_assets/files/field_protection_clusters/Occupied_Palestinian/files/Fact%20sheet%20-%20Settlement%20expansion%20in%20southern%20Nablus%20governorate.pdf

[1067] Amnesty International, interview in person with Abu Imad, one of the owners of the land, 10 June 2018, Qaryut.

[1068] Amnesty International, *Destination: Occupation* (previously cited).

[1069] Amnesty International, interview in person with Bashar Muammar, 10 November 2018, Qaryut.

[1070] Emek Shaveh, "Two High Court Petitions in case of Tel Shiloh against settlers' management of archaeological site and construction of a tourism complex", 11 October 2015, alt-arch.org/en/two-high-court-petitions-tel-shiloh-against-settlers-management-october-2015-eng

[1071] The new museum, as well as the film shown in the auditorium, highlight the belief that several important Biblical episodes took place at the location. By contrast, Amnesty International researchers noted, when visiting on 7 June 2018, that the museum and the film downplay or ignore the most significant ruins at the site: two mosques and a Byzantine church. The presence – for centuries – of Arabs on the land is ignored. Indeed, the site's managers present Tel Shiloh as an integral part of Israel and there is an Israeli flag flying at its entrance.

accommodate 5,000 people a day.[1072] Residents of surrounding Israeli settlements have sought to profit from the growth in tourism by advertising their homes on digital tourism websites, such as Airbnb and Booking.com.[1073]

5.5.3 DISCRIMINATORY PROVISION OF SERVICES

Across Israel and the OPT, millions of Palestinians live in densely populated areas that are generally underdeveloped and lack adequate essential services such as garbage collection, electricity, public transportation and water and sanitation infrastructure, and often face arbitrary restrictions in their access to healthcare.

In areas under full Israeli control such as the Negev/Naqab, East Jerusalem and Area C of the West Bank, the denial of essential services is inherently linked to discriminatory planning and zoning policies, which force Palestinians to build without permits, and is intended to create unbearable living conditions to force Palestinians to leave their homes to allow for the expansion of Jewish settlement. In addition, Israeli policies of exclusion, segregation and severe restrictions on movement in the entirety of the West Bank and the Gaza Strip mean that Palestinians face difficulties accessing healthcare, including life-saving treatment, and education even though Israel bears the responsibility under international law to provide such services not just to its own population but also to Palestinians living under its military occupation. When they manage to access such services, they are in general inferior to those provided to Jewish Israeli citizens. These policies severely impact Palestinians' socio-economic rights and prevent them from fulfilling their human potential.

DECADES OF NEGLECT: LACK OF ACCESS TO ADEQUATE ESSENTIAL SERVICES IN EAST JERUSALEM

As mentioned above, even though Palestinian residents of Jerusalem comprise 38% of the population of the city, they receive less than 10% of Jerusalem Municipality's budget; Jewish Israeli residents (most of whom live in West Jerusalem) receive more than 90%.[1074] Palestinians live in densely populated areas of the city that lack adequate essential services, which are inferior to services provided to residents and citizens in other parts of Israel, including education and healthcare. Despite some recent improvements, their neighbourhoods are poorly connected to other parts of the city with public transportation and the road network has been intentionally designed to prevent future urban expansion. Roads are narrow and full of holes, and are unsuitable for the large volume of traffic in the densely populated area. They are also unsafe, and largely lack barriers and sidewalks.[1075]

Residents in East Jerusalem face discrimination in the provision of services in virtually all aspects of their daily lives. For example, despite high poverty rates in East Jerusalem, according to ACRI, access to welfare services is extremely limited with only six offices providing assistance to nearly 335,000 people. By contrast, some 570,000 Jewish Israeli residents of Jerusalem have access to 19 such offices, meaning that on average, welfare offices in East Jerusalem deal with nearly double the number of clients as offices in West Jerusalem.[1076]

In 2019, a report by Israel's State Comptroller criticized both the Jerusalem municipality and the Israeli government for their discriminatory treatment of Palestinians in East Jerusalem. It noted that the service provided by the Ministry of Interior's Population and Immigration Authority to residents of East Jerusalem was "far inferior to that given to citizens in the rest of the country". Amongst other concerns, the report also noted disproportionately higher poverty rates amongst East Jerusalem and disparities in the handling of garbage collection between East and West Jerusalem. For example, despite the fact that 38% of the city's total population live in East Jerusalem, the municipality only makes 7% of dumpsters and 6% of garbage disposal routes available to East Jerusalemites.[1077]

In another example of unequal provision of services, there are only eight post offices in East Jerusalem compared to 33 such offices in West Jerusalem, numbers which are not proportionate to the difference in the size of the two populations.[1078] Similarly, there is a shortage of public parks and playgrounds in Palestinian neighbourhoods. While there are "hundreds of playgrounds" in West Jerusalem, according to Bimkom, by 2019 the authorities had only built 20 playgrounds in East Jerusalem, which they rarely maintain leading to their rapid deterioration.[1079]

[1072] The plan has been contested by the Israeli organization Emek Shaveh, which filed a petition with the High Court; a decision was pending as of the end of August 2021. See, for example, Emek Shaveh, *Tel Shiloh (Khirbet Seilun): Archaeological Settlement in the Political Struggle over Samaria* (previously cited).
[1073] Amnesty International, *Destination: Occupation* (previously cited).
[1074] Nathan Thrall, "Rage in Jerusalem", 4 December 2014, London Review of Books, Volume 36, Issue 23, lrb.co.uk/the-paper/v36/n23/nathan-thrall/rage-in-jerusalem
[1075] UN Habitat, *Right to Develop: Planning Palestinian communities in East Jerusalem*, 2015, reliefweb.int/sites/reliefweb.int/files/resources/Right%20To%20Develop.pdf
[1076] ACRI, *East Jerusalem: Facts and Figures 2021*, May 2021, english.acri.org.il/post/__283pdf
[1077] Haaretz, "Garbage and poverty: Watchdog blasts Israel's services to Arab East Jerusalem", 2 June 2019, haaretz.com/israel-news/.premium-ge-and-poverty-watchdog-blasts-israel-s-services-to-arab-east-jerusalem-1.7315449
[1078] ACRI, *East Jerusalem: Facts and Figures 2021* (previously cited)
[1079] Bimkom, "Playgrounds alongside community gardens in the Palestinian neighbourhoods of East Jerusalem", 25 November 2019, bimkom.org/eng/playgrounds-alongside-community-gardens-in-the-palestinian-neighborhoods-of-east-jerusalem/

For the Palestinian residents of East Jerusalem residing in isolated communities beyond the fence/wall, who constitute more than a third of the Palestinian population of East Jerusalem, the situation is much worse.[1080] Israeli authorities severely neglect and discriminate against them in budget allocation and municipal services, while directing spending to Jewish Israeli neighbourhoods in Jerusalem.[1081]

In May 2018, the Israeli government adopted Government Resolution 3790 on "Narrowing Socio-Economic Gaps and Economic Development in East Jerusalem", which allocated NIS 2 billion (over USD 645 million) to improve education, create jobs and upgrade public spaces in East Jerusalem. Although the plan has the potential to improve essential services, the allocated budget is unlikely to address socio-economic gaps between East and West Jerusalem created by years of deliberate neglect. Crucially, it failed to change discriminatory planning and building policies and, as such, does not address the root causes behind the discriminatory provision of services. The real motivation behind the plan appears to be to further consolidate control over East Jerusalem with analysts noting that "The Netanyahu government has conceded that its neglect of East Jerusalem has failed to induce Palestinians to leave."[1082] (See below for details on funding for education allocated under this Government Resolution.)

SUBSTANDARD WATER AND SANITATION SERVICES

Israel's blockade of the Gaza Strip and other discriminatory policies have created a water and sanitation crisis characterized by an acute shortage lack of potable water, reduced ability to filter water and water pollution. The routine power cuts and lack of equipment and resources to treat sewage, wastewater and solid waste puts the population of Gaza at increased risks of waterborne diseases and other health problems in the context of a collapsing health sector.[1083]

As a result of these various factors, the piped water in Gaza is unfit for human consumption and Palestinians are not able use it for drinking or cooking. Instead, according to OCHA, 90% of households in Gaza, which are already impoverished, have to buy water from desalination or purification plants, costing between 10 and 30 times more than piped water. It is commonly delivered by water tankers.[1084]

In 2021, water and sanitation infrastructure in Gaza reached a crisis point, exacerbated by the stringent restrictions imposed for over 14 years by Israel on the entry into Gaza of material and equipment necessary for its development and repair. As a result, Gazans lose on average 40% of their domestic supply because of leakages in Gaza's old water infrastructure, which has sustained considerable damage over the years.[1085] During Israel's 50-day military operation in the Gaza Strip in 2014,[1086] Israeli forces destroyed the main water and sanitation infrastructure.[1087] Israel also targeted infrastructure during the 10-21 May 2021 military operation in the Gaza Strip. According to OCHA, water, sanitation and hygiene infrastructure was severely affected, with wastewater networks, pipelines, wells, a wastewater pumping station and service vehicles damaged in 93 Israeli strikes. Compounded by the lack of power supply, three main desalination plants providing drinking water for more than 400,000 people suspended operations as did sewage treatment facilities, resulting in more than 100,000 cubic metres of untreated or partially treated wastewater being discharged into the sea every day.[1088] Further, the limited entry of fuel and the damage to the electricity network reduced access to electricity to a daily average of four to six

[1080] See, for example, ACRI, *East Jerusalem: Facts and Figures 2021* (previously cited); Al-Haq, *East Jerusalem: Exploiting Instability to Deepen the Occupation*, 2015, alhaq.org/cached_uploads/download/alhaq_files/publications/Special.Focus.on.jerusalem.pdf; Al-Haq, *Annexing a City: Israel's Illegal Measures to Annex Jerusalem Since 1948,* 2020, alhaq.org/cached_uploads/download/2020/05/11/annexing-a-city-web-version-1589183490.pdf

[1081] Ir Amim, *Jerusalem Municipality Budget Analysis for 2013: Share of Investment in East Jerusalem,* December 2014, ir-amim.org.il/en/policy_papers/jerusalem-municipality-budget-analysis-2013-share-investment-east-jerusalem

[1082] International Crisis Group, *Reversing Israel's Deepening Annexation of Occupied East Jerusalem*, 12 June 2019, crisisgroup.org/middle-east-north-africa/eastern-mediterranean/israelpalestine/202-reversing-israels-deepening-annexation-occupied-east-jerusalem

[1083] Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (previously cited), para. 83.

[1084] OCHA, "Increased electricity supply improves access to water and sanitation in Gaza", 6 September 2020, ochaopt.org/content/increased-electricity-supply-improves-access-water-and-sanitation-gaza

[1085] B'Tselem, "Water in Gaza: Scarce, polluted and mostly unfit for use", 17 August 2020, btselem.org/gaza_strip/20200818_gaza_water_scarce_polluted_mostly_unfit_for_use

[1086] Amnesty International, *Families Under the Rubble: Israeli Attacks on Inhabited Homes* (previously cited).

[1087] OCHA, *Gaza Water Disaster: Damages to Water Infrastructure*, 15 August 2014, un.org/unispal/document/auto-insert-206040

[1088] OCHA, "Escalation in the Gaza Strip, the West Bank and Israel: Flash Update #11 covering 12:00 20 May – 12:00 21 May", 21 May 2021, ochaopt.org/content/escalation-gaza-strip-west-bank-and-israel-flash-update-11-covering-1200-20-may-1200-21-may

hours throughout Gaza, further limiting the provision of water and treatment of sewage.[1089] An estimated 800,000 people lacked regular access to piped water.[1090]

Palestinians in East Jerusalem also suffer from poor water and sanitation infrastructure,[1091] in part because they are connected to different water systems with only some areas connected to the Israel national water network, and older houses not connected to any water grid or sewage infrastructure.[1092] As of 2018, only 44% of Palestinian households in East Jerusalem were formally connected to the network supplying water for drinking and other domestic purposes, with residents of communities beyond the fence/wall most affected. [1093] Further, an assessment by the Hagihon water company estimated in April 2021 that some 24km of new sewage lines were needed in East Jerusalem, partly to eliminate the use of cesspits. [1094] According to ACRI, this is the result of the authorities' failure to provide plans for Palestinian neighbourhoods and to set up infrastructure that takes into account population growth.

In addition, Israeli settlements in East Jerusalem and the rest of West Bank, including specialized industrial zones located in and around settlements, contribute to the pollution of fresh water and groundwater with both treated and untreated waste, as well as the pollution of air and soil. In one example, Wadi al-Nar, which is considered the most polluted area of the West Bank, receives 13 million cubic metres of sewage each year from Jerusalem and Palestinian communities. Whilst Israel recently began the construction of filtration and purification facilities to treat sewage in the area, the project is seemingly intended to benefit only Israeli settlers by treating their wastewater and providing them with treated water for irrigation.[1095]

As mentioned above, as a result of discriminatory planning and zoning policies, which force Palestinians to build homes and other structures illegally, the Israeli authorities do not provide adequate housing or essential services such as water and sanitation, healthcare, education, public transport or electricity to 35 unrecognized Bedouin villages in the Negev/Naqab and the vast majority of Palestinian communities in Area C of the West Bank even though they constitute some of Israel's and the OPT's most vulnerable populations.

According to OCHA, in 2016, some 180 Palestinian rural communities in the West Bank – located primarily in Area C – did not have access to running water and an additional 122 communities did not have regular supply despite being connected to the water network.[1096] They are also prevented from repairing existing infrastructure including water cisterns and, as mentioned above, are forced to rely on water trucking at a high price and rainwater harvesting (see section 5.5.3 "Discriminatory provision of services"). Given that these alternatives rarely meet their domestic and livelihood needs, many families limit their daily water consumption exposing them to health risks, which also result from poorer hygiene.[1097]

Similarly, the vast majority of these communities are not connected to wastewater services and do not have access to functioning external or internal latrines, according to a humanitarian assessment carried out in June 2021. Further, existing sanitation facilities "do not satisfy the WHO minimum requirements for adequate hygiene, privacy, and dignity".[1098] Meanwhile, Jewish settlements located in Area C enjoy regular water supply and are connected to a wastewater infrastructure.

The plight of Palestinians in Al-Hadidiya in the Jordan Valley illustrates these disparities.

[1089] OCHA, *The United Nations and NGOs launch a humanitarian plan to support Palestinians affected by the recent escalation* (previously cited).
[1090] OCHA, "Escalation in the Gaza Strip, the West Bank and Israel: Flash Update #11 covering 12:00 20 May – 12:00 21 May" (previously cited).
[1091] State Comptroller and Ombudsman of Israel, ניקיון ותברואה בשכונות הערביות במזרח ירושלים, 2 June 2019, mevaker.gov.il/sites/DigitalLibrary/Pages/Reports/2735-10.aspx; Haaretz, "Garbage and Poverty: Watchdog Blasts Israel's Services to Arab East Jerusalem", 2 June 2019, haaretz.com/israel-news/.premium-ge-and-poverty-watchdog-blasts-israel-s-services-to-arab-east-jerusalem-1.7315449
[1092] UN High Commissioner for Human Rights, *The allocation of water resources in the Occupied Palestinian Territory, including in East Jerusalem* (previously cited).
[1093] ACRI, "East Jerusalem: Facts and Figures 2019", May 2019, english.acri.org.il/_files/ugd/01368b_20dc66c3a088465286ce4c6d5a87c56c.pdf
[1094] ACRI, "East Jerusalem: Facts and Figures 2019" (previously cited).
[1095] UN High Commissioner for Human Rights, *The Allocation of Water Resources in the Occupied Palestinian Territory, including in East Jerusalem* (previously cited).
[1096] OCHA, "Water tankering projects target the most vulnerable communities in Area C", 10 August 2016, ochaopt.org/content/water-tankering-projects-target-most-vulnerable-communities-area-c
[1097] OCHA, "Palestinians strive to access water in the Jordan Valley", 22 June 2021, ochaopt.org/content/palestinians-strive-access-water-jordan-valley
[1098] OCHA, "Palestinians strive to access water in the Jordan Valley", 22 June 2021, ochaopt.org/content/palestinians-strive-access-water-jordan-valley

AL-HADIDIYA COMMUNITY IN JORDAN VALLEY

The village of Al-Hadidiya is in the north of the Jordan Valley on land the Palestinian residents leased from the West Bank governorate of Tubas. The village's nearly 200 residents earn their living as shepherds and farmers.[1099] Israel established the settlements of Ro'i in 1976, which has a population of 175 settlers;[1100] and Beka'ot in 1972, which has a population of 182 settlers, allocating them parts of the farmland of Al-Hadidiya.[1101]

Al-Hadidiya is not connected to a water grid and is deliberately cut off from any regular water supply despite its proximity to Beka'ot, which has a water pump installed by the Israeli state-owned water company Mekorot. The pump provides water only to the settlements of Ro'i and Beka'ot. As a result, the average water consumption of a Palestinian in Al-Hadidiya is 20 litres per person per day, compared to a daily water allotment for household use alone per settler of over 460 litres (over 23 times more).[1102]

Before Israel's occupation of the West Bank in 1967, residents of Al-Hadidiya lived a few kilometres east of the village's current location. The site was declared to be a "firing zone" and the residents were ordered to vacate it in 1997. The residents filed a petition to the Supreme Court of Israel against the expulsion, which was rejected in 2003, and the residents were forced to leave. However, the Israeli Civil Administration issued demolition orders for structures built in the new location as well, claiming it was designated agricultural land.[1103] The villagers filed another petition in March 2004, but it was rejected in December 2006 after the Supreme Court declined to intervene in the actions of the Civil Administration. Palestinian residents of the community have been forcibly displaced at least five times since 2006.[1104]

Due to these and other policies, the Israeli authorities have forced the residents of Al-Hadidiya to live in extremely difficult conditions. The Palestinians are forbidden from building permanent structures by discriminatory planning and building laws and are consequently forced to live in tents and shacks that provide little protection from the harsh weather. Israeli authorities consider these structures to be "illegal" and have demolished them on several occasions. According to OCHA, between January 2009 and 19 August 2020, Israel demolished 119 structures in Al-Hadidiya, displacing 142 people and affecting a total of 430 people.[1105] Of these demolished structures, 37 were homes and 63 were agricultural structures.

Children of the community need to travel more than 10km to go to the nearest school in the village of Tammun, also in the Tubas governorate. While residents of Al-Hadidiya must travel several kilometres to buy water for cooking and other basic needs, Israeli settlers living in the surrounding settlements have well-watered gardens and pools, and use water for intensive farming.

Abu Saqer, a community leader in Al-Hadidiya, told Amnesty International:

In one incident, which took place on 11 October 2020, one of our young men was attacked by Israeli settlers, while he was herding his sheep. According to their allegations, he was invading the settlement's "space" so they chased him out of the area, scared his sheep, followed him home, and ransacked his home.

In another incident, the settlement's security guards attacked my youngest daughter Sumoud, 14 years old, as she was attending to our sheep on nearby land that I have sowed and cared for. It was 10 in the morning, and a security officer raced through with his jeep trying to scare my daughter and our herd, and I'm not sure if this was because it was too hot or if he was moving too fast but his jeep rolled over, killing four of our sheep. Imagine that my daughter Sumoud, only 14 years old, had to deal with this on her own. Think of the ramifications this will have on Sumoud and children like her in the future.[1106]

[1099] PCBS, 2021-2017 عدد السكان المقدر في منتصف العام لمحافظة طوباس والأغوار الشمالية حسب التجمع [Projected Mid-Year Population for Tubas & Northern Valleys Governorate by Locality 2017-2021], pcbs.gov.ps/Portals/_Rainbow/Documents/TubasA.html (in Arabic, accessed on 29 August 2021).

[1100] ICBS, "Population in localities, by population group, end of 2019" (previously cited).

[1101] B'Tselem, "Al-Hadidyeh, February 2010: Israel effectively pressuring Palestinian Bedouin community to leave the Jordan Valley", 22 February 2010, btselem.org/planning_and_building/20100222_al_hadidiyeh

[1102] See, for example, B'Tselem, The Village of al-Hadidiyah, 12 January 2014, btselem.org/jordan_valley/al_hadidiyah (accessed on 29 August 2021)

[1103] B'Tselem, The Village of al-Hadidiyah (previously cited).

[1104] UN Development Programme, *In Focus: Bedouins in the Occupied Palestinian Territory*, September 2013, undp.org/content/dam/papp/docs/Publications/UNDP-papp-reserach-bedouinsoPt.pdf, p. 7.

[1105] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 24 August 2021), "Breakdown by community".

[1106] Amnesty International, interview by voice call with Abu Saqer, 13 October 2020.

Residents in Al-Hadidiya reported an increase in settler violence, arrests and bans on grazing during 2020.[1107]

None of the unrecognized Bedouin villages in the Negev/Naqab region of Israel is properly connected to the national water network, meaning that villagers access water through expensive third-party suppliers, a central water point in the village or a central water point in a neighbouring village.[1108] They are also forced to rely on generators for electricity. Meanwhile, residents in nearby Jewish localities enjoy state-provided services including running water, electricity and access to municipal sewerage systems.

In its 2019 concluding remarks CERD expressed concern at the general substandard living conditions of the Bedouin in both the unrecognized villages and the recognized townships in the Negev/Naqab.[1109] The CESCR has also expressed concern that none of the unrecognized villages in the Negev/Naqab is connected to the national water network and that the majority of Bedouin villages, recognized or unrecognized, are not connected to a sewage disposal infrastructure.[1110]

The case of Al-Araqib is emblematic of the deprivation of social and economic rights faced by residents of unrecognized Bedouin villages as a result of Israel's planning and building regime.

UNRECOGNIZED VILLAGE OF AL-ARAQIB

The village of Al-Araqib is home to the Al-Turi tribe. The village is located north of Beersheba in the Negev/Naqab desert and is one of the 35 unrecognized villages, rendering any construction illegal in the village. Israeli authorities have demolished Al-Araqib many times. Following the repeated demolitions, many residents have left the village and the current residents are forced to live in the vicinity of the village cemetery. At least 400 people lived in the village before demolitions began in 2010, according to the NCF.

Al-Araqib was established during the Ottoman period on land that was purchased by the village's residents in 1906.[1111] Shortly after the creation of Israel in 1948, residents of Al-Araqib were told to temporarily vacate their village after it was declared a military zone. Residents were then permanently banned from returning. In the 1970s, former residents submitted multiple claims of land ownership to Israeli authorities to allow them to return to Al-Araqib. They were all rejected.[1112]

In the early 2000s, residents returned to live on their land in Al-Araqib without permission, even though Israeli authorities deemed them as trespassers and did not recognize the village. On 27 July 2010, Israeli forces demolished the entire village and since then had destroyed it at least 186 times as of April 2021.[1113] Residents continue to rebuild their tents and small homes, or some of them, after each demolition. In 2019, residents were required to pay the state NIS 1.3 million (USD 419,000) for their own eviction costs.[1114]

The Israeli authorities' actions in Al-Araqib systematically violate the villagers' right to adequate housing, a right enshrined in the ICESCR. Amnesty International has repeatedly condemned demolitions that aim to forcibly evict residents of Al-Araqib from the land they have lived on for generations.

Israeli authorities have long denied residents of Al-Araqib essential state services. No state health or education services are provided because of the village's unrecognized status. Instead, residents rely on informal infrastructure networks. For example, villagers travel to the city of Rahat, 6km away, to access schools and receive basic healthcare. Al-Araqib is also disconnected from the Israeli water network and electricity grid, forcing residents to rely on private generators, solar panels and water brought from trucks at a much higher price. Residents who buy water from Mekorot, the Israeli state-owned water company, pay up to 67% more for water

[1107] Mondoweiss, "COVID-19 in Palestine: Annexation in the Jordan Valley", 17 September 2020, mondoweiss.net/2020/09/covid-19-in-palestine-annexation-in-the-jordan-valley
[1108] NCF and Adalah, *NGO Report to the UN Human Right Committee* (previously cited), p. 10.
[1109] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, para. 28.
[1110] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 46.
[1111] Israeli Committee Against House Demolitions (ICAHD), "Demolishing the Green Line: A tale of Two 'States' but one Agenda … and One Solution", 30 October 2018, icahd.org/2018/10/30/demolishing-the-green-line-a-tale-of-two-states-but-one-agenda-and-one-solution; NCF, On the Map: the Arab Bedouin Villages in the Negev-Naqab: al-ʿAragib, dukium.org/village/al-arakib (accessed on 25 August 2021).
[1112] NCF, *On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab* (previously cited).
[1113] NCF, Home Demolitions, dukium.org/?page_id=11916 (accessed on 25 August 2021).
[1114] Haaretz, "Israeli Court Orders Bedouin to Pay Cost of Their Eviction From Unrecognized Village", 8 August 2019, haaretz.com/israel-news/.premium-court-bedouin-must-pay-cost-of-eviction-from-unrecognized-village-1.7645474

than those connected to the state-provided water network.[1115] Residents are also forced to transport water in containers for up to 18km.[1116]

By contrast, the Jewish community of Givot Bar, adjacent to Al-Araqib, has an abundance of water and state-provided services. In 2004, the community was established by the minister of housing, spearheaded by the OR Movement, which constructed 10 mobile homes overnight.[1117] The community was promptly connected to electricity, water and sewerage networks. According to the OR Movement's website, the community houses 170 families today and plans to house 500 by the end of the decade.[1118] The community has outdoor swimming pools and green lawns, and hopes to encourage tourism to the area.[1119]

Since 2010, residents of the village have been peacefully protesting every week to demand government recognition of their ownership of their lands and to commemorate the demolition of their village.

The Israeli authorities have targeted and arrested prominent Bedouin human rights defender Sayyah Abu Mdeighim Al-Turi and his family for fighting for the right of Al-Araqib residents to adequate housing and for defending Bedouin land in the Negev/Naqab at large.[1120] On 21 September 2020, an Israeli magistrates' court sentenced three members of the Al-Turi family to terms of imprisonment after convicting them of crimes related to their human rights work.[1121]

UNEQUAL ACCESS TO HEALTH SERVICES

The Israeli government discriminates when providing funds to the health system serving Palestinian citizens of Israel, even though they have worse health than their Jewish Israeli counterparts (see section 5.5.2 "Discriminatory allocation of resources"), which in large part is due to socio-economic factors: education; employment; allocation of land for residential use; lack of infrastructure, including connection to the national electricity grid; running water; paved roads; sewage disposal systems; regulation and control of air and noise pollution; high urban density; and lack of designated funding for urban development that enables and encourages healthy lifestyles.[1122]

As the NGO Physicians for Human Rights – Israel points out, the discrimination and exclusion of Arab citizens and residents in Arab localities also negatively impact their ability to engage in health-promoting lifestyles and preventive medicine leading to illnesses such as obesity, hypertension and diabetes even though health gaps between the Jewish and Arab populations could be greatly reduced by providing sufficient resources for determinants of health to all Arab local localities.[1123] Additionally, nutritional insecurity, another factor closely connected to illnesses associated with nutrition and stress, is far more prevalent in the Arab population.[1124]

Palestinian citizens of Israel also face physical barriers to accessing healthcare services. For example, 40.5% of Jewish respondents to a 2018 ICBS survey (see section 5.5.1 "Suppression of Palestinians' human development") stated there was a direct bus route from their home to a local medical facility, compared to only 14.6% of Arabs respondents. Similar inequalities were observed for patients making appointments: 77.9% of Jewish respondents compared to 54.5% of Arab respondents stated they were given an appointment within a week of their request.[1125]

[1115] Adalah, "Water in the Naqab (Negev): Source of Life, Tool of Expulsion", February 2013, adalah.org/uploads/oldfiles/Public/files/English/Newsletter/101-February-2013/Mahajna-Water-Naqab.pdf
[1116] NCF, On the Map: the Arab Bedouin Villages in the Negev-Naqab: al-ʿAragib, dukium.org/village/al-arakib (accessed on 25 August 2021).
[1117] Haaretz, "Tribal Lands (Cont.)", 14 July 2006, haaretz.com/1.4857547
[1118] OR Movement, About Givot Bar, or1.org.il/english_settlements/givot-bar (accessed on 25 August 2021), "Givot Bar".
[1119] OR Movement, About Givot Bar (previously cited); Airbnb, Givot Bar Community Rent Choices, airbnb.com/s/Giv'ot-Bar--Israel/homes?adults=1&refinement_paths%5B%5D=%2Fhomes&tab_id=home_tab&ne_lat=31.371336415863052&ne_lng=34.77724861938472&sw_lat=31.316871217573723&sw_lng=34.7264368518066&zoom=14&search_by_map=true&search_type=unknown (accessed on 24 August 2021).
[1120] Amnesty International, "Israel/OPT: Prominent Bedouin Leader Imprisoned by Israel: Sheikh Sayyah Abu Mdeighim al-Turi" (Index: MDE 15/9702/2019), 21 January 2019, amnesty.org/en/documents/mde15/9702/2019/en
[1121] Housing and Land Rights Network, "Palestine/Israel: Naqab Land Defenders Imprisoned", 22 September 2020, hlrn.org/arabic/activitydetails.php?title=Palestine/Israel:-Naqab-Land-Defenders-Imprisoned&id=pnBsbA==#.YLigD_kzY2w
[1122] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 6; NCF and Adalah, "Violations of Human Rights of the Arab Bedouin Community in the Negev/Naqab: International Day of Human Rights 2019", 10 December 2019, p. 5.
[1123] Mossawa Center, "The 2019 State Budget and Government Resolution 922" (previously cited); Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited).
[1124] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 6.
[1125] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 45.

For Palestinian Bedouins living in the Negev/Naqab, accessibility of health services is even worse, as there are no medical clinics in most Bedouin villages.[1126] Israel does not provide healthcare facilities or medical services in unrecognized villages. These villages are not connected to public transport, forcing families to travel long distances to receive basic healthcare.[1127] Adalah has argued that Israeli authorities intentionally make healthcare inaccessible for Palestinian citizens of Israel in unrecognized villages, in part to create a coercive environment to force residents to leave the villages.[1128]

At the same time, the higher poverty rates of the Arab population prevent many from being able to purchase supplementary and private health insurance. In recent decades, the Israeli government has adopted a policy of privatization and budgetary erosion of social programmes, which have undermined public services, including healthcare for all Israeli citizens, but with a more critical impact on marginalized communities such as the Arab population.[1129] The effects of these policy changes have weakened public health services, reduced medical staffing in the geographic periphery, and blocked access to medical offices and clinics for newborn babies.[1130] This, combined with worse health outcomes, means that Arabs are likely to spend much more on medication than their Jewish counterparts, despite having less income.[1131]

Palestinians' unequal access to health services in Israel is reflected in a range of health outcomes and impacts their enjoyment of their right to health. Various official statistics reveal significant health gaps between the Jewish and Arab populations, with the latter universally scoring worse. According to a study based on Israeli government data in 2019: infant mortality for Arab citizens of Israel (5.4 per 1,000 births) was more than double that for Jewish Israelis (2.4); average life expectancy for Arab citizens of Israel was 79.5 compared to 83.1 for Jewish Israelis; and mortality rates due to illness among Arab citizens of Israel were, per 1,000 people, 7.1 for men and 4.9 for women, compared to 5.5 for men and 3.9 for women among Jewish Israelis.[1132] Self-assessed health is lower for respondents among Arab citizens of Israel (49% assessed their health as very good), compared to Jewish Israeli respondents (56% assessed their health as very good).[1133]

In addition, the ICBS 2018 social survey found that 16.1% of Arab respondents forewent medical treatment for financial reasons, more than double the rate of Jewish respondents (7.9%).[1134] Moreover, the proportion of Arab respondents who stated they had to forego medication for this reason (16.7%) was three times higher than among Jewish respondents (4.8%).[1135]

In its 2020 review, CERD expressed concern about the disproportionately poor health status of the "Palestinian and Bedouin" populations, including shorter life expectancy and higher rates of infant mortality compared to the Jewish population.[1136] Similar concerns were also expressed by the CESCR in 2019.[1137]

In the West Bank and Gaza Strip, Israel's half-a-century-long military occupation does not just impact Palestinians' standard of health but also their ability to access the necessary care and treatment, in particular specialized treatment for serious medical conditions. Israel does not extend coverage of its health system to the OPT (excluding annexed East Jerusalem), despite its obligations under international humanitarian law to ensure and maintain public health and hygiene in the occupied territory and under human rights law to ensure the

[1126] NCF and Adalah, "Violations of Human Rights of the Arab Bedouin Community in the Negev/Naqab: International Day of Human Rights 2019" (previously cited), p. 21.
[1127] NCF and Adalah, "Violations of Human Rights of the Arab Bedouin Community in the Negev/Naqab: International Day of Human Rights 2019" (previously cited).
[1128] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel*, March 2011, p. 11.
[1129] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 8.
[1130] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 8.
[1131] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 28.
[1132] With respect to mortality as a result of illness, the rate is much higher among Arabs. For example, the cancer mortality rate for Jewish males is about 38% compared to 47% for Arab males. Among women, the rate is 31% and 38.4% respectively. Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 29.
[1133] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), pp. 5-6.
[1134] ICBS, 2018 הסקר החברתי [Social Survey 2018], cbs.gov.il/he/publications/doclib/2020/seker_hevrati18_1788/t12.pdf (in Hebrew).
[1135] Physicians for Human Rights – Israel, *20 Years since October 2000: Structural Health Discrimination between Arabs and Jews* (previously cited), p. 45.
[1136] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, para. 38(c).
[1137] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 54.

highest attainable standard of physical and mental health to everyone under its effective control.[1138] Israel does, however, provide health coverage for Israeli settlers in the same territory.

The Oslo Accords transferred the responsibility for the provision of healthcare of Palestinians in Gaza and the West Bank, excluding East Jerusalem, to the Palestinian authorities, who face numerous Israeli-imposed constraints on their capacity to fulfil such responsibilities.[1139] As a result, according to the WHO, the health sector in the OPT is fragmented and largely donor-dependent; it also lacks adequate specialized health services and remains underfunded, which exacerbates its fragility.[1140]

In addition to the Ramallah-based Palestinian authorities in the West Bank and the de facto Hamas administration in the Gaza Strip, healthcare in the OPT is provided by UNRWA as well as a range of private and non-governmental institutions. In Area C of the West Bank, where the Palestinian authorities have no jurisdiction, healthcare for Palestinians is largely provided through mobile clinics that are run by private and non-governmental organizations.

Although Palestinian residents of East Jerusalem are entitled to Israeli health services and health insurance provided in Jerusalem and the rest of Israel, in practice, they rely on a network of six Palestinian-run private hospitals for their primary healthcare.[1141] The hospitals also provide specialized medical treatment for Palestinians from the rest of the West Bank and Gaza Strip, referred by the Palestinian Ministry of Health. The consequence of this overreliance on donor funding was exemplified by the impact of a 2018 decision of the US administration to cut USD 25 million in financial aid to the East Jerusalem Hospital Network. This affected critical medical care, including cardiac surgery, neonatal intensive care, radiation therapy and paediatric dialysis, especially for Palestinian patients referred by the Palestinian Ministry of Health from other parts of the OPT, where such services are unavailable.[1142]

CRUEL AND ARBITRARY RESTRICTIONS ON ACCESS TO HEALTHCARE IN OPT

When specialized and potentially life-saving healthcare is unavailable in medical facilities in the rest of the West Bank and the Gaza Strip, patients are referred to East Jerusalem, Israel or abroad. However, this option is often hindered by the discriminatory Israeli policies and practices described throughout this report.[1143]

Palestinians from Gaza and the West Bank referred to receive medical care in East Jerusalem or Israel, as well as medical staff who hold West Bank IDs, must apply for an Israeli military permit on humanitarian grounds to access medical facilities there. On average, each year around 200,000 Palestinians are required to apply for permits either to receive medical care in East Jerusalem or Israel, or for family members to accompany patients, according to the WHO.[1144] There are usually more than 2,000 permit applications each month for patients from Gaza, of which a third are for cancer treatment. Nearly 80% of all permits are approved; the remaining 20% are either denied or not approved in time.[1145]

The permits are difficult to obtain and the process for obtaining them remains unclear. The vast majority of unsuccessful applicants do not receive explanations for the denial or delay of their permits.[1146] According to the WHO, "While there is no published eligibility criteria for obtaining a permit, data collection and interview findings indicate that factors which appear to affect edibility [sic] include age, sex, residency, civilian status, timing of

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[1138] Under the right to health, healthcare goods, facilities and services should be available in sufficient quantity within the state; accessible to everyone without discrimination; respectful of medical ethics and culturally appropriate; and scientifically and medically appropriate and of good quality. To be considered "accessible", these goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population; within safe physical reach for all sections of the population; and affordable for all. CESCR, General Comment 14 (previously cited), para. 12(a).

[1139] WHO, Director-General, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (previously cited).

[1140] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited).

[1141] The East Jerusalem Hospital Network consists of six hospitals: Makassed Islamic Charitable Society Hospital, Augusta Victoria Hospital, Palestine Red Crescent Society Hospital, St John of Jerusalem Eye Hospital Group, Jerusalem Princess Basma Centre and Saint Joseph Hospital.

[1142] Lutheran World Federation, "US Cuts Funding to East Jerusalem Hospital Network", 8 September 2018, lutheranworld.org/news/us-cuts-funding-east-jerusalem-hospital-network; DW media, "US cuts $25 million from hospitals serving Palestinians", 22 April 2020, dw.com/en/us-cuts-25-million-from-hospitals-serving-palestinians/a-45417846

[1143] UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report, 15 March 2018, UN Doc. A/HRC/37/75.

[1144] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 51; Physicians for Human Rights – Israel, *Divide and Conquer: Inequality in Health*, 8 January 2015, phr.org.il/en/divide-conquer-new-phri-report, p. 48.

[1145] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 51; Physicians for Human Rights – Israel, *Divide and Conquer: Inequality in Health* (previously cited), p. 48.

[1146] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), pp. 27 and 29; WHO, Director-General, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (previously cited), p. 23.

travel, kind of medical treatment, and family relationships, in addition to unexplained 'security' reasons of Israeli authorities."[1147]

The permit regime has a particularly devastating impact on the health of Palestinians in Gaza where the blockade and other Israeli policies of segregation, coupled with a chronic energy crisis, have undermined the availability and quality of health services and left the system close to collapse. Additionally, the Ramallah-based Palestinian authorities' reduction of essential services to the Gaza Strip, including electricity and medical supplies, undermines Palestinians' right to health. Egypt has kept the Rafah crossing mostly closed since 2013, which has also restricted access to healthcare.[1148]

As a result, Palestinians in Gaza are unable to enjoy and access adequate healthcare including life-saving and other emergency medical treatment. Treatment for cancer[1149] and other chronic illnesses as well as specialized paediatric, cardiology and haematology services are severely limited due to severe and continuous shortages of medicines and medical equipment, which Israel prohibits from entering under the "dual use" policy (see section 5.5.1 "Suppression of Palestinians' human development").[1150] According to the WHO, the policy has also affected the supply of electricity generators for hospitals; communications equipment for coordinating ambulances and emergency response; and a large number of people with disabilities, as certain materials and equipment, such as nuclear scanning technology,[1151] as well as carbon fibre and epoxy resins used in some types of prosthetic limbs, are prohibited from being delivered to Gaza, leaving patients with heavier and more uncomfortable alternatives.[1152] The WHO also reported that Palestinians have to pay more for medication than international standard prices because of import restrictions and their limited ability to negotiate lower prices.[1153]

In addition, Israel has not allowed certain types of medical equipment to leave Gaza for repair. For instance, after three years of denying permits, in June and July 2020, following legal intervention by Gisha, the Israeli authorities finally allowed a device used for treating burns, the only one of its kind in Gaza, to be shipped for repair.[1154] In parallel, punitive measures taken by the Palestinian authorities in the West Bank to reduce essential services to the Gaza Strip since 2017 have exacerbated the impact of Israeli restrictions. They too have violated Gazans' right to health by reducing their access to medical supplies and electricity essential for the healthcare system.[1155] Meanwhile, Egypt has kept the Rafah Crossing mostly closed for the population in Gaza since 2013, which has also restricted access to healthcare.[1156]

The Covid-19 pandemic has further debilitated the health system. According to OCHA, as of March 2021, 50% of essential drugs were at zero-stock level (less than a month's supply) compared with 45% in February due to the impact of Covid-19. This percentage was the highest recorded since September 2019.[1157] In May 2021, there were more than 9,500 active cases in Gaza[1158] and just over 38,000 residents had been vaccinated[1159] – far short

[1147] WHO, *Right to Health: Crossing barriers to access health in the occupied Palestinian territory,* 2013, p. 16. apps.who.int/gb/ebwha/pdf_files/WHA73/A73_15-en.pdf
[1148] Amnesty International and others, "Israel: Record low in Gaza medical permits; 54 died in 2017 awaiting Israeli permit (joint statement)" (Index: MDE 15/7882/2018), 13 February 2018, amnesty.org/en/documents/mde15/7882/2018/en
[1149] For example, Gaza completely lacks radiotherapy treatment. Chemotherapy treatment is available but very limited in terms of supply and variety.
[1150] Israel prohibited the import of a PET/CT scanner used in cancer diagnosis and treatment for a hospital in Nablus. See Haaretz, "The Miraculous Tale of the West Bank's First University Hospital and Its 'Very Israeli' CEO", 19 August 2017, haaretz.com/middle-east-news/palestinians/.premium.MAGAZINE-the-miraculous-tale-of-the-west-bank-s-first-university-hospital-1.5443777
[1151] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 8.
[1152] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 8; HRW, "Gaza: Israeli restrictions harm people with disabilities. Neglect by Hamas authorities, armed conflict cause further hardship", 3 December 2020, hrw.org/news/2020/12/03/gaza-israeli-restrictions-harm-people-disabilities
[1153] WHO, Director-General, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (previously cited), para. 19.
[1154] Gisha, "With Gisha's assistance, critical goods brought in to the Strip and medical equipment exits Gaza for repair", 25 August 2020, gisha.org/en/with-gishas-assistance-critical-goods-brought-in-to-the-strip-and-medical-equipment-exits-gaza-for-repair
[1155] OCHA, "The humanitarian impact of the internal Palestinian divide on the Gaza Strip", 23 June 2017, ochaopt.org/content/humanitarian-impact-internal-palestinian-divide-gaza-strip-june-2017
[1156] Amnesty International and others, "Record-low in Gaza medical permits; 54 died in 2017 awaiting Israeli permit" (previously cited).
[1157] OCHA, "Gaza Strip: Snapshot: March 2021", 27 April 2021, ochaopt.org/content/gaza-strip-snapshot-march-2021
[1158] WHO, "OPT- Coronavirus disease 2019 (COVID-19) Situation Report 75", 6 May 2021, bit.ly/3y12qIR
[1159] Even though Israel's vaccination campaign started in December 2020 – to cover Israeli citizens, East Jerusalem residents, Israeli settlers in illegal settlements in the West Bank and later Palestinian workers in Israeli settlements – in Gaza access to vaccinations was intermittent and slow. See Al Jazeera, "First batch of COVAX-supplied vaccines arrives for Palestinians", 17 March 2021, aljazeera.com/news/2021/3/17/first-batch-of-covax-supplied-vaccined-arrives-for-palestinians

of what is needed for a population of some 2 million. In April 2021, hospitals were already struggling to admit new patients with insufficient intensive care capacity and shortage of essential medication.[1160]

As a result, Palestinians from Gaza are often forced to rely on the more advanced healthcare in East Jerusalem and elsewhere in the West Bank, in Israel and abroad. Yet the Israeli authorities often delay permits and sometimes fail to provide them at all.[1161] According to the WHO, patients applying to leave Gaza for healthcare in 2018 had the second lowest approval rate recorded by the WHO since 2006, with 15,834 of 25,811 patient permit applications approved (61.4%).[1162] This low level persisted until July 2020.[1163] From January to May 2020, 67% of patient applications for permits to leave Gaza were successful.[1164]

It appears that, in some cases, Israel's denial of permits to leave Gaza for medical treatment is intended as a punitive measure. For example, in the context of the Great March of Return protests, according to OCHA, Israeli forces injured over 8,000 Palestinian civilians with live ammunition, 1,200 of whom require long-term rehabilitation, including 156 who had to have limbs amputated.[1165] According to the WHO, the permit approval rate for Palestinians injured in the Great March of Return protests who needed treatment outside Gaza was significantly lower than the overall approval rate for patient permit applications to exit Gaza. Between 30 March 2018 and 30 September 2019, there were 591 patient permit applications from Palestinians injured in the Great March of Return protests; 18% (104) were approved, 27% (161) were denied and 55% (326) were delayed.[1166] This pattern applied to children as well as to adults. According to a 2019 report by the Special Rapporteur on the situation of human rights in the OPT, the approval rate for permit applications for children to cross into Israel for medical treatment was significantly lower for Palestinian children injured during demonstrations in Gaza than for children injured in other circumstances. In 2018, 22% of applications were approved, compared with an average approval rate of 75% for other cases involving children.[1167]

Even when children have their permit applications to exit Gaza for treatment approved, they are often denied the companionship of those most able to support them. In 2018, Israel refused to allow either parent to accompany their child for healthcare outside Gaza in the case of 5,256 patient permit applications relating to 1,821 children.[1168]

More stringent security checks, which Israel put in place in November 2015, have also contributed to delays in permits being issued. Under the new directives, in order to receive permits male patient companions aged between 16 and 55 and female patient companions aged between 16 and 45 must face more intensive security investigations. Further, all "patients may be called for security interrogation as a prerequisite to permit processing", according to the WHO.[1169] Indeed, in 2018, the WHO recorded 133 patients and 52 patient companions who were called for security interrogation. Human rights organizations have also documented many cases where Palestinian patients or their companions were called in for interrogation by the Israeli authorities, who attempted to coerce them into collaborating in exchange for treatment. In addition, Israeli forces arrested one patient and four patient companions at the checkpoint at the Erez crossing in 2018.[1170]

[1160] ICRC, "Gaza: Vicious new COVID-19 wave hits during Ramadan as vaccine doses trickle in", 20 April 2021, icrcnewsroom.org/story/en/1950/gaza-vicious-new-covid-19-wave-hits-during-ramadan-as-vaccine-doses-trickle-in
[1161] Amnesty International and others, "Israel: Record low in Gaza medical permits; 54 died in 2017 awaiting Israeli permit" (previously cited).
[1162] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited).
[1163] WHO, "Health access barriers for patients in the occupied Palestinian territory: Monthly report - July 2020", 8 September 2020, emro.who.int/images/stories/palestine/documents/WHO_July_2020_Monthly_Report.pdf?ua=1
[1164] WHO, "Palestinian patient voices: Patients in the Gaza Strip unable to access healthcare", June 2020, emro.who.int/images/stories/palestine/documents/WHO-PatientVoices_2_Final.pdf?ua=1
[1165] In the context of the Great March of Return protests, Israeli forces shot tear gas canisters, some of them dropped from drones, rubber bullets and live ammunition, mostly by snipers. As a result, 214 Palestinians, including 46 children, were killed, and over 36,100, including nearly 8,800 children, were injured. During the same period, one Israeli soldier was killed and seven others were injured during the demonstrations. See OCHA, "Two years on: people injured and traumatized during the 'Great March of Return' are still struggling", 6 April 2020, ochaopt.org/content/two-years-people-injured-and-traumatized-during-great-march-return-are-still-struggling
[1166] WHO, *Health Access: Barriers for patients in the occupied Palestinian territory*, September 2019, emro.who.int/images/stories/palestine/documents/september_monthly_report_2019.pdf?ua=1, p. 3.
[1167] UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report, 21 October 2019, UN Doc. A/74/507.
[1168] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 8.
[1169] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 37.
[1170] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 67.

Israeli restrictions on movement have been directly responsible for patient deaths in Gaza and have compounded the suffering of ill Palestinians.[1171] The WHO reported that 54 patients, 46 of whom had cancer, died while waiting for their permits in 2017, which witnessed the lowest approval rate of medical permits – 54% – between 2012 and 2019.[1172] It is possible that some of these deaths might not have occurred but for the delays caused by the blockade. In 2019, a survival analysis conducted by the WHO found that "cancer patients initially denied or delayed permits to access chemotherapy and/or radiotherapy outside Gaza from 2015 to 2017 were 1.5 times less likely to survive in the following six months or more, compared to those initially approved permits."

The case of Abdul Nasser Al-Yazji, a two-year-old boy who died of cancer whilst waiting for an Israeli permit to enter Jerusalem for urgent medical treatment, exemplifies the suffering of thousands of patients and their families in the Gaza Strip.

ABDUL NASSER AL-YAZJI

Abdul Nasser Al-Yazji was just two years old when he died on 28 August 2020 in the Gaza Strip. He was diagnosed with Ewing's sarcoma of the cervical spine, a rare type of cancer in the neck, in 2019 when he was 18 months old. His parents were trying to get him to a hospital in East Jerusalem to receive specialist treatment, but Israeli authorities did not grant them a permit to leave in time. He had been admitted to Abdel Aziz Rantisi Specialist Hospital for Children, which provides oncology services in Gaza, where doctors had confirmed he had cancer.

Abdul Nasser Al-Yazji was first given radiology treatment at the hospital in Gaza, but his condition did not improve. On 8 February 2020, he was transferred to Al-Ahli Hospital in the West Bank city of Hebron for chemotherapy. The Israeli Civil Administration granted permits to him and his mother, Jawaher Al-Yazji, to leave the Gaza Strip for two weeks for medical treatment in the West Bank. He had surgery to remove the tumour from his neck and he and his mother returned to the Gaza Strip on 22 February 2020.

Abdul Nasser Al-Yazji's health condition deteriorated and, on 27 June 2020, he was admitted to Gaza's Abdel Aziz Rantisi Hospital for treatment. Medical examinations and a scan revealed the tumour had regrown and that the cancer had spread to the lung. On 8 July 2020, doctors in Gaza recommended that he be transferred to Augusta Victoria Hospital in East Jerusalem, where he could receive urgent and specialist medical treatment. The family applied for an exit permit through Erez crossing on the same day, but they did not receive an answer before he died around a month later. The family tried reaching out to the Civil Administration office but were told that they were not processing any permits since the Ramallah-based Palestinian authorities had cut ties with the Israeli authorities, following Israel's declared plans of annexation in April 2020.

On 20 August 2020, while waiting for the permit to be issued, Jawaher Al-Yazji told Amnesty International:

The Gaza Strip is under siege, meaning we always need to deal with the humiliation of the Israeli occupation in order to get medical treatment outside of Gaza. When we went in February, we applied to the Ministry of Civil Affairs of the Palestinian Authority, which works with the Israeli Civil Administration. There, we were told that it would take five days to organize the authorization documents: two on the Palestinian side and three more days to get an answer from the Israeli side. And if you have a security issue, the process will take much longer.

If my son dies at the hospital here, it is not that the cancer has killed him, rather it is the occupation. The fact that we cannot even get a proper medical treatment outside of the Gaza Strip is what is making people surrender to the illness. Our life is miserable, and it is not getting any better. We just pray that one day this injustice will go away.[1173]

By implementing this arbitrary permit denial policy, Israel is failing to fulfil its obligation to ensure access to health facilities, goods and services on a non-discriminatory basis to Palestinians under its effective control, violating Palestinians' right to the highest attainable standard of health and, in the most extreme cases, their right to life.

In its 2019 review, the CESCR expressed concern regarding Israel's "lengthy and complicated exit-permit system", in addition to "the very limited availability of healthcare services and the deteriorating quality of health-

[1171] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), pp. 35-48; Medical Aid for Palestinians (MAP), "Palestinian Child Dies after being Denied Access to Hospital by Israeli Authorities", 27 January 2017, map.org.uk/news/archive/post/483-palestinian-teenager-dies-after-being-denied-access-to-hospital-by-israeli-authorities
[1172] Amnesty International and others, "Record-low in Gaza medical permits; 54 died in 2017 awaiting Israeli permit" (previously cited); WHO, Director-General, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (previously cited).
[1173] Amnesty International, interview by voice call with Jawaher Al-Yazji, 20 August 2020.

care services in the Gaza Strip due to restrictions on 'dual use' items, including essential medical equipment".[1174] The CESCR called on Israel to "[i]mmediately lift the blockade and closures on the Gaza Strip". It recommended that Israel "[f]acilitate the entry of essential medical equipment and supplies and the movement of medical professionals from and to Gaza" and "[r]eview the medical exit permit system with a view to facilitating timely access to all medically recommended healthcare services by residents of Gaza".[1175]

In addition to restricting the movement of people, Israel also bars Palestinian ambulances travelling from the rest of the West Bank from entering East Jerusalem. A procedure known as "back-to-back" transfer operates, where Palestinian patients must switch to Palestinian Red Crescent Society ambulances with Israeli-licensed plates at checkpoints before they can be transferred to receive medical care in East Jerusalem; patients must also receive security clearance from Israeli authorities beforehand.[1176] In 2018, 84% of the 1,462 recorded journeys by Palestinian ambulances requiring entry to East Jerusalem from other parts of the West Bank had to follow this procedure, diverting health resources as at least two ambulances need to be available for the transfer at checkpoints, and delaying transit.[1177] According to data collected by the Palestinian Red Crescent Society, the average delay at checkpoints for "back-to-back" transfer procedures in emergency cases was 24 minutes.[1178] In 2019, 90% of Palestinian ambulance journeys to Jerusalem were required to follow this "back-to-back" transfer procedure.[1179]

Israel's territorial division of parts of East Jerusalem, which has left some Palestinian communities beyond the fence/wall, and the imposed movement restrictions have hindered the ability of Palestinian residents of East Jerusalem in these areas to access adequate primary healthcare services in a timely manner. For instance, during the Covid-19 pandemic, the movement restrictions impeded access to healthcare services for Palestinians in East Jerusalem and exacerbated the health crisis.

L. M.

L. M. works at a school near the Old City in East Jerusalem and lives with her family in Kufr Aqab, which is segregated from the rest of the city by the fence/wall and military checkpoints. She is married with five children. The family is forced to live in Kufr Aqab because they do not have permanent residency or the necessary permits to allow them to live in East Jerusalem. L. M. must cross through Israeli checkpoints to reach work or receive healthcare. She told Amnesty International:

I work at the Schmidt-Schule Jerusalem [school], so living in Jerusalem would be a lot easier… I need to get off the bus [from Kufr Aqab] and cross the [Qalandia] checkpoint on foot. Sometimes there are so many people waiting at the checkpoint, and it can be suffocating. I now have problems with my leg, and it makes it hard and painful to walk sometimes, especially when climbing this new bridge they [Israeli authorities] installed at Qalandia checkpoint. I am often late for work. I also need to cross whenever I need to go see a doctor. My doctor works at a clinic close to the school where I work.[1180]

When the Covid-19 lockdown measures were first imposed in Jerusalem, Palestinian residents of East Jerusalem living in Kufr Aqab and Shuafat refugee camp, both beyond the fence/wall, could no longer access health facilities in the rest of the city. Thousands of them were left with no access to Covid-19 testing clinics for several weeks.[1181] Palestinians had to rely solely on receiving testing and treatment in West Jerusalem and the rest of Israel, where facilities are better equipped to treat certain conditions and illnesses. Only after a petition to the Israeli Supreme Court by Adalah and the Civic Coalition for Palestinian Rights in Jerusalem was submitted on 8 April 2020 did Israeli health authorities commit to opening Covid-19 clinics and testing centres in Kufr Aqab and Shuafat refugee camps and in Silwan, also in East Jerusalem.[1182] The three clinics opened on 15 April 2020, nearly two months after the first confirmed cases of Covid-19, and were operated by one of the state-mandated medical service providers in Israel. Additional testing facilities were opened at a later stage and were run by the Jerusalem Municipality.

[1174] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 58.
[1175] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 59.
[1176] MAP, "'Sometimes patients die': Barriers facing Palestinian ambulances entering East Jerusalem", 24 November 2017, map.org.uk/news/archive/post/757-athe-aback-to-backa-process-is-hard-and-sometimes-patients-diea-athe-barriers-facing-palestinian-ambulances
[1177] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 52.
[1178] MAP, *Health under occupation*, September 2017, map.org.uk/downloads/health-under-occupation---map-report-2017.pdf
[1179] WHO, Director-General, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (previously cited), para. 36.
[1180] Amnesty International, interview by voice call with L. M., 18 August 2020.
[1181] +972 Magazine, "East Jerusalem scrambles to prevent COVID-19 outbreak before Ramadan", 22 April 2020, 972mag.com/east-jerusalem-coronavirus-ramadan
[1182] Adalah, "Following Adalah's Supreme Court petition, Israel to open coronavirus testing centers in East Jerusalem neighborhoods beyond the separation wall", 14 April 2020, adalah.org/en/content/view/9979

ATTACKS AGAINST HEALTHCARE WORKERS AND MEDICAL FACILITIES

Over the years, Israel's army has repeatedly targeted medical facilities during its military offensives. According to the NGO Medical Aid for Palestinians, 147 hospitals and clinics, and 80 ambulances, were damaged or destroyed in military offensives on Gaza between 2008 and 2017.[1183] In the same period, 145 medical workers – most of them ambulance drivers – were killed or injured.[1184]

During the May 2021 military operation, Israel damaged or destroyed 28 health facilities in Gaza, including nine hospitals and 19 primary care clinics, according to OCHA.[1185] Two of Gaza's prominent health physicians were killed. On 16 May 2021, Israel carried out air strikes against residential buildings and streets in Gaza city, which destroyed two residential buildings belonging to the Abu Al-Ouf and Al-Kolaq families, killing at least 30 people.[1186] Among those killed were Ayman Abu Al-Ouf, head of internal medicine at Al-Shifa hospital, who was also supervising the ward for severe Covid-19 cases, and Mooein Ahmad Al-Aloul, a psychiatric neurologist.[1187] The attack blocked Al-Wehda Street, a main road leading to Al-Shifa hospital. The next day, an Israeli attack on a building severely damaged the neighbouring medical complex that contained the main Covid-19 laboratory.[1188]

In another example, the WHO noted unprecedented attacks on the health sector in the context of the Great March of Return protests that began in March 2018 along the fence between Gaza and Israel. It reported 369 attacks against health personnel in the Gaza Strip in 2018, leading to the death of three health workers and the injury of 570.[1189]

At times of heightened tensions, Israeli security forces have also carried out violent raids on Palestinian hospitals and medical personnel in the West Bank, including East Jerusalem, in some cases preventing doctors from providing out urgent medical treatment. According to Medical Aid for Palestinians, between October and December 2015, attacks by Israeli security forces resulted in damage to 92 ambulances and injuries to 147 medical workers, in addition to eight hospitals being raided.[1190] Such raids are usually aimed at arresting injured Palestinian protesters whilst they are seeking medical care, and have involved the harassment and intimidation of staff with machine guns and stun grenades.[1191]

More recently, during the protests in Sheikh Jarrah in early May 2021,[1192] Israeli forces impeded the work of Palestinian health workers in East Jerusalem by preventing them from treating the wounded, delaying transportation of injured people, and physically assaulting paramedics and ambulances.[1193] According to the American Near East Refugee Aid, at least 41 healthcare workers were injured in the West Bank, and 21 medical service vehicles were damaged or confiscated. It also reported physical attacks, harassment and restrictions on the movement of healthcare workers, paramedics and ambulances.[1194]

[1183] MAP, "Infographic: Attacks on medical facilities and personnel in the West Bank and Gaza", 1 October 2017, map.org.uk/news/archive/post/627-infographic-attacks-on-medical-facilities-and-personnel-in-the-west-bank-and-gaza; WHO, *Right to health in the occupied Palestinian territory: 2018* (previously cited).
[1184] Al Mezan, *Medical Care Under Siege: Israel's Systematic Violation of Gaza's Patient Rights*, February 2018, mezan.org/en/uploads/files/15174966411875.pdf
[1185] OCHA, "Gaza Strip: Escalation of Hostilities as of 3 June 2021", 6 June 2021, ochaopt.org/content/gaza-strip-escalation-hostilities-3-june-2021; Amnesty International, "Israel/OPT: Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes", 17 May 2021, amnesty.org/en/latest/news/2021/05/israelopt-pattern-of-israeli-attacks-on-residential-homes-in-gaza-must-be-investigated-as-war-crimes
[1186] Amnesty International, "Israel/OPT: Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes", 17 May 2021, amnesty.org/en/latest/news/2021/05/israelopt-pattern-of-israeli-attacks-on-residential-homes-in-gaza-must-be-investigated-as-war-crimes
[1187] Al Jazeera, "'Huge loss': Experienced Gaza doctors killed in Israeli attacks", 17 May 2021, aljazeera.com/news/2021/5/17/holdshockformedical-system-as-israeli-strikes-kill-gaza-doctors
[1188] WHO, "Escalation in the occupied Palestinian territory", 20 May 2021, emro.who.int/images/stories/palestine/documents/210520_-_OPT_flash_update_May_20.pdf?ua=1
[1189] WHO, *Right to Health in the occupied Palestinian territory: 2018* (previously cited), p. 10.
[1190] MAP, *Health under occupation*, September 2017, map.org.uk/downloads/health-under-occupation---map-report-2017.pdf
[1191] Amnesty International, "Israeli forces carry out violent hospital raids in ruthless display of force", 25 July 2017, amnesty.org/en/latest/press-release/2017/07/israeli-forces-carry-out-violent-hospital-raids-in-ruthless-display-of-force
[1192] See section 5.2.2 "Palestinians in OPT".
[1193] MAP, *MAP's letter to the UK Government on attacks on Palestinian healthcare*, 20 May 2021, map.org.uk/news/archive/post/1238-pursuing-protection-for-palestinian-healthcare-workers-and-medical-facilities-at-the-un-security-council; Palestinian Red Crescent Society, *Targeting Palestine RCS medical teams continues in Jerusalem*, 10 May 2021, palestinercs.org/index.php?page=post&pid=26554&catid=4&parentid=67&y=&langid=1
[1194] American Near East Refugee Aid, *New Situation Report from Palestine*, 7 June 2021, anera.org/blog/update-on-the-crisis-in-palestine

DISCRIMINATION IN EDUCATION

Across Israel and the OPT, Israel undermines Palestinians' right to education through underfunding and discriminatory urban planning and zoning policies. In the West Bank and Gaza Strip, access to education for hundreds of thousands of Palestinians is additionally restricted by Israeli violations of freedom of movement and military operations targeting schools or conducted in their vicinity. In general, these discriminatory policies have a severely detrimental effect on the quality of education provided to Palestinian students, and lead to high drop-out rates. Ultimately, they affect Palestinians' human development, and the ability to sustain themselves and their families.

Israel has an obligation to respect, protect and fulfil the right to education in both Israel and the OPT under international human rights law. In addition, as the occupying power, it has a duty to ensure the right to education in the OPT under international humanitarian law including by "facilitat[ing] the proper working of all institutions devoted to the care and education of children".[1195]

The public education system in Israel is run by both the central government and local authorities.[1196] Palestinian citizens of Israel and Jewish Israelis study in separate schools throughout the public education system, whereby students are generally sorted into four main streams: three for the Jewish Israeli community (secular, religious and ultra-orthodox) and one for the Arabic-speaking community (Palestinian, including Bedouin, Druze, and Circassian minorities).[1197] The language of instruction for Arabic-speaking communities is Arabic,[1198] but it is mandatory for them to learn Hebrew.[1199]

With the exception of East Jerusalem, Israel does not currently operate or serve the education system for Palestinians in the OPT, whereas it does run the education system for Israeli settlers residing in illegal settlements across the West Bank. Since 1994, Palestinian authorities, along with private institutions and UNRWA, have operated the education system for Palestinians in the West Bank and Gaza Strip.[1200] UNRWA provides primary and junior secondary schooling education to registered Palestinian refugees in the OPT, including East Jerusalem, free of charge, in addition to offering vocational and technical training courses and university scholarships to qualified refugee youth.[1201]

In East Jerusalem, the Israeli Ministry of Education and the Jerusalem Municipality are responsible for providing public education for Palestinian students. Based on an agreement with the Palestinian authorities, state schools in East Jerusalem have until recently been solely teaching the Palestinian curriculum. However, in recent years, some state schools have adopted the Israeli curriculum in exchange for additional funding.[1202]

Israel discriminates against Palestinian students in Israel and East Jerusalem by underfunding the Arab education sector, excluding Arab educators from decision-making bodies, and by failing to provide adequate infrastructure and facilities.[1203] They receive less funding than their Jewish counterparts at all levels of school education. An analysis by the Mossawa Center of the Israeli Ministry of Education's 2016 budget found that Arab students from disadvantaged backgrounds received 30% less funding per learning hours in primary education, 50% less funding at the intermediate school level and 75% less funding at the secondary school level than Jewish students with the same socio-economic status.[1204] In 2016, only 526 classrooms were built in Arab localities, compared to 2,171 classrooms built in the Hebrew education system. In 2018, the Israeli Ministry of Education recognized the need for merely 2,416 additional classrooms in Arab localities. A year later, the Israeli state budget allocated NIS 58.4 million (USD 18.8 million) for the construction of classrooms in Arab localities, falling far short of meeting the

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[1195] Fourth Geneva Convention, Article 50.
[1196] State of Israel, MoFA, Education: Primary and Secondary, mfa.gov.il/mfa/aboutisrael/education/pages/education-%20primary%20and%20secondary.aspx (accessed on 10 December 2021), "Administration and Structure"; OECD, *Education Policy Outlook: Israel,* April 2016, oecd.org/israel/Education-Policy-Outlook-Country-Profile-Israel.pdf
[1197] OECD, *Education Policy Outlook: Israel* (previously cited).
[1198] State of Israel, MoFA, Education: Primary and Secondary, mfa.gov.il/mfa/aboutisrael/education/pages/education-%20primary%20and%20secondary.aspx (accessed on 10 December 2021), "School System"
[1199] Foreign Policy, "The two-school solution", 18 May 2016, foreignpolicy.com/2016/05/18/the-two-school-solution-israeli-arab-children-education-integration
[1200] RecoNow, *The Higher Education System in Palestine: National Report*, May 2016, reconow.eu/files/fileusers/5140_National-Report-Palestine-RecoNOW.pdf
[1201] European Commission, *Higher Education in the Occupied Palestinian Territory,* 1 July 2014, available at humanitarianresponse.info/sites/www.humanitarianresponse.info/files/assessments/ec_-_higher_education_in_opt.pdf
[1202] Reuters, "'Carrot not stick': Israel pushes its curriculum in Palestinian schools", 29 June 2017, reuters.com/article/us-israel-palestinians-jerusalem-schools-idUSKBN19K2BE
[1203] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited); OECD, *Education policy outlook Israel* (previously cited).
[1204] Mossawa Center, "Analysis of the Ministry of Education's Budget for 2016", 25 April 2017, mossawa.org/eng//Public/file/0Ministry%20of%20Education%20Report%202016.pdf

needs of the community, according to the Mossawa Center.[1205] At the same time, Arab localities were experiencing a shortage of 7,000 classrooms.[1206]

The Israeli authorities' discriminatory underfunding of Palestinian schools in East Jerusalem is equally clear. According to an analysis of the Jerusalem Municipality budget carried out by Haaretz in 2016, "funding for the western Jerusalem school [was] immeasurably higher than that of its East Jerusalem counterpart."[1207] Haaretz found that the Jerusalem Municipality transferred less funding to Palestinian public schools in East Jerusalem than the already low budget allocated to them by the Ministry of Education. By contrast, Jewish schools received consistently more funding from the municipality than their allocated budget.[1208] An inquiry by a Meretz party city councillor confirmed these findings: 11 out 17 Palestinian high schools in East Jerusalem received less than their allocated share of the government's allocated budget in 2016.[1209]

The underfunding of Palestinian state schools in Israel and annexed East Jerusalem, coupled with discriminatory urban planning policies and a discriminatory provision of other essential services described elsewhere in this section, lead to classroom overcrowding, lower quality of education and gaps in educational attainment between Palestinian and Jewish Israeli students and, ultimately, to a high drop-out rate.[1210]

The situation is particularly severe in the unrecognized villages in the Negev/Naqab where Palestinian Bedouins have few or no educational facilities given the government's refusal to provide such services, based on these villages' lack of official status under discriminatory planning and zoning policies. Those that exist are poorly equipped and severely overcrowded.[1211]

Indeed, in its 2020 concluding observations CERD expressed concern about the disproportionately high drop-out rates among Bedouin students in the Negev/Naqab and the significant gaps in the educational achievements between Arab students and Jewish students, as well as the shortage of classrooms and kindergartens in Bedouin localities.[1212] Similar concerns were expressed by the CESCR in 2019 about drop-out rates and gaps in educational achievements, as well as the shortage of classrooms and kindergartens in Bedouin areas.[1213]

Similarly, the shortage of classrooms is a major impediment to free education for Palestinians in East Jerusalem. The Ministry of Education and the Jerusalem Directorate of Education are responsible for providing education to 127,198 Palestinian children eligible for school. Of these, as of May 2019, only 108,598 were actually enrolled in the public education system: 41.1% in 65 public schools in East Jerusalem, with the remainder either enrolled in "recognized but not official" schools (43.2% of the students in 105 schools),[1214] or in private schools (15.7% of the students in 79 schools), principally as result of the shortage of classroom facilities provided by Israeli authorities.[1215]

In 2019, public schools in East Jerusalem had a shortage of 1,983 classrooms out of a total shortfall of 3,800 classrooms in the entire city.[1216] Already in February 2011, the Israeli Supreme Court recognized the government and municipal authorities' failure to provide sufficient funding to Palestinian schools in East Jerusalem leading to an acute and chronic shortage of classrooms, and held that this violated the constitutional right to equal access to education for Palestinian students.[1217] The court gave the Ministry of Education and the Jerusalem Municipality a five-year period to resolve the shortage of classrooms in Palestinian schools in East Jerusalem.[1218] Yet, as of May 2019, only 314 new classrooms had been completed in East Jerusalem since the court's ruling. In 2019, the State Comptroller said that the municipality had failed in its obligation to provide free access to education due to

[1205] Mossawa Center, "The 2019 State Budget and Government Resolution 922" (previously cited).
[1206] Mossawa Center, "The 2019 State Budget and Government Resolution 922" (previously cited).
[1207] Haaretz, "Arab Students in Jerusalem get less than half the funding of Jewish counterparts", 23 August 2016, haaretz.com/israel-news/.premium-arab-students-in-jerusalem-get-less-than-half-the-funding-of-jews-1.5427909
[1208] Haaretz, "Arab Students in Jerusalem get less than half the funding of Jewish counterparts" (previously cited)
[1209] Haaretz, "Arab Students in Jerusalem get less than half the funding of Jewish counterparts" (previously cited)
[1210] Ir Amim and ACRI, *Annual Status Report: The Failing East Jerusalem Education System,* August 2013, law.acri.org.il/en/wp-content/uploads/2013/09/EJ-edu-report-2013.pdf
[1211] Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (previously cited).
[1212] CERD, Concluding Observations: Israel, 12 December 2019, UN Doc. CERD/C/ISR/CO/17-1, para. 38(a).
[1213] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 62
[1214] "Recognized but unofficial" schools are funded and licensed by the Israeli Ministry of Education but are privately operated and charge tuition. See Ir Amim, *Falling between the Cracks: Student Dropout and the Shortage of Classrooms in East Jerusalem*, August 2015, altro.co.il/uploads/252/File/Falling%20between%20the%20Cracks.2015.pdf
[1215] ACRI, "East Jerusalem: Facts and Figures 2019" (previously cited).
[1216] ACRI, "East Jerusalem: Facts and Figures 2019" (previously cited).
[1217] ACRI, "HCJ: Authorities Have 5 Years to Provide Public Education in East Jerusalem", 6 February 2011, law.acri.org.il/en/2011/02/06/high-court-ruling-authorities-have-5-years-to-provide-free-public-education-in-east-jerusalem; Ir Amim, *Falling between the Cracks: Student Dropout and the Shortage of Classrooms in East Jerusalem* (previously cited).
[1218] ACRI, "East Jerusalem: Facts and Figures 2019" (previously cited).

the shortage of classrooms.[1219] The Jerusalem Municipality states that it intends to provide an additional 834 classrooms by 2022. Even if implemented, this would still fail to meet students' learning needs.[1220]

In addition, existing classrooms are often inadequate for teaching.[1221] In 2016, 43% of East Jerusalem public school classrooms were overcrowded with many located in rented houses.[1222] Ir Amim also expressed concern that many schools in East Jerusalem lack open spaces and have sub-standard sanitary conditions due to a shortage of cleaning staff and unavailability of sanitation supplies.[1223]

In parallel with underfunding and blatant neglect, Israeli discriminatory practices aimed at coercing Palestinians in East Jerusalem to leave the city have also a severe impact on their right to education. Israel extends its policy of home and structure demolitions in East Jerusalem to Palestinian schools constructed without building permits, which as detailed above are nearly impossible to obtain. According to the UN, in 2019, eight schools in East Jerusalem had pending "stop work" or demolition orders issued against them, which would affect around 1,100 students if implemented.[1224] In addition, movement restrictions in different parts of East Jerusalem impede access to education for children living in the communities isolated by the fence/wall, and expose them to a risk of harassment, attacks and/or arrest by Israeli soldiers.

The combined effect of inadequate teaching conditions, restrictions on movement and high poverty rates means that over 14% of Palestinian children in East Jerusalem were not enrolled in any educational institution in 2019.[1225] In 2020, the number of Palestinian children not registered in any formal education rose to 30% mainly due to disruptions caused by the Covid-19 pandemic, exposing the fragility of the education system in East Jerusalem,[1226] and disparities between Palestinian and Jewish Israeli children's accessibility to distance learning through the availability of a computer and internet account at home.[1227] Further, approximately a third of Palestinian adolescents in Jerusalem do not complete 12 years of schooling compared to a drop-out rate for Jewish Israeli students in the city of an estimated 1.5%.[1228]

As stated above, in May 2018, the Israeli government announced that it would invest NIS 1.85 billion in infrastructure and services in East Jerusalem to address its residents' socio-economic needs. According to Ir Amim, however, 43.4% of the education budget intended to reduce gaps between West and East Jerusalem is conditioned on Palestinian schools' adoption of the Israeli curriculum.[1229] This strategy was confirmed by the UN Special Rapporteur on the situation of human rights in the OPT when he expressed concern in 2019 that Israel was attempting to further erode Palestinian identity and autonomy by persuading schools in East Jerusalem to change the curriculum in return for more investment.[1230]

Israeli discriminatory urban planning policies aimed at coercing forcible transfers, severe restrictions on movement and repeated military attacks are the primary reasons why Palestinian students face obstacles in accessing education in the rest of the West Bank and the Gaza Strip, in addition to the Palestinian authorities' failure to sufficiently prioritize education and an underfunding crisis.[1231] This has resulted in a severe shortage of learning facilities.[1232]

[1219] ACRI, "East Jerusalem: Facts and Figures 2019" (previously cited).
[1220] ACRI, "East Jerusalem: Facts and Figures 2019" (previously cited).
[1221] ACRI, "5 Year 'Grace-Period' for Education in East Jerusalem has Ended", 1 February 2016, law.acri.org.il/en/2016/02/01/5-year-grace-period-for-education-in-east-jerusalem-has-ended
[1222] ACRI, "5 Year "Grace-Period" for Education in East Jerusalem has Ended" (previously cited).
[1223] Ir Amim, *The State of Education in East Jerusalem: Discrimination against the Backdrop of Covid-19*, September 2020, ir-amim.org.il/sites/default/files/Education%20in%20EJ%20Report%202020_Discrimination%20Against%20the%20Backdrop%20of%20COVID19%20sep2020.pdf
[1224] UNICEF and Education Cluster, "Map: Schools under the risk of demolition in the West Bank 2019", 22 June 2020, available at reliefweb.int/map/occupied-palestinian-territory/schools-under-risk-demolition-west-bank-2019
[1225] ACRI, *East Jerusalem: Facts and Figures, 2021* (previously cited).
[1226] ACRI, *East Jerusalem: Facts and Figures, 2021* (previously cited).
[1227] Ir Amim, *The State of Education in East Jerusalem: Discrimination against the Backdrop of Covid-19* (previously cited).
[1228] Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports*, 10 November 2019, tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_39700_E.pdf
[1229] Ir Amim, *The State of Education in East Jerusalem: Budgetary Discrimination and National Identity*, August 2018, ir-amim.org.il/sites/default/files/The%20State%20of%20Education_2018_1.pdf
[1230] UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report, 21 October 2019, UN Doc. A/74/507, para. 23.
[1231] UNICEF, "Right of Education for 1 Million Palestinian Children at Risk", 11 September 2017, unicef.org/sop/press-releases/right-education-1-million-palestinian-children-risk
[1232] Ecumenical Accompaniment Programme in Palestine and Israel (EAPPI), *Education Under Occupation: Access to Education in the occupied Palestinian territory*, February 2013, eappi.org/en/resources/publications/education-under-occupation-2013/view; UN Human Rights Council, *Report of the independent fact-finding mission to investigate the implications of the*

In 2019, 43 Palestinian schools in Area C of the West Bank were subject to demolition or "stop work" orders due to lack of permits, affecting around 4,100 students and hindering any maintenance or expansion of school infrastructure.[1233] In general, many schools in Area C do not meet safety and well-being standards. They are located in rented houses, or in caravans, and in some cases are built out of tyres. Many lack sanitation facilities and play areas, and have water leakages, and broken windows. In addition, Palestinian children in more than one third of Area C lack access to primary schools, with many having to walk long distances, exposing them to violence and harassment by Israeli settlers[1234] and soldiers who rarely intervene to stop such attacks. As a result, some families adopt "negative coping mechanisms" and take their children out of school.[1235]

More broadly, in 2018, the UN documented 118 incidents of Israeli actions interfering with the right to education in the OPT, affecting 23,188 children and impacting their access to education.[1236] More than half of these incidents related to the firing of live ammunition, tear gas and stun grenades into or near schools by Israeli forces, while the other incidents pertained to the threat of demolition of schools, closures, settler violence and harassment at military checkpoints.[1237]

Since 2008, four major rounds of Israeli military operations in the Gaza Strip have had a particularly devastating impact on the right to education of Palestinians living there. For example, during the 2014 Israeli military operation in Gaza, nearly 615 educational facilities, including kindergartens, schools, and tertiary education institutions were damaged or destroyed, affecting 350,000 students, according to the UN Development Programme.[1238] By February 2017, the UNDP programme had completed the rehabilitation and reconstruction of 37 educational facilities, benefiting 88,311 students.[1239] The May 2021 military offensive further exacerbated Gaza's education crisis, resulting in 331 damaged educational facilities.[1240] Together with disruptions caused by the Covid-19 pandemic, Israeli violations placed some 18,089 Gazan children at risk of dropping out from school.[1241]

Over the years, repeated Israeli air strikes on schools, and restrictions under the "dual use" policy (see section 5.5.1 "Suppression of Palestinians' human development") preventing the entry of construction materials necessary for the reconstruction and repair of education facilities, have caused a serious shortage of classrooms. This has led to schools operating on a shift basis. For example, out of 274 UNRWA schools across the Gaza Strip, 84 operate on a single-shift basis, 177 on a double-shift basis, and 13 on a triple-shift basis.[1242]

In addition, thousands of Palestinians in the Gaza Strip have been unable to access higher education outside Gaza, including in the West Bank, since Israel imposed its blockade,[1243] which not only violates their right to education but also may have lifelong consequences for their ability to support themselves and their families. The restrictions on access to education come on top of the already severely limited opportunities through which Palestinians can generate an income and access livelihood opportunities. There are a number of important programmes that continue to be unavailable in Gaza, including medical engineering and some doctoral programmes.[1244] The combined impact of such restrictions places Palestinians in Gaza at risk of ongoing and deepening poverty and deprivation, suppressing their human potential.

Indeed, in its 2019 review, the CESCR expressed concern about the blanket ban on allowing Gazan students to leave Gaza to attend university imposed since 2014, and concluded that the "dual-use" policy undermines the ability of students in the Gaza Strip to enjoy their right to education, "particularly in the fields of science and

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Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, UN Doc. A/HRC/22/63, para. 53.

[1233] UNICEF and Education Cluster, "Map: Schools under the risk of demolition in the West Bank 2019" (previously cited).

[1234] UNICEF and Education Cluster, *Education Cluster Strategy: Palestine 2020-2021,* 22 June 2020, available at reliefweb.int/sites/reliefweb.int/files/resources/education_cluster_strategy_9.4.2020_final.pdf; UN Human Rights Council, *Report of the independent fact-finding mission to investigate the implications of the Israeli settlements* (previously cited).

[1235] UNICEF and Education Cluster, *Education Cluster Strategy: Palestine 2020-2021* (previously cited).

[1236] UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Report, 21 October 2019, UN Doc. A/74/507, para. 26.

[1237] For case information, see Amnesty International, Seventy+ Years of Suffocation (previously cited).

[1238] UN Development Programme, "Right to Education in the Gaza Strip", 1 May 2017, ps.undp.org/content/papp/en/home/presscenter/articles/2017/05/01/right-to-education-in-the-gaza-strip-.html

[1239] UN Development Programme, "Right to Education in the Gaza Strip" (previously cited).

[1240] UNICEF, "Education case study: State of Palestine" (previously cited)

[1241] UNICEF, "Education case study: State of Palestine" (previously cited).

[1242] UNRWA, Education in the Gaza Strip, unrwa.org/activity/education-gaza-strip (accessed on 10 December 2021).

[1243] Gisha, "Students from Gaza blocked for Travel to Studies Abroad", 14 January 2021, gisha.org/en/students-from-gaza-blocked-for-travel-to-studies-abroad

[1244] Gisha, "The Impact of the Separation between the Gaza Strip and the West Bank on Higher Education", May 2010, gisha.org/userfiles/file/safepassage/InfoSheets/English/students.pdf

engineering, and the benefits of scientific progress and its applications due to the lack of essential education materials and equipment".[1245]

More broadly, the CESCR expressed concern at Israeli restrictions on Palestinians' access to education in the OPT due to a shortage of school facilities in the OPT resulting from demolition orders, difficulties in obtaining building permits and importing construction materials under the "dual-use" policy; searches of Palestinian schools by Israeli security forces; repeated harassment and threats against teachers and students by both Israeli security forces and Israeli settlers at checkpoints or along roads.[1246]

5.6 A SYSTEM OF OPPRESSION AND DOMINATION

As this chapter has demonstrated, Israel has created and maintains an institutionalized regime of systematic oppression and domination over Palestinians, enforced across different domains through reinforcing discriminatory laws, policies and practices that, when seen as a totality, control virtually every aspect of Palestinians' lives and routinely violates their human rights. Israel's control over Palestinians within Israel, East Jerusalem and the rest of the West Bank, and Gaza, and over the right of return of Palestinian refugees, manifests itself differently but consistently has the same purpose of dominating and oppressing Palestinians for the benefit of Jewish Israelis, both generally and within the same areas, who are privileged under Israeli civil law regardless of where they reside. The discrimination and segregation are self-evidently systematic as it is realized in law, policy and practice.

Since its establishment in 1948, the State of Israel has created and continues to maintain a system designed to ensure an overwhelming Jewish majority with access to and benefiting from the maximum amount of territory, land, and resources acquired or controlled for the benefit of Jewish Israelis while restricting the rights of Palestinians to challenge this dispossession. This system has been applied wherever Israel has exercised effective control over territory and land or over the exercise of the rights of Palestinians. It is realized in law, policy and practice, and reflected in the discourse of the state from its establishment and until this day.

While laws and policies define the State of Israel as democratic, this chapter has shown that the regime in Israel and the OPT is structurally built and maintained to benefit Jewish Israelis, whilst dispossessing Palestinians, of rights and preventing them from challenging the regime of systematic oppression and domination.

While international law applies differently to the situations in Israel and in the OPT, this fact does not excuse prohibited discrimination against Palestinians in any of the areas under Israel's control. Israel's treatment of Palestinians inside Israel is governed by international human rights law, to the exclusion of international humanitarian law. In the OPT, Israel's conduct is bound both by the rules of international humanitarian law relevant to military occupation (law of occupation) and its obligations under international human rights law. The law of occupation allows, and in some cases requires, differential treatment between nationals of the occupying power and the population of the occupied territory. However, it does not allow the occupying power to do this where the intention is to establish or maintain a regime of systematic racial oppression and domination (see section 4.7 "Apartheid in situations of belligerent occupation"). Given the reality of over five decades of annexation, illegal settlements and dispossession of the occupied population, there is no doubt that Israel's differential treatment Palestinians in the OPT does not adhere to the law of occupation. In fact, it is a serious and flagrant violation of its obligations under international human rights law and international humanitarian law.

This chapter illustrates how, through fragmentation and segregation, denial of Palestinians' right to equal nationality and status; systematic violation of their rights to freedom of movement, family unification and return to their country and their homes; and blocking their ownership of and access to land, the State of Israel subjects Palestinians to systematic oppression and domination and denies them human rights. In order to ensure Jewish domination over land and territory, Israel created a land acquisition and allocation regime consisting of legislation, reinterpretation of existing British and Ottoman laws, governmental and semi-governmental land institutions, and a supportive judiciary that enabled land dispossession and discriminatory reallocation of such lands across all territories under its control. The result has been the deliberate impoverishment of the Palestinian population both within Israel and in the OPT.

The continuing forced displacement of a majority of Palestinians from their land and property in 1947-49 and subsequently in 1967; the forced deportations, forcible transfers and arbitrary restrictions on their freedom of movement; the denial of nationality and the right of return; the racialized and discriminatory dispossession of their lands and property; and the subsequent discriminatory allocation of and access to national resources (including land, housing and water) combine to hinder Palestinians' current enjoyment of their rights, including to access to livelihood, employment, healthcare, food security, water and sanitation, and education opportunities. They ensure that Palestinians cannot as individuals or communities enjoy a status equal to that of Jewish Israelis in Israel, the

[1245] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 66.
[1246] CESCR, Concluding Observations: Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 64.

OPT and other situations where Israel exercises control over Palestinians' enjoyment of their rights, particularly the right of return.

While Palestinian citizens of Israel can vote in national elections, in practice their right to political participation is limited and they continue to be perceived as the "enemy within". However, this is not the primary way in which they have been subjected to segregation, oppression and domination by Israel. As this chapter has shown, Palestinian citizens of Israel were systematically dispossessed of land, property and housing through many of the same practices which are currently applied against Palestinians in the OPT and continue to be largely denied access to public land for development and to natural and financial resources on the basis of their racial and national status under Israeli law. This has led directly to the impoverishment and alienation of Palestinian communities and their effective exclusion from civil and political life. They have no effective recourse to the courts for redress of these violations.

This regime of systematic oppression and domination is of a prolonged and sustained nature: many of the discriminatory laws, policies and practices in Israel were brought in during the years following the creation of the State of Israel in 1948 and have been applied to the OPT since 1967. These laws, policies and practices are blatantly discriminatory on the basis of membership of racial groups,[1247] particularly cruel in their impact on the lives of Palestinians and are deliberately applied as a matter of official policy to Palestinians in Israel and the OPT, and to Palestinian refugees living outside Israel and the OPT. Almost all of Israel's civilian administration and military authorities, as well as quasi-governmental institutions, are involved in the enforcement of this regime of discrimination against and segregation of Palestinians, across Israel and the OPT and against Palestinian refugees and their descendants outside Israel and the OPT.

The intention to maintain this regime can be inferred from the prolonged nature of the cruel and discriminatory treatment, which indicates the non-accidental nature of the oppression and domination perpetrated against Palestinians, and from statements by successive Israeli political leaders of various political parties, who have emphasized the overarching objective of maintaining Israel's identity as a Jewish state and the fact that this is perceived to require preventing Palestinians from full enjoyment of equal rights. This regime of oppression and domination was clearly crystallized in the nation state law adopted in 2018 that constitutionally enshrined racial discrimination against non-Jewish people in Israel and the OPT. The essence of this system has also been communicated in numerous statements by senior civilian and military officials, who have promoted, maintained and enforced the institutionalized regime of systematic oppression and domination of Palestinians, being fully aware of, and therefore fully responsible for, the atrocious consequences the regime has for the Palestinian population.

The racial discrimination against and segregation of Palestinians is the result of deliberate government policy. The regular violations of Palestinians' rights are not accidental repetitions of offences, but part of an institutionalized regime of systematic oppression and domination.

As described above apartheid as condemned by the ICERD and public international law constitutes, at the very least, the (creation and) maintenance of a system or institutionalized regime of oppression and domination by one racial group over another. This chapter has documented a system of laws, policies and practices that ensure the prolonged and cruel discriminatory treatment of Palestinians with the intention of controlling them and therefore demonstrates that Israel has committed the international wrong of apartheid against the Palestinian people. This chapter has also demonstrated that Israel has committed serious violations of human rights within the context of this regime of systematic oppression and domination with the goal of maintaining it. These acts include murder and unlawful killings, arbitrary detention, torture, forcible transfer (which was partly documented in this chapter) and other grave violations of international human rights and international humanitarian law. Many of these acts constitute inhuman and inhumane acts as prohibited by respectively the Apartheid Convention and the Rome Statute. These are assessed further in the following chapter.

[1247] In section 5.2 "Palestinians and Jewish Israelis as racial groups", Amnesty International showed that Jewish Israelis and Palestinians constitute racial groups for the purposes of the ICERD, the Apartheid Convention and the Rome Statute.

6. INHUMAN AND INHUMANE ACTS AGAINST PALESTINIANS

In the process of creating and maintaining the system of oppression and domination over Palestinians described above, individuals, acting on behalf of the State of Israel, have committed inhuman and inhumane acts as proscribed by respectively the Apartheid Convention and the Rome Statute. An assessment of these violations is relevant to determining whether the crime of apartheid has been committed in Israel and the OPT as each of these serious human rights violations would constitute the crime against humanity of apartheid if committed in the necessary context. The analysis provided in this chapter gives an overview of some of the serious human rights violations committed within the context of the system of oppression and domination over Palestinians to determine whether they amount to inhuman or inhumane acts. It also assists in determining whether there has been the commission of a widespread or systematic attack on the civilian population with the intention of creating or maintaining a system of oppression and domination.

Amnesty International has examined specifically the inhuman or inhumane acts of forcible transfer, administrative detention, torture, unlawful killings and serious injuries, and the denial of basic rights and freedoms or persecution committed against the Palestinian population in Israel and the OPT, and that are associated with and enforce the system of discriminatory laws, policies and practices already discussed in detail above. The set of acts analysed below is not exhaustive and does not imply that Israel is not responsible for committing other inhuman or inhumane acts as defined under respectively the Apartheid Convention and the Rome Statute.

These proscribed actions have been analysed because they demonstrate most starkly the inhuman treatment meted out to Palestinians and illustrate other violations perpetrated against Palestinians in the territories under Israel's effective control.

6.1 FORCIBLE TRANSFER

6.1.1 RELEVANT CRIMES UNDER INTERNATIONAL LAW

Article 7(1)(d) of the Rome Statute criminalizes "deportation or forcible transfer of population" as a crime against humanity. Forcible transfer occurs when there is displacement within the territory of one state, whereas deportation presumes displacement beyond state borders.[1248] The crime against humanity of forcible transfer is defined in the Rome Statute as the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[1249] The Apartheid Convention criminalizes "the deliberate creation of conditions preventing the full development of such a group or groups", for example, through measures that make it impossible to remain in a given community.[1250]

As provided by the Rome Statute, and as has been interpreted by ad hoc international criminal tribunals, the term "forced" in the context of forcible transfer is not confined to expulsions or "physical force". It also includes "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment",[1251] or "factors other than force itself [that] may render an act involuntary".[1252] The International Criminal Tribunal for the former Yugoslavia (ICTY) has also ruled that the creation of adverse living conditions, such as cutting off water, electricity and telephone services, harassment, arrests and house searches, that made it impossible for those targeted to remain and induced their movement, constitutes forcible transfer.[1253]

A key criterion for assessing the coercive and arbitrary nature of the transfer is the absence of a "genuine wish to leave"[1254] or a "genuine choice to go"[1255] by the individuals displaced from the area in which they are lawfully present. The ICTY has clarified that the lawful presence requisite "is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for 'residency' to be demonstrated as a legal standard."[1256] Thus, the ICTY case law has primarily focused on the

[1248] ICTY, *Prosecutor v. Krstić*, Case IT-98-33, Trial Chamber judgment, 2 August 2001, para. 521.
[1249] Rome Statute, Article 7(2)(d).
[1250] Apartheid Convention, Article II(c).
[1251] ICTY, *Prosecutor v. Stakić*, Case IT-97-24, Trial Chamber judgment, 22 March 2006, para. 281; ICTY, *Prosecutor v. Krnojelac*, Case IT-97-25, Trial Chamber judgment, 17 September 2003, paras 229 and 233; and ICTY, *Prosecutor v. Krajišnik*, Case IT-00-39, Trial Chamber judgment, 27 September 2006, paras 724 and 730. See, for example, *Prosecutor v. Krstić*, Case IT-98-33, Trial Chamber judgment, 2 August 2001, paras 528-530.
[1252] ICTY, *Prosecutor v. Krnojelic,* Case IT-02-60, Trial Chamber judgment, 17 January 2005, para. 475. See also ICTY, *Prosecutor v. Stakić*, Case IT-97-24, Trial Chamber judgment, 22 March 2006, para. 281.
[1253] ICTY, *Prosecutor v. Krajišnik*, Case IT-00-39, Trial Chamber judgment (previously cited).
[1254] ICTY, *Prosecutor v. Naletilić and Martinović*, Case IT-98-34, Trial Chamber judgment, 31 March 2003, para. 519.
[1255] ICTY, *Prosecutor v. Krstić*, Case IT-98-33, Trial Chamber judgment (previously cited), para. 528 and what follows.
[1256] ICTY, *Prosecutor v. Popović and Others*, Case IT-05-88, Trial Chamber judgment, 10 June 2010, para. 900.

coercive nature of the "unlawful transfer", which is "crucial for diminishing the importance of examining the *lawfulness* of the place of residence from which persons are removed".[1257]

Additionally, the forcible transfer or deportation of the population of an occupied territory, either within or outside the occupied territory, may constitute a war crime under Article 8(2)(a)(vii) of the Rome Statute. Forcible transfer is absolutely prohibited under international humanitarian law.[1258] Only "imperative military reasons" or the protection of the displaced population could justify their partial or total transfer,[1259] which must be limited by the "temporariness of the transfer" and the right of the displaced population to return immediately upon the end of hostilities.[1260]

6.1.2 ISRAELI POLICIES AND PRACTICES

HOME AND PROPERTY DEMOLITIONS

Across Israel and the OPT, Israel's destruction of Palestinian homes, agricultural land and other property is intricately linked with Israel's long- standing policy of land appropriation for the benefit of its Jewish population. In the Negev/Naqab in Israel, East Jerusalem and Area C of the West Bank, which are under full Israeli control, Israeli authorities enforce planning and building regimes against the Palestinian population that result in widespread and similar patterns of home and property demolitions, including structures directly linked to livelihoods, on grounds of the lack of building permits.[1261] This policy coerces the transfer of Palestinians or leaves many facing the threat of home demolition and displacement. The effect is to concentrate Palestinians into small enclaves and reduce their demographic presence and future growth, while disproportionally favouring the Jewish Israeli population in these areas.

As analysed above, although the legal system applied by Israel to Palestinians in Israel and East Jerusalem differs from that imposed on Palestinians in the rest of the West Bank, Israeli authorities have enforced a discriminatory and to a large extent similar planning and building regime against Palestinians in these communities, where the pattern has a similar logic and aims using slightly different means (see section 5.4.4 "A discriminatory planning and zoning system"). The restrictive and discriminatory planning laws and policies in Israel, East Jerusalem and Area C of the West Bank have made it extremely difficult or virtually impossible for Palestinians to obtain building permits from the Israeli authorities, leaving many of them with little choice but to build without permits, risking home demolitions and subsequent forced displacement.

Since 1948, Israel has demolished tens of thousands of Palestinian homes and other properties across all areas under its jurisdiction and effective control.[1262] This includes the destruction of more than 500 Palestinian villages in what became Israel following the 1947-49 conflict. Those affected are some of the poorest and most marginalized communities in both Israeli and Palestinian society, often refugees or internally displaced persons, who are forced to rely on family, friends and humanitarian actors for shelter and livelihoods. [1263] Homes and other property built with the assistance of foreign donors have been amongst those targeted for demolitions.

Demolitions continue today and are usually carried out for three main reasons: unlicensed building, alleged military or security needs or as punishment. As shown above (see section 5.4.4 "Discriminatory urban planning and zoning system"), in the Negev/Naqab, where Israeli authorities refuse to recognize 35 Bedouin villages, between 2013 and 2018 there were 7,298 demolitions in the Palestinian Bedouin communities over lack of permits, of which 6,100 were "self-demolitions", in which owners destroy their own homes or structures that have demolition orders against them in order to avoid paying heavy fines and the cost of demolition to the Israeli authorities,[1264] and 1,974 were of structures intended for residential purposes, according to the Negev Coexistence Forum for Civil Equality.[1265] According to the Ministry of Public Security, demolitions of Bedouin

[1257] Yutaka Arai, Amicus Brief on the Direct or Indirect Transfer of Palestinians within the Occupied Territories, 1 July 2010, available at hamoked.org.il/files/2010/110528.pdf, p. 6.
[1258] Fourth Geneva Convention, Article 49(1).
[1259] Fourth Geneva Convention, Article 49(2).
[1260] Eyal Benvenisti, *Expert Opinion on the prohibition of Forcible Transfer in Susya Village*, 30 June 2021, p. 4 (an unofficial English translation is available at apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2021/07/the-prohibition-of-forcible-transfer-in-susya-village.-prof.-eyal-benvenisti.pdf).
[1261] See section 5.4 "Dispossession of land and property".
[1262] ICAHD, *Israel's Demolition of Palestinian Homes: A Fact Sheet*, 20 April 2021, icahd.org/2021/04/20/the-demolition-of-palestinian-homes-by-israel-a-fact-sheet/#_edn3
[1263] Amnesty International, *Under the rubble: Home demolition and destruction of land and property* (Index: MDE 15/033/2004), May 2004, amnesty.org/en/wp-content/uploads/2021/06/mde150332004en.pdf
[1264] Israeli authorities issued a bill for demolitions over the lack of building permits. Many Palestinians cannot afford to pay the cost so end up demolishing their own homes or properties so as not to incur those expenses as well.
[1265] NCF, *Mechanism for Dispossession and Intimidation: Demolition Policy in Arab Bedouin communities in the Negev/Naqab*, June 2019, dukium.org/wp-content/uploads/2019/07/Demolition-Report-Eng.2018.pdf, pp. 11-13.

homes in the Negev/Naqab tripled between 2013 and 2017.[1266] In 2019 alone, 2,241 structures were demolished, either by state forces or by the owners after they received the demolition order or a warning. This represented an increase of 146% compared to the previous year, and a 221% increase compared to 2013.[1267]

In East Jerusalem, Israeli authorities demolished 1,360 structures, displacing 2,462 people, over the lack of building permits, from 1 January 2009 to 5 August 2020, according to OCHA.[1268] B'Tselem, for its part, recorded the demolition of 1,632 structures, including 1,136 housing structures and 496 non-residential structures in East Jerusalem between 1 January 2004 and 31 July 2021, which in total displaced 3,659 Palestinians.[1269] Such demolitions have been more widespread in Area C of the West Bank, where, between 1 January 2009 and 12 August 2020, Israeli authorities demolished or seized 5,339 structures over the lack of building permits and as a result 7,548 people were displaced.[1270]

In the case of unlicensed building, Israeli authorities have consistently maintained that the demolition of Palestinian houses is based on planning considerations and carried out in accordance with the applicable law. When Palestinians build houses illegally (because they cannot obtain planning and building permits),[1271] the houses are destroyed. However, Israeli officials have discriminated in the application of planning laws and policies in the Negev/Naqab in Israel, East Jerusalem and Area C of the West Bank. They strictly enforce planning prohibitions where Palestinian houses are built and freely allow amendments to plans to promote development where Israeli authorities are setting up Jewish cities in Israel or Israeli settlements in the OPT.[1272] For instance, the Israeli Civil Administration has enforced sanctions against construction without permits in Area C of the occupied West Bank in a discriminatory manner, issuing demolition orders against thousands of Palestinian homes and other structures, but issuing them less often in relation to structures built without permits by Israeli settlers.[1273] For example, between 1988 and 2014, the Israeli Civil Administration issued 14,087 demolition orders against Palestinian structures in Area C and executed nearly 20% of them. In the same period, it issued 6,948 demolition orders against structures in Israeli settlements, and executed 12% of them.[1274]

Forced evictions and demolitions are usually carried out by demolition crews, accompanied by security officials, who may arrive at any time, giving families little notice or opportunity to remove their possessions. Recent years have shown a spike in the rate of "self-demolitions".[1275]

Israel carries out its policy of home and structure demolitions based on the lack of building permits in the context of other discriminatory laws and policies it applies to Palestinians. Some of these laws relate to the planning and building regimes, such as the refusal to connect these communities to water and sanitation networks or electricity grids, or provide them with schools or healthcare centres, thereby precluding Palestinians from meaningfully exercising their rights to livelihood, adequate housing and residence. Other policies are designed and relate to maintaining a regime of domination over Palestinians, such as Israel's severe restrictions on movement in the OPT, its declaration of adjacent lands as closed military areas or "firing zones", its expansion of settlements and its failure to protect the Palestinian population against Israeli settlers' attacks and intimidation. Together, these policies create a coercive environment with the aim of forcing Palestinians in these communities to leave their homes to ensure a Jewish demographic majority and retain Israeli control over these areas and allow for the creation and expansion of Jewish localities and settlements, as shown above. Many Palestinians from East Jerusalem and Area C of the West Bank have left their homes to areas adjacent to their original homes or to areas under the nominal administrative control of the Palestinian authorities.

Within the OPT, Israel has also pursued other policies that have resulted in systematic punitive home demolitions. Since 1967, Israel has been punitively demolishing homes of families of Palestinians suspected or convicted of attacks against Israeli soldiers or civilians across the OPT or in Israel, regardless of whether they are the owners of

[1266] NCF and Adalah, *NGO Report to UN Human Right committee* (previously cited), p. 4.
[1267] NCF, *On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab* (previously cited).
[1268] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 21 July 2021).
[1269] B'Tselem, House Demolitions: Demolition on the pretext of unlawful construction, statistics.btselem.org/en/demolitions/pretext-unlawful-construction?stateSensor=%22west-bank%22&structureSensor=%22true%22&tab=overview&demoScopeSensor=%22false%22 (accessed on 25 August 2021).
[1270] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 21 July 2021).
[1271] See section 5.4 "Dispossession of land and property".
[1272] See, for example, Adalah, "Court to hear Adalah's defense arguments against evacuation of 500 residents of Ras Jrabah", 14 June 2020, adalah.org/en/content/view/10032.
[1273] Amnesty International, "Israeli authorities must transfer planning powers to Palestinians in Area C of the occupied West Bank" (Index: MDE 15/1430/2015), 9 April 2015, amnesty.org/en/documents/mde15/1430/2015/en
[1274] OCHA, *Under Threat: Demolition orders in Area C of the West Bank,* 7 September 2015, ochaopt.org/content/under-threat-demolition-orders-area-c-west-bank
[1275] OCHA, "Record Number of Demolitions, including Self-Demolitions, in East Jerusalem in April 2019", 14 May 2019, ochaopt.org/content/record-number-demolitions-including-self-demolitions-east-jerusalem-april-2019

the property or not.[1276] Israel's military claims that the policy is carried out for security and military purposes to deter other attacks, yet it stopped using the policy for lack of evidence of its effectiveness in 1998 (Israel reinstated it in 2001 during the second *intifada*) and in 2005 (Israel reinstated its official use in 2014, but used it exceptionally in 2009 to demolish a home and seal two others in East Jerusalem).[1277]

The Supreme Court of Israel rubber-stamped the punitive home demolitions policy in 2014, and left the administrative practice to be carried out at the discretion of the Military Commander, without court supervision or proceedings.[1278] However, this policy has been undoubtedly punitive in nature and constitutes collective punishment, which is expressly prohibited under international law.[1279] According to B'Tselem, Israel punitively demolished 1,012 houses and sealed seven others between 1 January 2001 and 21 August 2020, effectively leaving 4,548 people homeless.[1280]

Additionally, the Israeli army has conducted several military operations in the OPT over the years, which have also resulted in widespread home demolitions and the forced displacement of thousands of Palestinians.[1281] Some of these attacks involved air strikes deliberately targeting inhabited residential buildings and family homes.[1282] In the Gaza Strip, Israel's military operation in 2014 destroyed or rendered uninhabitable about 18,000 housing units and a further 37,650 housing units were damaged (see section 5.5.1 "Suppression of Palestinians' human development").[1283] With 485,000 people – or 28% of Gaza's population – displaced at the peak of the hostilities, the operation resulted in the largest internal displacement in the OPT since 1967, leaving 108,000 people homeless, according to the UN. As of February 2019, over 12,300 of these people were still displaced.[1284] In its military operation in the Gaza Strip between 10 and 21 May 2021, Israel destroyed or severely damaged 2,291 housing and commercial units (see section 5.5.1 "Suppression of Palestinians' human development"),[1285] and, at the height of the violence, over 113,000 Gazans were internally displaced.[1286]

The destruction of property in the OPT not justified by military necessity is also a violation of international humanitarian law. The destruction of property by an occupying power is prohibited "except where such destruction is rendered absolutely necessary by military operations"[1287] – even with ample forewarning. In fact, "extensive

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[1276] See, for example, HaMoked, The Punitive Demolition of Homes, hamoked.org//timeline.aspx?pageID=timelinehousedemolitions (accessed on 30 August 2021); Al-Haq, *Israel's Punitive House Demolition Policy: Collective Punishment in Violation of International Law*, 19 July 2011, alhaq.org/publications/8101.html

[1277] Israel relies on Regulation 119(1) of the Defence (emergency) Regulations of 1945, enacted during the British Mandate of Palestine, to carry out punitive home demolitions: HaMoked, "Regulation 119 of the Defence (Emergency) Regulations, 1945", hamoked.org/files/2015/2204_eng.pdf

[1278] HCJ, *Qawasmeh and Others v. Military Commander of the West Bank Area*, Case HCJ 5290/14, HCJ 5295/14, HCJ 5300/14, judgment, 7 August 2014, available at hamoked.org/files/2014/1158616_eng.pdf

[1279] Fourth Geneva Convention, Article 33(1): "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited… Reprisals against protected persons and their property are prohibited". On punitive home demolitions in the OPT, see, for example, HaMoked, "The Punitive Demolition of Homes", hamoked.org//timeline.aspx?pageID=timelinehousedemolitions; B'Tselem, "Massive collective punishment: homes of 149 Palestinians suspected of no wrongdoing demolished since Oct. 2015; hundreds more under threat", 21 April 2016, btselem.org/punitive_demolitions/20160421_149_left_homless_hundreds_threatened; OHCHR, "Palestinian homes must cease to be a target, UN human rights experts say", 25 November 2014, ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15340&LangID=E; Amnesty International, "Israel/OPT: Israel Resumes Punitive House Demolitions" (Index: MDE 15/035/2014), 21 November 2014, amnesty.org/en/documents/mde15/035/2014/en

[1280] B'Tselem, House Demolitions: Demolition of houses as punishment, statistics.btselem.org/en/demolitions/demolition-as-punishment (accessed on 30 August 2021).

[1281] See, for example, Amnesty International, *Israel/Gaza: Operation 'Cast Lead': 22 days of death and destruction* (Index: MDE 15/015/2009), 2 July 2009, amnesty.org/en/documents/MDE15/015/2009/en; Amnesty International, *Families Under the Rubble: Israeli Attacks on Inhabited Homes* (previously cited); Amnesty International, *Nothing is immune: Israel's destruction of landmark buildings in Gaza* (Index: MDE 15/029/2014), 9 December 2014, amnesty.org/en/documents/mde15/0029/2014/en; Amnesty International, *Black Friday: Carnage in Rafah during 2014 Israel/Gaza conflict* (Index: MDE 15/2139/2015), 29 July 2015, amnesty.org/en/documents/mde15/2139/2015/en

[1282] Amnesty International, "Israel/OPT, Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes", 17 May 2021, amnesty.org/en/latest/press-release/2021/05/israelopt-pattern-of-israeli-attacks-on-residential-homes-in-gaza-must-be-investigated-as-war-crimes

[1283] OCHA, "Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 4 September 2014, 08:00 hrs)", 4 September 2014, ochaopt.org/sites/default/files/ocha_opt_sitrep_04_09_2014.pdf

[1284] OCHA, "March Escalations in Gaza Result in More Displacement", 14 May 2019, ochaopt.org/content/march-escalations-gaza-result-more-displacement

[1285] OCHA, "Gaza Strip: Escalation of Hostilities as of 3 June 2021", 6 June 2021, ochaopt.org/content/gaza-strip-escalation-hostilities-3-june-2021; Amnesty International, "Israel/OPT: Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes", 17 May 2021, amnesty.org/en/latest/news/2021/05/israelopt-pattern-of-israeli-attacks-on-residential-homes-in-gaza-must-be-investigated-as-war-crimes

[1286] OCHA, "Response to the escalation in the oPt: Situation Report No. 2 (28 May - 3 June 2021)", 6 June 2021, ochaopt.org/content/response-escalation-opt-situation-report-no-2-28-may-3-june-2021

[1287] Fourth Geneva Convention, Article 53.

destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly," is a grave breach of the Fourth Geneva Convention and is a war crime.[1288]

The following case studies of home demolitions in Umm Al-Hiran in the Negev/Naqab, Silwan in East Jerusalem and Khirbet Khumsa and Khan al-Ahmar in Area C of the West Bank are emblematic of Israel's long-standing policies towards Palestinians in Israel and the OPT. They illustrate the interplay between discriminatory zoning and building regimes, land appropriation policies enabled by a supportive judiciary, and the deliberate creation of a coercive environment through the denial of basic services, on the one hand, and continued attacks and harassment by settlers and security forces, on the other – all intended to minimize Palestinian presence and establish Jewish domination and control over specific areas of strategic importance.

UMM AL-HIRAN

Umm Al-Hiran is one of the 35 unrecognized Bedouin villages in the Negev/Naqab, located in the north-east of the region and home to 350 Palestinians.[1289] These Bedouin families were displaced from their original land in Wadi Zubala in the western Negev/Naqab following the establishment of the State of Israel. The original lands of the village had been purchased in 1940 by the JNF/KKL, which allocated part of the lands to the Jewish kibbutz of Shuval, which was established in 1946.[1290] In 1952, the Israeli army seized the lands of the village and ordered the residents to leave. They were never allowed to return and experienced expulsion twice again until their final resettlement in Umm Al-Hiran in 1956.[1291]

For decades, the residents of Umm Al-Hiran lived in dire socio-economic conditions and lacked basic services, while waiting to return to their original place of residence or gain legal recognition of their current location. However, in 2003, the National Council for Planning and Building approved the founding of the Jewish settlement Hiran in place of the village of Umm Al-Hiran. The villagers began to receive eviction and demolition orders the following year.[1292]

In 2009, Israeli authorities approved plans to use Umm Al-Hiran's land to build a town "with institutions intended to serve the religious Jewish community" to be named Hiran.[1293] In May 2015, the Supreme Court of Israel approved the plan and ruled that the land belongs to the state and that it is entitled to withdraw its permission for Umm Al-Hiran inhabitants to live there.[1294]

After receiving demolition and eviction orders, the residents initiated legal proceedings to cancel the orders before an Israeli magistrates' court.[1295] During the proceedings and in their briefs, the residents raised several alternatives to the destruction of their village and their subsequent displacement. These included the legal recognition of their village in its current location instead of the building of a Jewish locality; their village becoming part of the future Hiran locality; and their return to their original lands. The different legal proceedings pertaining to Umm Al-Hiran and the eviction orders lasted 13 years. Throughout the proceedings, Israeli authorities rejected all proposals and retained the legal argument that the Bedouin were trespassers on state lands.[1296]

The legal proceedings ended on 5 May 2015 when the Israeli Supreme Court dismissed the petition and ordered the eviction of the village in the same month.[1297] The ruling was contingent on an alternative housing solution for the residents. Israeli authorities proposed the nearby state-planned township of Hura, 8km south-west of Umm Al-

[1288] See, for example, list of grave breaches of the Fourth Geneva Convention, Article 147.
[1289] Adalah, "Umm al-Hiran residents to Israeli Supreme Court: Stop demolition of our village", 10 April 2018, adalah.org/en/content/view/9460
[1290] Adalah, *Nomads Against Their Will: The attempted expulsion of the Arab Bedouin in the Naqab: The example of Atir–Umm al-Hieran*, September 2011, adalah.org/uploads/oldfiles/eng/publications/Nomads%20Against%20their%20Will%20English%20pdf%20final.pdf
[1291] NCF, On the Map: the Arab Bedouin Villages in the Negev-Naqab: Umm al-Hiran, dukium.org/village/umm-alheiran (accessed on 21 August 2021).
[1292] HRW, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages,* 30 March 2008, hrw.org/report/2008/03/30/map/land-and-housing-rights-violations-israels-unrecognized-bedouin-villages
[1293] HRW, "Israel/Palestine: Bedouins Face Imminent Displacement: Government to Demolish Villagers' Homes to Build Jewish Town", 24 November 2016, hrw.org/news/2016/11/24/israel/palestine-bedouins-face-imminent-displacement
[1294] HRW, "Israel/Palestine: Bedouins Face Imminent Displacement: Government to Demolish Villagers' Homes to Build Jewish Town" (previously cited).
[1295] State of Israel, MoFA, "Behind the Headlines: Background on the Bedouin localities of Hiran in southern Israel", 18 January 2017, mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Background-on-the-Bedouin-localities-of-Hiran-in-southern-Israel-18-January-2017.aspx
[1296] Adalah, *Nomads Against Their Will: The attempted expulsion of the Arab Bedouin in the Naqab: The example of Atir–Umm al-Hieran*, September 2011, adalah.org/uploads/oldfiles/eng/publications/Nomads%20Against%20their%20Will%20English%20pdf%20final.pdf, p. 24.
[1297] Supreme Court, *Al-Qi'an and Others v. The State of Israel,* Case PCA 3094/11, judgment, 5 May 2015 (an unofficial English translation is available at versa.cardozo.yu.edu/sites/default/files/upload/opinions/Al-Qi%27an%20v.%20State.pdf).

Hiran, as the alternative. However, this option was not viable, as Hura was already overcrowded and suffering a serious housing shortage for its own residents.

Meanwhile, the Israeli authorities began work on the new Jewish locality of Hiran in 2015.[1298] Following the court decision in May 2015, the Israeli authorities ploughed the agricultural fields of Umm Al-Hiran and destroyed the crops. In January 2016, the court rejected a request to appeal its decision.

In 2017, Adalah uncovered a document from Hiran's cooperative association's bylaws that said its "admissions committee" would permit the admittance of individuals to the town "if they meet the following qualifications: a Jewish Israeli citizen or permanent resident of Israel who observes the Torah and commandments according to Orthodox Jewish value."[1299]

On 18 January 2017, the authorities began evictions. A large number of Israeli police, with bulldozers and other special vehicles, stormed the village of Umm Al-Hiran before dawn. They encircled the area, blocked the entry and exit of people and vehicles, and demolished eight houses, arresting and injuring tens of residents. One resident, Ya'qub Abu Al-Qia'an, a 50-year-old teacher, was unlawfully killed (see section 6.3.2 "Israeli policies and practices").[1300]

According to the Negev Coexistence Forum for Civil Equality, some of the residents who had already been evicted after their homes were destroyed sought to build homes and reside in Hura township.

The plan to build the Jewish community of Hiran is supported by the JNF/KKL and key NGOs, including the OR Movement.[1301] According to the OR Movement's website, it hopes to settle up to 2,400 families, or some 10,000 residents, in Hiran.[1302] The website also states that Hiran has "received construction approval from all institutions and authorities, and is now in the process of construction of the community in practice." It further states that over 30 families are currently living in a nearby town waiting to move into Hiran once it is built.[1303]

SILWAN

As mentioned above,[1304] Silwan is a very densely populated part of East Jerusalem lying to the south of the Old City, with 40,000 to 45,000 Palestinians[1305] living in an area of merely 5.5km^2. For decades, it has been the target of home demolitions under Israel's discriminatory policies relating to planning and building in Jerusalem. Silwan comprises nine neighbourhoods, including Ras Al-Amoud, Wadi Yasul, Wadi Hilweh and Al-Bustan.[1306] Since the 1980s, it has seen intense levels of settler activity due to its strategic location.

The increase in the Palestinian population over the decades and the impediments precluding any development create unbearable living conditions that amount to a coercive environment. Coupled with this, Israeli authorities have historically neglected Palestinian neighbourhoods in East Jerusalem, deliberately avoiding investing in infrastructure and services, including roads, pavements, water and sewerage systems, schools and cultural institutions (see sections 5.5.1 "Suppression of Palestinians' human development" and 5.5.3 "Discriminatory provision of services").[1307]

[1298] NCF, On the Map: the Arab Bedouin Villages in the Negev-Naqab: Umm al-Hiran (previously cited).
[1299] Adalah, "No non-Jews allowed: New Israeli town of Hiran, to be built upon ruins of Bedouin village, is open to Jewish residents only contrary to state's representations before Supreme Court", 8 August 2017, adalah.org/en/content/view/9186
[1300] Forensic Architecture, "Killing in Umm al-Hiran", investigation initiated 19 January 2019, forensic-architecture.org/investigation/killing-in-umm-al-hiran
[1301] Haaretz, "A 'Special Problem': How Israel Is Transplanting the Bedouins of Hiran", 16 November 2013, haaretz.com/.premium-how-bedouin-land-is-taken-1.5290752
See also T'ruah, "Statement on JNF and OR Movement's 'Bedouin' Fashion Show to Raise Money for Towns that Discriminate Against the Bedouin", 31 August 2917, truah.org/press/statement-on-jnf-and-or-movements-bedouin-fashion-show-to-raise-money-for-towns-that-discriminate-against-the-bedouin; OR Movement, About Chiran, or1.org.il/english_settlements/chiran (accessed on 30 August 2021).
[1302] OR Movement, About Chiran (previously cited).
[1303] OR Movement, About Chiran (previously cited).
[1304] For more information on settlement expansion in Silwan, see box in section 5.4.3 "Discriminatory allocation of expropriated Palestinian land for Jewish settlement".
[1305] Amy Cohen, Director of International Relations and Advocacy, Ir Amim, email to Amnesty International, 28 May 2021, on file with Amnesty International.
[1306] The other five neighbourhoods are: Wadi al-Rababa, Batn al-Hawa, Wasat al-Balad, Wadi Qadoum and Ein al-Loza.
[1307] B'Tselem, East Jerusalem (previously cited).

Israel has been moving its citizens into the neighbourhood since the 1980s.[1308] Several hundred settlers live inside enclaves in Wadi Hilweh and Batn Al-Hawa within heavily protected settlement compounds.[1309] The expansion of settlements in Silwan is led by two settler organizations – Elad and Ateret Cohanim – with support, funding and protection from Israeli authorities. Palestinians do not receive the same.[1310] As outlined above, these two organizations work to displace Palestinian families living in East Jerusalem through the Custodian of Absentee Property in order to hand over their homes to Jewish settlers, and have initiated scores of eviction claims against Palestinians in the area.

The deliberate refusal to approve zoning plans for Silwan has made it virtually impossible for Palestinian residents to obtain building permits. Over the years, hundreds of Palestinian homes that were consequently built without a permit have been demolished or expropriated.[1311] According to OCHA, between January 2009 and July 2021, Israeli authorities demolished 164 structures in the Silwan neighbourhood, resulting in the forced displacement of least 260 Palestinian residents, including 186 children.[1312] More than 66% of these demolitions happened in the last four years, with 17 demolitions taking place in 2020 alone.[1313] Today, there are over 2,000 Palestinian residents of Silwan who are at imminent risk of forcible transfer as a result of demolition orders.

In the neighbourhood of Wadi Yasul, 44 residential structures are threatened with demolition owing to the entire area's designation by the Jerusalem Municipality as a "green zone",[1314] an area designated for public and not residential development. As a result, since 1977, Wadi Yasul's 500 residents have been unable to acquire proper building permits leaving their homes at risk of demolition.[1315]

For years, residents submitted alternative local outline plans requesting to re-zone Wadi Yasul as a residential area. However, Israeli authorities rejected multiple versions of the plans on the grounds that they differed from the city's future plans, which designate the area as a "green zone".[1316] On 3 February 2020, the community appealed to the Jerusalem District Court over the continuous rejection of their plans. A hearing was scheduled on 31 May 2020. However, the residents of Wadi Yasul agreed with the Israeli authorities to postpone the final court hearing until December 2020 to allow the community to meet the Jerusalem District Planning Committee to try and reach

[1308] OCHA, *Humanitarian Impact of Settlements in Palestinian Neighbourhoods of East Jerusalem: the Coercive Environment,* 10 July 2018, ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive

[1309] The two settlements are Ma'ale HaZeitim and Ma'alot David. Ma'ale HaZeitim was established in 1998, with a population of at least 670 Israeli settlers. Ma'alot David was established in 2009 and has over 100 housing units; PASSIA, "Jerusalem 2008 – Chronology of Events", 2008, passia.org/media/filer_public/70/90/70905409-7c22-449b-8304-5d3521c051e1/chrono-j2008docx.pdf; OCHA, *Humanitarian Impact of Settlements in Palestinian Neighbourhoods of East Jerusalem: the Coercive Environment,* 10 July 2018, ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive

[1310] According to the Israeli NGO Peace Now, the Israeli Ministry of Housing budget funds private security companies meant to protect settlers' complexes in Palestinian neighbourhoods in East Jerusalem. In recent years, the annual budget for East Jerusalem security has been nearly NIS 100 million (USD 32.3 million). This amount is equivalent to spending NIS 3,000 (USD 968) each month on every individual settler in these complexes. See Peace Now, *Settlement Under the Guise of Tourism: The Elad Settler Organization in Silwan*, 12 October 2020, peacenow.org.il/en/settlement-under-the-guise-of-tourism-the-elad-settler-organization-in-silwan
See also Ir Amim, *Shady Dealings in Silwan* (previously cited), p. 35.

[1311] Al-Haq, *House Demolitions and Forced Evictions in Silwan: Israel's Transfer of Palestinian from Jerusalem*, 26 August 2020, alhaq.org/cached_uploads/download/2020/08/26/house-demolitions-and-forced-evictions-in-silwan-web-1598440511.pdf

[1312] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 21 August 2021).

[1313] OCHA, Data on Demolition and Displacement in the West Bank, ochaopt.org/data/demolition (accessed on 21 August 2021).

[1314] Approximately 22% of East Jerusalem is zoned as "green areas" where Palestinian construction is strictly forbidden. The zoning of green areas has long been a common practice by Israeli authorities to stop legal Palestinian development and expansion in areas where the state plans to build or expand Jewish-only settlements. Israeli zoning laws allow municipal authorities to zone any un-expropriated land as a "green area". This effectively bars Palestinian development in these areas as Palestinian residents are forbidden from building on "green areas". However, these areas are often re-zoned for Jewish settlement construction as well as for the construction of Jewish national or historical parks. See ICAHD, *Israel/Occupied Palestinian Territory Briefing to the UN Committee on Economic, Social and Cultural Rights: 47th Session*, November 2011, tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ISR/INT_CESCR_NGO_ISR_47_9138_E.pdf; Civic Coalition for Palestinian Rights in Jerusalem, Coalition for Jerusalem, Society of St. Yves, Catholic Center for Human Rights, *Occupied East Jerusalem: De-Palestinization and Forcible Transfer of Palestinians: a Situation of Systematic Breaches of State Obligations under the ICCPR,* 2014, *tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18169_E.pdf*; NRC, *Wadi Yasul - Silwan, East Jerusalem: NRC Displacement Monitoring Map*, July 2020, nrc.no/global-figures

[1315] Since the 1970s Wadi Yasul has been designated a "green area" placing dozens of Palestinian families living there at risk of imminent demolition. See OCHA, "Wadi Yasul: a Community at Risk of Mass Displacement", 20 June 2019, ochaopt.org/content/wadi-yasul-community-risk-mass-displacement
See also Ir Amim, "Demolitions in Wadi Yasul Symbolize Politically Motivated Discrimination in Planning", 17 April 2019, altro.co.il/newsletters/show/11451?key=997885aa275954e6cf8be03604b1ba0a&value=18d95e8e03b04e0d28d46e55d3db53b3290303ee:1319409

[1316] OCHA, "Wadi Yasul: a Community at Risk of Mass Displacement", 20 June 2019, ochaopt.org/content/wadi-yasul-community-risk-mass-displacement

an agreement on the plans. The fate of the majority of the structures in Wadi Yasul was thus tied to the outcome and decision of the District Planning Committee on the proposed plan by the community.

Meanwhile, in June 2010, Elad, with government backing, published plans to expand the area designated for tourism into Silwan, to create an area called the King's Garden.[1317] This would mean the demolition of 88 Palestinian homes in the Al-Bustan neighbourhood and the forced eviction of more than 1,500 people.[1318] To justify this, in 2015 the Jerusalem Municipality told the Palestinian community that all the houses in Al-Bustan had been built illegally. Yet, like other Palestinian areas in East Jerusalem (and Area C of the West Bank), the discriminatory planning regime meant that residents of Al-Bustan had had no choice but to build or extend homes without a permit.[1319] In the meantime, the municipality imposed fines on the homeowners, who were already living in dire poverty.[1320] In 2017, 16 of the homes in Al-Bustan, housing at least 118 individuals, received demolition orders, placing them at imminent risk of demolition.[1321] Residents of Al-Bustan began to prepare an alternative plan in order to retroactively legalize the homes with demolition orders. Israeli authorities had rejected previous plans by Al-Bustan residents.[1322] A freeze on the demolition of the 16 threatened homes was granted by court order from June to October 2020. The community continued to send extension requests as they prepared their alternative plan for the area. In late February 2021, the Jerusalem Municipality submitted an objection to the community's requests to freeze the demolition orders and asked the municipal court to authorize demolition.[1323] On 29 June 2021, Israeli authorities demolished a butcher's shop owned by the Al-Rajabi family in Al-Bustan.[1324] At least 13 Palestinians were injured as authorities dispersed protesters during the demolition.[1325]

Mohammed Al-Rajabi, a resident of Al-Bustan whose home was demolished by Israeli authorities on 23 June 2020, described to Amnesty International the devastating effects of the demolition on his family:

I lived in the house for two months before it was demolished. I mean we were dealing with a pandemic spreading, and normally these things take time but with us it went down really quick. They had court orders to demolish my house within weeks of me starting to construct my house. And since my house was in the middle of a crowded area and impossible to demolish with a bulldozer they used a machine saw to cut my house in half… anything to make it uninhabitable.

I know that this could have been avoided if I'd got a building permit, but it's impossible. This could not have been avoided; it's as if it's been designed this way and there is no exit. My house was going to be demolished in all cases, no matter what I do.

The municipality is asking me to pay them for the demolition also. They need NIS 100,000 [USD 32,258] to cover the expenses of my demolition. They even said that the cost is this high because it took more manpower to accomplish than regular demolitions with machinery and bulldozers.

This is extremely hard to deal with. It might be difficult to put into words… and I sensed that it was harder on my kids than on us. They were really excited for us to have this new home. I'm going to keep the photos from that day and show them to my children when they grow up, so they do not forget what happened to us. I will tell them: "You see what kind of memories I have to pass on to you?" My plan was for them to have a warm family home

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[1317] Ir Amim, *The Giant's Garden* (previously cited).
[1318] Al-Haq, *Parallel Report to the Committee on Economic, Social and Cultural Rights on the Occasion of the Consideration of the Third Periodic Report of Israel*, 1 September 2011, tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ISR/INT_CESCR_NGO_ISR_47_9141_E.pdf; and Ir Amim, *The Giant's Garden* (previously cited).
[1319] See section 5.3.2 "East Jerusalem".
[1320] B'Tselem, Al-Bustan Neighborhood – Garden of the King, 16 September 2014, btselem.org/jerusalem/national_parks_al_bustan_garden_of_the_king (accessed on 29 August 2021); ACRI, "East Jerusalem Facts and Figures 2017", updated on 24 May 2017, law.acri.org.il/en/2017/05/24/east-jerusalem-facts-and-figures-2017
[1321] Al-Haq, *House Demolitions and Forced Evictions in Silwan: Israel's Transfer of Palestinians from Jerusalem*, 26 August 2020, alhaq.org/cached_uploads/download/2020/08/26/house-demolitions-and-forced-evictions-in-silwan-web-1598440511.pdf, p. 33.
[1322] In 2009, Israeli authorities rejected residents' proposed plan to change Al-Bustan from a "green zone" to a "residential zone". In June 2010, the local planning committee pushed the King's Garden plan without discussing it with the residents. Residents initiated legal proceedings before the Jerusalem District Court to review that decision. In January 2011, the District Court dismissed their claim and in June 2012 the Supreme Court upheld the District Court's decision. See NRC, "Case Summary: Al Bustan – Silwan, East Jerusalem", 12 April 2021, on file with Amnesty International.
[1323] Ir Amim, "Reignited Plan For 'King's Garden' Park Threatens To Displace Over 1000 Palestinians From Al Bustan, Silwan", 25 March 2021, ir-amim.org.il/en/node/2627
[1324] NRC, "Israeli authorities demolish shop in Silwan, 15 families at imminent risk", 29 June 2021, nrc.no/news/2021/june/israeli-authorities-demolish-shop-in-silwan-15-families-at-imminent-risk
[1325] Reuters, "Police, Palestinians clash as Israel begins demolition in Jerusalem's Silwan", 29 June 2021, reuters.com/world/middle-east/police-palestinians-clash-israel-begins-demolition-jerusalems-silwan-2021-06-29

close to their loved ones and family members. Now I'm passing on the memories of their first childhood home being destroyed.[1326]

Israeli authorities also systematically discriminate in the enforcement of building laws against Palestinians in Silwan, and fail to enforce the same laws or issue demolition orders against illegally constructed structures in Israeli settlements in the area. For example, according to Bimkom, the Israeli authorities failed to vacate the seven-storey building known as Beit Yehonatan, which the settler group Ateret Cohanim built in 2002 without a permit on an 800m^2 plot in Al-Bustan.[1327] In 2007, a court ordered the building to be sealed and vacated, but to date the municipal authorities have not implemented the order.[1328]

The expansion of settlement compounds in Silwan, along with an increased presence of Israeli security forces and private security guards to protect them, has led to rising tensions among residents,[1329] which contributes to creating a coercive environment. This has led to many reported security incidents in Silwan involving children, who are often accused of throwing stones at Israeli settlers and security personnel. Many children have been arrested.[1330] For example, a 17-year-old boy told Amnesty International in August 2018 that he had been detained three times. "There's not one kid you see in the streets who hasn't at least been arrested once in this neighbourhood," he said.[1331]

Arrests often lead to other forms of abuse. Over the years, Amnesty International and other organizations have documented how Israeli security forces have used unnecessary force to arrest or detain Palestinian children in East Jerusalem and elsewhere in the OPT.[1332]

In Area C of the West Bank, Palestinian communities in the Jordan Valley have been repeatedly targeted for demolition. According to B'Tselem, the Israeli Civil Administration demolished at least 698 Palestinian residential units in the Jordan Valley between January 2006 and September 2017. The demolished structures were home to at least 2,948 Palestinians, at least 1,334 of whom were children. Of these, 783 Palestinians, including 386 children, had their homes demolished at least twice. From January 2012 to September 2017, the Civil Administration additionally demolished at least 806 non-residential units, including agricultural structures.[1333]

AREA C OF WEST BANK

Khirbet Humsa

Khirbet Humsa, a Palestinian village of approximately 177 residents, is located in the northern Jordan Valley on land leased from the Palestinian city of Tubas in the north of the West Bank.[1334] The community earn their living as shepherds and farmers. The Israeli settlements of Ro'i, Beka'ot and Hemdat surround the village.

Since 2007, Amnesty International has been documenting Israeli violations against residents of Khirbet Humsa, including multiple demolition incidents and denial of water as means of expulsion.[1335] Palestinians living in

[1326] Amnesty International, interview by voice call with Mohammed Al-Rajabi, 16 October 2020.
[1327] Bimkom and Ir Amim, *Making Bricks Without Straw: The Jerusalem Municipality's New Planning Policy for East Jerusalem*, 1 January 2010, ir-amim.org.il/en/report/making-bricks-without-straw-jerusalem-municipality%E2%80%99s-new-planning-policy-east-jerusalem
[1328] Ir Amim, *Shady Dealings in Silwan* (previously cited), p. 18.
[1329] Settlers are accompanied by security guards from the Housing and Construction Ministry when entering and leaving the vicinity; Haaretz, "Number of Jewish Silwan Residents Doubles in Overnight Mission", 1 October 2018, haaretz.com/.premium-dozens-of-settlers-move-to-silwan-1.5317563
[1330] According to the UN there have been more than 560 cases of detention of children in Silwan since 2012. See OCHA, "Humanitarian Impact of Settlements in Palestinian Neighbourhoods of East Jerusalem: the Coercive Environment", 10 July 2018, ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive
[1331] Amnesty International, interview in person with resident of Silwan, 4 August 2018, Silwan.
[1332] Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited); HRW, "Israel: Security Forces Abuse Palestinian Children", 19 July 2015, hrw.org/news/2015/07/19/israel-security-forces-abuse-palestinian-children
[1333] B'Tselem, The Jordan Valley (previously cited).
[1334] Peace Now, Settlements Map, Khirbet Humsa, peacenow.org.il/en/settlements/settlement738-en (accessed on 30 August 2021).
[1335] Amnesty International, *Israel/Occupied Territories: House Demolition/Forced Eviction* (Index: MDE 15/029/2007), 27 April 2007, amnesty.org/en/documents/mde15/029/2007/en; Amnesty International, "Israeli army destroys Palestinian homes", 14 February 2008, amnesty.org/en/latest/news/2008/02/israeli-army-destroys-palestinian-homes-20080214; Amnesty International, "Palestinian homes demolished without warning", 11 March 2008, amnesty.org/en/latest/news/2008/03/palestinian-homes-demolished-without-warning-20080311; Amnesty International, "Palestinian homes at risk in occupied West Bank", 8 June 2009, amnesty.org/en/latest/news/2009/06/palestinian-homes-risk-occupied-west-bank-20090608; Amnesty International, *Thirsting for Justice: Palestinian Access to Water Restricted* (Index: MDE 15/028/2009), 27 October 2009, amnesty.org/en/documents/MDE15/028/2009/en, p. 5; Amnesty International, "Israel/Occupied Palestinian Territories: Families Without Homes Following Demolition" (Index: MDE 15/028/2011), 22 June 2011,

Khirbet Humsa and other similar communities are among the most economically marginalized in the OPT. They face harsh winters and summer heat exceeding 40^{0}C, and recently the Covid-19 pandemic, without access to adequate health facilities. The constant eviction of residents has had a devastating economic and social impact, as well as taking a psychological toll on the residents. Residents of Khirbet Humsa fear that army bulldozers may return at any time to destroy their homes.

Israeli authorities prevent Palestinian residents of Khirbet Humsa from connecting to electricity or water grids or drilling new wells in the area. The community obtains its water by travelling and filling a water tanker at the Ain Shibli spring, 15km away.[1336] Since 1972, the land of Khirbet Humsa has been designated as a "firing zone", which prohibits Palestinian construction and is often used as an instrument for mass expulsion of Palestinian Bedouins, especially those living in Area C.[1337]

Some 12km north-east of Khirbet Humsa lies the Israeli settlement of Hemdat, which was established in 1997 and has a population of 296 Israeli settlers.[1338] In 1999, Israeli authorities introduced an amendment to the military order regarding Firing Zone 903, which adjusted the borders of the zone to allow an enclave outside it for the settlement of Hemdat.[1339] The redrawing of the borders privileged Jewish Israeli settlers, allowing them to live freely in the "firing zone".

Analysis of these military zones illustrates that – rather than serving a "military need" – their purpose is to drastically reduce the ability of Palestinians to use the land while transferring as much of the land as possible to Israeli settlers.[1340] The settlement of Hemdat has large homes and, like other settlements, is connected to the Israeli water and electricity grids. The settlement harvests dates and flowers. The Jewish settlers have a per capita water usage of 172 litres per day.[1341]

On 3 November 2020, Israeli forces entered the herder community of Khirbet Humsa and demolished or confiscated 29 residential and livelihood structures, displacing 73 people, including 41 children, in what was the largest forced displacement incident recorded in recent years.[1342] The Israeli Civil Administration followed through with the demolitions, stating that the living structures were built illegally in a "firing zone".[1343] The first tent confiscated was the home of Nitham Abu Kbash, a herder and father of three. His residential structure was confiscated a further five times in February 2021. He told Amnesty International:

Having lived my whole life in [Khirbet] Humsa, I have never seen it like this before. The army is trying every single way to get rid of us. God knows how we are still here. Never did we have to deal with what we went through [in November] last year, where every few days they would come and demolish our homes. I know they are trying to use Humsa as an example, because if they succeed in displacing us it can be a model for them to use elsewhere. I know the Israelis are choosing to do their demolition campaigns during the winter, during the hardest part of the year because we are most vulnerable. They know how hard it is to survive during the winters in the Jordan Valley. They probably never thought we would remain resilient – that we would stay.[1344]

Between November 2020 and July 2021, Israeli authorities demolished or confiscated at least 210 residential and livelihood structures, displacing at least 392 residents, including 227 children.[1345]

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amnesty.org/en/documents/mde15/028/2011/en; Amnesty International, "Israel and the Occupied Palestinian Territories: Further Information: Israeli Army Destroys Homes for Sixth Time" (Index: MDE 15/012/2013), 8 July 2013, amnesty.org/en/documents/mde15/012/2013/en

[1336] Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (previously cited), p. 46.

[1337] Kerem Navot, *A Locked Green: Declaration of closed areas in the West Bank,* March 2015, f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/cdb1a7_5d1ee4627ac84dca83419aebf4fad17d.pdf, p. 43.

[1338] Kerem Navot, *A Locked Green (*previously cited*),* p. 69; ICBS, "Population in localities, by population group, end of 2019" (previously cited).

[1339] Kerem Navot, *A Locked Green* (previously cited), p. 67.

[1340] Kerem Navot, *A Locked Green* (previously cited), p. 64.

[1341] Ma'an Development Center, *Cultivating Dispossession: Israeli Settlements in the Jordan Valley*, 2013, palestina-komitee.nl/wp-content/uploads/2017/11/3-Cultivating-Dispossession-Israel-Settlements-in-the-Jordan-Valley-Maan-Development-Center-2013A-1.pdf, p. 13.

[1342] OCHA, "West Bank witnesses largest demolition in years", 4 November 2020, ochaopt.org/content/west-bank-witnesses-largest-demolition-years; OCHA, "Occupied Palestinian Territory (oPt): Flash Update #1 Humsa - Al Bqai'a", 5 February 2021, ochaopt.org/content/humsa-al-bqaia-flash-update-1

[1343] OHCHR, "UN experts condemn Israel's demolition of houses in Palestinian Bedouin community", 19 November 2020, ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26522&LangID=E

[1344] Amnesty International, interview by voice call with Nitham Abu Kbash, 23 March 2021.

[1345] See OCHA, "West Bank witnesses largest demolition in years", 4 November 2020, ochaopt.org/content/west-bank-witnesses-largest-demolition-years; OCHA, "Occupied Palestinian Territory (oPt): Flash Update #1 Humsa - Al Bqai'a", 5 February 2021, ochaopt.org/content/humsa-al-bqaia-flash-update-1; OCHA, "Occupied Palestinian Territory (oPt): Flash Update #2 Humsa - Al Bqai'a", 11 February 2021, ochaopt.org/content/humsa-al-bqaia-flash-update-2; OCHA, "Occupied Palestinian Territory (oPt):

Five out of six of these demolitions took place during February 2021. Many of these structures were donated to the residents of Khirbet Humsa as part of a humanitarian response to the community's vulnerability to the Covid-19 pandemic as well as the severe winter conditions in the northern Jordan Valley. Many of the residents faced repeated demolitions of their homes and livelihood structures, sometimes only days after rebuilding them after a previous demolition or confiscation.

During demolitions on 1 February, COGAT informed the community that they must relocate to a site near the village of Ain Shibli where their confiscated structures would be returned.[1346] Nitham Abu Kbash described the psychological impact of these demolitions on his children:

The main virus our community faces is the Israeli army, not Covid-19. My kids are always scared; we are all always scared. When the army comes in and your children are terrorized and crying and outside in the pouring rain, I promise you, there is no human being on this earth that is meant to be able to handle that. The only way to describe it is as a tragedy. And what are we supposed to do? We don't have anywhere to go. Even when the international community, including the EU, came to Humsa for solidarity, the army came in and confiscated our tents in front of diplomats and EU representatives. At first we were happy that the EU came; we thought we would be safe, that they would be able to stop the demolitions. But we were wrong; no one can protect us.[1347]

The evictions in Khirbet Humsa hinder the community's ability to have an adequate livelihood as their livelihood structures for livestock are often demolished or confiscated as well. Nitham Abu Kbash said:

Because of the demolitions I have had some of my sheep die from the conditions outside when they confiscated the tent where they live. Other times we didn't have water to give them after they confiscated our water tanks. What did my sheep do to deserve to die? My family survives off our livestock; it is our only means of living. I ask anyone with a conscience to pressure the Israelis to do one thing: to stop the demolitions and to allow us to live our life and to tend to our animals. We are not asking for much.[1348]

Jahalin of Khan Al-Ahmar

The Jahalin Bedouin communities currently residing in the West Bank originate from the Tel Arad area in the Negev/Naqab. In the 1950s, Israeli authorities forcibly displaced the Jahalin tribe from their original lands. They subsequently moved to the West Bank and continued their traditional pastoral way of life and established seasonal migration paths between Jerusalem and Jericho until they settled in and around the eastern periphery of Jerusalem on lands leased from Palestinian landowners in the area (primarily in Abu Dis, Al-Ezariyeh, Anata, Al-Tur and Al-Issawiyya).[1349] In mid-1951, they registered as Palestinian refugees with UNRWA and they are currently the largest Bedouin tribe among Palestinian refugees in the West Bank.[1350]

There are currently 18 Bedouin communities that belong to the Jahalin tribe who live in and around the eastern periphery of Jerusalem,[1351] totalling more than 3,000 people, half of whom are children.[1352] These communities belong to the larger group of 46 Bedouin communities in the central West Bank who are at "a high risk" of forcible transfer by Israeli authorities, according to the UN.[1353]

Since 1967, the Israeli military has restricted vast expanses of the Jahalin's grazing land by declaring them military zones or nature reserves, confiscating land for building settlements and prohibiting the Bedouin from using them. As a result, the Jahalin's seasonal movement and traditional way of life became impossible and they were forced to settle in small encampments in the eastern periphery of Jerusalem and south of the West Bank.

Flash Update #3 Humsa - Al Bqai'a", 17 February 2021, ochaopt.org/content/humsa-al-bqaia-flash-update-3; OCHA, "Occupied Palestinian Territory (oPt): Flash Update #5 Humsa - Al Bqai'a", 25 February 2021, un.org/unispal/document/humsa-al-bqaia-village-ocha-occupied-palestinian-territory-opt-flash-update-5

[1346] OCHA, *West Bank witnesses largest demolition in years*, 4 November 2020, ochaopt.org/content/west-bank-witnesses-largest-demolition-years; OCHA, *Occupied Palestinian Territory (oPt): Flash Update #1 Humsa - Al Bqai'a*, 5 February 2021, ochaopt.org/content/humsa-al-bqaia-flash-update-1

[1347] Amnesty International, interview by voice call with Nitham Abu Kbash, 23 March 2021.

[1348] Amnesty International, interview by voice call with Nitham Abu Kbash, 23 March 2021.

[1349] Amnesty International, *Israel and the Occupied Palestinian Territories: Stop the transfer: Israel about to expel Bedouin to expand settlements* (Index: MDE 15/001/2012), 8 February 2012, amnesty.org/en/documents/mde15/001/2012/en

[1350] Jahalin Solidarity, "Bedouin Palestine Refugees: the Jahalin Tribe in the Eastern Jerusalem Periphery", 2012, jahalin.org/wp-content/uploads/2012/01/Factsheet-Jahalin-Tribe-1.pdf

[1351] OCHA, "Tightening of coercive environment on Bedouin communities around Ma'ale Adumim settlement", 11 March 2017, ochaopt.org/content/tightening-coercive-environment-bedouin-communities-around-ma-ale-adumim-settlement

[1352] B'Tselem, Ma'ale Adumim Area, 16 November 2013 (updated on 18 May 2014), btselem.org/maale_adumim_area (accessed on 30 August 2021), "Communities Facing Expulsion".

[1353] OCHA, "46 Bedouin Communities at Risk of Forcible Transfer in the Central West Bank: A Vulnerability Profile", 2017, ochaopt.org/page/46-bedouin-communities-risk-forcible-transfer-central-west-bank-vulnerability-profile (accessed on 26 August 2021).

These areas were subsequently designated as Area C, where the Israeli military retains full control of all civilian affairs, including planning and zoning.[1354]

In 1975, Israel expropriated 30,000 dunams (3,000 hectares) of the area where the Jahalin lived to build the Ma'ale Adumim settlement. This is currently the third most populous Israeli settlement in the West Bank with nearly 40,000 settlers.[1355] In the following years, Israel expropriated yet more land, began constructing Ma'ale Adumim, and established the Mishor Adumim industrial zone and the settlements of Kfar Adumim, now with a population of over 4,300 Israeli settlers,[1356] and Kedar, with around 1,500 settlers.[1357]

In the 1990s, the area became particularly significant due to Israel's plan to annex the settlements and connect them to Jerusalem, known as the E1 (an abbreviation of East 1) plan. The E1 plan envisages the expansion of around 4,000 housing units, hotels, an industrial area and a large Israeli border police station to serve as the border police headquarters for the West Bank area. The police station was officially opened in 2008 and much of the infrastructure is already in place. The E1 plan has not been fully implemented by successive Israeli governments due to international opposition, mainly from the EU and the US government. If implemented, the plan will effectively cut the geographic contiguity of the West Bank, with a solid line of Israeli settlements dividing the northern and southern parts of the West Bank. The E1 plan will also prevent development of the Palestinian neighbourhoods of Al-Tur and Al-Issawiyya in East Jerusalem.

In 2004, the construction of the fence/wall in the area began, cutting off the Jahalin Bedouins from Jerusalem. Along with the expansion of settlements, the fence/wall enclaved the Jahalin in the area and placed them under further threat of forced displacement. When the Israeli government announced its annexation plans in May 2020, it stated that it was highly likely to annex the Ma'ale Adumim settlements' bloc to Israel.[1358]

As a result of the establishment and expansion of settlements, the Jahalin Bedouins in the area were forcibly displaced and their homes demolished by Israeli authorities in 1994, 1997 and 1998.[1359] Since 2011, Israeli authorities have proposed plans to forcibly transfer all the communities in the area. These plans, along with home demolitions and forced evictions, have worsened social and legal conditions and increased pressure on the Jahalin to leave. The plans had not been implemented as of end of August 2021.

Because they lack access to grazing lands in the area, many of the Bedouin communities have abandoned their traditional way of life and currently depend on humanitarian assistance. More than half of the communities are food insecure; none of the communities has access to the electricity grid; and only half are connected to water networks.[1360]

The village of Khan Al-Ahmar is home to approximately 180 Bedouins from the Jahalin tribe, more than half of whom are children.[1361] The village has more than 160 structures, including a school, a mosque, kitchens, animal shelters and a clinic, mostly made of corrugated metal, wood and makeshift materials such as tyres. The Israeli settlement of Kfar Adumim is just 2km from the village.

For years, Israel has been trying to forcibly transfer the residents of Khan Al-Ahmar, to expand settlements in the region and has issued demolition orders against every structure in the village built without permits. Amnesty International has documented the demolitions of at least 25 homes in Khan Al-Ahmar over the lack of building permits between 2008 and 2018.[1362]

On 24 May 2018, following a nine-year legal battle against the demolition orders, the Supreme Court of Israel ruled in favour of razing the entire community and relocating Palestinian residents elsewhere, finding "no reason to intervene in the decision of the minister of defence to implement the demolition orders issued against the

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[1354] Amnesty International, *Israel and the Occupied Palestinian Territories: Stop the transfer: Israel about to expel Bedouin to expand settlements* (previously cited).
[1355] Peace Now, Ma'ale Adumim, peacenow.org.il/en/settlements/settlement70-en (accessed on 26 August 2021).
[1356] Peace Now, Kfar Adumim, peacenow.org.il/en/settlements/settlement56-en (accessed on 26 August 2021).
[1357] Peace Now, Keidar, peacenow.org.il/en/settlements/settlement114-en (accessed on 26 August 2021).
[1358] Times of Israel, "Netanyahu to initially annex 3 settlement blocs, not Jordan Valley – officials", 10 June 2020, timesofisrael.com/netanyahu-to-initially-annex-3-settlement-blocs-not-jordan-valley-officials
[1359] B'Tselem, Ma'ale Adumim Area, 16 November 2013 (updated on 18 May 2014), btselem.org/maale_adumim_area (accessed on 30 August 2021), "Communities Facing Expulsion".
[1360] Amnesty International, *Israel and the Occupied Palestinian Territories: Stop the transfer: Israel about to expel Bedouin to expand settlements* (previously cited).
[1361] OCHA, "UN officials call on Israel to abandon plans to demolish and transfer Khan al Ahmar – Abu al Helu community", 1 June 2018, ochaopt.org/content/un-officials-call-israel-abandon-plans-demolish-and-transfer-khan-al-ahmar-abu-al-helu
[1362] Amnesty International, "Israel/OPT: Israeli court approves a war crime by ruling in favour of demolishing the entire village of Khan al-Ahmar", 5 September 2018, amnesty.org/en/latest/news/2018/09/israel-opt-israeli-court-approves-a-war-crime-by-ruling-in-favour-of-demolishing-the-entire-village-of-khan-al-ahmar

illegal structures in Khan Al-Ahmar."[1363] A few days later, the Israeli Civil Administration approved the construction of 92 new homes for Kfar Adumim.[1364] Abu Khames, the spokesperson and a resident of the community, told Amnesty International in June 2018:

If this was an Israeli village, the court ruling would have been completely different… If a settler house was built nearby, the Israeli Civil Administration would open an entire road for that house, and provide it with electricity and water, but for us, we have been struggling for years to have such essential services provided to us, and instead we get nothing other than a Supreme Court ruling that would displace us from our land.[1365]

On 4 July 2018, the Israeli army attempted to forcibly evict the residents of Khan Al-Ahmar, violently attacking them and solidarity activists. This triggered further legal action by the community in the hope of protecting their village by petitioning the Supreme Court. On 5 September 2018, the court upheld its decision and rejected the community's petition. The decision to demolish an entire community in the OPT generated wide international condemnation including by the Prosecutor of the ICC. Seemingly as a result of this pressure, the authorities refrained from carrying out the demolitions.

This is in turn led to a petition to the Supreme Court by Israeli settler organization Regavim, which pushed for the demolition orders to be implemented. On 29 November 2020, the Supreme Court ruled on this petition, stating that, if the residents of Khan Al-Ahmar did not reach a settlement with the Israeli military and civil administrations, the demolition orders would be implemented on 15 July 2021.[1366] Following the ruling, the Israeli authorities asked the court for more time to prepare plans for the implementation of the demolition order citing Covid-19 and considerations relating to the "diplomatic-security situation". This prompted a second petition to the Supreme Court by Regavim. When the court scheduled a hearing on this for 6 March 2022, it criticized the state for "inaction and feet dragging" over the demolitions.[1367]

FORCIBLE TRANSFERS AND DEPORTATIONS IN OPT

As outlined in Chapter 5, in East Jerusalem, the revocation of the permanent residency status of thousands of Palestinians is a central and widespread Israeli policy that results in the forcible transfer of Palestinians "without grounds permitted under international law".[1368] Between 1967 and 2019, according to the Israeli Ministry of Interior, Israel revoked the residency status of 14,683 Palestinians from East Jerusalem, which had the effect of forcibly transferring them out of Jerusalem unless they remained there in conflict with Israeli law.[1369] Israel pursues this policy to ensure a Jewish majority in Jerusalem, as indicated by official planning documents developed by the Jerusalem Municipality and statements by a range of senior Israeli officials.[1370]

Additionally, between 1967 and 1992, according to B'Tselem, Israel deported 1,522 Palestinians from the OPT as a punitive measure, often targeting opponents of Israel's occupation and its policies.[1371] Israel stopped deporting Palestinians after 1992 with the exception of 2002, when it deported 13 Palestinians from the OPT.[1372]

SALAH HAMMOURI

Salah Hammouri is a French-Palestinian lawyer who lives in the neighbourhood of Kufr Aqab in East Jerusalem. He holds a Jerusalem residency permit and works as a field researcher for Addameer, a legal aid and prisoners'

[1363] HCJ, *Eid Hamis Jahalin and Others v. Minister of Defense and Others,* Case HCJ 3287/16, judgment, 25 April 2018 (an unofficial English translation is available at btselem.org/sites/default/files/2018-06/20180524_hcj_ruling_3287_16_khan_al_ahmar_eng.pdf).
[1364] Haaretz, "Israel to Build 92 New Settlement Homes Near Bedouin Village Slated for Demolition", 30 May 2018, haaretz.com/israel-news/.premium-israel-to-build-92-homes-in-settlement-near-condemned-bedouin-village-1.6132947
[1365] Amnesty International, interview in person with Abu Khames, 6 June 2018.
[1366] Amnesty International, interview by voice call with Abu Khames, 31 March 2021.
[1367] Chen Maanit, "Israel 'Inconsistent' on Khan al-Ahmar Eviction, Top Court Says, Granting State Yet Another Extension", Haaretz, 29 September 2021, haaretz.com/israel-news/.premium-israel-inconsistent-on-khan-al-ahmar-top-court-says-granting-another-extension-1.10250535
[1368] Rome Statute, Article 7(2)(d). See section 5.2.2 "East Jerusalem".
[1368] See section 5.2.2 "East Jerusalem".
[1369] HaMoked, "Ministry of Interior data: 40 East Jerusalem Palestinians were stripped of their permanent residency status in 2019 as part of Israel's "quiet deportation" policy; a significant increase compared to 2018", 28 June 2020, hamoked.org/Document.aspx?dID=Updates2174; see section 5.2.2, "East Jerusalem".
[1370] See section 5.3.2 "East Jerusalem".
[1371] B'Tselem, *Deportation of Palestinians from the Occupied Territories: The Mass Deportation of December 1992*, 3 June 1993, btselem.org/publications/summaries/199306_deportation
[1372] State of Israel, MoFA, "13 Palestinian terrorists from the Church of the Nativity to be deported-10-May-2002", 10 May 2002, mfa.gov.il/mfa/mfa-archive/2002/pages/13%20palestinian%20terrorists%20from%20the%20church%20of%20the%20n.aspx; Midde East Monitor, "17 years since Palestinians deported following Church of Nativity siege", 13 May 2019, middleeastmonitor.com/20190513-17-years-since-palestinians-deported-following-church-of-nativity-siege

rights NGO, which was declared – together with five other civil society groups – as a "terrorist organization" in October 2021. UN human rights experts condemned this move as a misuse of counterterrorism measures and a "frontal attack on the Palestinian human rights movement, and on human rights everywhere".[1373] The Israeli authorities have persistently harassed him and violated his rights to freedom of movement and family, his residency rights, and his right to live in his city of birth. He is at risk of forcible deportation as the Israeli authorities have taken action to revoke his residency status.[1374]

Since the second *intifada* in 2000, Israeli authorities have detained Salah Hammouri several times, including twice when he was placed under administrative detention – for five months in 2004 and for 13 months in 2017.[1375]

In 2005, he was sentenced to seven years in prison after being convicted of planning an attack on the former Sephardi Chief Rabbi of Israel, Ovadia Yosef. Shortly before his release, the then French minister of foreign affairs expressed regret at the fact that the Israeli authorities refused to shorten Salah Hammouri's sentence given the lack of strong evidence against him.[1376] He was eventually released in December 2011, three months before the end of his sentence under a prisoner exchange deal. After his arrest, Salah Hammouri was offered a deal (negotiated by the French consulate) of being deported to France for 10 years instead of being imprisoned, but he refused in fear of prolonged exile.

In September 2014, Israel imposed a six-month travel ban on Salah Hammouri preventing him from entering the West Bank and hindering his progress towards achieving a degree in law from Al-Quds University near Abu Dis in the West Bank. The ban was renewed twice for a total of 18 months. He was only able to go back to university after the ban was lifted.[1377] During the 18 months, he was also unable to go to his workplace at Addameer in Ramallah in the West Bank.

On 3 September 2020, the Israeli Ministry of Interior notified Salah Hammouri of its intention to revoke his permanent residency status on the grounds of "breach of allegiance" to the State of Israel.[1378] He was given 30 days to challenge this decision by submitting a written response to the Israeli interior minister, which would later be examined ahead of a final decision. Salah Hammouri said:

The "breach of allegiance to the State of Israel" will affect my work. We [Addameer] are already under constant inspection by the Israeli authorities for the work we do in the field of human rights, but with this accusation of theirs, we'll be even put under further surveillance of every activity we do: every visit I make to meet Palestinian prisoners, every conference I attend, and briefing I join… The scope of their accusations is so broad it could literally include anything and hinder my work – and anyone who does such work – in defending prisoners and Palestinians' rights… If you ask me what's my worst fear in all of this, it's having to leave my country by force with no hope of being able to come back. In a nutshell, I do not want to leave, and I refuse to be forced to do so.

On 29 June 2021, Israeli interior minister Ayelet Shaked announced the adoption of recommendations to revoke the permanent residency of Salah Hammouri based on "breach of allegiance", confirming her intentions to proceed with approving the process. Israeli attorney general Avichai Mendelblit and minister of justice Gideon Sa'ar must still approve the revocation.[1379]

Israeli authorities have also banned his wife, Elsa Lefort, a French national, from entering Israel and the OPT since 5 January 2016, citing security concerns and forcing the family to live apart. They can only see each other when Salah Hammouri visits her in France every few months.[1380] The couple's family reunification requests to the Israeli Ministry of Interior to allow the family to live together in the OPT have all been rejected on security grounds

[1373] OHCHR, "UN experts condemn Israel's designation of Palestinian human rights defenders as terrorist organisations", 25 October 2021, ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27702&LangID=E
[1374] Amnesty International, "Israel/OPT: Further Information: NGO worker's arbitrary detention prolonged: Salah Hammouri" (Index: MDE 15/7967/2018), 8 March 2018, amnesty.org/en/documents/mde15/7967/2018/en
[1375] Amnesty International, "Israel/OPT: Palestinian NGO worker released: Salah Hammouri" (Index: MDE 15/9264/2018), 25 October 2018, amnesty.org/en/documents/mde15/9264/2018/en
[1376] HRW, "Israel Detains French Human Rights Worker Without Charge", 10 December 2017, hrw.org/news/2017/12/10/israel-detains-french-human-rights-worker-without-charge
[1377] Cairo Institute for Human Rights Studies, "Palestine: Human Rights Organisations Send Urgent Appeal to UN Special Procedures on the Imminent Threat of Forcible Transfer/Deportation of Salah Hammouri for "Breach of Allegiance"", 5 October 2020, cihrs.org/human-rights-organisations-send-urgent-appeal-to-un-special-procedures-on-the-imminent-threat-of-forcible-transfer-deportation-of-salah-hammouri-for-breach-of-allegiance/?lang=en
[1378] Addameer, "The Case of Salah Hammouri: Ongoing Harassment of Human Rights Defenders", 1 March 2021, addameer.org/sites/default/files/campaigns/salah.pdf
[1379] Addameer, "Urgent Intervention: Israeli Interior Minister Ayelet Shaked Adopts Recommendations to Revoke the Permanent Residency of HRD Salah Hammouri", 5 July 2021, addameer.org/ar/node/4440
[1380] Amnesty International, interview by voice call with Salah Hammouri, 23 March 2021; Amnesty International, "Israel/OPT: Palestinian NGO worker released: Salah Hammouri" (previously cited).

because Salah Hammouri was released through a prisoner exchange deal. The most recent application for family unification was on 20 April 2021. Salah Hammouri told Amnesty International:

As to how all of this affects me personally, I will not say this is something we get used to, but it became rather another daily life obstacle I have to deal with – being separated from my family, this ongoing and never-ending uncertainty and feeling uneasy all the time. This has affected my relationship with my son, between me being here and him in France with his mother, only meeting every few months and over video calls. And my wife is currently pregnant, and we are awaiting a newborn, and as much as we're excited we are also worried. Imagine my wife gives birth in France and I'm there with her, then they do not allow me back in the country. I have family here, friends, my work, and life.

In the West Bank, excluding East Jerusalem, and the Gaza Strip, Israel has engaged in another systematic and widespread policy since 1967 – the forcible transfer of Palestinian detainees, including children, to prisons inside Israel.[1381] It has also transferred prisoners from the rest of the OPT to the Gaza Strip, either as a condition of release or as a punitive measure, which also amounts to forcible transfer.[1382]

As outlined above (see section 5.3.4 "Use of military rule"), since 1967, Israeli security forces have arrested over 800,000 Palestinians in the West Bank, including East Jerusalem, and Gaza Strip, according to an estimate by Addameer.[1383] All but one of the 17 prisons where Palestinians from the OPT are detained are located inside of Israel in breach of Article 76 of the Fourth Geneva Convention, which states that protected persons accused of offences should be detained in the occupied territory. This long-standing policy is not only unlawful but also cruel and has devastating consequences for the rights of detainees to family visits in addition to undermining their right to education. Even though the Israeli Prison Service Regulations grant all prisoners family visits once every two weeks, Palestinians from the OPT visit much less frequently as they are required to apply for permits to enter Israel, which are often denied on unspecified "security" grounds.[1384]

6.1.3 PATTERN OF INHUMAN OR INHUMANE ACTS

Across Israel and the OPT, Israeli authorities have employed a set of interrelated discriminatory policies and practices that have directly caused the displacement and dispossession of Palestinian communities, created unbearable living conditions for Palestinians that have coerced their displacement, or put them at high risk of forced displacement, amounting to a state-sanctioned policy of forcible transfer of population. These policies have been carried out in a widespread and systematic manner, combined with violent acts. This has been widely documented by Amnesty International and other local and international human rights organizations, as well as by the UN, over the decades.

The process of forcible transfer is the result of organized governmental policy, as indicated by laws, formal planning documents and statements by senior officials that have stated in some instances that such policies are pursued to change the demographic nature of these localities to ensure a Jewish majority. Israel also continues to deny Palestinian refugees displaced in 1948 and 1967 the right to return to their homes and property or the right to residency or citizenship in Israel or the OPT.

The restrictions on Palestinians amount to a violation, on discriminatory grounds, of the right to freedom of movement. In addition to the severity of the deprivation of freedom of movement, these restrictions have led to the deprivation of a raft of other rights similarly enshrined in international law,[1385] underlining the wide reach of this crime against Palestinians in Israel and the OPT.

Israel's discriminatory state policies, regulations and conduct against Palestinians have involved the crime against humanity of deportation or forcible transfer in violation of fundamental rules of international law as provided in the Rome Statute, as well as denying to members of a racial group the right to freedom of movement as prohibited in the Apartheid Convention. Within the OPT, policies of unlawful deportation or transfer, which are carried out neither for military necessity nor the protection of the population of the occupied territory, also constitute war crimes under the Rome Statute.

[1381] See section 6.2 "Administrative detention and torture" on other policies affecting Palestinian detainees.
[1382] Addameer, "Deportation as policy: Palestinian prisoners & detainees in Israeli detention", 18 April 2016, addameer.org/publications/deportation-policy-palestinian-prisoners-detainees-israeli-detention; Middle East Monitor, "Church of the Nativity deportees ask to be part of Hamas-Israel prisoner swap", 20 April 2020, middleeastmonitor.com/20200420-church-of-the-nativity-deportees-ask-to-be-part-of-hamas-israel-prisoner-swap
[1383] Addameer, "Palestinian Political Prisoners in Israeli Prisons", June 2016, addameer.org/sites/default/files/briefings/general_briefing_paper_-_june_2016_1.pdf
[1384] Amnesty International, "Israel must end 'unlawful and cruel' policies towards Palestinian prisoners", 13 April 2017, amnesty.org/en/latest/press-release/2017/04/israel-must-end-unlawful-and-cruel-policies-towards-palestinian-prisoners
[1385] See, for example, ICJ, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion, 9 July 2004, paras 130-4, 136-7.

6.2 ADMINISTRATIVE DETENTION AND TORTURE

6.2.1 RELEVANT CRIMES UNDER INTERNATIONAL LAW

Article 7(1)(e) of the Rome Statute criminalizes "[i]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" as a crime against humanity. Similarly, the Apartheid Convention criminalizes both the "arbitrary arrest and illegal imprisonment of the members of a racial group".[1386]

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, even during a declared state of emergency or armed conflict.[1387] Both the Apartheid Convention and the Rome Statute reflect this absolute prohibition of torture and other ill-treatment, and establish that "torture" amounts to the crime against humanity of apartheid when "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". Article II(a)(ii) of the Apartheid Convention criminalizes:

… the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment.

Under Article (7)(1)(f) of the Rome Stature, torture is defined as a crime against humanity. Torture and other ill-treatment committed in occupied territory violates international humanitarian law and, under Article (8)(2)(a)(ii) of the Rome Statute, is defined as a war crime.

6.2.2 ISRAELI POLICIES AND PRACTICES

ADMINISTRATIVE DETENTION

Since the occupation of the West Bank and Gaza Strip in 1967, the Israeli authorities have made widespread use of administrative detention to imprison thousands of Palestinians, including children, without charge or trial under renewable detention orders.

There are no exact figures on the number of administrative detention orders issued against Palestinians since 1967 because the Israeli authorities have not consistently made them available to NGOs or the wider public.[1388] Monitoring by Israeli and Palestinian human rights organizations shows that its use has fluctuated over the years, rising at times of heightened tensions in the OPT. Israel held more than 5,000 Palestinians, some repeatedly, in administrative detention between the beginning of the first *intifada* in December 1987 and June 1989.[1389] Approximately two months after the outbreak of the second *intifada*, on 13 December 2000, there were only 12 administrative detainees. The number rose drastically following a major military offensive in the West Bank codenamed "Operation Defensive Shield", reaching 960 administrative detainees in December 2002 and 1,119 in April 2003. Numbers remained high (between approximately 600 and 850 at any given time) until the end of 2009 when they dropped below 300 before rising again in 2014.[1390] At the end of May 2020, 352 Palestinians, including two children, all from the occupied West Bank, were held as administrative detainees, according to information provided by the Israel Prison Service to B'Tselem.[1391]

Data made available to B'Tselem also shows that, while the vast majority of administrative detainees held between January 2011 and July 2020 received orders lasting up to a year, many others were held for up to two years and a minority for over that time. For example, out of 548 Palestinians administratively detained on 21 January 2009, 330 had been held for up to a year, 176 for periods ranging between one and two years, and 39 for periods ranging between two and three and a half years. One detainee had been in administrative detention for a period between four and four and a half years, and two others for more than four and a half years.[1392]

Administrative detention is a form of detention under which individuals are detained by state authorities without intent to prosecute them in a criminal trial and is based on secret security grounds that the defendant and their

[1386] Apartheid Convention, Article II(a)(iii).
[1387] UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), Article 2; ICCPR, Article 4(2).
[1388] See B'Tselem, Statistics on Palestinians in the custody of the Israeli security forces (previously cited).
[1389] Amnesty International, *Israel/Occupied Territories: Administrative detention: Despair, uncertainty and lack of due process* (Index: MDE 15/003/1997), 29 April 1997, amnesty.org/en/documents/mde15/003/1997/en
[1390] B'Tselem, Administrative detention: Statistics, btselem.org/administrative_detention/statistics (accessed on 30 August 2021).
[1391] B'Tselem, Administrative detention: Statistics (previously cited).
[1392] B'Tselem, Administrative detention: Statistics (previously cited).

lawyer cannot review. Administrative detention is used to circumvent the legal protection and due process guaranteed for all persons deprived of their liberty under international law. While not completely prohibited under international law, the use of administrative detention is only permitted in exceptional circumstances, subject to stringent safeguards.[1393] However, Israel's systematic use of administrative detention against Palestinians indicates that it is used to persecute Palestinians rather than as an extraordinary and selectively used preventative measure. This is evident given that Israel labels Palestinians as "security detainees", and practice and evidence have shown that this is a pretext to persecute and deprive people of their fundamental rights and freedoms because they challenge Israel's occupation and its policies.

Under Military Order 1651,[1394] Israeli military commanders have autonomous discretion to issue individual temporary administrative detention orders of up to six months to detain Palestinians if there are "reasonable grounds" to presume that an individual presents a risk to "the security of the area" or to "public security".[1395] The military commander can extend administrative detention orders indefinitely. Under Military Order 1651, a Palestinian administrative detainee must be brought before a military judge within eight days of issue or renewal of the detention order, or released.[1396] Although administrative detainees have the right to appeal every detention order and are entitled to legal counsel of their choice, neither the lawyer nor the detainee is informed of the details of the evidence against them. A military judge has the power to uphold, shorten or cancel the order. If the order is upheld, Palestinian detainees can contest the military judges' rulings by petitioning the Supreme Court of Israel.

The Supreme Court has issued rulings emphasizing the importance of judicial review,[1397] and stating that administrative detention may only be used as a preventative measure against an individual posing a danger to security that no other means will prevent.[1398] However, it has not set clear substantive standards for reviewing administrative detention, has rarely examined whether military judges' decisions conform to its own rulings, and has been reluctant to intervene in specific cases or question the privileged intelligence information on which detention orders are based.[1399]

Since 2005, Israel has used the Internment of Unlawful Combatants Law of 2002 to place Palestinians from the Gaza Strip under administrative detention.[1400] Although judicial review takes place before a civil court, rather than a military court, the procedural safeguards under the law are weaker than those of Military Order 1651. The detainee must be brought before a district court judge within 14 days of the date of the detention order. The judge can only cancel the order if they find that the (very malleable) conditions for it are not satisfied. As the order is of indefinite duration, there is no provision for the judge to shorten it. Once an order is approved, the detainee is brought before a district court judge every six months; the judge can only annul the order if they find that release of the detainee will not harm state security (contrary to the presumption under the law), or that there are special (unspecified) grounds for release. Decisions of the district court may be appealed to the Supreme Court, but such cases are heard by a single Supreme Court judge who reviews the case according to the same stipulations as the District Court. In 2008, the Supreme Court ruled that the law was unconstitutional.[1401]

[1393] In the context of an occupation, the Fourth Geneva Convention specifies that a civilian may only be interned or placed in assigned residence if "the security of the Detaining Power makes it absolutely necessary" (Article 42) or, in occupied territory, for "imperative reasons of security" (Article 78).

[1394] Military Order 1651 went into effect on 2 May 2010, replacing and consolidating a number of Israeli military orders effective since 1967 (an unofficial English translation is available at militarycourtwatch.org/files/server/military_order_1651.pdf).

[1395] Local commanders can issue administrative detention orders. These terms are not defined in the military order, and their interpretation is left to the discretion of military commanders. See Military Order 1651, Chapter I, Article B.

[1396] Military Order 1651, para. 287(b).

[1397] For a good summary of these rulings, see Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court", 2012, Vanderbilt Journal of Transnational Law, Volume 45, No. 3, pp. 668-669.

[1398] See, for example, HCJ, *Nasrallah v. Commander of Military Forces in the West Bank,* Case HCJ 814/88, judgment; *Ajuri v. Commander of Military Forces in the West Bank,* Case HCJ 7015/02, judgment; *Sajadiya v. Minister of Defense,* Case HCJ 253/88, judgment.

[1399] David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, 2002, pp. 132-135.

[1400] According to an Israeli Supreme Court ruling from 2008, detention under the Internment of Unlawful Combatants Law is a form of administrative detention, and therefore restrictions that apply to the use of administrative detention under Military Order 1651 or the Emergency Powers (Detention) Law also apply to internment under this law. The court held that the status of "unlawful combatant" does not exist in international humanitarian law, that such persons are civilians entitled to the protections of the Fourth Geneva Convention, and that the state must prove that the individual poses a danger or a threat. Nevertheless, the justices did not discuss the presumptions specified in the law. In effect, the law enables the state to hold detainees indefinitely under presumptions of guilt that render the judicial review almost meaningless. See Amnesty International, *Starved of Justice: Palestinians Detained without Trial by Israel* (Index: MDE 15/026/2012), 6 June 2012, amnesty.org/en/documents/mde15/026/2012/en

[1401] B'Tselem and HaMoked, *Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law,* October 2009, btselem.org/sites/default/files/sites/default/files2/publication/200910_without_trial_eng.pdf

According to B'Tselem and HaMoked, Israel held 39 Palestinians from the Gaza Strip under this law in 2009, releasing most of them later that year.[1402] There is no clear information on how many Palestinians from Gaza have been held under the law since then, but B'Tselem found that a Palestinian from the Gaza Strip was held in administrative detention under the Internment of Unlawful Combatants Law from August 2014 to April 2018.[1403]

Israel justifies the use of administrative detention as a necessary preventative measure used "as the exception",[1404] when evidence against an individual "engaged in illegal acts that endanger the security of the area and the lives of civilians" cannot be presented in ordinary criminal proceedings "for reasons of confidentiality and protection of intelligence sources".[1405] However, evidence collected by Amnesty International and other human rights groups over the decades indicates an intentional Israeli policy to detain individuals, including prisoners of conscience, solely for the non-violent exercise of their right to freedom of expression and association,[1406] and punish them for their views challenging the policies of the occupation.[1407]

Israel's intention to crack down on dissent to the occupation is also evident by its policy to release administrative detainees if they agree to leave the OPT and go into exile abroad for a specified time, in contravention of international law that prohibits the forcible transfer or deportation of the population of an occupied territory. The policy also undermines Israel's justification of the use of administrative detention as a necessary preventative measure against Palestinians.[1408]

Within the OPT, administrative detention mechanisms are discriminatory against the Palestinian population, evident by the differential access to two bodies of Israeli laws and courts, one for Palestinians and another for Israeli settlers.

For Israeli settlers in the West Bank, administrative detention orders are issued under civil Israeli law and administrative detainees are brought before civilian courts. Israel relies on the provisions of the Emergency Powers (Detention) Law of 1979 to hold Israeli settlers residing in the occupied territory under administrative detention orders.[1409] The law is also used to detain Israeli citizens and Palestinian residents of occupied East Jerusalem. Under the law, the Israeli minister of defence must have "reasonable grounds to presume that the security of the state or public security require the detention".[1410] Similarly to the military order applicable to Palestinians in the West Bank, the administrative order can be issued for up to six months and renewed indefinitely. As for the judicial review of the administrative detention order, orders against Israeli settlers (and other Israeli citizens) must be reviewed within 48 hours by an Israeli civilian judge at a district court. The court is also required to automatically review the order no later than three months after the first judicial review. The detainee can appeal

[1402] B'Tselem and HaMoked, *Without Trial* (previously cited).
[1403] B'Tselem, Administrative detention: Statistics (previously cited).
[1404] Israeli authorities maintain that the use of administrative detention in the OPT is consistent with Article 78 of the Fourth Geneva Convention, which states: "If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment." According to the commentary of Jean Pictet, a leading authority on the Geneva Convention, "such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved." Furthermore, "in occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict", and detainees can only be interned within the occupied territory, not inside the occupying state. Israel's practice of administrative detention over many years clearly violates these provisions. See ICRC, Commentary on Article 78 of the Fourth Geneva Convention, icrc.org/ihl.nsf/COM/380-600085?OpenDocument
[1405] According to responses from the Israeli Ministry of Justice to urgent appeals from Amnesty International members regarding individuals held under administrative detention. See Amnesty International, *Starved of Justice: Palestinians Detained without Trial by Israel* (previously cited).
[1406] UN High Commissioner for Human Rights, Report: *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, 21 February 2018, UN Doc. A/HRC/37/42; Addameer, *Administrative Detention in the Occupied Palestinian Territory: a Legal Analysis Report,* 2016, addameer.org/sites/default/files/publications/administrative_detention_analysis_report_2016.pdf; Addameer, *Administrative Detention in the Occupied Palestinian Territory: Between Law and Practice,* December 2010, addameer.org/sites/default/files/en-addameer-administrative-detention-between-law-and-practice-december-2010.pdf; Amnesty International, "Israel: Release Palestinian prisoner of conscience detained without charge or trial", 24 May 2017, amnesty.org/en/latest/news/2017/05/israel-release-palestinian-prisoner-of-conscience-detained-without-charge-or-trial; Al-Haq, "Administrative Detention in the Occupied West Bank: Law in the Service of Man", 1986, alhaq.org/cached_uploads/download/alhaq_files/publications/Administrative_Detention_in_the_Occupied_West_Bank.pdf; B'Tselem and HaMoked, *Without Trial* (previously cited).
[1407] Military Order 101. See also HRW, *Born Without Civil Rights: Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank*, 17 December 2019, hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress
[1408] Amnesty International, *Starved of Justice: Palestinians Detained without Trial by Israel* (previously cited).
[1409] The Emergency Powers (Detention) Law of 1979 is also used against Israeli citizens inside Israel, including Palestinian citizens of Israel, and Palestinian residents of East Jerusalem.
[1410] British Mandate Government of Palestine, Defence (Emergency) Regulations, 1945, Regulation 125, imolin.org/doc/amlid/Israel/The_Defence_Emergency_Regulations_1945.pdf

the decision of the district court to the Supreme Court. Proceedings at both the district court and Supreme Court are held behind closed doors and evidence justifying the order can be withheld from the detainee and their lawyer.

In contrast to the widespread use of administrative detention orders against Palestinians, such orders have rarely been used against Jewish Israeli settlers. According to B'Tselem, Israel has used administrative detention orders against Israeli citizens, including settlers, but they remain isolated cases.[1411]

In one emblematic case of the devastating consequences of Israel's abusive use of administrative detention to punish Palestinians for their legitimate non-violent political activities and their dissenting views, Ahmad Qatamesh, an academic from Ramallah, has spent a total of more than 10 years in Israeli prisons without charge or trial between 1992 and 2017. The repeated renewals of his administrative detention orders have not only had a detrimental effect on his mental health but also on his family. Amnesty International campaigned for his immediate and unconditional release as a prisoner of conscience.

AHMAD QATAMESH

Ahmad Qatamesh is a writer and university professor from Ramallah in the West Bank. Israeli authorities have arbitrarily arrested and detained him for his peaceful expression of his political views, including in his writing and teaching. He has spent over 10 years in administrative detention and four years in prison on charges of membership in the Popular Front for the Liberation of Palestine (PFLP), a left-wing political party with an armed wing, banned by Israel.[1412] Israel has consistently violated his rights to freedom of expression and association and his right to work and earn a livelihood, with a devastating impact on his life and health. Ahmed Qatamesh is also an outspoken critic of Palestinian authorities in the West Bank and Gaza.

His first arrest was in the 1970s, when he spent four years in prison on charges related to involvement in the PFLP. In 1992, Israeli authorities accused him of continued membership in the PFLP, which he denied, and held him as an administrative detainee for six years without charge or trial.[1413]

Between April 2011 and December 2013,[1414] Israeli forces held Ahmed Qatamesh in administrative detention over allegations that he was a member of the political bureau of the PFLP.[1415] He was arrested once again on 15 May 2017 and placed in administrative detention for three months.[1416]

Israeli forces arrested him most recently on 24 December 2019 during a sweep of arrests of Palestinians associated or perceived to be associated with the PFLP in the aftermath of the killing of a 17-year-old Israeli girl, Rina Shnerb, near the West Bank settlement of Dolev on 23 August 2019.[1417] On 30 December 2019, he was charged according to military law with "giving services" and "providing a lecture" to an "illegal organization". On 2 January 2020 a military court approved his release on condition that he made a bail payment of NIS 7,000 (USD 2,258) and attended all court hearings. However, on the same day he was handed an administrative detention order and kept in detention until his release on 30 July 2020. Ten days before his release, the military court sentenced him to a four-month suspended prison sentence valid for three years.

Ahmad Qatamesh's repeated arrests, periods of imprisonment and uncertainty about lengths of detention (due to the nature of administrative detention) have taken a toll on him and his family. He told Amnesty International:

When I was arrested back in 1992 my daughter Haneen was only three years old, but she had to suffer with me all the while to see her father in prison twice every month. She began to understand the meaning of imprisonment at a very young age, yet she never really stopped raising big questions, asking again and again, "How long will it go on for?" As the end of each renewal to the administrative detention order approached, hopes of being reunited with family would be raised. But all it took to destroy this hope and postpone happiness, time after time, was for the Israeli Military Commander to issue a new administrative detention order...

[1411] For example, in 2011, Israel issued 12 settlers with administrative detention orders for periods ranging from three months to a year. See B'Tselem, "Restraining orders issued to settlers are unacceptable", 3 August 2011, btselem.org/administrative-detention/3-aug-11-restraining-orders-issued-settlers-are-unacceptable

[1412] Amnesty International, interview by voice call with Ahmad Qatamesh, 28 October 2020.

[1413] Amnesty International, "Israel and the Occupied Territories: Torture / ill-treatment: Ahmad Sulayman Musa Qatamesh" (Index: MDE 15/022/1992), 10 September 1992, amnesty.org/en/documents/mde15/022/1992/en

[1414] Amnesty International, "Palestinian academic given detention extension must be released", 25 April 2013, amnesty.org/en/press-releases/2013/04/palestinian-academic-given-detention-extension-must-be-released

[1415] Amnesty International, "Palestinian academic given detention extension must be released" (previously cited).

[1416] Amnesty International, "Israel: Release Palestinian prisoner of conscience detained without charge or trial", 24 May 2017, amnesty.org/en/latest/news/2017/05/israel-release-palestinian-prisoner-of-conscience-detained-without-charge-or-trial

[1417] Haaretz, "Shin Bet: Dozens of Palestinian Faction Members Arrested for Planning West Bank Terror Attacks", 18 December 2019, haaretz.com/israel-news/.premium-shin-bet-dozens-of-palestinian-faction-members-arrested-for-west-bank-terror-attack-1.8288390

When you are in administrative detention, you know the date of your detention, but not the date of your release, which is in the hands of whoever gave the detention order. It's a form of continuous psychological torture for the detainee and his family, who go through the trauma all over again when the detention order is renewed.

His wife, Suha Barghouti, told Amnesty International:

Since the very beginning of our relationship, we have suffered and continue to suffer until now because of Ahmad's continued arrest. Our marriage produced one child, who also suffered terribly, and had a troubled childhood because her father wasn't often around...

The experience of being in administrative detention was not only mentally exhausting for Ahmad, but also for us. Each time the order end date approached, we would prepare ourselves for his release, only to then get shocked by the news of a renewal. The experience is mentally and psychologically draining.

Palestinian administrative detainees – as well as other Palestinian prisoners held by Israel – are routinely subjected to torture and other ill-treatment; poor prison conditions, including inadequate medical care; detention in prisons inside Israel rather than in the OPT; and prohibitions on family visits.

Many Palestinian administrative detainees have reported they were routinely tortured and otherwise ill-treated during arrest and interrogation, especially by the Israel Security Agency.[1418] The use of administrative detention may result in arbitrary detention and, if prolonged or repeated, can amount to cruel, inhuman and degrading treatment or punishment.[1419] The UN Committee against Torture has also repeatedly concluded that the use by Israel of administrative detention, particularly for "inordinately lengthy periods", violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and called upon Israel to urgently end this practice.[1420]

TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment during arrest and interrogation of Palestinians in Israel and the OPT is widespread. For decades, Palestinian detainees, including children, have reported torture or other ill-treatment by the Israel Security Agency, the Israel Prison Service and Israeli military forces during arrest, transfer and interrogation. Prompt, thorough and impartial investigations by Israeli authorities into such allegations are extremely rare.

Widespread patterns of torture and other ill-treatment by Israeli security forces against Palestinians have been documented for decades, particularly in the OPT. Amnesty International's reporting on torture by Israel began in the 1970s.[1421] In the 1980s and 1990s, it and other human rights organizations recorded widespread torture during and after the first *intifada*.[1422] In 1997, CAT made the following damning conclusion:

... the methods of interrogation, which were described by non-governmental organizations on the basis of accounts given to them by interrogatees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee, therefore, must assume them to be accurate. These methods include: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill; and are in the Committee's view breaches of article 16 and also constitute torture as defined in

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[1418] See, for example, Addameer, *The Systemic Use of Torture and Ill-treatment at Israeli Interrogation Centers... Cases of Torture Committed at al-Mascobiyya Interrogation Center,* 23 January 2020, addameer.org/sites/default/files/publications/story_based_torture_final.pdf; Addameer, *"I've Been There": A Study of Torture and Inhumane Treatment in al-Mascobiyeh Interrogation Center*, 2018, addameer.org/sites/default/files/publications/al_moscabiyeh_report_0.pdf; Addameer, *Aggression by Special Units of Israeli Prison Service against Prisoners and Detainees during Transfers and Raids,* 13 December 2014, addameer.org/sites/default/files/publications/special_units_of_the_ips.pdf; Public Committee Against Torture in Israel (PCATI), *"Ticking Bombs": Testimonies of Torture Victims in Israel,* May 2007, hamoked.org/files/2016/7243_eng.pdf

[1419] Convention against Torture, Article 16. See also Amnesty International, *Starved of Justice: Palestinians Detained without Trial by Israel* (previously cited).

[1420] See CAT, Concluding Observations: Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5, paras 22-23; CAT, Concluding Observations: Israel, 23 June 2009, UN Doc. CAT/C/ISR/4, para. 17; CAT, Concluding Observations: Israel, 23 November 2001, UN Doc. CAT/C/XXVII/Concl.5, para. 6(e).

[1421] Amnesty International, *Report and Recommendations of an AI Mission to the Government State of Israel* (Index: MDE 15/002/1980), 7 June 1979, amnesty.org/en/wp-content/uploads/2021/06/mde150021980en.pdf

[1422] See, for example, HRW, *Israeli Interrogation Methods Under Fire After Death of Detained Palestinian: Israel's Supreme Court to Rule on Legality of Interrogation Guideline*, 1 March 1992, hrw.org/legacy/reports/1992/Israel; HRW, *Torture and ill-treatment: Israel's Interrogation of Palestinians from the Occupied Territories*, 1 June 1994, hrw.org/reports/pdfs/i/israel/israel946.pdf; Al-Haq, *Torture for Security: the Systematic Torture and Ill-treatment of Palestinians in Israel,* 1995, alhaq.org/cached_uploads/download/alhaq_files/publications/Torture_for_Security.pdf; Amnesty International, *"Under constant medical supervision": Torture, ill-treatment and the health professionals in Israel and the Occupied Territories* (Index: MDE 15/037/1996), 13 August 1996, amnesty.org/en/wp-content/uploads/2021/06/mde150371996en.pdf;

article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case.[1423]

In 1999 the Israeli Supreme Court delivered a landmark ruling that both revealed and outlawed various methods of torture systematically employed by the Israel Security Agency and other Israeli security forces, overwhelmingly against Palestinian detainees and prisoners.[1424] In 2000, a report by the Israeli State Comptroller concluded that, during the first *intifada*, between 1988 and 1992, the Israel Security Agency "used systematic torture against Palestinians and regularly lied about it".[1425]

Despite these official conclusions and ruling, human rights organizations have continued to report widespread torture and other ill-treatment from the 2000s to the present day. The Public Committee Against Torture in Israel publishes yearly situation reports.[1426] Other Israeli organizations have documented violations in general and in particular interrogation facilities.[1427] Palestinian organizations have done similarly, covering Israeli practices in the West Bank and Gaza Strip.[1428]

Particularly harsh are methods used by the Israel Security Agency to obtain information and "confessions", practices well documented by Amnesty International and other human rights organizations.[1429] Methods reported by Palestinian detainees include painful shackling and binding; immobilization in stress positions; sleep deprivation; the use of threats, including against family members; sexual harassment; the extensive use of prolonged solitary confinement; and verbal abuse. All these methods amount to torture or other ill-treatment. Interrogations under torture can last for weeks, with the detainee routinely denied access to a lawyer.[1430] Torture and other ill-treatment are frequently inflicted with the complicity of medical professionals, especially on detainees staging prolonged hunger strikes.[1431]

Palestinian children are among those subjected to torture and other ill-treatment, including to obtain "confessions", and are denied access to counsel or family visits.[1432] At the end of June 2020, according to B'Tselem, at least 151 children were held in Israeli prisons, at least two of them in administrative detention.[1433]

[1423] CAT, Consideration of Special Report of Israel: Summary Record, 4 September 1997, UN Doc. CAT/C/SR.297/Add.1.
[1424] HCJ, *Public Committee Against Torture in Israel v. the Government of Israel*, Case HCJ 5100/94, judgment, 6 September 1999.
[1425] See Guardian, "Israeli government report admits systematic torture of Palestinians", 11 February 2000, theguardian.com/world/2000/feb/11/israel
[1426] PCATI, Publications, stoptorture.org.il/en/category/publications
[1427] See B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, btselem.org/publications/summaries/200705_utterly_forbidden; B'Tselem and HaMoked, *Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency*, October 2010, btselem.org/download/201010_kept_in_the_dark_eng.pdf; B'Tselem and HaMoked, *Backed by the System: Abuse and Torture at the Shikma Interrogation Facility*, December 2015, btselem.org/sites/default/files2/201512_backed_by_the_system_eng.pdf
[1428] See, for example, Addameer, *The Sounds of Silence: Isolation and Solitary Confinement of Palestinians in Israeli Prisons*, 13 December 2009, addameer.org/sites/default/files/publications/isolation-eng.pdf; Al-Mezan, *Torture and other Forms of Cruel, Inhumane and Degrading Treatment against the Palestinian Population in Gaza Strip by the IOF*, July 2011, available at adalah.org/uploads/oldfiles/Public/files/English/Publications/On%20Torture%20(English).pdf; Addameer, *Torture Positions in Israeli Occupation Prisons*, 2 September 2020, addameer.org/sites/default/files/publications/webenglishbooklet_1.pdf
[1429] See, for example, Addameer, *"I've been There"* (previously cited); Addameer, *Israeli Prison Service against Prisoners and Detainees during Transfers and Raids* (previously cited); PCATI, "*Ticking Bombs*" (previously cited); Amnesty International, *Israel: Blind to violations, deaf to obligations: Israel's human rights record: Amnesty International updated submission to the UN Universal Periodic Review, September 2013* (Index: MDE 15/015/2013), 1 October 2013, amnesty amnesty.org/en/documents/mde15/015/2013/en; Amnesty International, *Israel and the Occupied Palestinian Territories: Briefing to the Committee against Torture* (Index: MDE 15/040/2008); 30 September 2008, amnesty.org/en/documents/MDE15/040/2008/en; Amnesty International, *Israel and the Occupied Palestinian Territories: Update of the Briefing to the Committee against Torture* (Index: MDE 15/014/2009), 30 September 2008, tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT_CAT_NGO_ISR_42_9120_E.pdf
[1430] For recent examples of Palestinian detainees subjected to torture during prolonged interrogation by Israel Security Agency Officers in 2019, see Addameer, *The Systematic Use of Torture and Ill-Treatment at Israeli Interrogation Centers… Cases of Torture Committed at al-Mascobiyya Interrogation Center,* 21 January 2021, addameer.org/publications/systematic-use-torture-and-ill-treatment-israeli-interrogation-centers-cases-torture; Amnesty International, *Starved of Justice: Palestinians Detained without Trial by Israel* (previously cited).
[1431] See, for example, Physicians for Human Rights – Israel and PCATI, *Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill-treatment in Israel*, October 2011, phr.org.il/uploaded/Doctoring%20the%20Evidence%20Abandoning%20the%20Victim_November2011.pdf
[1432] According to Israel Prison Service information, from 2012 to 2015, Israel held an average of 204 Palestinian children in custody each month. See Defense for Children International - Palestine (DCI-Palestine), "Palestinian Children Incarcerated at Higher Rate, Abuses Routine", 18 July 2017, dci-palestine.org/palestinian_children_incarcerated_at_higher_rate_abuses_routine; CAT, Concluding Observations: Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5.
[1433] B'Tselem, Statistics on Palestinian Minors in the Custody of Israeli Security Forces, updated on 28 April 2020, btselem.org/statistics/minors_in_custody (accessed on 30 August 2021).

According to UNICEF, the UN Children's Fund, ill-treatment of Palestinian children in the Israeli military detention system is "widespread, systematic, and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing".[1434] Human rights organizations have come to similar conclusions. Defense for Children International – Palestine concluded in 2016: "Out of 429 West Bank children detained between 2012 and 2015, three-quarters endured some form of physical violence following arrest."[1435] It has reported regularly on the torture and other ill-treatment of Palestinian children, including solitary confinement, blindfolding and violent methods of restraint.[1436] Save the Children has also documented physical abuse of children in military detention across the West Bank.[1437] B'Tselem and HaMoked reported in 2017 on the abuse of hundreds of Palestinian teenagers arrested every year in East Jerusalem:

… it is a case of a plain and clear policy followed by the various authorities: the police who carry out the arrests; the IPS (Israel Prison Service) which keeps the [1438]boys incarcerated in harsh conditions; and finally, the courts, where judges virtually automatically extend the boys' custodial remand, even in cases when the arrest was unwarranted to begin with, even when the interrogation is already over, and even in cases of boys complaining of being subjected to physical abuse.

Even though it is contrary to international law, the Israel Security Agency justifies interrogations where detainees are tortured or otherwise ill-treated as "necessity interrogations".[1439] The Israeli Ministry of Justice refuses to release any information on what "necessity interrogations" entail. According to the Public Committee Against Torture in Israel, at least 15 people in August and September 2019 were subjected to "necessity interrogations".[1440] The UN Committee against Torture has expressed concern about Israel's use of what it termed its "necessity defence", and has reiterated that the "prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture".[1441]

Israeli legislation does not contain an absolute prohibition on torture and does not define torture and other ill-treatment as a crime,[1442] allowing for the practice to continue with impunity. While Israel's Supreme Court in 1999 ruled that torture and other ill-treatment were generally prohibited, it permitted interrogators to use what the Court described as "physical interrogation methods" in "ticking bomb" situations, and allowed them to escape criminal liability or even investigations under the "defence of necessity".[1443] The Supreme Court of Israel never interpreted or limited the scope of the so-called "ticking bomb" situation, leaving it to the discretion of the Israel Security Agency to broadly interpret the situation and implicitly to continue to use torture and other ill-treatment against Palestinian or "security suspects".

Since the Supreme Court decision in 1999, Israeli interrogators have tortured hundreds of Palestinians, citing the "ticking bomb" plea, and not one of them has been prosecuted.[1444] According to the Public Committee Against Torture in Israel, between 2001 and 2020, over 1,300 complaints of torture were submitted to the Israeli Ministry

[1434] UNICEF, *Children in Israeli Military detention: Observations and Recommendations*, 6 March 2013, unispal.un.org/DPA/DPR/unispal.nsf/8fedccc58951b2f485257b35004e7bf0/1ee6b43ba34634f885257b260051c8ff?OpenDocument

[1435] DCI-Palestine, *No Way to Treat a Child: Palestinian Children in the Israeli Military Detention System*, 14 April 2016, dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system, p.8

[1436] DCI-Palestine and World Organization Against Torture (OMCT), *Ill-treatment and Torture of Palestinian Children in Israeli Military Detention and Use of Excessive Force by Israeli Forces,* 27 March 2016, defenceforchildren.org/wp-content/uploads/2016/04/DCI-OMCTisrael.pdf; DCI-Palestine, *Isolated and Alone: Palestinian Children held in Solitary Confinement by Israeli Authorities for Interrogation*, 2 December 2020, nwttac.dci-palestine.org/report_israels_isolation_of_palestinian_child_prisoners_amounts_to_torture

[1437] Save the Children, *Bound, Blindfolded and Convicted: Children held in military detention*, April 2012, resourcecentre.savethechildren.net/sites/default/files/documents/5899.pdf; Save the Children, *Defenceless: The Impact of Israeli Military Detention on Palestinian Children*, 2020, resourcecentre.savethechildren.net/pdf/defenceless_the_impact_of_israeli_military_detention_on_palestinian_children_0.pdf;

[1438] B'Tselem and HaMoked, *Unprotected: Detention of Palestinian Teenagers in East Jerusalem,* October 2017, btselem.org/sites/default/files/publications/201710_unprotected_eng.pdf, p. 30

[1439] PCATI, "Torture in Israel 2021: Situation report", stoptorture.org.il/en/torture-in-israel-today (accessed on 29 August 2021).

[1440] PCATI, "Torture in Israel 2020: Situation report", 2020, stoptorture.org.il/wp-content/uploads/2021/06/%D7%90%D7%A0%D7%92%D7%9C%D7%99%D7%AA.pdf

[1441] Convention against Torture, Article 2(2); CAT, Concluding Observations: Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5, para. 14.

[1442] CAT, Concluding Observations: Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5.

[1443] HCJ, *Public Committee Against Torture in Israel v. the State of Israel*, Case HCJ 5100/94, 6 September 1999. See, for example, PCATI, *"Ticking Bombs"* (previously cited).

[1444] PCATI, *"Ticking Bombs"* (previously cited); Amnesty International, "Israel/OPT: Legally-sanctioned torture of Palestinian detainee left him in critical condition" (previously cited).

of Justice, resulting in only two criminal investigations and no indictments.[1445] In 2021, several UN Special Rapporteurs called on Israel to end impunity for torture and other ill-treatment.[1446]

6.2.3 PATTERN OF INHUMAN OR INHUMANE ACTS

Israel's widespread and systematic use of arbitrary arrest, administrative detention and torture on a large scale against Palestinians, in flagrant violation of several prohibitions under international law, forms part of the state's policy of domination and control over the Palestinian population. Israel's laws and policies of administrative detention and torture have therefore involved the crimes against humanity of "imprisonment or other severe deprivation of physical liberty" and "torture", which are prohibited under the Rome Statute and the Apartheid Convention. When committed in the OPT, acts of torture and other ill-treatment are also war crimes.

6.3 UNLAWFUL KILLINGS AND SERIOUS INJURIES

6.3.1 RELEVANT CRIMES UNDER INTERNATIONAL LAW

Under Article 7(1)(a) of the Rome Statute, "murder" is listed as a prohibited inhumane act, which may constitute the crime against humanity of apartheid when committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over another, with the intention of maintaining that regime. The Apartheid Convention also lists the "murder of members of a racial groups or groups" as an inhuman act and a crime of apartheid when "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".[1447]

By using the term "murder", both the Apartheid Convention and the Rome Statute have specified that the killings have led to arbitrary deprivation of the right to life, which is protected under international human rights law,[1448] committed on a widespread or systematic basis as part of an "attack on a civilian population", meaning there is some degree of planning or policy to commit the crime.[1449] Murder has been defined as the "the death of the victim which results from an act or omission by the accused, committed with the intent either to kill or to cause serious bodily harm with the reasonable knowledge that it would likely lead to death."[1450]

Additionally, the Rome Statute criminalizes "[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."[1451] The Apartheid Convention prohibits the "infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity… "[1452]

Wilful killing and wilfully causing great suffering, or serious injury to body or health. also are listed as grave breaches under the Fourth Geneva Convention,[1453] and war crimes under the Rome Statute.[1454] International criminal tribunals have clarified that the term murder has an identical meaning to the war crime of wilful killing.[1455] The ICTY found that the "mental element" (*mens rea*), that is intent and knowledge of the act, is what distinguishes wilful killing from any other killing, providing that "there is demonstrated an intention on the part of the accused to kill, or inflict serious injury in reckless disregard to human life".[1456]

6.3.2 ISRAELI POLICIES AND PRACTICES

Israeli forces have killed and injured thousands of Palestinian civilians in the OPT since 1967, often in circumstances suggesting that the killings were systematic, unlawful and arbitrary, and with near total impunity.

[1445] PCATI, Torture in Israel Today, stoptorture.org.il/en/torture-in-israel-today (accessed on 29 August 2021).
[1446] OHCHR, "Israel must end impunity for torture and ill-treatment – UN experts", 8 February 2021, ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26729&LangID=E
[1447] Apartheid Convention, Article 2(a)(1).
[1448] ICCPR, Article 6.
[1449] HRC, General Comment 31 (previously cited), para. 18; and UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Principles on Extra-legal Executions), Principle 1.
[1450] ICTY, *Blagojević and Jokić*, Case IT-02-60, Trial Chamber judgment, 17 January 2005, para. 556. See also, in particular, ICTR. *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, para. 589; ICTY, *Prosecutor v. Delalić and Others* (*Čelebići Case*), Case ICTY-96-21, Trial Chamber judgment, 20 February 2001, para. 439; ICTY, *Prosecutor v. Blaškić*, Case IT-95-14, judgment, paras 153, 181 and 217; ICTY, *Prosecutor v. Jelisić,* Case IT-95-10, Trial Chamber judgment, 14 December 1999, paras 35 and 63 (in the latter case, the Trial Chamber ruled that a perpetrator of murder must have had the intention to cause death; the foreseeable consequence theory was not upheld).
[1451] Rome Statute, Article 7(1)(k).
[1452] Apartheid Convention, Article II(a)(ii).
[1453] Fourth Geneva Convention, Article 147.
[1454] Rome Statute, Article 8(2)(a)(i) and 8(2)(a)(iii).
[1455] ICTY, *Prosecutor v. Delalić and Others (Čelebići Case)*, Trial Chamber judgment, 20 February 2001, paras 421-422.
[1456] ICTY, *Prosecutor v. Delalić and Others (Čelebići Case),* Trial Chamber judgment, 20 February 2001, para. 439.

Recent decades have seen a mounting toll of deaths and injuries of Palestinians as a result of shooting or other violence by Israeli soldiers outside the context of armed conflict in the OPT. In Israel, too, there has been a pattern of killings of Palestinian citizens of Israel in law enforcement activities in circumstances that indicate that the killings were unlawful.

According to B'Tselem, between September 2000 and February 2017 Israeli forces killed 4,868 Palestinians in the OPT, including 1,793 children, outside the context of armed conflict.[1457] Law enforcement activities in the OPT, such as supressing protests, carrying out raids to arrest people, enforcing travel and movement restrictions, and conducting search operations, stem from Israel's administration of occupied territory. In conducting such activities, Israeli forces are exercising a policing function that is governed under international human rights law.[1458] Policing activities against civilians during belligerent occupation may never be conducted like hostilities against combatants, as they do not meet the threshold of hostilities regulated by international humanitarian law.[1459] Both the Israeli army and the police, including the border police, have authority to carry out policing activities in the OPT; in East Jerusalem, however, only the Israeli police exercise such authority. The police, not the army, have policing powers in relation to Israeli settlers in the occupied West Bank.

In the context of Palestinian protests in the OPT, the conduct of Israeli forces appears to be intended to stifle dissent and freedom of expression. Palestinians frequently protest against Israeli occupation, as well as the policies and practices that underpin it, such as the blockade on Gaza, the creation and expansion of illegal settlements, land seizures, closures, arrests and detentions. The right to peaceful protest is of particular importance for Palestinians in the OPT, as they have no opportunity to influence the policy of the occupying power through voting or other such means. Israeli authorities, however, view such protests as a threat to security, and have since the beginning of its occupation criminalized them.[1460] During protests, demonstrators often resort to low-level violence, throwing stones and rocks at Israeli soldiers but without posing any serious risk to them due to the distance and the heavily protected nature of their positions. In return, Israeli forces use a wide variety of measures against the protesters. These include less lethal means such as tear gas, pepper spray, stun grenades (sound bombs) and hand-held batons. However, Israeli forces frequently resort to lethal means and fire rubber-coated metal bullets and live firearms ammunition at protesters, causing deaths and injuries. In some cases, they have also killed or injured demonstrators by firing tear gas directly at them from close range or by using tear gas in enclosed spaces causing asphyxiation. In many cases, Israeli forces have used unnecessary or excessive force, unlawfully killing hundreds of Palestinian protesters, including children, when there was no imminent threat to life and wounding thousands more often seriously. The pattern of unlawful killings and infliction of serious injuries against Palestinian demonstrators appears to be aimed at eliminating opposition to Israel's policies and practices in the OPT. Amnesty International has documented this pattern over decades.[1461] Other human rights organizations have done similarly.[1462]

[1457] B'Tselem, *Getting Off Scot-Free: Israel's Refusal to Compensate Palestinians for Damages Caused by Its Security Forces,* March 2017, btselem.org/publications/summaries/201703_getting_off_scot_free

[1458] In particular, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990).

[1459] Marco Sassòli and others, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*, 2011, Chapter 14, p. 4; OHCHR, *International Legal Protection of Human Rights in Armed Conflict,* 2011, p. 66; Louise Doswald-Beck, "The right to life in armed conflict: does international humanitarian law provide all the answers?", December 2006, International Review of the Red Cross, Volume 88, Issue 864, international-review.icrc.org/sites/default/files/irrc_864_8_0.pdf

[1460] B'Tselem, Military Order 101, btselem.org/demonstrations/military_order_101 (accessed on 26 August 2021).

[1461] See, for example, Amnesty International, *Israel/Occupied Territories and the Palestinian Authority: Five years after the Oslo Agreement: Human rights sacrificed for security* (Index: MDE 02/004/1998), 31 August 1998, amnesty.org/en/library/info/MDE02/004/1998/en; Amnesty International, *Israel and the Occupied Territories: Excessive use of lethal force* (Index: MDE 15/041/2000), 18 October 2000, amnesty.org/en/library/info/MDE15/041/2000/en; Amnesty International, *Israel and the Occupied Territories: State assassinations and other unlawful killings* (Index: MDE 15/005/2001), 21 February 2001, amnesty.org/en/library/info/MDE15/005/2001/en; Amnesty International, *Israel and the Occupied Territories: Broken lives – A year of intifada* (Index: MDE 15/083/2001), 13 November 2001, amnesty.org/en/documents/mde15/083/2001/en; Amnesty International, *Israel and the Occupied Territories and the Palestinian Authority: Killing the future: Children in the line of fire* (Index: MDE 02/005/2002), 29 September 2002, amnesty.org/en/library/info/MDE15/147/2002/en; Amnesty International, *Israel and the Occupied Territories: Israel must put an immediate end to the policy and practice of assassinations* (Index: MDE 15/056/2003), 3 July 2003, amnesty.org/en/library/info/MDE15/056/2003/en; Amnesty International, *Israel and the Occupied Palestinian Territories: Enduring occupation: Palestinians under siege in the West Bank* (Index: MDE 15/033/2007), 4 June 2007, amnesty.org/en/library/info/MDE15/033/2007/en; Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited); Amnesty International, "One year on from protests, Gaza civilians' devastating injuries highlight urgent need for arms embargo on Israel" (previously cited).

[1462] See, for example, B'Tselem, *The Occupation's Fig Leaf: Israel's Military Law Enforcement as a Whitewash Mechanism*, May 2016, btselem.org/sites/default/files/publications/201605_occupations_fig_leaf_eng.pdf; Al-Haq, *Al-Haq Report on Killings in 2019,* 5 May 2019, alhaq.org/cached_uploads/download/2020/04/05/palestinians-killed-in-2019-5-april-2020-1586084547.pdf

Israeli forces regularly obstruct and prevent medical personnel from providing medical care to injured protesters, contributing in some cases to their death.[1463] They have also attacked medics seeking to assist the wounded,[1464] and human rights defenders and journalists who are present to document abuses or report on protests, including by firing tear gas canisters and rubber-coated metal bullets at them. In some cases, Israeli forces appear to have deliberately targeted medics, journalists and human rights defenders during protests.[1465]

Also well documented is the pattern of misuse of lethal force and firearms, including intentional lethal use of firearms, by Israeli forces against Palestinians during law enforcement operations in the OPT when there was no imminent threat to life or without exhausting less lethal means of neutralizing a perceived threat.[1466] Additionally, Israeli forces frequently and recklessly fire at or deploy less lethal weapons against bystanders, or damage property of nearby residents.[1467]

The Israeli authorities treat as classified information (for security reasons) the "rules of engagement" guidance issued to soldiers and border police to advise and instruct them as to when and in what circumstances they may resort to force, including lethal force, and what actions, if any, they must take beforehand – for example, to issue warnings.[1468] Some details about the rules have been shared on rare occasions.[1469] One such instance was when some details came to light about the open-fire regulations during the suppression of the Great March of Return protests in the Gaza Strip in 2018. Over a year into the protests, in July 2019, it emerged that the Israeli military had allowed and instructed Israeli snipers to fire at protesters' lower limbs above the knee under their open-fire regulations. After it became clear that such regulations were leading needlessly to deaths and devastating injuries, snipers were briefed to aim below the knee.[1470]

In the OPT, Israeli forces have carried out unlawful killings, caused serious injuries of Palestinians, and damaged Palestinian property, with near total impunity. The Israeli military justice system has consistently failed to deliver justice for Palestinian victims of unlawful killings or serious injuries and their families.[1471] Amnesty International is not aware of any case in which an Israeli army soldier or member of another security force has been convicted of wilfully causing the death of a Palestinian in the OPT since 1987. Israeli soldiers and other security forces personnel have rarely been prosecuted at all in connection with the killings of Palestinians in the OPT, although many of the killings appear to have been unlawful. Convictions have been even rarer. When such convictions have occurred, soldiers have been convicted of manslaughter or lesser offences.[1472] In 2016, B'Tselem decided to stop referring cases of unlawful killings or injuries of Palestinians during law enforcement operations to the Israeli authorities for investigations after 25 years of doing so, because of the "ineffectuality" of the Israeli military

[1463] UN General Assembly, *Implementation of Human Rights Council resolutions S-9/1 and S-12/1*, 5 April 2018, UN Doc. A/HRC/37/38, un.org/unispal/wp-content/uploads/2018/07/A-HRC-37-38.pdf, para. 16; Al-Haq, "IOF Targets Palestinian Civilians with Lethal Force, Killing 13 across the OPT", 22 November 2018, alhaq.org/monitoring-documentation/6134.html; Al-Haq, *Repression of Non-violent Protest in the Occupied Palestinian Territory: Case Study on the village of al-Nabi Saleh, 2011,* alhaq.org/cached_uploads/download/alhaq_files/publications/Nabi-Saleh.pdf; Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited).

[1464] Amnesty International, "Six Months On: Gaza's Great March of Return", 2018, amnesty.org/en/latest/campaigns/2018/10/gaza-great-march-of-return

[1465] Amnesty International, Trigger Happy (previously cited); "Six Months On: Gaza's Great March of Return" (previously cited); Amnesty International, "Six Months On: Gaza's Great March of Return" (previously cited).

[1466] See, for example, Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited); B'Tselem, *The Occupation's Fig Leaf* (previously cited).

[1467] Israeli forces have used tear gas against homes, sometimes injuring people inside – mainly by the asphyxiating effects of tear gas – and have deliberately damaged property such as residents' water storage tanks located on rooftops.

[1468] See, for example, B'Tselem, *The Occupation's Fig Leaf* (previously cited); B'Tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank*, January 2013, btselem.org/download/201212_crowd_control_eng.pdf

[1469] Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited).

[1470] B'Tselem, "After the Supreme Court Praised the Open-Fire Policy, the Military Admits: We killed Protestors for No Reason", 24 July 2019, btselem.org/press_releases/20190724_military_admits_to_killing_protestors_for_no_reason; Amnesty International, "Israel/OPT: Further Information: Gazan's second leg saved from amputation: Yousef al-Kronz" (Index: MDE 15/8234/2018), 17 April 2018, amnesty.org/en/documents/mde15/8234/2018/en

[1471] Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (previously cited); Amnesty International, *Lethal force and accountability for unlawful killings by Israeli forces in Israel and the Occupied Palestinian Territories* (Index: MDE 15/4812/2016), 27 September 2016, amnesty.org/en/documents/mde15/4812/2016/en; Amnesty International, "Submission to The United Nations Independent Commission Of Inquiry On Protests In The Occupied Palestinian Territory", 16 November 2018, on file with Amnesty International.

[1472] See, for example, Amnesty International, "Conviction of Israeli soldier must pave the way for justice for unlawful killings", 4 January 2017, amnesty.org/en/latest/news/2017/01/conviction-of-israeli-solider-must-pave-the-way-for-justice-for-unlawful-killings

justice system, which continues to cover up unlawful acts and protect perpetrators, rather than provide justice for victims.[1473]

Senior Israeli officials have contributed to a culture of impunity by arguing in specific cases that killings and injuries during law enforcement operations were justified and carried out pursuant to orders, and that perpetrators should not be reprimanded or prosecuted.[1474] Some have even called on police and soldiers to kill Palestinians they suspect of attacking Israelis irrespective of whether lethal force is actually strictly necessary to protect life.[1475]

The pattern of unlawful killings and serious injuries inflicted by Israeli forces on Palestinians in the OPT is illustrated by the killing and wounding of Palestinian protesters during the Great March of Return in Gaza in 2018.

GREAT MARCH OF RETURN IN GAZA

On 30 March 2018, Palestinians in Gaza, including refugees, launched the Great March of Return, a series of weekly mass demonstrations along the fence between Gaza and Israel to demand their right to return to their villages and towns in what is now Israel, and to press for an end to Israel's blockade on Gaza.

Even before the protests began, senior Israeli officials publicly threatened that any Palestinian approaching the fence would be shot, and deployed snipers near the fence.[1476] In addition, Israeli officials have threatened, endorsed or encouraged the use of lethal force against protesters. Then defence minister Avigdor Lieberman warned protesters that they were "playing with their lives" before the protests began.[1477] He later said that Israeli soldiers on the Gaza border "did what was necessary".[1478]

At least 17 Palestinians were killed and 5,500 others injured on the first day of protests on 30 March 2018.[1479] During the demonstration, some Palestinian protesters approached the fence in a show of defiance. Amnesty International documented in April 2018 that many of the serious injuries were to the lower limbs, including the knees, causing serious bone and tissue damage, with large exit wounds measuring 10-15mm similar to war wounds.[1480] Doctors told Amnesty International that such serious injuries would likely face further complications, infections and some form of physical disability, such as paralysis or amputation. According to the international humanitarian organization Médecins Sans Frontières, half of the more than 500 patients admitted to its clinics on 1-19 April 2018 were treated for injuries "where the bullet has literally destroyed tissue after having pulverized

[1473] B'Tselem, *The Occupation's Fig Leaf* (previously cited); B'Tselem, "Follow-up: Military Police and MAG Corps investigations of civilian Palestinian fatalities in West Bank, as of April 2011", 30 April 2013 (updated on 26 January 2021), btselem.org/accountability/military_police_investigations_followup

[1474] Former education minister Naftali Bennett responded to a question about the Israeli army using a shoot-to-kill policy on Palestinian children along the fence that separates Gaza and Israel by saying, "They are not children – they are terrorists. We are fooling ourselves. I see the photos." See Times of Israel, "Bennett says IDF should shoot to kill Gazans who cross border", 8 October 2018, timesofisrael.com/bennett-says-idf-should-shoot-to-kill-gazans-who-cross-border
Former education minister Naftali Bennett called for Israeli soldier Elor Azaria, convicted of manslaughter in the deliberate killing of a wounded Palestinian, to be pardoned. Bennett said, "Today a soldier who killed a terrorist who deserved to die, who tried to slaughter [another] soldier, was placed in shackles and convicted as a criminal." See Haaretz, "Netanyahu Supports Pardon for Convicted Hebron Shooter Elor Azaria", 4 January 2017, haaretz.com/israel-news/netanyahu-i-support-pardon-for-elor-azaria-1.5481858
In a Facebook post, former minister of foreign affairs Avigdor Liberman said, "No attacker, male or female, should make it out of any attack alive". Avigdor Liberman, Facebook post, 13 October 2015, facebook.com/AvigdorLiberman/posts/1072953826050898 (in Hebrew).

[1475] HRW, "Israel/Palestine: Some Officials Backing 'Shoot-to-Kill'", 2 January 2017, hrw.org/news/2017/01/02/israel/palestine-some-officials-backing-shoot-kill

[1476] On 31 March 2018, the Israel Defense Forces spokesperson issued the following statement on its Twitter account (@IDFSpokesperson): "Yesterday we saw 30,000 people; we arrived prepared and with precise reinforcements. Nothing was carried out uncontrolled; everything was accurate and measured, and we know where every bullet landed". The tweet was later removed, but a screenshot of it is available on Al-Haq's website. Al-Haq, "30 March: 15 Palestinians Killed, More than a Thousand Injured, as IOF Violently Suppress Palestinian Protestors in the Gaza Strip", 31 March 2018, alhaq.org/advocacy/topics/gaza/1206-30-march-15-palestinians-killed-more-than-a-thousand-injured-as-iof-violently-suppress-palestinian-protestors-in-the-gaza-strip

[1477] Haaretz, "Lieberman warns Gaza protesters Hamas is playing with your lives", 30 March 2018, haaretz.com/israel-news/.premium-lieberman-warns-gaza-protesters-hamas-is-playing-with-your-lives-1.5962232?=&ts=_1527084396406

[1478] Jewish Telegraph Agency, "Israeli soldiers 'did what was necessary' on Gaza border, defense minister says", 1 April 2018, jta.org/2018/04/01/news-opinion/israeli-soldiers-necessary-gaza-border-defense-minister-says

[1479] Amnesty International, "Israel/OPT: Stop the use of lethal and other excessive force and investigate deaths of Palestinian protesters", 31 March 2018, amnesty.org/en/latest/news/2018/03/israelopt-stop-the-use-of-lethal-and-other-excessive-force-and-investigate-deaths-of-palestinian-protesters

[1480] Amnesty International, "Israel/OPT: Gazan at imminent risk of losing his second leg: Yousef al-Kronz", 12 April 2018, amnesty.org/en/documents/mde15/8223/2018/en

the bone".[1481] The nature of these injuries shows that Israeli soldiers were using high-velocity military grade weapons designed to cause maximum harm.[1482]

Although the demonstrations were generally peaceful, there were individuals who threw stones and Molotov cocktails at Israeli forces and some launched incendiary kites and balloons into Israel, resulting in some fires, including of crops.

By the end of 2019, Israeli forces had killed 214 civilians, including 46 children, and injured over 8,000 others with live ammunition. A total of 156 of those injured had to have limbs amputated, according to OCHA. More than 1,200 patients require long-term, complex and expensive therapy and rehabilitation, and tens of thousands more require psycho-social support, neither of which the resources in Gaza can provide.[1483]

Razan Al-Najjar
On 1 June 2018, Israeli sniper fire killed 21-year-old Razan Al-Najjar, a paramedic with the Palestinian Medical Relief Society, while she was treating injured protesters to the east of the southern city of Khan Younis, near the fence separating the territory from Israel, during the Great March of Return protests. She was wearing her white coat, clearly identifying her as a paramedic.

She was shot in the chest at approximately 6.45pm. According to an investigative report by the New York Times, the sniper fired one round of live ammunition into the crowd.[1484] Moments earlier, Razan Al-Najjar and three other Palestinian paramedics moved closer to the fence to provide medical assistance to two injured protesters. All four held their hands up in the air, indicating that they meant no harm.[1485] Neither she nor her colleagues posed any threat to Israeli forces. Razan Al-Najjar was transferred to hospital, where she was pronounced dead at approximately 7.10pm.[1486]

Amnesty International had interviewed Razan Al-Najjar six weeks earlier, on 16 April 2018, while documenting cases of paramedics and medical workers who had been injured by live ammunition or tear gas inhalation during the protests. She told Amnesty International:

I am here in the field from 7am until 10pm with my team. We paid with our own money from our pockets for the supplies we are using. Our team yesterday was intensely targeted. We were targeted with tear gas in this tent right here, in the middle of the tent where we are now. There are so many critical injuries, like cases of amputations of the limbs and direct head injuries. Instead of support or help… we get targeted instead by the Israeli army. I have been injured four times, and even until now I am still getting injuries.[1487]

On 5 June 2018, during an initial examination of the killing, the Israeli military found that no shots were deliberately or directly aimed towards Razan Al-Najjar.[1488] On 29 October 2018, the Israeli Military Advocate General rejected the findings and ordered the military police to open a criminal investigation – almost five months after she was killed.[1489] The results of the investigation have yet to be made public.

Amnesty International believes that Razan Al-Najjar was wilfully killed, a grave breach of the Geneva Conventions and a war crime.

[1481] Médecins Sans Frontières, "MSF teams in Gaza observe unusually severe and devastating gunshot injuries", 19 April 2018, msf.org/palestine-msf-teams-gaza-observe-unusually-severe-and-devastating-gunshot-injuries
[1482] See, for example, Amnesty International, "One year on from protests, Gaza civilians' devastating injuries highlight urgent need for arms embargo on Israel" (previously cited); Haaretz, "'42 Knees in One Day': Israeli Snipers Open Up About Shooting Gaza Protesters", 6 March 2020, haaretz.com/israel-news/.premium.MAGAZINE-42-knees-in-one-day-israeli-snipers-open-up-about-shooting-gaza-protesters-1.8632555
[1483] OCHA, "Two years on: people injured and traumatized during the 'Great March of Return' are still struggling" (previously cited).
[1484] New York Times, "A Day, a Life: When a Medic Was Killed in Gaza, Was It an Accident?", 30 December 2018, nytimes.com/2018/12/30/world/middleeast/gaza-medic-israel-shooting.html
[1485] According to the detailed findings of the independent international commission of inquiry on the protests in the OPT, Razan and the other paramedics held their hands up in the air to indicate to Israeli forces that they meant no harm. See UN Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/CRP.2, 18 March 2019, para. 524.
[1486] New York Times, "A Day, a Life: When a Medic Was Killed in Gaza, Was It an Accident?" (previously cited).
[1487] Amnesty International, interview in person with Razan Al-Najjar, 16 April 2018.
[1488] Israel Defense Forces, Twitter post, 5 June 2018, twitter.com/IDF/status/1004005041701818368?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1004005041701818368%7Ctwgr%5Eshare_3&ref_url=
[1489] Times of Israel, "IDF launches criminal probe into killing of Gazan medic in June", 29 October 2018, timesofisrael.com/idf-launches-criminal-probe-into-killing-of-gazan-medic-in-june; Haaretz, "Israeli Army Opens Criminal Investigation Into Killing of Gaza Medic", 29 October 2018, haaretz.com/israel-news/israeli-army-opens-criminal-investigation-into-killing-of-gaza-medic-1.6609021

Adham Al-Hajjar
Adham Al-Hajjar is a freelance journalist and lives in Gaza City. On 6 April 2018, while he was covering the Great March of Return demonstrations, Israeli snipers positioned along the fence separating Gaza from Israel shot him. The bullet hit his left knee, splintering the bone and damaging muscles and the femoral nerve. He told Amnesty International:

I went down to the fence like any other day to cover the demonstrations at Al-Malaka. At around 2pm or 3pm I was wearing my press jacket and helmet and I remember I wanted to take a photo of a demonstrator near the fence. I went to take the photo, and the second I lifted my camera the next thing I remember was fainting and then realizing I was shot. I kept going in and out of consciousness. Luckily there was another photographer who carried me to the field medic and then to Al-Shifa Hospital. I was wearing my press jacket and clearly holding a camera, and the snipers could see this. This same day… they killed journalist Yasser Murtaja and shot and injured another journalist.[1490]

Adham Al-Hajjar has had a series of operations in Gaza, Egypt and Jordan since his injury. He continues to suffer from partial paralysis of his foot, and requires a knee replacement and ankle surgery. He is unable to obtain the medical help he needs in Gaza because of the debilitated health services there, and Israel will not allow him to travel elsewhere. He told Amnesty International:

I barely sleep any more. My leg hurts every night, the pain is always there. I wake up in the morning and walk to my friend's house close by to drink coffee. I need to do this just to leave my room and to move around or else all I am left with is my mind, and thinking, and it is debilitating…

The bullet that entered my leg did not just enter and leave my body. It entered and stopped everything; it stopped my life. I look back at the last three years and ask what have I done? Nothing. What has progressed in my life? Nothing. Just because a soldier pulled the trigger without thinking of how it would devastate my life. Not just my life, but my family's life. Did he or she ever think about what this would cause? The pain, the loss. I am walking around as a dead man, everything in my life froze from the moment that bullet entered my leg.[1491]

Over recent decades, Israeli forces and security agents have killed dozens of Palestinian citizens and residents of Israel in law enforcement activities in circumstances that indicate that the killings were unlawful. These have taken place in the context of the policing protests against discriminatory Israeli policies and actions in Israel and the OPT and during other, often discriminatory, law enforcement activities. The perpetrators of the violence have enjoyed near total impunity. This pattern is illustrated by Israeli state killings of Palestinian citizens and residents of Israel between 2000 and 2017.

STATE KILLINGS OF PALESTINIANS IN ISRAEL, 2000-2017
Israeli forces and security agents continue to kill unlawfully Palestinian citizens of Israel, including in the context of protests against discriminatory Israeli policies and actions in Israel and the OPT and in other, often discriminatory, law enforcement activities. Such a pattern is possible because of the near total impunity that perpetrators of such violations enjoy.

In 2000, Amnesty International documented the killing of 13 Palestinians, most of them citizens of Israel, by police and other security forces in Israel and East Jerusalem between 29 September and 8 October 2000,[1492] as well as the injury of hundreds of others and the arrest of more than 600 people in protests across Israel against Israeli policies in the OPT at the beginning of the second *intifada*.[1493] A commission of inquiry into the killings,[1494] established by the Israeli government, found in 2003 that there was no justification for the killings. Despite this, in 2008 the Israeli attorney general closed the investigations into the killings without finding any wrongdoing or indicting any officer.[1495]

[1490] Amnesty International, interview by voice call with Adham al-Hajjar, 31 March 2021.
[1491] Amnesty International, interview by voice call with Adham al-Hajjar, 31 March 2021.
[1492] Amnesty International, *Israel and the Occupied Territories: Broken lives – A year of intifada* (previously cited).
[1493] Adalah, "The October 2000 Killings (October Uprising)", 30 September 2020, adalah.org/en/content/view/10127
[1494] Following public pressure, the Israeli government established the Commission of Inquiry into the Clashes between Security Forces and Israeli Citizens in October 2000, also known as the Or Commission, in November 2000, to "investigate the clashes with security forces... in which Jewish and Arab Israeli citizens were killed and wounded." The Commission's mandate did not extend to examining acts of torture or ill-treatment carried out on those arrested by security forces in connection with the demonstrations in Israel. See Amnesty International, *Israel and the Occupied Territories: Broken lives – A year of intifada* (previously cited).
[1495] Adalah, "The October 2000 Killings (October Uprising)" (previously cited).

According to the Mossawa Center, between October 2008 and May 2021 Israeli police killed more than 45 Palestinian citizens of Israel. The organization also documented three cases of Israeli police killing unarmed Palestinian residents of Israel in the same period. A further 15 Palestinian citizens were killed by Jewish citizens and private security agents. The combined total of 63 does not include Palestinian citizens killed in what the authorities classify as "security incidents". According to the Mossawa Center, only two police officers were convicted in cases of killings during this period.[1496]

An investigation by Sikha Mekomit, a Hebrew-language media organization, published in January 2019, revealed that in the previous five years the Israeli police had killed 14 citizens of Israel, of whom nine were Palestinians, one was of Ethiopian origin and the rest had "Middle Eastern surnames". According to the report, the incidents were not security related and no perpetrator was held accountable for the killings.[1497]

On 7 November 2014, Israeli police shot and killed Kheir Hamdan, 22, in Kafr Kanna in northern Israel after he had approached a police vehicle following the arrest of another man from the village. According to Adalah, Kheir Hamdan banged on the police vehicle's windows with an object and then ran away when the officers got out. The officers shot Kheir Hamdan while he was running away and not posing an imminent threat to lives.[1498] Mahash, the internal investigation unit at the Ministry of Justice, closed the complaint. Following a petition to the Supreme Court, the Court asked the State Attorney Office to consider interrogating only one of the policemen who had shot Kheir Hamdan and mistreated him while he was injured. No indictment was filed.[1499]

In the early morning of 18 January 2017, Israeli police shot at 47-year-old teacher Yaqoub Abu Al-Qi'an in the village of Umm Al-Hiran in the Negev/Naqab while he was driving back from his mother's house during a raid by the Israeli forces to carry out demolition orders against homes and structures in the village. As a result, Yaqoub Abu Al-Qi'an lost control of his vehicle, inadvertently striking and killing a policeman. Even though Yaqoub Abu Al-Qi'an had already sustained a gunshot injury, the police again opened fire on him with live ammunition, assuming that the loss of control of the car was an intentional attack. Bleeding in the car, the police prevented paramedics from helping Yaqoub Abu Al-Qi'an for three hours.[1500] The forensic investigation concluded that he bled for about 30 minutes before dying, indicating that he would have lived if he had received proper medical treatment. Public statements made at the time by Israeli minister Gilad Erdan[1501] and police commissioner Peretz Ammar[1502] described Yaqoub Abu Al-Qi'an as a terrorist and a radical Islamist who had wanted to kill the policemen. The Israeli police held his body for a week and released it after a Supreme Court hearing that allowed only a conditional burial,[1503] which limited the number of people who could attend.[1504]

A comprehensive analysis and study of the available footage and recordings by the Forensic Architecture group found that Yaqoub Abu Al-Qi'an was shot despite not posing any imminent threat to security forces or others.[1505] Yet, the Israeli State Prosecutor officially closed the investigation by the Israeli police into what appears to have been an extrajudicial execution, and cleared the officers involved of any misconduct, even though a department in the Israeli Ministry of Justice had found police misconduct.[1506] Adalah and the Public Committee Against Torture in Israel petitioned against the decision to close the investigation and, as of the end of August 2021, were awaiting an outcome.[1507]

[1496] Mossawa Center, مركز مساواة يرافق عائلة منير عنبتاوي [The Mossawa Center accompanies Mounir Anabtawi's family], 29 March 2021, mossawa.org/?mod=articles&ID=944 (in Arabic).

[1497] Sikha Mekomit, בחמש שנים ארבעה-עשר אזרחים נהרגו מירי משטרתי, אפס כתבי אישום [In five years: 14 citizens were killed by police gunfire, zero indictments], 23 January 2019, tinyurl.com/723n6v6u (in Hebrew).

[1498] Adalah, "Adalah Statement on the Killing of Kheir Hamdan by Israeli Police", 9 November 2014, adalah.org/en/content/view/8403

[1499] HCJ, *Rafat Hamdan v. State Attorney and Others*, Case HCJ 4845/17, judgment, 28 December 2019. See also Haaretz, "Israel's High Court Orders Trial for Cop Who Killed Israeli Arab, Four Years After Case Was Closed", 28 October 2019, haaretz.com/israel-news/.premium-israel-s-top-court-orders-trial-for-cop-who-killed-arab-4-years-after-case-closed-1.8045402

[1500] Physicians for Human Rights – Israel, "Why was Ya'qub Abu Al-Qi'an Left Bleeding to Death?", 15 September 2019, phr.org.il/en/why-was-yaqub-abu-al-qian-left-bleeding-to-death

[1501] +972 Magazine, "The killing of a Bedouin man is a weapon in Netanyahu's war for survival", 9 September 2020, 972mag.com/umm-al-hiran-netanyahu-israel-police

[1502] Times of Israel, "Autopsy on Bedouin driver may discredit claims of terrorism", 21 January 2017, timesofisrael.com/autopsy-on-bedouin-driver-may-discredit-claims-of-terrorism

[1503] +972 Magazine, "When the High Court has to intervene so a Palestinian family can mourn", 24 January 2017, 972mag.com/when-the-high-court-has-to-intervene-so-a-palestinian-family-can-mourn

[1504] NCF, "The Time has Come for Israel to Recognize the Bedouin Villages of Atir and Umm Al-Hiran", December 2015, dukium.org/wp-content/uploads/2015/12/Umm-al-Hiran-and-Atir-PP-Final.pdf

[1505] Forensic Architecture, Killing in Umm al-Hiran, 19 January 2019, forensic-architecture.org/investigation/killing-in-umm-al-hiran (accessed on 30 August 2021).

[1506] Haaretz, "Bedouin Was Driving Slowly When Cops Killed Him as 'Car-rammer,' but Police Closed the Case", 3 May 2018, haaretz.com/israel-news/bedouin-drove-at-10-km-h-when-cops-killed-him-as-car-rammer-1.6052518

[1507] Adalah, "Israel's perception of Palestinian citizens as 'enemy' continues to grant blanket impunity to police for killings", 1 October 2020, adalah.org/en/content/view/10141

The culture of impunity in relation to state killings in Israel sits within a broader lack of accountability for police violence in the country. Between 2011 and 2013, according to a study by Adalah, 11,282 complaints of police harassment and brutality were filed with Mahash, the internal investigation unit at the Ministry of Justice. The report found that Mahash closed 93% of the complaints; only 3.3% of the cases filed (373 complaints) led to disciplinary action against police officers, and only 2.7% (306 files) led to criminal prosecution.[1508]

A report by the State Comptroller in 2017 found serious deficiencies with regards to accountability for violations by police officers. It stated that while the unit receives thousands of complaints a year, many are not investigated at all and only dozens lead to disciplinary action or criminal proceedings.[1509]

The persistent failure of Israeli authorities to punish the perpetrators and hold them accountable perpetuates a culture of police violence particularly against Palestinian citizens of Israel.

6.3.3 PATTERN OF INHUMAN OR INHUMANE ACTS

Patterns of excessive use of force against Palestinians during law enforcement operations, information available about the Israeli military's "rules of engagement", as well as Israeli officials' statements on responding to such operations particularly during protests, reflect a planned and persistent policy of shooting to kill or maim Palestinians. The policy has led to the killing of thousands of Palestinians and the wounding of hundreds of thousands, many of whom have been left with permanent, catastrophic and often life-changing injuries.

These practices are consistent with the inhuman and inhumane acts of "murder" and "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health"[1510] or the "infliction upon the members of a racial group or groups of serious bodily or mental harm" enumerated in the Rome Statute and the Apartheid Convention.

Additionally, under international humanitarian law, Palestinians in the OPT are "protected persons" entitled to special protection and humane treatment at all times.[1511] As such, the intentional and unjustified killing and injury of Palestinians in the OPT during law enforcement operations may amount to the war crimes of wilful killing or wilfully causing great suffering or serious injury to body or health.

6.4 DENIAL OF BASIC RIGHTS AND FREEDOMS, AND PERSECUTION

6.4.1 RELEVANT CRIMES UNDER INTERNATIONAL LAW

The Apartheid Convention identifies acts listed in Article II(c), which defines the crime of apartheid, as including:

Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

The acts enumerated in Article II(c) appear to follow and complement the list of rights guaranteed under Article 5 of the ICERD, reinforcing the fundamental responsibility of states parties in guaranteeing the enjoyment of these rights through the prohibition and elimination of racial discrimination in all its forms. Further, the list of acts is intended to be "illustrative and inclusive rather than comprehensive and exclusive", meaning that not all these rights need to be violated in order to establish the crime of apartheid. Other prohibited acts found in Article 5 of the ICERD might be considered if they are relevant to preventing "participation" and "full development" of the racial group.[1512]

[1508] See, for example, Adalah, *Mahash: Green Light for Police Brutality,* September 2014, adalah.org/uploads/oldfiles/Public/files/English/Newsletter/Sep-2014/Adalah-Mahash-Data-Report-Sep-2014.pdf
[1509] Globes, תלונות על אלימות 6,300: המבקר - שוטרים הועמדו לדין 200 רק [State Comptroller: 6,300 complaints of violence – only 200 police officers were prosecuted], 5 April 2017, globes.co.il/news/article.aspx?did=1001184227&fbclid=IwAR10ZY7R6UdUVVQ6uu5q-c4wtYPeiSJwYI-NPs5jVh04IvtczPkqAb_IHoE (in Hebrew).
[1510] Rome Statute, Article 7(1)(k).
[1511] Fourth Geneva Convention, Article 27(1).
[1512] Virginia Tilley, *Beyond Occupation: Colonialism and International Law in the Occupied Palestinian Territories,* 2012, p. 146.

The Rome Statute provides that crimes against humanity (which include apartheid) may involve "… other inhumane acts of a similar character [to those provided elsewhere in Article 7(1)] intentionally causing great suffering, or serious injury to body or to mental or physical health."[1513] This provision, which was included in the statutes of previous international tribunals,[1514] is designed to ensure that acts not explicitly criminalized in Article 7(1) but similar to them in "nature and gravity"[1515] are not excluded.[1516]

Several scholars have maintained that for the purposes of acts constituting the crime of apartheid, the acts listed in Article II(c) of the Apartheid Convention may fall under Article 7(1)(k) ("other inhumane acts") of the Rome Statute, in conjunction with its Article 7(1)(j) ("apartheid"). In this context, experts on the Rome Statute have explained why these acts enumerated in Article II(c) may be considered, in the context of apartheid, as crimes against humanity:

Although some may contend that some of the other acts listed in Article II, such as the denial of the right to work or to education, although of course, very serious deprivations, are not of the same nature as the acts listed in Article 7, para.1, this contention overlooks the devastating impact on the lives of those denied these rights recognized by the Universal Declaration of Human Rights and guaranteed by the International Covenant on Economic, Social and Cultural Rights, and on society deprived of the full potential of its members.[1517]

The "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity"[1518] on "political, racial, national, ethnic, cultural, religious, gender… or other grounds that are recognized as impermissible under international law"[1519] constitutes the crime against humanity of persecution, as per the Rome Statute, when committed in the context of other Rome Statute crimes.

6.4.2 ISRAELI POLICIES AND PRACTICES

As analysed in Chapter 5, Israel imposes a wide range of discriminatory and exclusionary laws, policies and practices against the civilian Palestinian population that have clear – and foreseeable – consequences for the enjoyment of human rights and amount to "deliberate creation of conditions preventing the full development" of Palestinian communities in Israel and more acutely in the OPT. Some of these discriminatory laws extend to Palestinian refugees, who were formerly citizens of British mandate Palestine, and their descendants, residing in the OPT or outside Israel and the OPT. While some of the violations are the direct result of official policy and conduct, others result from more "downstream" and indirect consequences, where policies severely impede the enjoyment of other rights, including economic, social and cultural rights.

The systematic denial of the right to a nationality and severe restrictions imposed by Israel on movement and residence, including the right to leave and to return to one's country, go beyond what is justifiable under international law. Their sweeping application has targeted the Palestinian population in a discriminatory manner on the basis of their racialized identity as Palestinians. Thus, these restrictions obstruct Palestinians' participation in political, social, economic and cultural life in Israel and the OPT and deliberately prevent their full development as a group. These restrictions further undermine the enjoyment of a host of basic rights and freedoms, including the rights to freedom of opinion and expression, freedom of peaceful assembly and association, livelihood, work, health, food and education, as has been demonstrated in this report. Beyond that, Israel has also imposed laws and policies that have restricted the enjoyment of these rights and contributed to the "deliberate creation of conditions preventing the full development" of Palestinians.

Israel denies Palestinian refugees outside Israel and the OPT the right to citizenship and prevents them from returning to their homes. This is a serious violation of Palestinian refugees' "right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence"[1520] and, committed as it has been as part of the system of oppression and domination, the violation amounts to an inhuman or inhumane act

[1513] Rome Statute, Article 7(2)(k). While the analysis here will focus on the Rome Statute, the Apartheid Convention's criminalization, in Article II(c), of "denying to members of a racial group… basic human rights" roughly covers the specific violations and crimes addressed in this section, bearing in mind that causing malnutrition involves violating "basic" human rights such as to an adequate standard of living, including food, and to life, in particular of children.
[1514] The ICC Pre-Trial Chamber distinguished the Rome Statute's provision for "other inhumane acts" from that of previous tribunals by stating that, unlike them, Article 7(2)(k) is not a "catch-all provision" but rather "contains certain limitations, as regards to the action constituting an inhumane act and the consequence required as a result of that action." See ICC, *Prosecutor v. Katanga and Ngudjolo*, Case ICC-01/04-01/07, Pre-Trial Chamber, Decision on the Confirmation of Charges, 30 September 2008, para. 450.
[1515] ICC, Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2 (2000), Article 7(1)(k)(2).
[1516] Mark Klamberg, *Commentary on the Law of the International Criminal Court*, 2017, p. 60.
[1517] Kai Ambos and others, "Article 7 – Crimes against humanity – the crime of apartheid", in Otto Triffterer and Kai Ambos (editors), *The Rome Statute of the ICC: A Commentary*, 2016, pp. 283-4.
[1518] Rome Statute, Article 7(2)(g).
[1519] Rome Statute, Article 7(1)(h).
[1520] Apartheid Convention, Article II(c).

under respectively the Apartheid Convention and the Rome Statute. In addition, by violating these rights Israel prevents Palestinian refugees from "participating in the political, social, economic and cultural life of the country," which appears intended to ensure that Palestinians with the right to vote remain a minority within Israel.

The case of Mustafa Al-Kharouf, who together with his family has been trying to legalize his status in East Jerusalem for over 22 years, first as a child and then as an adult, exemplifies the wide-ranging impact of Israel's discriminatory citizenship and status policies on the fundamental rights of those affected who are unable to lead a normal life.

MUSTAFA AL-KHAROUF

Mustafa Al-Kharouf is a Palestinian photojournalist who was born to an Algerian mother and a Palestinian Jerusalemite father. He lives in occupied East Jerusalem with his wife, Tamam Al-Kharouf, and their children Asia, Iyad and Iyas. Israel denies Mustafa Al-Kharouf the right to live in Jerusalem and maintains a threat to deport him. Israel's measures deny him his right to reside within his own country, freedom of movement, access to health, and the right to work.

Mustafa Al-Kharouf moved to East Jerusalem with his family from Algeria when he was 12. Soon after the family returned to East Jerusalem, they submitted family unification requests with Israeli authorities, requesting a legal status to reside in the city. However, they were subjected to the "centre of life" condition that the Israeli authorities have applied in a discriminatory manner to Palestinian Jerusalemites since 1988. Mustafa Al-Kharouf's family had to wait six years before meeting that condition. By the time they met the condition, Mustafa Al-Kharouf had turned 18 and his family was unable to apply for child registration or family unification on his behalf, rendering him stateless.

Mustafa Al-Kharouf then started a long legal battle with the Israeli Ministry of Interior to validate his legal status in East Jerusalem. He holds a temporary Jordanian travel document, which Jordan issues for stateless Palestinians living in East Jerusalem. He was also granted a temporary work visa by Israeli authorities on humanitarian grounds, but this was only valid from 27 October 2014 to 1 October 2015.

In June 2016, the Israeli Ministry of Interior refused to renew his work visa citing "security reasons". His lawyer, Adi Lustigman, from the Israeli human rights organization HaMoked, believed that the ministry's rejection was related to his work as a photojournalist documenting human rights abuses by the Israeli authorities in East Jerusalem. In May 2017, Mustafa Al-Kharouf's lawyer filed an appeal at a court of appeal. After negotiations, the Ministry of Interior allowed him to submit an application for family unification and to stay at his home in East Jerusalem until a decision was made. However, the ministry rejected his application for family unification on 23 December 2018. The decision, according to his lawyer, was based on an unsupported claim that Mustafa Al-Kharouf is an activist with Hamas and that he is engaged in illegal activity.[1521]

On 21 January 2019, Mustafa Al-Kharouf's lawyer appealed the decision rejecting the family unification request. A few hours later, at approximately 1am on 22 January 2019, Israeli police and immigration inspectors, acting on a Ministry of Interior deportation order, raided his home and arrested him. He was held in Givon prison in the Negev/Naqab inside Israel, in contravention of international law. On 3 April 2019, an Israeli district court rejected Mustafa Al-Kharouf's appeal regarding the family unification request. However, the court gave an interim order not to deport him so he could bring his case before the Supreme Court.

During the night of 21-22 July 2019, Israeli immigration authorities took Mustafa Al-Kharouf from Givon prison and attempted to deport him to Jordan through the Allenby/King Hussein crossing, but Jordanian authorities refused him entry. He was then taken to the Wadi Araba crossing, where Jordanian authorities again refused him entry. This deportation attempt lasted over half of a day during which Mustafa Al-Kharouf's whereabouts were unknown to either his family or his lawyer. Mustafa Al-Kharouf's lawyer was later informed that he was being taken back to Givon prison to be held in custody "pending deportation".

On 25 September 2019, the Israeli Tribunal for Review of Custody of Illegal Aliens ruled that Mustafa Al-Kharouf must be released if he was not deported within a month. On 24 October 2019, Mustafa Al-Kharouf was released from detention after spending nine months in prison. Under the terms of his release he had only 21 days to obtain a legal status to reside in East Jerusalem or else leave the country.[1522] His lawyer asked for an extension.

[1521] Amnesty International, "Israel/OPT: Palestinian photojournalist at imminent risk of being ripped away from his family", 23 May 2019, amnesty.org/en/latest/news/2019/05/israelopt-palestinian-photojournalist-at-imminent-risk-of-being-ripped-away-from-his-family

[1522] Amnesty International, "Israel/OPT: Stateless Palestinian Released on Bail: Mustafa al-Kharouf" (Index: MDE 15/1336/2019), 5 November 2019, amnesty.org/en/documents/mde15/1336/2019/en

Mustafa Al-Kharouf currently holds a temporary permit of residence that must be renewed every three months.[1523] The visa allows him to travel between East Jerusalem, the rest of the West Bank and Israel, but he is unable to work or access healthcare under Israel's national health insurance schemes. As each expiry date approaches the anxiety heightens for him and his family. His wife, Tamam Al-Kharouf, told Amnesty International:

It hasn't been easy. I thought the worst part was over when he was finally released from prison, but it is not. Mustafa hasn't been handling this well; my husband is still being treated as if he was a visitor and not a resident of his city… He's been accused of being an activist for Hamas, whatever this means. And these were the grounds they relied on to reject our family reunification request once again… To be honest, I am a little at ease because his deportation is no longer an option since the countries they want to deport him to are refusing to allow it. I mean now, our worst-case scenario is that we move to a place like Kufr Aqab, which is problematic to be honest. It will be difficult for Mustafa, as I'll be able to move freely, while he will be limited and stuck – regarding commuting, accessing health facilities, and being able to do his job as a photojournalist.[1524]

Mustafa Al-Kharouf told Amnesty International:

There is no way out. I try to normalize my situation as much as possible or else I will go crazy or depressed. I do everything with an expiry date on it, whether they are my visas, my activities, my movement. According to my release terms, I have to be home by 10pm and could leave only after 5am every day. I never put myself in a position of risk; this risk would entail being caught and sent back to prison just because that day an Israeli authority figure might stop me randomly at a "flying checkpoint" or during a random search and ask for my papers… and require me having to explain my situation from scratch for them for hours and hours. I avoid these situations; I rarely ever go to the West Bank just so I don't have to deal with soldiers at Qalandia checkpoint. I've left one big prison to enter another or if we're being more accurate, I was always in prison – it just changed form a little.[1525]

Mustafa Al-Kharouf and his family last submitted a family reunification request in May 2020. The Ministry of Interior rejected it in December 2020 again based on allegations that he posed a "security threat" to Israel. The family appealed, but on 30 May 2021 Mustafa Al-Kharouf's lawyer notified him that this had been rejected on security grounds based on secret information. He spoke to Amnesty International after receiving the news:

I do not understand this logic, or lack of it. I could understand them beating me, shooting me, detaining me, as they have done, due to my work, but cannot understand the rationale of holding secret evidence against me and keeping on flipping my life upside-down every few months just because they can. I want to tell my lawyer to ask them to make sure that I am the person in question, to double-check if they have me mixed up with someone else, or to ask them to at least let me know how they've affiliated me with Hamas for example, or am doing work that somehow displeases the State of Israel. I wish I could get to meet face to face with whoever it is sitting behind a desk and making these irrational decisions about my life. I need some kind of logic to understand my situation, because none of this makes any sense.[1526]

6.4.3 PATTERN OF INHUMAN OR INHUMANE ACTS

Israeli authorities' intent to commit the crime against humanity of persecution is evident from their long-standing discriminatory laws, policies and practices against the Palestinian population in the OPT that have resulted in numerous restrictions on fundamental rights, including arbitrarily restricting Palestinians' freedom of movement and residence in their communities, their right to family life, and their rights to access livelihoods, housing, food, water, essential healthcare services and education. These serious violations have been committed in the context of the multiple commission of crimes under the Rome Statute within the territory of Israel and the OPT. In almost every instance, the persecution faced by the Palestinian population tracks the acts of persecution enumerated in Article II(c) of the Apartheid Convention.

Amnesty International has therefore concluded that, at least as regards the denial of human rights of the Palestinian population through years of deliberate discriminatory and exclusionary policies and official Israeli statements that are reflected in practice, Israeli authorities have committed the crime against humanity of, or other inhumane act similar to, "persecution" within the meaning of the Rome Statute and "denial of basic human rights" that "prevent the racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing [its or their] full development" under the Apartheid Convention.

[1523] A temporary residence permit issued under Article 2(a)(5) of the Entry into Israel Law. It is used for asylum seekers.
[1524] Amnesty International, interview by voice call with Tamam Al-Kharouf, 22 March 2021.
[1525] Amnesty International, interview by voice call with Mustafa Al-Kharouf, 20 April 2021.
[1526] Amnesty International, interview by voice call with Mustafa Al-Kharouf, 2 June 2021.

6.5 SECURITY CONSIDERATIONS AND INTENT TO COMMIT APARTHEID

Israeli authorities justify on security grounds many of the policies presented in this report, including policies of land confiscation, denial of building and planning permits, residency revocations, restrictions of movement, and violations of civil and political rights. It is true that the State of Israel has an obligation under international law to protect all persons within its jurisdiction and control from violence, and therefore has a duty to ensure security within all territories that it controls. In the context of an international armed conflict and a military occupation there may be circumstances where treating different groups differently is based on lawful grounds and this may therefore occur in a manner that does not infringe the prohibition of discrimination. Indeed, as set out above, international humanitarian law allows, and in certain circumstances requires, nationals of the occupying power and the occupied population to be treated differently. However, security-related policies must comply with international law, including by ensuring any limitations or restrictions to rights are necessary and proportionate to the security threat. As this report illustrates, Israeli authorities have, on the contrary, pursued policies that deliberately discriminate against Palestinians over a prolonged period and in a particularly cruel manner in ways that have no reasonable basis in security, but which can be explained much more readily as consequent to an intent to control the Palestinian people and exploit their resources.

Firstly, many of the violations that are documented in this report simply have no justification in security or "defence". The prolonged and cruel discriminatory denial of Palestinians' access to their land and property that was seized in a violent and discriminatory manner has no security rationale. There is no security basis for the effective segregation of Palestinian citizens of Israel through discriminatory laws on planning and access to housing. The denial of their rights to claim their property and homes seized under the authority of racist laws, or to move into and reside wherever they wish, including in what have been designated as exclusively Jewish communities, is more likely to lead to security challenges than to encourage harmonious relations.

Other violations against the rights of Palestinian citizens of Israel also fall short of a link to security. Arbitrary and discriminatory interference with the rights of Palestinian citizens of Israel to marry and extend rights of residence to their spouses and children, in the absence of evidence that particular individuals pose a threat, cannot be justified on security grounds.[1527] There is no security justification for the bifurcation of nationality and citizenship within Israel and the limitations that this imposes on Palestinians in exercising their rights. The real reason for these violations and the intention for the differential action must be sought elsewhere.

Secondly, and as seen above, differential treatment in occupied territories cannot be tolerated where the intention of the difference is to privilege the nationals of the occupying power to the lasting detriment of the occupied population. As established above, certain limitations on human rights may be permissible in situations of occupation, and thus administrative detention in East Jerusalem, the rest of the West Bank or the Gaza Strip may be justifiable under international law if conducted in good faith and adhering to the law of occupation. However, this justification for the differential treatment cannot extend to the settlement of Jewish Israelis, whether with the tacit consent or active support of the State of Israel, in the occupied territories. It cannot extend to the murders, the targeted killings, the torture, the deportation and other forcible transfer of populations that have been perpetrated in the OPT and documented in this report.

Thirdly, while some policies that have the effect of discriminating against Palestinians may have been designed to fulfil legitimate security objectives, they have been implemented in a blanket manner and for prolonged periods, thus failing to comply with international law. For example, this report details Israel's policies towards Palestinians in Gaza following the withdrawal of settlers and troops in 2005 and during the time the territory has been under the de facto administration of Hamas. The report illustrates how policies of sweeping, severe and long-term restrictions on freedom of movement, for example, have no security justification. Meanwhile, certain policies, such as the creation of access-restricted zones around Gaza, both on land and in the sea, may have been designed for a legitimate security purpose, namely to prevent Hamas from using these areas to launch attacks against Israelis. However, their implementation over a prolonged period has resulted in systematic violations of human rights. This report shows that the policy to maintain these zones has resulted in systematic violations of human rights with severe impact on the livelihoods of Palestinians, particularly farmers and fishermen who are violently denied access to agricultural land and fishing waters within them.

The report provides other examples of such Israeli policies, including the declaration of closed military zones, the use of administrative detention, and the imposition of certain restrictions on movement such as travel bans and blocking access to certain areas. Taken out of context, these could be seen as grounded in legitimate security concerns. However, examined in the context of systematic discrimination and oppression, and in the light of the mass human rights violations these policies have entailed, it becomes clear that the element of genuine security

[1527] In other words, the differential treatment is not proportionate to any legitimate aim of the state (including the legitimate aim of ensuring the security of the state and its nationals).

considerations has been far outweighed by the clear, and illegitimate, intent to dominate and oppress. The report demonstrates that these policies, while justified by Israel on security grounds, have consistently been implemented in a grossly disproportionate and discriminatory manner, resulting in mass, systematic violation of Palestinians' human rights.

Consequently, security is not a viable explanation for the prolonged and cruel discrimination to which Palestinians have been subjected. Instead, the evidence of widespread, systematic and cruel violations documented in this report leads to the conclusion that the intention is to ensure Jewish Israeli domination over and oppression of Palestinians in all areas under Israel's control. This intention can be inferred from Israel's systematic privileging of Jewish Israelis over Palestinians in all geographical territories under its control, by its discriminatory denial of the right of return to all Palestinian refugees, by the illegal settlement of its citizens in the occupied territories and its exploitation of the resources there, and by its illegal annexation of East Jerusalem and extension of lesser rights to Palestinians living there compared to Israeli citizens.

6.6 CRIME AGAINST HUMANITY OF APARTHEID

This chapter has demonstrated that Palestinians have been subjected to acts proscribed under customary international law and by both the Apartheid Convention and the Rome Statute, in Israel and the OPT and in all situations where Israel exercises control over Palestinians' enjoyment of their rights. Where these serious human rights violations are committed as part of a widespread or systematic attack directed at a civilian population pursuant to or in furtherance of a state or organizational policy, and with the intention to maintain the systematic, cruel and prolonged control of the Palestinians to the benefit of Jewish Israelis, these amount to crimes against humanity of apartheid.

The evidence set out demonstrates that multiple (indeed a multitude) of proscribed acts have been committed in Israel and the OPT and against Palestinians whose rights are under the control of Israel. These serious human rights violations have been committed in the context of a system of oppression and domination of the Palestinian people by the Israeli state for the benefit of Jewish Israelis with the intention of maintaining that regime. By their very nature, such discriminatory, segregationist laws, policies and practices are systematic. Further, the attack is widespread because the crimes have been committed in a way that is "massive, frequent, [and] carried out collectively with considerable seriousness and directed against a multiplicity of victims".[1528] The attack against the Palestinian population is therefore both widespread and systematic.

Considering among other things the legally mandated nature of many of these inhuman and inhumane acts and the failure of Israeli courts to provide remedies or to end these violations, the only logical inference is that these violations have been committed as part of an attack directed at the civilian population "pursuant to or in furtherance of a State or organizational policy to commit such attack".[1529] The nature of the proscribed acts documented in this chapter make it clear that these violations have been "planned, directed or organized" by the Israeli authorities and indeed that many of these violations have been committed on the basis of and with reference to Israeli laws and official policies, and thus by their very nature have been committed in furtherance of a state policy. The only conclusion, after careful consideration of the factual findings, is that they form part of a widespread as well as systematic attack directed against the Palestinian population, and that the crimes committed within the context of this attack constitute crimes against humanity as defined in international law.

[1528] ICTR, *Prosecutor v. Akayesu*, Case ICTR-96-4, Trial Chamber judgment, 2 September 1998, para. 580.
[1529] Rome Statute, Article 7(2)(a).

7. CONCLUSIONS AND RECOMMENDATIONS

7.1 CONCLUSIONS

7.1.1 A SYSTEM AND CRIME OF APARTHEID AGAINST PALESTINIANS

This report analyses whether institutionalized discrimination committed in Israel and the OPT and against Palestinian refugees amounts to a system of apartheid as well as whether the serious human rights violations committed within the context of implementing this system constitutes the crime of apartheid.

Amnesty International has considered whether Israeli laws, policies and practices deployed against the Palestinian people violate international human rights law as well as whether they constitute crimes under the Apartheid Convention and the Rome Statute. Amnesty International understands apartheid as condemned by the ICERD to constitute the creation and maintenance of a system or regime of oppression and domination by one racial group over another. The crime of apartheid is committed when inhuman or inhumane acts are committed within the context of a widespread or systematic attack directed at a civilian population with the intention of creating or maintaining such a system of oppression and domination by one racial group over any other racial group or groups.

The totality of the regime of laws, policies and practices described in this report demonstrates that Israel has established and maintained an institutionalized regime of oppression and domination of the Palestinian population for the benefit of Jewish Israelis – a system of apartheid – wherever it has exercised control over Palestinians' lives since 1948. The report concludes that the State of Israel considers and treats Palestinians as an inferior non-Jewish racial group. The segregation is conducted in a systematic and highly institutionalized manner through laws, policies and practices, all of which are intended to prevent Palestinians from claiming and enjoying equal rights with Jewish Israelis within the territory of Israel and within the OPT, and thus are intended to oppress and dominate the Palestinian people. This has been complemented by a legal regime that controls (by negating) the rights of Palestinian refugees residing outside Israel and the OPT to return to their homes.

Israel has ensured that the Palestinian people are segmented into different geographical areas and treated differently with the intention and effect of dividing the population while consistently preventing its members from exercising their fundamental human rights. Thus, the legal fragmentation of the Palestinian population between Israel, East Jerusalem, the rest of the West Bank, the Gaza Strip and the refugee communities serves as a foundational element of the regime of oppression and domination of Palestinians. This legal fragmentation denies Palestinians the possibility of realizing equality within Israel and the OPT.

Other aspects of the system of oppression and domination include legal regimes that ensure the denial of nationality and residence, denial of family life, severe restrictions on freedom of movement, and discriminatory seizure and allocation of and access to resources. All of these have enabled and resulted in grave violations of social and economic rights, including access to housing, adequate standards of living, livelihoods, work, healthcare, food security, water and sanitation, and education. The outcome of these legal regimes has been the prolonged and cruel violation of the human rights of individual Palestinians wherever Israel exercises control over their enjoyment of these rights.

Israel's system of institutionalized segregation and discrimination against Palestinians, as a racial group, in all areas under its control amounts to a system of apartheid, and a serious violation of Israel's human rights obligations. Almost all of Israel's civilian administration and military authorities, as well as governmental and quasi-governmental institutions, are involved in the enforcement of a system of apartheid against Palestinians across Israel and the OPT and against Palestinian refugees and their descendants outside the territory. The intention to maintain this system has been explicitly declared by successive Israeli political leaders, emphasizing the overarching objective of maintaining Jewish Israeli domination by excluding, segregating and expelling Palestinians. The intention was clearly crystallized in the 2018 nation state law, which constitutionally enshrined racial discrimination against non-Jewish people in Israel and the OPT. Senior civilian and military officials have also issued numerous public statements and directives over the years that reveal, maintain and enforce the institutionalized regime of systematic oppression and domination of Palestinians, being fully aware of, and therefore fully responsible for, the atrocious consequences the regime has for the lives of the Palestinian population.

Israel continues to perpetrate widespread as well as systematic human rights violations against the Palestinian population against a backdrop of decades of state-sponsored discrimination, segregation and persecution that has targeted the Palestinian population as a whole on the basis of their non-Jewish identity and national status. This report documents inhuman and inhumane acts, serious human rights violations and crimes under international

law, committed against the Palestinian population with the intent to maintain this system of oppression and domination.

Amnesty International has examined specifically the inhumane acts of forcible transfer, administrative detention and torture, unlawful killings and serious injuries, and the denial of basic freedoms or persecution committed against the Palestinian population in Israel and the OPT. The organization has concluded that the patterns of proscribed acts perpetrated by Israel form part of a systematic as well as widespread attack directed against the Palestinian population, and that the inhuman or inhumane acts committed within the context of this attack have been committed with the intention to maintain this system and amount to the crime against humanity of apartheid under both the Apartheid Convention and the Rome Statute.

7.1.2 LEGAL REMEDIES

Legal remedies exist, including at the international level, to address, at least in part, the system and crime of apartheid perpetuated by Israel against Palestinians.

The State of Palestine is pursuing one through the UN human rights system. On 23 April 2018, the State of Palestine submitted against Israel one of the first interstate communications to CERD.[1530] The communication was deposited pursuant to Article 11(1) of the ICERD, which provides the following:

If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.[1531]

The State of Palestine's interstate communication provided that Israel "has violated articles 2, 3 and 5 of the Convention with regard to Palestinian citizens living in the Occupied Palestinian Territory, including East Jerusalem."[1532]

The claim is based on the fact that the prohibition of apartheid, as a system of institutionalized discrimination, entails an obligation on the State of Israel to "condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction".[1533] CERD has concluded that Israel has violated Article 3 of the ICERD, although it did not explicitly used the term "apartheid" in reaching these conclusions, and called on Israel to eradicate all such policies and practices against non-Jewish communities and in particular "policies or practices that severely and disproportionately affect the Palestinian population" in Israel and the OPT.[1534]

Following responses and further statements by both the State of Israel and the State of Palestine, CERD decided on 12 December 2019 that it had jurisdiction to deal with the interstate communication submitted by the State of Palestine.[1535] On 30 April 2021, it rendered the interstate communication by the State of Palestine admissible,[1536] and requested its chair, in accordance with Article 12(1) of the ICERD, to move the communication to an ad hoc conciliation commission.[1537]

Another remedy involves investigations and prosecutions, since the crime against humanity of apartheid entails individual international criminal responsibility,[1538] which applies to individuals, members of organizations and

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[1530] CERD, *Interstate communication State of Palestine v. Israel,* February 2020, ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx (accessed on 28 July 2021).
[1531] For more information, see, for example, David Keane, "ICERD and Palestine's Inter-State Complaint", 30 April 2018, ejiltalk.org/icerd-and-palestines-inter-state-complaint
He notes: "Of the international human rights treaties, only the ICERD has a compulsory inter-state complaints mechanism, found in Articles 11-13, which applies to all States Parties upon ratification."
[1532] CERD, *Inter-State communication submitted by the State of Palestine against Israel: decision on admissibility*, 17 June 2021, UN Doc. CERD/C/103/4, para. 2.
[1533] ICERD, Article 3.
[1534] CERD, Concluding Observations: Israel, 27 January 2020, UN Doc. CERD/C/ISR/CO/17-19, paras 21-24; CERD, Concluding Observations: Israel, 28 February 2012, UN Doc. CERD/C/ISR/CO/14-16, paras 24, 27, 28.
[1535] See, for example, CERD, *Inter-State communication submitted by the State of Palestine against Israel*, 12 December 2019, UN Doc. CERD/C/100/5.
[1536] CERD, *Decision on the admissibility of the inter-State communication submitted by the State of Palestine against Israel*, 20 May 2021, UN Doc. CERD/C/103/R.6, para. 65,
[1537] CERD, *Decision on the admissibility of the inter-State communication submitted by the State of Palestine against Israel* (previously cited), para. 66.
[1538] Rome Statute, Article 25. See also, for example, Apartheid Convention, Articles 1-3.

representatives of the state who commit and participate in the commission of the crime of apartheid.[1539] Thus, all those with jurisdiction over the commission of the crime against humanity of apartheid, including Israel itself, the Palestinian authorities, the international community and the ICC, can and should investigate the commission of these crimes. Where there is reasonable suspicion that individuals bear individual criminal responsibility for the commission of these crimes, they can and should ensure their prosecution.

States may exercise universal jurisdiction over all persons reasonably suspected of committing the crime under international law of apartheid.[1540] Articles IV and V of the Apartheid Convention, read together, create an obligation on states parties to exercise universal jurisdiction over the crime against humanity of apartheid.[1541] The International Law Commission's 2019 Draft articles on Prevention and Punishment of Crimes Against Humanity provide that "the State in the territory under whose jurisdiction the alleged offender is present shall, if it does not extradite or surrender the person to another State or competent international criminal court or tribunal, submit the case to its competent authorities for the purpose of prosecution."[1542]

The obligation to exercise universal jurisdiction on states parties to the Apartheid Convention includes the obligation to prosecute non-nationals for the crime of apartheid committed in the territory of a non-state party, where the accused is within the jurisdiction of a state party.[1543] States parties are obliged to prosecute, bring to trial and punish those persons responsible for the crime of apartheid, which means that states must conduct prompt, effective and impartial criminal investigations when presented with reasonable evidence that an individual within their territory or control is reasonably suspected of criminal responsibility.

The Apartheid Convention also provides that states parties to the convention are obliged "to grant extradition in accordance with their legislation and with the treaties in force."[1544] This provision amounts to a duty on states parties to extradite persons where this is sought for the purposes of prosecution for the crime under international law of apartheid. Coupled with the obligation of states parties in Articles IV and V, the convention creates the legal obligation on states under public international law to prosecute persons who commit serious international crimes where no other state has requested extradition (*aut dedere aut judicare* obligations) on states parties to the convention.[1545]

[1539] See, for example, Apartheid Convention, Article 3: the modes of responsibility are described as "[c]ommit, participate in, directly incite or conspire in the commission of the acts" or "[d]irectly abet, encourage or co-operate in the commission of the crime of apartheid." See also, for example, Rome Statute, Article 25(3): "a person shall be criminally responsible… if that person… [c]ommits… [o]rders, solicits or induces… aids, abets or otherwise assists in [the] commission or… attempted commission [of such a crime]… contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose… [or] [a]ttempts to commit such a crime…"

[1540] See Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation - Chapter Five: Crimes against humanity* (Index: IOR 53/008/2001), amnesty.org/en/documents/ior53/008/2001/en, pp. 5-8. See also Amnesty International, *Eichmann Supreme Court Judgment: 50 years on, its significance today* (Index: IOR 53/013/2012), 6 June 2012, amnesty.org/en/wp-content/uploads/2021/06/ior530132012en.pdf, p. 6. This quotes the Israeli Supreme Court in *Attorney-General of the Government of Israel v. Eichmann*, judgment, 29 May 1962: "Not only do all the crimes attributed to the appellant bear an international character, but their harmful and murderous effects were so embracing and widespread as to shake the international community to its very foundations. The State of Israel therefore was entitled, pursuant to the principle of universal jurisdiction and in the capacity of a guardian of international law and an agent for its enforcement, to try the appellant."

[1541] See, for example, Roger S. Clark, "Offences of international concern: Multilateral treaty practice in the forty years since Nuremberg", 1 January 1988, Nordic Journal of International Law: "The plain meaning of these two articles combined is that universal jurisdiction is overwhelmingly supported by the preparatory work of the Convention." See also, for example, Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation – Chapter Five* (previously cited), pp. 3-4; and M. Cherif Bassiouni, *Crimes against humanity,* 2011, p. 283.

[1542] ILC, Draft articles on Prevention and Punishment of Crimes Against Humanity, 2019, Article 10, legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf

[1543] See, for example, Introductory note by John Dugard to the Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, legal.un.org/avl/ha/cspca/cspca.html; and Carsten Stahn, *A Critical Introduction to International Criminal Law*, 30 January 2019, p. 68. See also UN Commission on Human Rights, *Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid*, 19 January 1981, UN Doc. E/CN.4/1426, paras 21-22: "although [the Apartheid Convention] may be viewed as aiming in part at preventing the spread of [apartheid] practices to States parties, its primary thrust is against the practices of a non-State party. Moreover, to the extent that the term *apartheid* is given a generic definition applicable to practices of States… it must be presumed that no State indulging in such practices would also be a State party to the *Apartheid* Convention. Accordingly, the distinctive essence of the Apartheid Convention is that it addresses the consequences for States generally of conduct occurring within another State… This distinctiveness is of central importance to the question of implementation, for unlike other related instruments the *Apartheid* Convention cannot and does not rely on cooperation of the State wherein the reported human rights violation has occurred. On the contrary, it concerns itself with co-operation of States within which no such violations have occurred."

[1544] Apartheid Convention, Article XI.

[1545] See, for example, UN Commission on Human Rights, *Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid*, 19 January 1981, UN Doc. E/CN.4/1426, paras 49-50: "In addition the conduct prohibited by article II of the *Apartheid* Convention includes *inter alia* conduct deemed a 'crime under international law' and

States parties to the Rome Statute have affirmed "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation". The Rome Statute also provides "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". In light of these provisions, states parties to the Rome Statute should ensure that they investigate and prosecute perpetrators of the crime against humanity of apartheid in line with their Rome Statute undertakings.

The State of Palestine became a state party to the Rome Statute on 2 January 2015 and has accepted the jurisdiction of the ICC over alleged crimes, including war crimes and crimes against humanity, committed in the "occupied Palestinian territory, including East Jerusalem, since June 13, 2014." On 16 January 2015, the ICC Prosecutor announced the opening of a preliminary examination into the "Situation in Palestine" in order to establish whether the Rome Statute criteria into opening an ICC investigation are met, as per the court's procedures. On 15 May 2018, the State of Palestine made a referral pursuant to Articles 13(a) and 14 of the Rome Statute. The referral requested the Prosecutor "to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine".[1546] On 20 December 2019, the ICC Prosecutor concluded that "all the statutory criteria under the Rome Statute for the opening of an investigation… into the situation in Palestine" had been met, but requested a ruling from the Pre-Trial Chamber on "the scope of the territorial jurisdiction" of the ICC in Palestine.[1547] On 5 February 2021, the Pre-Trial Chamber concluded that the ICC finds that the "Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem",[1548] opening the way for investigation into crimes committed in the OPT since 13 June 2014. On 3 March 2021, the Prosecutor announced that her office was proceeding to open an investigation into Rome Statute crimes committed in the OPT.[1549]

While the ICC has held that it has jurisdiction over Rome Statute crimes committed in the OPT, it does not have jurisdiction over crimes committed within Israel itself. However, the UN Security Council has the power to refer to the ICC situations where it appears that one or more of the Rome Statute crimes have been committed, which would include the crime against humanity of apartheid (as defined in the Rome Statute), regardless of whether or not the state in question is a state party to the Rome Statute.[1550]

The right to truth entails an obligation on Israel to promptly, impartially and effectively investigate human rights violations and to ensure that the truth of apartheid and violations of human rights are publicized.[1551] The right to justice requires a remedy against human rights violations, and obliges Israel and the international community to combat impunity and to bring perpetrators to justice through fair trials.[1552]

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conduct regarding which an international duty to prosecute or extradite exists [under the convention]… the conduct in question should be criminalized under the national criminal law of the signatory States and thus embody the maxim *aut dedere aut judicare*". In relation to the "international penal tribunal" mentioned in the Apartheid Convention, although consideration was given in 1980 to the establishment of a special international criminal court to try persons specifically for the crime of apartheid (see UN Doc. E/CN.4/1426, 19 January 1981), no such court has yet been established. However, it has been held that (in relation to Article VI of the Genocide Convention) that "there can be no doubt that the [International Criminal] Court qualifies as an 'international penal tribunal'." See ICC, *Prosecutor v Al Bashir,* Case ICC-02/05-01/09-302, Pre-Trial Chamber, decision, Minority Opinion of Judge Marc Perrin De Brichambaut, 6 July 2017, paras 10-13. As such, Article V in the Apartheid Convention gives significant weight to the argument that the ICC could serve as a fundamental forum for the prosecution of the crime of apartheid.

[1546] Amnesty International, "Israel/OPT: Call to support ICC investigation into 'situation in Palestine' and safeguard ICC independence" (Index: MDE 15/1986/2020), 16 March 2020, amnesty.org/es/documents/mde15/1986/2020/en

[1547] ICC, Preliminary examination: Focus: Alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014, icc-cpi.int/palestine (accessed on 19 August 2021).

[1548] ICC, Situation in the State of Palestine, Case ICC-01/18, Pre-Trial Chamber, Decision on the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", 5 February 2021, para. 118.

[1549] Amnesty International, "Israel/OPT: Historic breakthrough as Prosecutor confirms initiation of ICC investigation in Occupied Palestinian Territories", 3 March 2021, amnesty.org/en/latest/news/2021/03/israel-opt-historic-breakthrough-as-prosecutor-confirms-initiation-of-icc-investigation-in-occupied-palestinian-territories

[1550] Rome Statute, Article 13(b). So far, the UNSC has referred two situations, that of Darfur, Sudan, and Libya to the ICC. UNSC, Resolution 1593 (2005), adopted on 31 March 2005, UN Doc. S/RES/1593; and UNSC, Resolution 1970 (2011), adopted on 26 February 2011, UN Doc. S/RES/1970.

[1551] See, for example, International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, 2018, p. 283: "The right to truth entails the right of victims and relatives to know the truth not only about the facts and circumstances surrounding human rights violation, but also the reasons that led to them and the implicated authors. This knowledge must be disclosed and made public not only to the victims and their relatives but also, unless it causes harm to them, for the benefit of society as a whole."

[1552] See, for example, International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, 2018, p. 283: "Victims and relatives of human rights violations have a right to a prompt, thorough, independent, and impartial official investigation, capable of leading to the identification and, if appropriate, the

Finally, the right to reparation entails a right of victims to full, prompt and effective compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.[1553] While "reparation" is often equated with compensation or the provision of certain compensatory benefits in response to wrongdoing, procedural rights to an investigation, to truth and to justice are equally central to reparation.[1554] The right to reparation of violations of international law obligations is recognized in customary international law. The right of individuals to effective remedy and reparation for violations of their human rights is found in many international treaties[1555] and other international law instruments.[1556]

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law "provide a timely and useful tool for the implementation of victims' rights at national level, as well as a benchmark for international bodies such as the International Criminal Court."[1557] They also provide that, in accordance with domestic law and international law, victims should be provided with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[1558]

While Israel is not a party to the Rome Statute, any international criminal process that may pursue individual criminal responsibility for the crime against humanity of apartheid should similarly provide for reparations to victims, as provided in Article 75 of the Rome Statute. Reparations within an international criminal law process should oblige those responsible for serious crimes to repair the harm they caused to victims and enable justice proceedings to ensure that offenders account for their acts. They should also – to the extent achievable – relieve the suffering caused by crimes under international law; afford justice to victims by alleviating the consequences of the wrongful acts; and deter future violations.[1559]

7.1.2 INTERNATIONAL COMMUNITY INACTION

Despite the legal remedies that exist and the other action that could have been taken, for over seven decades, the international community has stood by as Israel has been given free rein to dispossess, segregate, control, oppress and dominate Palestinians. The numerous UN Security Council resolutions adopted over the years have remained unimplemented with Israel facing no repercussions for actions that have violated international law apart from formulaic condemnations.

Without taking any meaningful action to hold Israel to account for its systematic and widespread violations and crimes under international law against the Palestinian population, the international community has contributed to undermining the international legal order and has emboldened Israel to continue perpetrating crimes with impunity. In fact, some states have actively supported Israel's violations by supplying it with arms, equipment and

punishment of the authors. The investigating authority must be personally and institutionally independent and vested with the necessary powers and resources to conduct a meaningful investigation. Victims and their relatives have a right to effective participation in the investigation. Officials who are under investigation should be suspended during the time of the investigation." See also p. 26: "The prosecution of perpetrators of gross human rights violations can also in itself constitute a form of reparation, i.e., satisfaction, and contributes to the right of victims and their family to truth and to the combating of impunity as an element of guarantees of non-recurrence."

[1553] See, for example, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, December 2005, Principle 18: "[reparation] includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition".

[1554] REDRESS, *Justice for Victims: The ICC'S Reparations Mandate*, 20 May 2011, redress.org/wp-content/uploads/2018/01/REDRESS_ICC_Reparations_May2011.pdf, p. 10.

[1555] See, for example, Rome Statute, Article 75; Universal Declaration of Human Rights, Article 8; ICCPR, Articles 2(3), 9(5) and 14(6); Convention Against Torture, Article 14(1); International Convention for the Protection of All Persons from Enforced Disappearance, Article 24.

[1556] See, for example, Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, 8 February 2005, UN Doc. E/CN.4/2005/102.

[1557] REDRESS, *Justice for Victims: The ICC'S Reparations Mandate* (previously cited), p. 13.

[1558] See, for example, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 18; International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, 2019, Article 12, legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf

Within the Rome Statute, reparations are awarded against a convicted person in the form of restitution, compensation and rehabilitation, and they may be ordered on an individual basis, collectively (for example to communities affected), or both (ICC Rules of Procedure and Evidence, Rule 97). While reparations in the form of satisfaction are not provided for in the Rome Statute, the ICC has ordered "symbolic" measures and reparations awards. See *Prosecutor v. Lubanga*, Case ICC-01/04-01/06, judgment, 7 August 2012, para. 222. Although Article 75 of the Rome Statute lists restitution, compensation and rehabilitation as forms of reparations, this list is not exclusive. Other types of reparations, for instance those with a symbolic, preventative or transformative value, may also be appropriate, as well as publishing an apology made by a convicted person.

[1559] ICC, *Prosecutor v. Lubanga*, Case ICC-01/04-01/06, judgment, 7 August 2012, para. 179.

other tools to perpetrate crimes under international law and by providing diplomatic cover, including at the UN Security Council, to shield it from accountability. By doing so, they have completely failed the Palestinian people and have only exacerbated Palestinians' lived experience as people with lesser rights and inferior status to Jewish Israelis.

Meanwhile, addressing Israeli violations against Palestinians in the occupied West Bank and Gaza Strip merely within the framework of international humanitarian law, and separately from the violations perpetrated against Palestinians in Israel, has failed to tackle the root causes of the conflict and achieve any form of accountability and justice for the victims.

7.2 RECOMMENDATIONS

Given these conclusions, Amnesty International is providing the following wide-ranging recommendations to the Israeli authorities and other relevant stakeholders to dismantle the system of apartheid against Palestinians and end the associated human rights violations.

It is making recommendations to the Israeli authorities covering laws, practices and policies that relate to Palestinians in general, as well as specific ones relating to each of the domains of control – Israel, East Jerusalem, the rest of the West Bank and the Gaza Strip – and Palestinian refugees outside Israel and the OPT. It also has a few recommendations for the Palestinian authorities.

In addition, given the scale and seriousness of the violations documented in this report, it is calling on the international community to urgently and drastically change its approach to the Israeli-Palestinian conflict and recognize the full extent of the crimes that Israel perpetrates against the Palestinian people. Based on this, it is making recommendations to UN bodies, the Office of the Prosecutor of the ICC, other governments and regional actors, businesses and national and international humanitarian and development organizations.

The UN, in particular, must take all steps to reasonably ensure the rights of Palestinians violated by the system of apartheid established in Israel and the OPT. To do this they must put pressure on the government of Israel to dismantle the system of oppression and domination and ensure individual remedies and reparations to all those whose rights have been violated.

Dismantling this appalling system of apartheid is essential for the millions of Palestinians who continue to live in Israel and the OPT, as well as for the return of Palestinian refugees who continue to be displaced in the region, so that they can enjoy their basic human rights free from discrimination.

7.2.1 ISRAELI AUTHORITIES

- End the system of apartheid by dismantling measures of discrimination, segregation and oppression currently in place against the Palestinian population and undertake a review of all laws, regulations, policies and practices that discriminate on racial, ethnic or religious grounds, and repeal or amend them to bring them into line with international human rights law and standards, in particular Israel's obligations to ensure the principle of non-discrimination under international law.

- Grant equal and full human rights to all Palestinians in Israel and the OPT in line with principles of international human rights law and without discrimination, while ensuring respect for protections guaranteed for Palestinians in the OPT under international humanitarian law.

- Immediately order members of all state authorities to end and refrain from all future conduct that violates international law, including forcible transfer of population, arbitrary arrest, administrative detention, torture and other ill-treatment, unlawful killings and infliction of injuries, as well as restrictions on other fundamental rights, such as arbitrarily restricting Palestinians' freedom of movement and residence in their communities, their right to family life, and their rights to access livelihoods, housing, food, water, essential healthcare services and education.

- Suspend from active duty any military or official personnel suspected of ordering or committing grave violations of international law pending the completion of investigations.

- Develop clear guidelines requiring law enforcement officials to report abuses, and ensure that officers at all levels of the chain of command know about these guidelines and are held responsible for enforcing them, with penalties imposed, following fair proceedings, for failing to report, or covering up, violations or misconduct by security forces.

- Order prompt, impartial, independent and effective investigations into all allegations of crimes against humanity and other serious human rights violations by state officials and actors. Where there is sufficient admissible evidence, bring those reasonably suspected of individual criminal responsibility, including command responsibility, to trial in proceedings that meet international standards of fairness.

- Hold accountable any private individual preventing or attempting to otherwise restrict the enjoyment of rights of others.

- Provide victims of human rights violations, crimes against humanity and serious violations of international humanitarian law – and their families – with full reparations. These should include restitution of and compensation for all properties acquired on a racial basis, including restitution of and compensation for properties confiscated by the Custodian of Absentee Property.

- Accede to the Apartheid Convention and to the Rome Statute; issue a declaration accepting the ICC's jurisdiction since 1 July 2002; and incorporate the provisions of these treaties into domestic law.

SPECIFICALLY RELATING TO ISRAEL

- Repeal or substantially amend legislation that facilitates discrimination against Palestinian citizens of Israel, including the nation state law.

- Provide constitutional protection to the principle of non-discrimination by introducing it into Israel's Basic Laws.

- Introduce specific safeguards to ensure that no individual is arbitrarily deprived of their citizenship, including by amending the 1952 Nationality Law.

- End policies that prevent Palestinians' family unification, refrain from pursuing the enactment of a new version of the Citizenship and Entry into Israel Law in force from 2003 to 2021 and ensure that processing family unification applications for spouses and children of Israeli citizens and Palestinian residents of Jerusalem and of the OPT is done according to the principle of non-discrimination, examining each case on an individual basis and on its merit.

- Ensure an end to discrimination in the exercise of the right of all people to participate in public life, including by voting and standing for election. In particular, take effective steps to increase the representation and participation of minorities in decision-making processes, and refrain for disqualifying them on discriminatory grounds such as political opinion.

- Revoke discriminatory policies that allow for discrimination against Palestinian citizens of Israel based on military service in accessing social and economic benefits or certain forms of work in Israel.

- Provide adequate provisions to ensure non-discrimination, transparency and accountability in terms of distribution and use of state land in Israel, and reform the role and/or scope of responsibilities of quasi-state Jewish institutions in order to achieve this end.

- Ensure adequate remedies, including just compensation and restitution, for all those whose land was illegally expropriated as state land.

- Repeal or amend discriminatory laws and policies governing the zoning and allocation of land in Israel and ensure that such laws and policies are implemented in a manner that respects the prohibition of discrimination on grounds including race, religion, national or ethnic origin and descent.

- Cancel all outstanding orders for evictions and demolitions and introduce a moratorium on future evictions and demolitions until the law is amended in a manner that complies with international standards and thereby ensures Palestinians are not subjected to forced evictions.

- Immediately grant legal recognition and status to the unrecognized villages in the Negev/Naqab. Legal security of tenure should be afforded to the residents of these villages. Sustainable access to safe, potable drinking water, electricity, sanitation, sewage, refuse disposal, emergency services, medical care and education must be guaranteed to all residents. Efforts to forcibly remove the inhabitants of unrecognized villages should be immediately halted.

- Ensure access to effective redress and reparation to those who have had their homes demolished as a result of discriminatory policies.

- Ensure that Palestinian citizens of Israel, especially in the Negev/Naqab, have equitable access to land, local authority resources, water and electricity necessary for their economic development, including the development of their industrial, agricultural and other activities necessary to enjoy their rights to an adequate standard of living, water, food, adequate housing, health and work.

- Ensure equal access to state resources and funding related to access to livelihoods, health and education irrespective of race, nationality, religion or gender.

- Establish an official monitoring mechanism to ensure that livelihoods, health and education programmes and services in Israel are implemented free from discrimination.

SPECIFICALLY RELATING TO EAST JERUSALEM

- Immediately cease all settlement activity as a first step towards dismantling all Israeli settlements and related infrastructure in East Jerusalem, and relocate Israeli civilians living in such settlements outside of the OPT.

- Cease the arbitrary revocations of the residency of Palestinian residents in East Jerusalem.

- Establish a mechanism to promptly re-examine, according to the principle of non-discrimination, cases of arbitrary revocations of residency.

- Resume the processing of family unification applications for families that include Palestinian residents of the rest of the OPT and do so in an expeditious and non-discriminatory manner. Establish a mechanism to promptly process the backlog of thousands of applications and to re-examine, according to the principle of non-discrimination, applications that were refused prior to the suspension of the processing of applications.

- Immediately stop the destruction of houses, land and other properties without absolute military necessity as prescribed by international humanitarian law. Anyone whose property has been unlawfully destroyed without adequate prior notification and the effective opportunity to challenge the decision before a court of law should receive reparation and be allowed, where possible, to rebuild their property in the same place.

- Transfer the responsibility for planning and building policies and regulations in East Jerusalem to the local Palestinian communities.

- Allow the Palestinian residents of East Jerusalem, especially those beyond the fence/wall, to access the land, local authority resources, water and electricity necessary for their economic development, including the development of their industrial and agricultural activities and other activities necessary to enjoy their rights to an adequate standard of living, water, food, adequate housing, health and work.

- Ensure Palestinians in East Jerusalem have access to their social and economic rights to livelihoods, healthcare and education without undue obstructions, and halt any discriminatory and restrictive policies that may hinder their access to these rights.

SPECIFICALLY RELATING TO REST OF WEST BANK

- Immediately cease all settlement activity as a first step to dismantling all Israeli settlements and related infrastructure in the West Bank and relocating Israeli civilians living in such settlements outside the OPT. Immediately end policies and practices that confer privileged access to resources for Israeli settlers in the West Bank.

- Resume the processing of family unification applications for foreign spouses and families of Palestinian residents of the West Bank and do so in an expeditious and non-discriminatory manner.

- Establish a mechanism to promptly process the backlog of thousands of applications and to re-examine, according to the principle of non-discrimination, applications that were refused prior to the suspension of the processing of applications.

- Ensure Palestinians enjoy their right to freedom of movement without discrimination of any kind, by ending the regime of closures in its current form, as well as other forms of restrictions on freedom of movement of people and goods, that result in collective punishment. Ensure that any restrictions on

movement are only imposed if they are absolutely necessary to respond to a specific security threat or for other compelling reasons and are non-discriminatory and proportionate in terms of their impact and duration, and do not target whole communities.

- Stop the construction of the fence/wall inside the West Bank, including East Jerusalem, which results in unlawful restrictions on the right to free movement of Palestinians and the arbitrary destruction or seizure of their homes and property, and undermines other rights, including the rights to adequate housing, to work, to an adequate standard of living and to respect for family life. Sections of the fence/wall already constructed that violate these rights should be removed.

- Immediately stop the destruction of houses, land and other properties without absolute military necessity as prescribed by international humanitarian law. Anyone whose property has been unlawfully destroyed without adequate prior notification and the effective opportunity to challenge the decision before a court of law should receive reparation and be allowed, where possible, to rebuild their property in the same place.

- Transfer responsibility for planning and building policies and regulations in the West Bank to the local Palestinian communities.

- Allow the Palestinian population to access natural resources in the West Bank, including fertile agricultural land, water, oil and gas resources, stone and Dead Sea minerals, in a manner that satisfies their personal and domestic needs and for their economic development, including the development of their industrial and agricultural activities and other activities necessary to enjoy their rights to an adequate standard of living, water, food, adequate housing, health and work.

- Ensure Palestinians in the West Bank have access to their social and economic rights to livelihoods, healthcare and education without undue obstructions, and halt any discriminatory and restrictive policies that may hinder their access to these rights.

SPECIFICALLY RELATING TO GAZA STRIP

- Lift the blockade on the Gaza Strip and other forms of arbitrary restrictions on freedom of movement of people and goods that result in collective punishment. Any restriction may only be imposed if it is necessary to respond to security threats, is non-discriminatory and proportionate in terms of its impact and duration, and is imposed on named individuals, not on whole communities.

- Allow the passage into Gaza of aid, fuel, electricity and other necessities to resume unhindered.

- Allow all patients in need of medical treatment not available in Gaza to leave and guarantee that they will be allowed to return after their treatment.

- Allow into Gaza as a matter of urgency the material and equipment necessary for the construction and repair of water and sanitation facilities, and the quantities of fuel necessary for operating these facilities, and ensure that water is never used as an instrument of political or economic pressure under any circumstances.

- Resume the processing of family unification applications for foreign spouses and families of Palestinian residents of Gaza and do so in an expeditious and non-discriminatory manner.

- Establish a mechanism to promptly process the backlog of thousands of applications and to re-examine, according to the principle of non-discrimination, applications that were refused prior to the suspension of the processing of applications.

- Immediately stop the destruction of houses, land and other properties without absolute military necessity as prescribed by international humanitarian law. Anyone whose property has been unlawfully destroyed without adequate prior notification and the effective opportunity to challenge the decision before a court of law should receive reparation and be allowed, where possible, to rebuild their property in the same place.

- Allow the Palestinian population to access natural resources in Gaza, including fertile agricultural land, as well as fishery, water, oil and gas resources, in a manner that satisfies their personal and domestic needs and for their economic development, including the development of their industrial and agricultural activities and other activities necessary to enjoy their rights to an adequate standard of living, water, food, adequate housing, health and work.

- Ensure Palestinians in Gaza have access to their social and economic rights to livelihoods, healthcare and education without undue obstructions and halt any discriminatory and restrictive policies that may hinder their access to these rights.

SPECIFICALLY RELATING TO PALESTINIAN REFUGEES OUTSIDE ISRAEL AND OPT

- Recognize the right of Palestinian refugees and their descendants to return to homes where they or their families once lived in Israel or the OPT, and to receive restitution and compensation and other effective remedies for the loss of their land and property.

7.2.2 PALESTINIAN AUTHORITIES

- Document as necessary and in line with international standards the discriminatory impact of Israel's system of apartheid against the Palestinian population in the OPT to provide evidence of such impact to relevant international courts and other bodies.

- Ensure that operations and any type of dealings with Israel, primarily through security coordination, do not contribute to maintaining the system of apartheid against Palestinians in the OPT.

7.2.3 UN HUMAN RIGHTS COUNCIL

As a council and through the mandates it creates:

- Assess whether the denial of nationality, restrictions on movement, freedom of assembly, association and religion, participation in public life, and access to healthcare, education, livelihoods, housing, employment, food security, and water and sanitation, constitute crimes under international law, in particular the crime against humanity of apartheid.

- Provide recommendations and assistance designed to dismantle these and other systems of oppression and domination.

7.2.4 UN SECURITY COUNCIL

- Impose targeted sanctions, such as asset freezes, against Israeli officials most implicated in the crime of apartheid.

- Impose a comprehensive arms embargo on Israel. The embargo should cover the direct and indirect supply, sale or transfer, including transit and trans-shipment of all weapons, munitions and other military and security equipment, including the provision of training and other military and security assistance.

- Explore avenues to bring perpetrators of crimes under international law to justice, in particular if Israel itself fails to investigate and prosecute those responsible for crimes against humanity and other human rights violations perpetrated against the Palestinian population in Israel and the OPT. This could include referring the entire situation to the ICC or establishing an international tribunal to try alleged perpetrators of international crimes.

7.2.5 UN GENERAL ASSEMBLY

- Re-establish the Special Committee against Apartheid, which was originally established under UN General Assembly Resolution 1761 (XVII) of 6 November 1962, to focus on all situations, including Israel and the OPT, where the serious human rights violation and crime against humanity of apartheid are being committed and to bring pressure on those responsible to disestablish these systems of oppression and domination.

7.2.6 OFFICE OF PROSECUTOR OF ICC

- Consider the applicability of the crime against humanity of apartheid within the current formal investigation of crimes under international law committed in the OPT since 13 June 2014.

7.2.7 OTHER GOVERNMENTS AND REGIONAL ACTORS

(in particular those that enjoy close diplomatic relations with Israel such as the USA, the European Union and its member states and the UK, as well as those that are in the process of strengthening their ties, such as some Arab and African states)

- Do not support the system of apartheid or render aid or assistance to maintaining such a regime, and cooperate to bring an end to this unlawful situation.

- Immediately suspend the direct and indirect supply, sale or transfer, including transit and trans-shipment to Israel of all weapons, munitions and other military and security equipment, including the provision of training and other military and security assistance.

- Institute and enforce a ban on products from Israeli settlements in your markets and regulate companies domiciled in your jurisdiction in a manner to prohibit companies' operation in settlements or trade in settlements goods.

- Exercise universal jurisdiction in investigating any person under your jurisdiction who may reasonably be suspected of committing crimes against humanity or other crimes under international law. Ensure that all proceedings meet international standards of fairness and do not involve seeking or imposing the death penalty. There should be no time limit for prosecuting crimes against humanity, nor should immunity from prosecution or amnesties be granted for such crimes.

- Ensure that your legal and institutional frameworks enable the effective investigation and prosecution of perpetrators of the crime against humanity of apartheid.

- Use all political and diplomatic tools at your disposal to ensure Israeli authorities implement the recommendations outlined in this report and ensure that human rights are central to all bilateral and multilateral agreements with the Israeli authorities, including by exercising due diligence to ensure that these do not contribute to maintaining the system of apartheid.

- Publicly recognize that international crimes, including the crime of apartheid, are being committed in Israel and the OPT.

7.2.8 BUSINESSES

- Adopt adequate procedures and codes of conduct in accordance with international standards to ensure that your own activities in Israel and the OPT are not contributing to or benefiting from the system of apartheid; address such impact when it occurs and cease relevant activities if it cannot be prevented.

7.2.9 NATIONAL AND INTERNATIONAL HUMANITARIAN AND DEVELOPMENT ORGANIZATIONS

- Increase advocacy, both public and private, with the Israeli government to end discrimination and segregation in law, policy and practices against Palestinians in Israel and the OPT, including through advocacy with donors.

- Conduct rigorous and ongoing assessments of all projects and assistance for Palestinians to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation of Palestinians.

- Continue and strengthen efforts to counter discrimination against Palestinians in Israel and the OPT, including by strengthening national and international networks working on these issues.

BACK BLURB

Since its establishment in 1948, Israel has pursued a policy of establishing and maintaining a Jewish demographic hegemony and maximizing its control over land to benefit Jewish Israelis while restricting the rights of Palestinians and preventing Palestinian refugees from returning to their homes. In 1967, Israel extended this policy to the West Bank and Gaza Strip, which it has occupied ever since.

Amnesty International has analysed Israel's intent to create and maintain a system of oppression and domination over Palestinians and examined its key components: territorial fragmentation; segregation and control; dispossession of land and property; and denial of economic and social rights. It has concluded that this system amounts to apartheid. It has also documented unlawful acts committed by Israel against Palestinians with the intent to maintain this system, including forcible transfers, administrative detention and torture, unlawful killings, denial of basic rights and freedoms and persecution. It has concluded that such acts form part of a systematic as well as widespread attack directed against the Palestinian population and amount to the crime against humanity of apartheid.

Israel must dismantle this cruel system and the international community must pressure it to do so. All those with jurisdiction over the crimes committed to maintain the system should investigate them.