

Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on the Legal Status of the Israeli Colonial Settlements in the Occupied Palestinian Territory Under the Rome Statute of the International Criminal Court

Submitted by:

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- Al-Haq, Law in the Service of Man
- Al Mezan Center for Human Rights
- Addameer Prisoner Support and Human Rights Association
- Palestinian Centre for Human Rights
- DCI - Defense for Children International – Palestine
- Jerusalem Legal Aid and Human Rights Center
- Aldameer Association for Human Rights
- Ramallah Center for Human Rights Studies
- Hurriyat - Center for Defense of Liberties and Civil Rights
- The Independent Commission for Human Rights (Ombudsman Office) - Observer Member
- Muwatin Institute for Democracy and Human Rights - Observer Member

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Habitat International Coalition – Housing and Land Rights Network



Housing and Land Rights Network
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1. Introduction

1. Internationally recognised as unlawful, and considered to be a serious violation of international law,¹ as the United Nations (UN) Security Council has asserted, at least six times since 1979,² Israel's establishment of colonial settlements in occupied territory has "no legal validity" and, more explicitly, is a "flagrant violation under international law."³ Despite this, Israel, asserts that the establishment of illegal Israeli colonial settlements in the West Bank is a natural right of those whom Israel considers 'Jewish nationals.'⁴ It continues to establish, maintain, and expand its settler-colonial enterprise, which serves to further annex large parts of the West Bank *de-facto*, entrenching Israel's settler-colonial and apartheid regime over the Palestinian people as whole, on both sides of the Green Line as well as Palestinian refugees and exiles abroad.⁵
2. Since 1967, over 250 colonial settlements and outposts have been established by the Israeli occupying authorities in the West Bank, including East Jerusalem.⁶ According to Israel's Ministry of Interior, the number of Israeli settlers living in the West Bank rose by 4.3 percent in 2011 alone,⁷ amid the distraction of popular upheavals across the region. The population of Israel's colonial settlements has more than doubled since the beginning of the Oslo process in 1993. In 2019, the total settler population consisted of least 590,000 settlers in the West Bank — around 386,000 settlers in some 130 colonial settlements in Area C — and 208,000 settlers in East Jerusalem.⁸ Along the 137 colonial settlements, including 12 large Israeli 'neighbourhoods' in the eastern part of Jerusalem,⁹ approximately 100 colonial outposts, which Israel classifies as illegal, have been gradually established without the formal approval of the Israeli government in Area C. Currently, legal efforts are under way in Israel to retroactively legalise those

¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) ICJ Rep 2004, paragraph 120 (hereafter: Advisory Opinion on the Wall), UN Security Council (UNSC) Res 446 (22 March 1979) UN doc. S/RES/446, UNSC Res 452 (20 July 1979) UN doc. S/RES/452 and UNSC Res 465 (29 July 1980) UN doc. S/RES/465.

² Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2020, UN Doc A/75/532.

³ UNSC Resolutions 446 and 465 (1 March 1980).

⁴ The preliminary response of the Government of Israel submitted to the High Court of Justice on 21 August 2017 to the petition against the "Regularization" Law, available (in Hebrew) at: <https://s3-eu-west-1.amazonaws.com/files.yeshdin.org/התפורה+הוק/Govenment+response+to+regulation+law+petition.pdf>

⁵ *On this*, see UN ESCWA, "Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No. 1, 2017, UN Doc E/ESCWA/ECRI/2017/1 (henceforth the "ESCWA Report"); see also Al-Haq, *et al*, "Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports," 10 November 2019, available at: http://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th19thperiodic-reports-10-november-2019-final-1573563352.pdf (henceforth the "CERD Report").

⁶ OCHA, "The humanitarian impact of Israeli settlement policies," January 2012, p.1.

⁷ Internal Displacement Monitoring Center – Norwegian Refugee Council, "Internal Displacement in the Middle East and North Africa," Global Overview, 2011; *Ahram online*, "Israeli settlement population up 4.3 per cent in 2011: lawmaker," 15 January 2012.

⁸ United Nations, "Report of the Middle East Quartet of July 2016", p. 4, available at: www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

⁹ Report on Preliminary Examination Activities 2018, para. 257.

colonial outposts.¹⁰ Initially, the official state rationale for the establishment of colonial settlements was that they were necessary to provide for Israel's security.¹¹ The current official Israeli government position is that the colonial settlements are established on 'disputed' land and, therefore, are not in violation of international law.¹²

3. In response to a call for input by the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr. Lynk on the legal status of the Israeli colonial settlements in the occupied Palestinian territory (oPt) under the Rome Statute of the International Criminal Court, and with our trust that this submission will be helpful for the purpose of his upcoming report, the Palestinian Human Rights Organizations Council (PHROC), comprising of: Al-Haq, Law in the Service of Man, Al Mezan Center for Human Rights, Addameer Prisoner Support and Human Rights Association, Palestinian Centre for Human Rights, DCI - Defense for Children International – Palestine, Jerusalem Legal Aid and Human Rights Center, Aldameer Association for Human Rights, Ramallah Center for Human Rights Studies, Hurriyat - Center for Defense of Liberties and Civil Rights, The Independent Commission for Human Rights (Ombudsman Office) - Observer Member, and Muwatin Institute for Democracy and Human Rights - Observer Member; Cairo Institute for Human Rights Studies; and Habitat International Coalition – Housing and Land Rights Network (hereinafter 'the organisations') submit this joint submission, highlighting the illegality of the Israeli colonial settlements, which are one aspect of Israel's settler-colonial and apartheid regime, and their impact on the rights of the Palestinian people.

2. Israeli Colonial Settlement Construction and Maintenance in the Context of Israel's Apartheid Regime

4. Recognition that the Palestinian people are subjected to an institutionalised regime of racial domination and oppression, amounting to the crime of apartheid, has gained significant traction in recent years. Governed primarily by the International Convention for the Elimination of All Forms of Racial Discrimination,¹³ the Apartheid Convention,¹⁴ and the Rome Statute of the International Criminal Court (ICC),¹⁵ the

¹⁰ *Ibid*, p. 5. See also UNHRC, "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 para. 33; UNSG, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan," 24 August 2016, UN Doc A/71/355 paras. 10-14.

¹¹ See, Y Schmidt, "Foundations of Civil and Political Rights in Israel and the Occupied Territories," GRIN Verlag, 2001, pp. 361 – 362; and Y Allon, "Israel: the Case for Defensible Borders," Foreign Affairs, 1 October 1976.

¹² Israeli Ministry of Foreign Affairs, "Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip," 1 February 2003.

¹³ Article 3, *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entry into force 4 January 1969) 660 UNTS 195.

¹⁴ *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) UN Doc A/RES/3068(XXVIII).

¹⁵ Article 7(1)(j), 7(2)(h), *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002).

first major instance of such international recognition came in 2007, when then-Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, observed that “elements of the occupation [of the West Bank, including East Jerusalem, and the Gaza Strip] constitute forms of colonialism and of apartheid, which are contrary to international law.”¹⁶

5. This precipitated a renewed interest in the crime of apartheid, this time focused on the Palestinian context, as opposed to its practice in South Africa, Namibia, and Rhodesia. In 2009, South Africa’s Human Sciences Research Council commissioned an extensive 302-page report dedicated to the question of whether Israel’s occupation of the oPt constituted colonialism and apartheid.¹⁷ The question was broached again in 2011, when Dugard’s successor, Richard Falk, reported to the Human Rights Council that “It seems incontestable that Israeli measures do divide the population of the Occupied Palestinian Territory along racial lines, create separate reserves for Palestinians and expropriate their land”,¹⁸ and that ultimately “The combined effect of the measures designed to ensure security for Israeli citizens, to facilitate and expand settlements, and, it would appear, to annex land, is *hafrada*, discrimination, and systematic oppression of, and domination over, the Palestinian people.”¹⁹
6. In 2017, the UN Economic and Social Commission for Western Asia (ESCWA) commissioned a study on this question, and for the first time in such a report, included the Palestinian people as a whole within its scope, not just those living in the oPt.²⁰ Accordingly, the report found that Israel’s apartheid regime is imposed upon all Palestinians, regardless of where they are. The report identifies four ‘domains’ into which the Palestinian people have been strategically fragmented: Palestinian citizens of Israel; Palestinians subject to a precarious ‘permanent residency’ status in East Jerusalem; Palestinians in the oPt; and Palestinian refugees and exiles abroad denied their right of return. Crucially, it is this very separation that serves to “enfeeble Palestinian resistance to Israeli apartheid oppression in each [domain], thereby reinforcing oppression of the Palestinian people as a whole.”²¹
7. Adopting this approach, a coalition of eight Palestinian, regional, and international civil society organisations made an extensive 60-page submission to the Committee on the Elimination of Racial Discrimination ahead of Israel’s seventeenth to nineteenth periodic review, held in Geneva in December 2019.²² In this report, the organisations identified Israel’s unlawful settler-colonial enterprise as fundamental to Israel’s strategic fragmentation of the Palestinian people. The colonial settlements, their related infrastructure, and the mosaic of movement restrictions imposed upon Palestinians both

¹⁶ UNHRC, “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,” 29 January 2007, UN Doc A/HRC/4/17, p. 3.

¹⁷ HSRC, “Occupation, Colonialism, Apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law,” 2009.

¹⁸ UNHRC, “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,” 13 January 2014, UN Doc A/HRC/25/67, para 71.

¹⁹ *Ibid.*, para 77.

²⁰ See ESCWA report.

²¹ *Ibid.*, pp. 37-38.

²² See CERD report.

on and within the Green Line, including the Annexation Wall, are amongst the most visible methods by which Israel ensures that Palestinians are unable to live, gather, and otherwise come together to exercise and demand the realisation of their collective rights. Accordingly, while illegal Israeli colonial settlements amount to international crimes in of themselves, as outlined below, it is necessary to place them within the context of Israel's wider apartheid regime, and to recognise their role in the construction and maintenance of that regime.

3. Status of Israel's Colonial Settlements

8. The oPt constitutes a territory placed under belligerent occupation as per Article 42 of the 1907 Hague Regulations,²³ under the effective control of the Israeli occupying power.²⁴ As confirmed by the ICJ in its *Wall* advisory opinion,²⁵ the oPt is regulated by IHRL as *lex generalis*, and IHL as *lex specialis*, in particular the 1907 Hague Regulations and the 1949 Fourth Geneva Convention.
9. At the international level, the UN has consistently resolved that Israeli colonial settlements in the oPt, including in East Jerusalem, are illegal. The UN Security Council has issued multiple resolutions in condemnation of the unlawful Israeli settlement enterprise and recalled the applicability of the Fourth Geneva Convention in the oPt, including in Resolutions 242(1967), 446(1979), 476(1980), 478(1980), 497(1981), 904(1994). Most recently, Resolution 2334 (2016) recalled that “the establishment by Israel of settlements in the [oPt] has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of ... a just, lasting and comprehensive peace.” Likewise, the UNGA has steadily denounced Israel's settlement enterprise as illegal, including in Resolutions 52/66(1998), 53/55(1999), 54/78(2000), 55/132(2001), 56/61(2002), 57/126(2003), 58/98(2003), 59/123(2004), 60/106(2005), 61/118(2006), 62/108(2007), 63/97(2008), 64/93(2009), 65/104(2010), 66/78(2011), 67/120(2012), 68/82(2013), 69/92(2014), 70/89(2015), 71/97(2016), 72/86(2017), 73/98(2018), 74/88(2019), 75/97(2020); as well as the Human Rights Council in Resolutions 2/4(2007), 7/18(2008), 13/7(2010), 16/31(2011), 19/17(2012), 22/26(2013), 25/28(2014), 28/26(2015), 31/36(2016), 34/31(2017), 37/36(2018), 40/24(2019), 43/31(2020).
10. Building on UN Security Council resolutions and the applicability of the Fourth Geneva Convention, the ICJ found in its *Wall* advisory opinion that “the Israeli

²³ “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Hague Regulations Annexed to the Convention (IV) Respecting the Laws and Customs of War on Land (Hague Regulations), Article 42.

²⁴ The ‘effective control’ test for occupation is passed if “the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt.” See *Prosecutor v Naletilic et al*, (Judgement; Trial Chamber) ICTY-98-34-T, 31 March 2003, para. 217, available at: https://www.icty.org/x/cases/naletilic_martinovic/tjug/en/nal-tj030331-e.pdf.

²⁵ ICJ, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion,” 9 July 2004, paras.106-114.

settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”²⁶

3.1. Israel’s colonial settlements and population transfers (Article 8(2)(a)(vii) & Article 8(2)(a)(viii) of the Rome Statute)

11. In Resolution 465(1980) of 1 March 1980, the UN Security Council qualified “Israel’s policy and practices of settling parts of its population and new immigrants” in the oPt as a “flagrant violation” of the Fourth Geneva Convention. Israeli colonial settlements contravene the prohibition on population transfers in two respects. Israel’s settler-colonial enterprise forms part of and benefits from a broader coercive environment aimed at, directly and indirectly, forcing local Palestinian communities to leave, in breach of Article 49(1) that forbids the transfer of the occupied local population into the territory of the occupying power or any other country. It results in an unlawful transfer, which constitutes a grave breach of the Fourth Geneva Convention according to its Article 147. As such, this unlawful transfer amounts to a war crime, prohibited under Article 8(2)(a)(vii) of the Rome Statute.
12. More significantly, as a well-entrenched rule of customary law,²⁷ the transfer of the Occupying Power’s population into the occupied territory is strictly prohibited as per Article 49(6): “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” It further constitutes a grave breach of Article 85(4)(a) of the First Additional Protocol to the Geneva Conventions. The 1958 Commentary of Article 49(6) refers to WWII practices of settling the Occupying Power’s civilian population into the occupied territory in an intent to “colonize those territories.” The absence of ‘forcible,’ as opposed to ‘individual and voluntary’, transfer of the Israeli civilian population into the oPt does not invalidate the unlawfulness of the enterprise. Israel both actively provides attractive legislative and regulatory benefits to entice relocation into government-sanctioned colonial settlements, and passively supports the formation of outposts, through retroactive regularization, and through the more indirect and non-transparent means of para-statal organizations, in particular the World Zionist Organization and the Jewish National Fund.²⁸ The underlying intention of the settler-colonial enterprise is to embed a system of subjugation, domination and exploitation over the oPt and its civilian population, which is defined as colonization as per Article 1 of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The “transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” is considered a war crime under Article 8(2)(b)(viii) of the Rome Statute.
13. Israel’s settler-colonial enterprise does not operate in a vacuum, but is fostered and itself reinforces a more extensive and creeping system of domination over the oPt, rooted in practices and policies of apartheid and institutionalized discrimination. The forcible transfer of the Palestinian civilian population to be replaced by Israel’s

²⁶ *Ibid.*, para.120.

²⁷ Jean-Marie Henckaerts and Louise Doswald-Beck, “Customary International Humanitarian Law, Volume I: Rules,” Cambridge: Cambridge University Press, 2009, Rule 130, 462.

²⁸ E/C.12/ISR/CO/4, para.10.

transferred civilian population is a fundamental tenet of Israel's assertion of its colonial power over the Palestinian lands. Israel's colonial settlements intentionally generate and reinforce widespread and systematic human rights violations against the Palestinian people in order to induce their forcible transfer. Therefore, Israel's settler-colonial enterprise may amount to a crime against humanity according to Article 7(1)(d) of the Rome Statute, being "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."

3.2. Israel's colonial settlements as a tool of annexation (Article 8bis of the Rome Statute)

14. Colonial settlements and their associated infrastructure are intended to be permanent in nature, benefit the Occupying Power's Jewish-Israeli civilian population instead of the Palestinian people, and do not respond to any security needs. The transfer of Israeli civilian population into the oPt strengthens Israel's settler-colonial regime, where the Occupying Power's own population gradually supplants Palestinians. Israel's settler-colonial enterprise and its associated acts in breach of international human rights and humanitarian law, constitute a clear attempt to gradually impose an illegitimate situation of 'permanent sovereignty' over the oPt and the Palestinian civilian population.
15. It does not only violate Article 43 of the 1907 Hague Regulations on the principle of temporary administration.²⁹ Rather, it forms part of a broader strategy of *de facto* annexation that, as a means of acquiring territory by force, is prohibited as a peremptory norm of international law under Article 2(4) of the UN Charter, and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, as per UNGA Resolution 2625(XXV)(1970). Colonial settlements, because they contribute to the gradual and indirect implementation of political, demographic, institutional and legislative initiatives intended to create a *de facto* situation of Israeli sovereignty over the oPt, constitute acts of *de facto* annexation. Qualifying as an act of unlawful acquisition of a territory by force, the settlement enterprise is prohibited under Article 8bis of the Rome Statute that characterises annexation as an act of aggression.

3.3. Role of Israel's colonial settlements in the entrenchment of its regime of apartheid (Article 7(2)(h) of the Rome Statute)

16. Colonial settlements are a key tool in Israel's strategy to unlawfully assert a *de facto* situation of 'permanent sovereignty' over the oPt, through the combination of policies and practices of apartheid prohibited under the International Convention on the Suppression and Punishment of the Crime of Apartheid, in order to maintain racial separateness and domination of the Israeli civilian population over the Palestinian people.

²⁹ "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." Hague Regulations Annexed to the Convention (IV) Respecting the Laws and Customs of War on Land (Hague Regulations), Article 43.

17. Israel's settler-colonial enterprise, and its correlated laws, policies and practices, contributes towards the normalisation of grave infringements of Palestinian people's human rights in all aspects of their life including: a separate legal system and institutions for Israeli settlers, the existence of bypass roads connecting colonial settlements to Israel proper and inaccessible to Palestinians, unequal access to basic services, the exploitation of Palestinian lands and natural resources in the oPt, in particular water, in the interest of colonial settlements,³⁰ discriminatory planning and zoning policies against Palestinians, which corresponds to Article II(c) of the Apartheid Convention as "[...] measures calculated to prevent a racial group [...] from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing [its] full development."
18. Colonial settlements reinforce a coercive environment for the Palestinian people, who are subjected to "living conditions calculated to cause [their] physical destruction in whole or in part," as per Article II(b) of the Apartheid Convention, including through countless acts of settler violence against Palestinian communities and their property.³¹ Israeli has categorically refused to take measures to protect the Palestinian civilian population, nor to ensure justice and accountability for settler-violence.³²
19. To facilitate the materialisation of its settler-colonial enterprise, including the construction, maintenance, and expansion of illegal Israeli colonial settlements, Israel destroys Palestinian property, including homes, and confiscates and appropriates lands belonging to the Palestinian people.³³ The implantation and development of colonial settlements in the oPt has therefore entailed widespread and systematic land appropriation, in breach of rules of *usufruct* that must guide the Occupying Power's administration according to Article 55 of the 1907 Hague Regulations.³⁴ It also involves the confiscation and destruction of Palestinian private property, which, unless

³⁰ CERD/C/ISR/CO/17-19, para.22; E/C.12/ISR/CO/4, para.46; see Al-Haq, "Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law," 2013, available at: <https://www.alhaq.org/publications/8075.html>; Al-Haq, "Atarot Settlement: The Industrial Key in Israel's Plan to Permanently Erase Palestine," 2020, available at: <https://www.alhaq.org/publications/16929.html>.

³¹ See Al-Haq, "Israeli Settlements and Settler Violence in Hebron," 26 May 2015, available at: <https://www.alhaq.org/monitoring-documentation/6534.html>; Al-Haq, "Continuing Impunity for Israeli Settlers: One Palestinian Killed, Property Vandalized in the West Bank," 23 April 2018, available at: <https://www.alhaq.org/monitoring-documentation/6239.html>; Al-Haq, "Special Focus: Yitzhar Settler Violence is on the Rise," 5 January 2021, available at: <https://www.alhaq.org/advocacy/17738.html>; Al-Haq, "Arson Attack Emblematic of Israel's Settlement Enterprise," 2 August 2015, available at: <https://www.alhaq.org/advocacy/6511.html>; Al-Haq, "The 'Price Tag' Policy A Surge in Settler Violence against Palestinians," 11 January 2011, available at: <https://www.alhaq.org/advocacy/7040.html>; and Al-Haq, "Institutionalized Impunity: Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory," 27 November 2013, available at: <https://www.alhaq.org/advocacy/6699.html>.

³² CERD/ISR/CO/17-19, para.42(c).

³³ CERD/ISR/CO/17-19, para.42(a)-(b). ICCPR/C/ISR/CO/4.

³⁴ "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct." Hague Regulations Annexed to the Convention (IV) Respecting the Laws and Customs of War on Land (Hague Regulations), Article 55.

absolutely necessary for military purposes, is strictly prohibited under Article 23(g) of the 1907 Hague Regulations.³⁵ Such acts of land appropriation that does not conform to the principle of military necessity may amount to pillage, unlawful under Article 28 of the 1907 Hague Regulations and Article 33 of the Fourth Geneva Convention,³⁶ as well as a war crime under Article 8(2)(b)(xvi) of the Rome Statute.³⁷

20. Because they form the backbone of a broader apartheid regime, illegal Israeli colonial settlements constitute a key tool of colonial domination aimed at depriving the Palestinian people from their right to self-determination.³⁸ The collective right to self-determination constitutes a peremptory norm of international law, giving rise to obligations *erga omnes*, owed to the international community as a whole.³⁹ The UN has recognized the right to self-determination of the Palestinian people myriad times across decades. Accordingly, self-determination is listed among the ‘inalienable rights’ of the Palestinian people acknowledged by the UNGA in Resolution 3236(XXIX) (1974). Similarly, the ICJ held the Palestinian people’s right to self-determination in its *Wall* advisory opinion.⁴⁰ Most recently, the ICC has underlined the importance of the right of the Palestinian people to self-determination.⁴¹
21. By recognising colonial settlements as “a national value” under Article 7 of the Basic Law: Israel - The Nation-State of the Jewish People, while conjointly recognizing the right to self-determination as “unique to the Jewish People” in the State of Israel, under Article 1(c), Israel not only infringes on the Palestinian people’s right to self-determination, but wrongfully suggests its sovereignty over the oPt, which was criticised by the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights in their most recent Concluding Observations following Israel’s periodic reviews under their respective instruments.⁴²

4. Impact of Israel’s Colonial Settlements on Palestinian Rights

22. As early as 1967, Israel has designed, created, and maintained various policies and practices that serve to create conditions leading to the transfer of the Palestinians by force and other means from the area, thereby maintaining and entrenching its settler-

³⁵ “To destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.” Hague Regulations Annexed to the Convention (IV) Respecting the Laws and Customs of War on Land (Hague Regulations), Article 23(g).

³⁶ “The pillage of a town or place, even when taken by assault, is prohibited.” Hague Regulations Annexed to the Convention (IV) Respecting the Laws and Customs of War on Land (Hague Regulations), Article 55. “Pillage is prohibited.” Fourth Geneva Convention for the Protection of Civilians in Times of War of 12 August 1949 (Fourth Geneva Convention), Article 33.

³⁷ Article 8(2)(b)(xvi), Rome Statute of the International Criminal Court.

³⁸ See Al-Haq, “An Obstacle to Peace: 41 Years of Israel’s Illegal Settlement Policy and the Violation of the Palestinian Right to Self-Determination,” 12 October 2010, available at: <https://www.alhaq.org/advocacy/7266.html>.

³⁹ Western Sahara, Advisory Opinion, 1975 ICJ 12, 16 October 1975, para.55.

⁴⁰ ICJ, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion,” 9 July 2004, para.122.

⁴¹ ICC, “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine,” 5 February 2021, ICC-01/18-143, para 116-123.

⁴² CERD/C/ISR/CO/17-19, paras.13-14; E/C.12/ISR/CO/4, para.16.

colonial and apartheid regime. While Israel is yet to be held accountable, these policies and practices have been noted and condemned by the international community. In 2016, for example, the former UN Secretary-General Ban-Ki Moon noted, “[t]he creation of new facts on the ground through demolitions and settlement-building raises questions about whether Israel’s ultimate goal is in fact to drive Palestinians out of certain parts of the West Bank”.⁴³

23. The main elements of the Israeli-created and maintained coercive environment include discriminatory planning and zoning regimes, movement restrictions, settler violence, and the pillaging of natural resources, including water. Such policies hinder the livelihoods and obstruct the fulfilment of basic needs, creating severe living conditions for the Palestinian population. In the Jordan Valley, for example, the number of Palestinians has significantly decreased. The Palestinian population of the Jordan Valley prior to the Israeli occupation was estimated at 250,000,⁴⁴ whereas it is now around 65,000.⁴⁵

4.1. Discriminatory planning and zoning regime

24. Israel has sought to legitimise the illegitimate appropriation and seizure of Palestinian land through four complementary methods, including the declaration of land as abandoned property, the requisition of land for military use, the expropriation of land for public use,⁴⁶ and the declaration of vast portions of land as ‘State land’⁴⁷. Israel’s interpretation of legislation that existed prior to the Israeli occupation, including remnants of Ottoman and British Mandate law that were subsequently absorbed into the Jordanian legal system, along with Israeli Military Orders,⁴⁸ has enabled Israel to freely and aggressively appropriate Palestinian land, facilitating Palestinian forcible transfer with the ultimate aim of maintaining, expanding, and consolidating its settler-colonial and apartheid regime.
25. According to the Oslo Accords, Area C of the occupied West Bank, which constitutes around 60 per cent of the area, is under full Israeli civil and military control. While the Accords called for the gradual transfer of power and responsibility over planning and

⁴³ United Nations Meetings Coverage and Press Releases, “Accelerated Settlement Activity Casts Doubt on Israel’s Commitment to Two-State Solution, Secretary-General Tells Security Council,” 18 April 2016, available at: <http://www.un.org/press/en/2016/sc12327.doc.htm>.

⁴⁴ Palestine Liberation Organisation Negotiations Affairs Department, “Israeli Annexation Policies in the Jordan Valley Destroying the Future of the Palestinian State,” September 2013, available at: <http://www.nad-plo.org/userfiles/file/Factsheet%202013/JORDANVALLEY%20FACTSHEET.pdf>.

⁴⁵ According to statistics recorded by the Palestinian Central Bureau of Statistics, available at: <http://www.pcbs.gov.ps/Portals/Rainbow/Documents/JericoE.html>, and <http://www.pcbs.gov.ps/Portals/Rainbow/Documents/TubasE.html>

⁴⁶ See, for example, B’Tselem, “By Hook or By Crook: Israeli Settlement Policy in the West Bank,” July 2010, available at: http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf.

⁴⁷ Oxfam, “On the Brink – Israeli Settlements and their Impact on Palestinians in the Jordan Valley,” 5 July 2012, available at: https://www.oxfamwereldwinkels.be/sites/default/files/case/bp160-jordan-valley-settlements-050712-en_1.pdf, p. 8.

⁴⁸ Raja Shehadeh, “Occupier’s Law, Israel and the West Bank,” Institute for Palestine Studies, 1985, p. 23.

zoning in Area C from the Israeli Civil Administration to the Palestinian Authority, this was never implemented.

26. As such, and despite the continued relevance of the Accords being contested, Palestinians continue to endure the restrictive planning regime imposed by the Israeli occupying authorities in Area C. Israel continues to manage planning and zoning in Area C in a discriminatory, unlawful manner that feeds into the settler-colonial interest of Israel, including by preventing Palestinians from constructing any infrastructure or implementing development projects, such as building water wells, reclaiming agricultural land, opening agricultural roads, and extending irrigation networks.
27. Notably, 70 per cent of Area C is off-limits to Palestinian construction, whereas 29 per cent is heavily restricted. Therefore, less than 1 per cent of Area C has been designated for Palestinian development by the Israeli Civil Administration.⁴⁹ In practice, however, construction is not allowed in Area C.⁵⁰
28. In contrast, the Israeli occupying authorities continue to approve and allow the ongoing expansion of illegal colonial settlements in the occupied West Bank, including in the Jordan Valley.⁵¹ As documented by Peace Now, in 2020, the Israeli occupying authorities announced tenders for the construction of 3,512 housing units in Israeli colonial settlements across the West Bank, including in occupied and annexed East Jerusalem.⁵²
29. Israeli settlers have similarly benefited from building opportunities facilitated through financial incentives and subsidies, full consultation and participation in planning decision-making, and an ample supply of infrastructure and services. Some 70 percent of Israelis, illegally settled into the oPt, were motivated by Israel's policies of providing low cost of living coupled with high living standards, rather than by ideological reasons.⁵³ Notably, outpost colonial settlements, which are usually built by settlers in

⁴⁹ OCHA, "Humanitarian Factsheet on Area C of the West Bank," July 2011, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf.

⁵⁰ See, for example, Al-Haq, "De Facto Annexation Continues with House Demolitions using Hyundai bulldozers, Destruction of Palestinian Lands, Infrastructure and Pillage," 16 July 2020, available at: <https://www.alhaq.org/advocacy/17124.html>; and Al-Haq, "PHROC Sends Joint Urgent Appeal to the United Nations Special Procedures on Israel's Continued Demolitions Amidst a Global Pandemic," 25 January 2021, available at: <https://www.alhaq.org/palestinian-human-rights-organizations-council/17841.html>.

⁵¹ See, for example, The Times of Israel, "In first since annexation suspended, Israel approves 2,100 new settlement homes," 14 October 2020, available at: <https://www.timesofisrael.com/israel-advances-plans-for-over-2100-new-settlement-homes/>.

⁵² Peace Now, "Construction," available at: <https://peacenow.org.il/en/settlements-watch/settlementsdata/construction>.

⁵³ Peace Now, "West Bank Settlements - Facts and Figures," 1 June 2009, available at: <https://peacenow.org.il/en/west-bank-settlements-facts-and-figures>.

contravention of Israeli domestic law,⁵⁴ still benefit from administrative leniency and are often formally *ex post facto* legalised.⁵⁵

30. The Jordan Valley, which comprises over a fifth of the occupied West Bank, constitutes a hub of Palestinian natural resources, as it includes one-third of the underground water reserves in the West Bank, and contains vital land reserves for the natural expansion of Palestinian towns and cities.⁵⁶ By declaring Palestinian lands as ‘closed military areas,’ ‘State lands,’ and ‘firing zones’ areas, Israel has left some 6,200 Palestinians in 38 communities living there under threat of forcible displacement.⁵⁷
31. Notably, approximately 78% of the area which were declared closed military zones did not witness military trainings, as they are not actually used for trainings, whereas 12% of the area is rarely used to carry out military trainings. In fact, the remaining 10% of the area, which is located close to Palestinian villages and communities, is where the trainings are frequently conducted.⁵⁸ This exemplifies Israel’s ultimate goal of transferring Palestinians, to entrench its settler-colonial enterprise.
32. In addition to the harsh living conditions that all Palestinians in Area C endure, those living in closed military areas and firing zones are further vulnerable to injury as a result of military trainings in the region, suffer from restricted access to resources, services or infrastructure, endure temporary displacements as a result of ‘military training’ exercises, and have their fields and cultivated areas damaged. These constant threats create a coercive environment that pressures Palestinian communities to leave these areas and relocate elsewhere.⁵⁹
33. For example, Khirbet Humsa al-Fawqa, which is a Palestinian community located in what Israel has declared a ‘firing zone’ area, is under constant and systematic harassment and targeting by the Israeli occupying authorities. Since 3 November 2020, the community has been targeted, raided, and demolished six times by the Israeli occupying authorities.⁶⁰
34. Acknowledging that “[t]he Israeli planning regime in the occupied territory is discriminatory and restrictive, and rarely grants Palestinian applications for building permits,” Mr. Michael Lynk, and the UN Special Rapporteur on the right to adequate

⁵⁴ Haaretz, “Israel Revives ‘Regularization’ Bill to Authorize Seizing Palestinian Land for Settlements,” 30 January 2017, available at: <https://www.haaretz.com/israel-news/premium-israel-revives-bill-to-seize-palestinian-land-for-settlements-1.5492053>.

⁵⁵ Al-Haq, “On World Habitat Day, COVID-19 Accentuates Threats to the Palestinian Environment,” 5 October 2020, available at: <https://www.alhaq.org/advocacy/17393.html>.

⁵⁶ Al-Haq, “Settling Area C: The Jordan Valley Exposed,” 2018.

⁵⁷ OCHA, “Firing zones and risk of forcible transfer,” 4 July 2017, available at: <https://www.ochaopt.org/content/firing-zones-and-risk-forcible-transfer>.

⁵⁸ Dror Etkes, “A Looked Garden: Declaration of Closed Areas in the West Bank,” March 2015, available at: https://www.diakonia.se/globalassets/documents/ihl/external/alockedgarden_keremnavot_finalversion.pdf.

⁵⁹ Al-Haq, “Settling Area C: The Jordan Valley Exposed,” 2018.

⁶⁰ Al-Haq, “Over 550 Organisations call on UN Human Rights Council: “Condemnation is Not Enough – Root Causes Must be Addressed, Israel’s Impunity Must be Brought to an End, Justice Must be Achieved,”” 18 March 2021, available at: <https://www.alhaq.org/advocacy/18044.html>.

housing, Mr. Balakrishnan Rajagopal, addressed the demolitions of Khirbet Humsa al-Fawqa and underlined that “[s]ecure housing is one of the ultimate protections that individuals possess to protect themselves against COVID-19.” The UN experts further stressed that “[d]eliberately creating a homeless population in the midst of an international health catastrophe is a serious human rights blemish on any State authority responsible for such acts.”⁶¹

35. Israel’s policy of demolishing Palestinian structures is widespread and systematic. Since the start of 2021 and until 15 April 2021, the Israeli occupying authorities demolished 221 private and public Palestinian structures, including 84 houses – 72 of which are inhabited – forcibly transferring 412 Palestinians, including 213 children.⁶² In 2020, the year of a global pandemic, Al-Haq documented a surge in demolitions of Palestinian private and public structures, amounting to twice the average number of structures destroyed on annual basis over the past 10 years,⁶³ carried out with impunity, as the international community continued to fail to take concrete measures to hold Israel to an account. In 2020, the Israeli occupying authorities demolished a total of 535 private and public structures, including 248 residential houses, resulting in the displacement of 941 Palestinians, including 442 children.⁶⁴ Of these demolished-houses, 169 were located in Area C, and were demolished on the grounds of not acquiring building permits.⁶⁵ These permits, however, are rarely issued.⁶⁶ Published in early 2020, a report by the Israeli daily *Haaretz* indicated that, out of 1,485 Palestinian applications for construction in Area C in 2016-2018, the Israeli occupying authorities only approved 21, or approximately 1 percent of all applications.⁶⁷
36. In occupied and illegally annexed East Jerusalem, Israel began its process of population transfer, colonial settlement, and erasure of Palestinian presence immediately following its occupation,⁶⁸ including by declaring that the “Old City of Jerusalem and some adjacent territory shall be subject to the law, jurisdiction, and administration of Israel.”⁶⁹
37. In 1970, the dispossession and displacement of Palestinians in East Jerusalem was further rooted when Israel promulgated the Legal and Administrative Matters Law,

⁶¹OHCHR, “UN experts condemn Israel’s demolition of houses in Palestinian Bedouin community,” 19 November 2020, available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26522&LangID=E>.

⁶² Data provided by Al-Haq’s Documentation and Monitoring Department.

⁶³ Al-Haq, “Al-Haq Field Report on Human Rights Violations in 2020,” 2 March 2021, available at: <https://www.alhaq.org/monitoring-documentation/17950.html>.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *See, for example*, Al-Haq, “PHROC Sends Joint Urgent Appeal to the United Nations Special Procedures on Israel’s Continued Demolitions Amidst a Global Pandemic,” 25 January 2021, available at: <https://www.alhaq.org/palestinian-human-rights-organizations-council/17841.html>.

⁶⁷ Hagar Shezaf, “Israel Rejects Over 98 Percent of Palestinian Building Permit Requests in West Bank’s Area C,” *Haaretz*, 21 January 2020, available at: <https://www.haaretz.com/israel-news/.premium-israel-rejects-98-of-palestinian-building-permit-requests-in-west-bank-s-area-c-1.8403807>.

⁶⁸ Al-Haq, “Occupying Jerusalem’s Old City: Israeli Policies of Isolation, Intimidation, and Transformation,” 2019, available at: <https://www.alhaq.org/publications/15212.html>.

⁶⁹ Henry Cattan, “Jerusalem,” St. Martin’s Press New York, 1981, p.71.

allowing Israelis to lodge “claims to land and property allegedly owned by Jews in East Jerusalem prior to the establishment of the State of Israel,”⁷⁰ putting Palestinians in East Jerusalem under constant threat of being evicted. At the same time, Palestinians who lost their homes, lands, and properties, and were forcibly displaced in the Nakba of 1948 are still prohibited, by Israel, from reclaiming them.

38. In 2019, Mr. Lynk noted that the majority of these claims “have been brought by settler organisations... within the context of Israel’s unilateral annexation of occupied East Jerusalem. UN Security Council resolutions affirm that all legislative and administrative measures taken by Israel to alter the character and status of Jerusalem are null and void.”⁷¹
39. At present, eight families of 19 households of around 87 Palestinians residing in the Sheikh Jarrah neighbourhood in East Jerusalem are currently at imminent risk of forced eviction.⁷² Unlawfully applying Israeli domestic law to occupied territory, including Israel’s discriminatory 1970 Legal and Administrative Matters Law, Israeli courts have ruled in favour of lawsuits undertaken by settler organisations to evict the eight families. In one case, four families totalling around 30 people, were ordered to leave their homes in May 2021. On this, Mr. Lynk, along with other Special Procedures mandate holders, have highlighted that “[s]uch forced evictions leading to population transfers are strictly prohibited under international law.”⁷³
40. All 500 residents of Karm al-Ja’ouni area in Sheikh Jarrah are refugees, subjected to an ongoing Nakba as exemplified in the continued denial of their inalienable rights of return and property restitution, and the intensified coercive environment designed to drive their ongoing transfer.
41. Palestinians living in Jerusalem in general, and the Old City in particular, continue to face systematic discrimination, including with regards to building and expanding homes, and in accessing adequate municipal services. The Jerusalem Municipality rarely grants building permits to Palestinians living in the Old City, and the Antiquities Authority also closely monitors construction activities and renovations.⁷⁴

⁷⁰ OCHA, “Imminent eviction of Palestinian family in East Jerusalem,” 13 February 2019, available at: <https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>.

⁷¹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 15 March 2019, A/HRC/40/73, para. 21.

⁷² See, for example, Al-Haq, “Sheikh Jarrah Families Send Letter to the International Criminal Court Calling for Urgent Investigation of their Imminent Forced Displacement, Endorsed by 190 Organisations,” 24 April 2021, available at: <https://www.alhaq.org/advocacy/18240.html>; Al-Haq, “Al-Haq Highlights Israel’s Apartheid Regime and Calls for Accountability at the 46th Session of the Human Rights Council,” 12 April 2021, available at: <https://www.alhaq.org/advocacy/18174.html>; and Al-Haq, “14 Palestinian and Regional Organisations Send Joint Urgent Appeal to UN Special Procedures on Forced Evictions in East Jerusalem,” 16 March 2021, available at: <https://www.alhaq.org/advocacy/17999.html>.

⁷³ OHCHR, “Israel/OPT: UN experts warn of rising levels of Israeli settler violence in a climate of impunity,” 14 April 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26991&LangID=E>.

⁷⁴ Al-Haq, “Occupying Jerusalem’s Old City: Israeli Policies of Isolation, Intimidation, and Transformation,” 2019, available at: <https://www.alhaq.org/publications/15212.html>.

42. Israel's discriminatory planning and zoning regime in occupied East Jerusalem is used to minimise the Palestinian presence in the occupied city. Israel denies access to building permits behind onerous and excessive costs, and have designated areas for non-residential purposes, leaving Palestinians with no other option but to build without a building permit.⁷⁵ Accordingly, these houses are under the threat of being demolished, as Palestinians in East Jerusalem are forced to carry out the demolitions themselves. Had they refused, the Israeli judiciary would have ordered the homes to be destroyed by Israeli forces and for the owners to pay a large fine.⁷⁶
43. In 2020, Al-Haq documented the destruction of 72 houses in East Jerusalem. Of these, 49 homes were self-demolished, marking a dangerous escalation of this practice over the past years.⁷⁷

4.2. *Movement restrictions*

44. As part of its policies and practices of dispossession and fragmentation, embedded in its settler-colonial and apartheid regime, Israel imposes draconian restrictions on freedom of movement and residence within the oPt and across the Green Line, severely impacting the rights of Palestinians to family life, choice of residence and spouse, adequate housing, and an adequate standard of living. Through imposing these policies, including the almost 14-year-long closure over two million Palestinians in the Gaza Strip, which further constitutes collective punishment, Israel denies the Palestinian people the right to freedom of movement and residence within the borders of the State, as well as their collective rights, including right to self-determination, while enabling Jewish colonial settlers to appropriate Palestinian land, water, and other means of subsistence. In addition to the rights violations and appropriation and exploitation of Palestinian natural resources, the imposed closure on Gaza serves to disempower Palestinian society by breaking community ties and undermining Palestinians' ability to organise and confront Israeli practices of dispossession and settler-colonialism.
45. One of the most visible Israeli measure of dispossession and fragmentation is the Annexation Wall, which runs along the West Bank, including in and around East Jerusalem. Once completed, approximately 87 per cent of the Wall will be built on occupied territory, annexing more than 10 per cent of occupied territory in order to fully integrate large Israeli colonial settlements, illegally built on Palestinian land, into the territory of the State of Israel.⁷⁸ This is also in violation of the commitment Israel made during the 1995 Interim Agreement on the West Bank and the Gaza Strip that "neither side shall initiate or take any step that will change the status of the West Bank

⁷⁵ See, for example, Al-Haq, "Special Focus: Israel Forces Self-Demolitions in Occupied East Jerusalem," 2 March 2020, available at: <https://www.alhaq.org/advocacy/16540.html>; and Al-Haq, "Demolitions in East Jerusalem Leave 52 Palestinians Homeless," 2 February 2012, available at: <https://www.alhaq.org/monitoring-documentation/6933.html>.

⁷⁶ Al-Haq, "The lesser of two evils: self-demolitions in East Jerusalem," 1 June 2012, available at: <https://www.alhaq.org/monitoring-documentation/6875.html>;

⁷⁷ Al-Haq, "Al-Haq Field Report on Human Rights Violations in 2020," 2 March 2021, available at: <https://www.alhaq.org/monitoring-documentation/17950.html>.

⁷⁸ Al-Haq, "Overlooking the Annexation Wall," 18 August 2011, available at: <https://www.alhaq.org/advocacy/7018.html>.

and the Gaza Strip pending the outcome of the permanent status negotiation.”⁷⁹ The construction of the Wall in the oPt and its associated regime is therefore having a devastating impact upon the fundamental human rights of the Palestinian population in the occupied territory.⁸⁰

46. Since 2002, when Israel started building the Annexation Wall, Israel has alleged a security rationale for its construction, separating the West Bank and Israel. At the time, the Israeli Parliament used the pretext of a spate of attacks carried out inside Israel in the spring of 2002 by Palestinians to authorise this ‘temporary’ structure as an ‘anti-terrorist fence’ or ‘security fence’. Israel claims that the Annexation Wall is designed to stop any potential attacks against Israel by creating a physical separation.
47. In 2004, the ICJ determined that the Annexation Wall was in breach of Israel’s obligation to uphold the right of the Palestinian people to self-determination, and called on Israel to dismantle the sections already built.⁸¹ Despite this, Israel has not halted its construction of the Annexation Wall, which remains standing and under further construction 17 years since the ICJ advisory opinion, and continues to result in material discrimination against Palestinians, including the appropriation of Palestinian land for illegal Israeli colonial settlement construction and expansion.⁸²
48. Not only does the Wall constitute the annexation of Palestinian land east of the Green Line, and contribute to the physical fragmentation of the West Bank, including East Jerusalem, it further affects Palestinians, violating numerous human rights, including freedom of movement, right to property, right to work, right to health, right to education, the right to private and family life, the right to non-discrimination and the human dignity of all persons.⁸³ According to OCHA, as of 2006, 60% of farming families with land to the west of the Wall could no longer get to their lands.⁸⁴
49. In a survey conducted by BADIL in 2006, it was concluded that 21.4% of all Palestinians reported to have at least one member who was separated from relatives, whereas 17.3% of all Palestinians in East Jerusalem who changed their residence did so due to the construction of the Annexation Wall.⁸⁵

⁷⁹ Interim Agreement on the West Bank and the Gaza Strip, Article XXXI, para. 7.

⁸⁰ Al-Haq, “The Annexation Wall and its Associated Regime,” 2011, available at: <https://www.alhaq.org/publications/8136.html>.

⁸¹ Advisory Opinion on the Wall, p. 136, paras. 122 and 151.

⁸² Al-Haq, BADIL, HIC-HLRN, and CIHRS, “Joint Submission to the Committee on the Elimination of Racial Discrimination for the List of Themes on Israel’s Seventeenth to Nineteenth Periodic Reports,” 100th Session, 5 September 2019, p. 4, at: <http://www.alhaq.org/advocacy/15010.html>.

⁸³ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/6/17/Add.1, p. 18.

⁸⁴ OCHA, “OCHA Special Focus,” November 2006, available at: https://www.ochaopt.org/sites/default/files/OCHA_Special_focus_8_Nov_2006_Eng.pdf.

⁸⁵ BADIL, “On the Main Findings of the Impact of the Wall and its Associated Regime on the Forced Displacement of the Palestinians in Jerusalem,” June 2006, available at: <http://www.badil.org/en/publication/press-releases/20-2006/1643-press-422-06.html>.

4.3. Settler violence

50. Illegally residing in the oPt, Israeli settlers are notorious for their frequent violent attacks, and acts of harassments and intimidation against Palestinians. Such attacks include beatings, throwing stones, shooting at Palestinians with live ammunition, torching agricultural lands, trees and cars, uprooting trees, confiscating and pillaging natural resources, including land and water, attacking and suppressing peaceful assemblies, denying access to property and to sources of livelihood, and spray-painting hate speech on cars, walls and other Palestinian properties.⁸⁶
51. On 14 April 2021, Mr. Lynk, along with other Special Procedures mandate holders, highlighted rising levels of Israeli settler violence against Palestinians, carried out with impunity. The statement underscored how “settler violence was predominantly ideologically motivated and primarily designed to take over land but also to intimidate and terrorize Palestinians.”⁸⁷ The experts further highlighted that: “[b]esides the presence and expansion of Israeli settlements, which are intended to establish illegal claims for Israeli sovereignty, settler violence is meant to make the daily lives of Palestinians untenable.”⁸⁸
52. With the aim of facilitating the transfer of Palestinians off their land to make way for the construction of colonial settlements, acts of settler violence are intentional, widespread, and organised, constituting a core component of the coercive environment endured by Palestinians in the occupied West Bank, including East Jerusalem.
53. Incidents of settler violence against Palestinians have intensified in frequency and severity over the course of the last several years, becoming one of the primary concerns for the safety of the Palestinian civilian population in the West Bank. These incidents regularly result in physical injury to Palestinians and severe damage to private and

⁸⁶ See, for example, Al-Haq, “Al-Haq Sends Urgent Appeal to the United Nations Special Procedures on Intensified Yitzhar Settler Violence,” 17 February 2021, available at: <https://www.alhaq.org/advocacy/17913.html>; Al-Haq, “Special Focus: Israeli Settlers Wilfully Kill a Palestinian, Attack Palestinian Homes and Families - Reporting Period: 1 April - 15 April 2019,” 21 May 2019, available at: <https://www.alhaq.org/advocacy/6047.html>; Al-Haq, “Continuing Impunity for Israeli Settlers: One Palestinian killed, Property Vandalized in the West Bank,” 23 April 2018, available at: <https://www.alhaq.org/monitoring-documentation/6239.html>; Al-Haq, “Settler Violence Escalates as Large Settler Mobs Attack Palestinian Civilians,” 20 January 2018, available at: <https://www.alhaq.org/monitoring-documentation/6285.html>; Al-Haq, “Settler Violence in the West Bank,” 7 August 2014, available <https://www.alhaq.org/monitoring-documentation/6617.html>; Al-Haq, “Open Letter Concerning the Increase in Settler Violence against Palestinians in the OPT,” 19 September 2011, available at: <https://www.alhaq.org/advocacy/6998.html>; Al-Haq, “The ‘Price Tag’ Policy A Surge in Settler Violence against Palestinians,” 8 June 2011, available at: <https://www.alhaq.org/advocacy/7040.html>; and Al-Haq, “Al-Haq calls for immediate measures to stop settler violence in Hebron and throughout the Occupied Palestinian Territory,” 5 December 2008, available at: <https://www.alhaq.org/advocacy/7240.html>.

⁸⁷ OHCHR, “Israel/OPT: UN experts warn of rising levels of Israeli settler violence in a climate of impunity,” 14 April 2021, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26991&LangID=E>.

⁸⁸ *Ibid.*

public property. In some cases, Israeli settler violence attacks result in the death of Palestinians.⁸⁹

54. While settler violence is prevalent throughout the year, it intensifies around and during the annual olive harvest season.⁹⁰ The Israeli occupying forces, often present during attacks by settlers, regularly fail to provide any protection to Palestinian civilians under attack and generally refuse to take any measures to restrain settlers, therefore becoming passive bystanders during such attacks. In some cases, the Israeli occupying forces have used force against Palestinian civilians under attack by settlers.
55. In one case documented by Al-Haq, Yitzhar settlers, with the support of the Israeli occupying forces, violently attacked and suppressed a solidarity event,⁹¹ injuring three Palestinians, and setting fire to olive trees.⁹² Sabe' Salim Ahmad 'Odeh, a 52-year-old Palestinian farmer and owner of a 30-dunum plot in al-Lahf area, is constantly under the threat of settler violence due to the close proximity of his land to the Yitzhar settlement, and specifically, the settlers' caravans, which have been set up 500–700 meters away from his agricultural land. Yitzhar settlers, who call themselves "Paying the Price Group" and "Hilltop Youth," have perpetrated frequent attacks against Sabe', including by torching and uprooting his olive trees.
56. In his affidavit to Al-Haq, Sabe' recalled the following:

"Each year, I used to coordinate with the Israeli Military Liaison [Office], which allocates specific days in the season for us to reach our lands to harvest the olive trees. But in 2020, the Israel-Palestinian security coordination was halted, which led to an uncertainty about the mechanism by which Palestinians can access their own lands which are close to Israeli settlements. We [Sabe', the volunteers, people

⁸⁹ Al-Haq, "Special Focus: Israeli Settlers Wilfully Kill a Palestinian, Attack Palestinian Homes and Families - Reporting Period: 1 April - 15 April 2019," 21 May 2019, available at: <https://www.alhaq.org/advocacy/6047.html>; Al-Haq, "Continuing Impunity for Israeli Settlers: One Palestinian killed, Property Vandalized in the West Bank," 23 April 2018, available at: <https://www.alhaq.org/monitoring-documentation/6239.html>; Al-Haq, "Armed Israeli Settlers Kill One Palestinian and Injure 30 Others in an Attack on Al-Mghayyer Village," 15 February 2019, available at: <https://www.alhaq.org/monitoring-documentation/6104.html>; Al-Haq, "Arson Attack Emblematic of Israel's Settlement Enterprise," 2 August 2015, available at: <https://www.alhaq.org/advocacy/6511.html>; and Al-Haq, "Settlers Kill a Palestinian Farmer in 'Iraq Bourin Village: Impunity Must End,'" 8 June 2011, available at: <https://www.alhaq.org/advocacy/7057.html>.

⁹⁰ See, for example, Al-Haq, "The Olive Harvest Season Disrupted by Settler Violence and Israeli Restrictions Imposed on Palestinian Farmers," 7 November 2014, available at: <https://www.alhaq.org/monitoring-documentation/6589.html>; Al-Haq, "Israeli Settlers Attack and Destroy Palestinian Olive Trees," 10 October 2013, available at: <https://www.alhaq.org/monitoring-documentation/6708.html>; and Al-Haq, "Open Letter Concerning the Increase in Settler Violence against Palestinians in the OPT," 19 September 2011, available at: <https://www.alhaq.org/advocacy/6998.html>.

⁹¹ A solidarity event to pick olives was organised to inaugurate the season in al-Lahf area, northwest of Huwwara village, south of Nablus. The event was attended by a group of 40-50 people from Palestinian organisations, the municipality of Huwwara, journalists, and the Faz3a grassroots campaign, a volunteer-based campaign by the Popular Struggle Coordination Committee, which aims at standing in solidarity with Palestinian farmers against settler violence and Israel's settler-colonial and apartheid regime.

⁹² Al-Haq, "Special Focus: Yitzhar Settler Violence is on the Rise," 5 January 2021, available at: <https://www.alhaq.org/advocacy/17738.html>.

from the municipality, and journalists] walked on foot, carrying our agricultural equipment. Immediately after our arrival, a group of five masked Israeli settlers, with photographic cameras, arrived and started [intimidating us] by taking photos of me and the volunteers that were with me. This happened while additional large groups of settlers arrived on top of a hill, from the eastern and western sides. At first, I saw [around] ten Israeli settlers, standing 20 meters away, holding big stones, throwing them at me and the aforementioned volunteers, and approaching us in an attempt to attacks us. This coincided with the increase in the number of Israeli settlers in the place, and the arrival of an [Israeli] military jeep.”⁹³

57. Following the arrival of the occupying forces, Israeli settlers continued and intensified their attacks against the Palestinians, under the protection, and with the help, of the Israeli occupying forces.⁹⁴ In his affidavit to Al-Haq, Sabe’ recounted the following:

“Around four to five Israeli soldiers, armed and wearing military uniforms, dismounted from the jeep and approached us, while stone throwing by settlers continued heavily. One of the Israeli soldiers asked me to leave the land, while the settlers continued to attack us. I told the soldier, in Hebrew, that rather than asking us to leave my land, he has to stop the settlers from throwing stones at us, because they are the attackers and I am in my own land. Then, the soldier, who was about four meters away from me, fired a bullet in the air. Then, a group of five masked settlers, wearing civilian clothes, approached and surrounded me. One of them, who was shirtless, grabbed me from my left shoulder from the back and started punching me with his fists. While I was blocking the punches, the other settlers were throwing stones at me, with the help of an Israeli soldier. The soldier, who was wearing his military outfit and helmet, pushed me from behind, with the help of the settler who was attacking me, into rocks from a height of about one and a half meter. After I fell on the ground, the settlers continued throwing stones at me. Stones were hitting me all over my body, as I was hit by stones in my chest, head and shoulders.”⁹⁵

58. After he was pushed to the ground, Sabe’ got up, in pain, and walked about 500 meters towards the village, until a Palestinian ambulance reached the scene and transferred him to Rafidia Governmental Hospital in Nablus city. At the hospital, and following some medical examinations and x-rays, the doctors found that Sabe’ had severe bruises to the chest, left shoulder, right arm, forearm, and elbow.⁹⁶

59. Israel’s discriminatory legislative and administrative regime in the West Bank, coupled with its institutional unwillingness to prosecute offending settlers, shields settlers from the consequences set out in law and has allowed such violence against the Palestinian civilian population to continue and escalate. Enjoying impunity, settlers involved in the

⁹³ Al-Haq Affidavit 238A/2020, given by Sabe’ Salim Ahmad ‘Odeh, 52, a resident of Huwwara village in Nablus Governorate, on 10 October 2020. (hereinafter ‘Al-Haq Affidavit 238A/2020.’)

⁹⁴ A video footage capturing the moment Sabe’ was injured is available here: <https://www.facebook.com/100008156800647/videos/2811134509168415/>.

⁹⁵ Al-Haq Affidavit 238A/2020.

⁹⁶ Al-Haq Affidavit 238A/2020.

planning and perpetration of such acts have remained largely immune from the enforcement of the law and, in some cases, have even benefited from official support from state authorities for educational, social and religious activities. This systematic lack of law enforcement against settlers as well as the failure to investigate such incidents have led to the creation of a culture of impunity and contributed to an increase in the frequency and severity of such attacks.⁹⁷

60. The measures taken by the Israeli law enforcement authorities in response to such attacks have been highly inadequate. Israel's national police, responsible for enforcing the law against settlers, regularly fail to arrive at the scene of the incident in time to intervene or prevent escalation.
61. Al-Haq documented the case of Sa'eed Hussein Sa'eed Abu Alia, a 60-year-old Palestinian farmer, who, on 26 October 2020, accompanied by his brothers, sons, and nephews, discovered that a hundred of their olive trees had been chopped down, and stressed that justice cannot be served by Israel's legislative and administrative regime, which, instead, provides protection to Israeli settlers. Sa'eed and his family are no longer allowed to access their lands without a permit from the Israeli Coordination Office, which, if approved, will allow them to access their land only four days every year. In his affidavit to Al-Haq, Sa'eed explained the following:

“My three siblings and I own an area of 43 dunums of land cultivated with olive and almond trees, north of al-Mghayyer village, east of Ramallah. We have inherited this piece of land from our late father. The Israeli [occupying authorities] have constructed Adei Ad settlement near our land. The nearest caravan, in which settlers reside, is only three or four meters away from the borders of our land. After Adei Ad settlement was established, we became obliged to obtain a permit from the Israeli occupying authorities, through the Israeli Coordination Office, in order to reach our land, under the pretext that we must have soldiers from the occupying army with us to prevent dispute between us and the settlers. The permit is for four days a year only; one day in April [or during Spring in general] for ploughing and three days in October for harvesting.”⁹⁸

62. Sa'eed and his family had applied for a permit, which was approved. 26 October 2020 was the first of the three days in which they were allowed to access the land to harvest their olive trees. At approximately 8:00 am that day, 15 members of Sa'eed's family were ready to harvest their olive trees. They brought the needed equipment, including an agricultural tractor. To their surprise, the trees were chopped down. In his affidavit to Al-Haq, Sa'eed recalled the following:

“We managed to obtain the required permit from the Israeli Coordination Office. At 8 am, I, along with my brothers, sons, and nephews, so around 15 people in total, were waiting for a patrol of the Israeli occupying army to accompany us to the

⁹⁷ Al-Haq, “Institutionalized Impunity: Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory,” 27 November 2013, available at: <https://www.alhaq.org/advocacy/6699.html>

⁹⁸ Al-Haq Affidavit 253A/2020, given by Sa'eed Hussein Sa'eed Abu 'Alia, 60, a resident of al-Mghayyer village in Ramallah Governorate, on 27 October 2020. (hereinafter ‘Al-Haq Affidavit 253A/2020.’)

land. Indeed, a patrol arrived. Along with the patrol was an officer, who was wearing the uniform of the Israeli army, and identified himself as 'Mohannad.' He informed us that he is the responsible officer at the Israeli Coordination Office for coordinating our entry into the land. We also had an agricultural tractor and another needed equipment for harvesting olive trees with us. Upon our arrival, I was surprised by the horror of the scene, as about 100 olive trees were completely chopped down from their trunks. It was clear, from the flat and sharp cutting that it was done by a chainsaw... From the dryness of the stems and branches, it seems that [the attack] took place about two months before we discovered it. It is quite clear that settlers were behind this, since we, Palestinians, are denied access to these lands. Even us, the owners of this land, are allowed to access it only after coordinating with the [Israeli occupying authorities] and only for four days every year."⁹⁹

63. This is not the first time Israeli settlers attacked Sa'eed, his family, and their lands. In March 2020, when the Israeli occupying authorities allowed them to access their land for ploughing, a settler sprayed pepper gas in Mohammad, Sa'eed's brother's, face. In his affidavit to Al-Haq, Sa'eed added:

*"On the same day [my brother was attacked], we discovered that settlers have bulldozed more than 150 olive trees planted in our land. Every year, settlers bulldoze, uproot and damage our olive trees. After the latest assault [the chopping down of trees], we were left with no more than 15 trees. Before 2004, we had about 500 olive trees. This time, I addressed and told the Israeli coordination officer: 'look what the settlers are doing,' to which he responded: 'we are a state that follows the law; you can file a complaint to the Israeli police.'"*¹⁰⁰

64. Sa'eed has previously tried to file complaints against the Israeli settlers, with no justice served. In his affidavit to Al-Haq, Sa'eed explained the following:

*"I have previously filed numerous complaints to the Israeli police regarding the settlers' attacks on my land. For each complaint, the Israeli police would list the offender as 'anonymous,' even though I've stressed that Palestinians cannot access the lands since 2004 without prior coordination with the Israeli occupying authorities. [In fact,] is it the [Israeli] settlers that access the land."*¹⁰¹

65. While Sa'eed, filled with anguish and sorrow, was standing observing the scene, a settler approached him laughing and commented provocatively "your olives are exceptional, you'll enjoy the tasteful oil this year."¹⁰²

66. In 2013, the report of the United Nations International Fact-Finding Mission on Settlements highlighted the failure of the Israeli occupying authorities to enforce the law by investigating such incidents and taking measures against their perpetrators. The

⁹⁹ Al-Haq Affidavit 253A/2020.

¹⁰⁰ Al-Haq Affidavit 253A/2020.

¹⁰¹ Al-Haq Affidavit 253A/2020.

¹⁰² Al-Haq Affidavit 253A/2020.

Fact-Finding Mission came to the “clear conclusion that there is institutionalised discrimination against the Palestinian people when it comes to addressing violence.”¹⁰³

67. Israel’s response to acts of settler violence and incitement to commit them continues to be inadequate, despite the Israeli occupying authorities’ awareness of the escalation in these organised violent activities. The virtual impunity for the majority of settler attacks has created an enabling environment for violence rather than a deterrent to it.¹⁰⁴

4.4. *Pillaging of natural resources*

68. In addition to the illegal appropriation of Palestinian land, in favour of establishing and expanding Israeli colonial settlements, the Israeli occupying authorities have for decades carried out systematic appropriation and exploitation of Palestinian natural resources, particularly water, across the oPt. Notably, Israel’s discriminatory planning regime, which facilitates the destruction and confiscation of Palestinian property, plays a preventive role in restricting Palestinians from extracting their own groundwater resources. While the situation in the Gaza Strip will not be specifically addressed in this submission, it is imperative to note that Gaza Strip has long experienced a severe water crisis.¹⁰⁵
69. Established in 1937, Mekerot, the national water company of Israel and the country’s top agency for water management, was founded by three parastatal organisations: the Jewish Agency, Jewish National Fund and Histadrut, which are chartered to serve only persons of “Jewish race or descendency.” At present, these parastatals, which are called “national” institutions, coordinate the control of Palestinian natural resources within their areas of specialisation: the Jewish Agency (with its sister organisation, the World Zionist Organization), which handles development planning; the Jewish National Fund, which handles funding and managing land acquisition; and Histadrut, which organises the labour of and for the same racialised ethno-religious group.¹⁰⁶ Mekerot supplies

¹⁰³ United Nations International Fact-Finding Mission on Settlements, “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,” Advanced Unedited Version (January 2013) UNHRC 22nd session, para. 107.

¹⁰⁴ Al-Haq, “Institutionalized Impunity: Israel’s Failure to Combat Settler Violence in the Occupied Palestinian Territory,” 27 November 2013, available at: <https://www.alhaq.org/advocacy/6699.html>.

¹⁰⁵ Sandy Tolán, “Gaza’s water crisis is ‘a ticking time bomb’,” Public Radio International, 13 November 2018, available at: <https://www.pri.org/stories/2018-11-13/gazas-water-crisis-ticking-time-bomb>; and Al-Haq, “Joint Urgent Appeal to the United Nations Special Procedures on the escalating water and sanitation crisis in the Gaza Strip, occupied Palestinian territory,” 9 November 2020, available at: <https://www.alhaq.org/advocacy/17505.html>.

¹⁰⁶ Al-Haq, “Joint Urgent Appeal to the United Nations Special Procedures on the escalating water and sanitation crisis in the Gaza Strip, occupied Palestinian territory,” 9 November 2020, available at: <https://www.alhaq.org/advocacy/17505.html>.

Israel with 90 per cent of its drinking water, operating a cross-country water supply network known as the National Water Carrier.¹⁰⁷

70. In 1952, Israel established the Tahal Group by merging the Water Resources Department of the Ministry of Agriculture with the engineering division of Mekorot. Founded under Israel's company law, the government of Israel holds the major share (52 per cent) in Tahal; the rest of the shares are divided equally between the JA and JNF.¹⁰⁸
71. As of 1967, Palestinians in the West Bank are denied access to the waters of the Jordan River, as the occupying authorities destroyed at least 120 Palestinian wells along the Jordan Valley in 1967,¹⁰⁹ and control both the shoreline and the flow of the water, which is diverted, along with the Jordan headwaters in the occupied Syrian Golan, via the National Water Carrier (designed by Tahal and constructed by Mekorot) from Lake Tiberias to Jewish settlements inside the Green Line.¹¹⁰ Israeli parastatal institutions—primarily Mekorot—also retain control over the waters of the Mountain Aquifer, diverting 89 percent of this resource to Israelis, despite the fact that 80 percent of the water recharging the aquifer originates in the Palestinian West Bank.¹¹¹
72. The facilitation of water supply for Israelis in the West Bank by state and private actors contributes to Israel's settler-colonial enterprise. Israel supports the functioning and maintenance of colonial settlements and outposts through the provision of infrastructure and services,¹¹² including water infrastructure and supply, at low costs while foreclosing Palestinian communities to establish those services under their own control and instead selling water at high costs to Palestinians as a strategy to increase their water dependency. Because Israel holds almost exclusive control over East Jerusalem through annexation and over Area C through maintaining jurisdiction over

¹⁰⁷ CERD Report, para. 105.

¹⁰⁸ "Tahal," Jewish Virtual Library, 2019, available at: <https://www.jewishvirtuallibrary.org/tahal>.

¹⁰⁹ Palestinian Authority Ministry of Agriculture and Palestinian Water Authority, "Development of the Palestinian Valley: Plan for Development of Water Sources in Valley Governates," May 2010, [in Arabic], pp. 3, 8, cited in Eyal Hareuveni, "Dispossession & Exploitation Israel's policy in the Jordan Valley & northern Dead Sea," Jerusalem: B'Tselem, May 2011, p. 32, at:

http://ecopeaceme.org/uploads/Btselem_Dispossession_and_Exploitation_Eng_201105.pdf. Other source report that Israeli occupying forces either confiscated or destroyed 140 pumping units in the Jordan Valley in 1967. See, Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Giorgio Giacomelli, Special Rapporteur, E/CN.4/2000/25, 15 March 2000, para. 24.

¹¹⁰ Al-Haq, "Joint Urgent Appeal to the United Nations Special Procedures on the escalating water and sanitation crisis in the Gaza Strip, occupied Palestinian territory," 9 November 2020, available at: <https://www.alhaq.org/advocacy/17505.html>.

¹¹¹ Al-Haq, "Geography and Hydrology of Water Resources in the OPT," 22 March 2013, available at: https://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20no%201%20Geography%20and%20Hydrology_66.2013.pdf.

¹¹² Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General on human rights situation in the Occupied Palestinian Territory, including East Jerusalem," 13 April 2017, UN Doc A/HRC/34/38, para 17, 18.

both security and civil affairs, Israel can unilaterally construct water infrastructure to and in illegal colonial settlements.

73. Due to Israel's control of the three main sources of natural water supply in the oPt, and its discriminatory water policies, a huge disparity in water consumption between Israelis and Palestinians may be observed by a factor estimated between 3.5 and 5 in favour of Israeli consumers.¹¹³ Accordingly, Palestinian lands cannot be irrigated and in many cases are, therefore, abandoned, and ultimately designated for colonial settlement expansion.

5. Accountability for Israel's Settler-Colonial Enterprise

5.1. *International Criminal Court*

74. After a long, 12-year process of preliminary investigation, abandonment, and renewed interest at the ICC,¹¹⁴ and following, most recently, the decision of Pre-Trial Chamber I confirming that the Court has full territorial jurisdiction to investigate and prosecute international crimes committed in the oPt,¹¹⁵ the Prosecutor took the step of formally opening a criminal investigation into the Situation in Palestine in April 2021.¹¹⁶
75. The illegal settler-colonial enterprise has been cited by the Prosecutor numerous times as a focus for investigation as the war crime of population transfer under Article 8(2)(b)(viii) of the Rome Statute.¹¹⁷ It is therefore likely that the settler-colonial enterprise will be central to the investigation going forward, and, should arrest warrants be issued, key personnel in the Israeli and governmental hierarchy with regards the construction, maintenance, and expansion of such colonial settlements will be indicted. Nonetheless, it is crucial to recall that, as outlined above, illegal Israeli colonial settlements in the occupied West Bank, including East Jerusalem, constitute only one

¹¹³ Eleni Lazarou, "Water in the Israeli-Palestinian conflict," European Parliamentary Research Service, 13 January 2016, available at:

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573916/EPRS_BRI\(2016\)573916_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573916/EPRS_BRI(2016)573916_EN.pdf);

B'Tselem, "The Gap in Water Consumption between Palestinians and Israelis," 1 January 2011, available at: <https://www.btselem.org/gap-water-consumptionbetween-palestinians-and-israelis>, with statistics as of 4 July 2018, available at: <https://www.btselem.org/water/statistics>, and

<https://www.btselem.org/water/statistics>; and Amnesty International, "Troubled Waters – Palestinians Denied Fair Access to Water," 2009, available at: <https://www.amnestyusa.org/pdf/mde150272009en.pdf>.

¹¹⁴ See Al-Haq, "Al-Haq Publishes Updated Q&A on the Situation in the State of Palestine at the International Criminal Court," 13 March 2021, available at: <https://www.alhaq.org/advocacy/18009.html>.

¹¹⁵ ICC, "Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine,'" 5 February 2021, ICC-01/18-143; Al-Haq, "Landmark Decision of the Pre-Trial Chamber of the International Criminal Court Welcomed by Human Rights Organizations," 6 February 2021, available at: <https://www.alhaq.org/advocacy/17878.html>.

¹¹⁶ ICC, "Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine," 3 March 2021, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>; Al-Haq, "Justice for Palestine: Historic Day for Palestinian Victims of Israeli Crimes," 4 March 2021, available at: <https://www.alhaq.org/advocacy/17972.html>.

¹¹⁷ See, most recently, ICC, "Report on Preliminary Examination Activities 2020," 14 December 2020, para 223, available at: <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>.

component of Israel's larger institutionalised regime of racial domination and oppression, imposed upon all Palestinians, whether they live within or across the Green Line, or as refugees and exiles denied their right of return abroad.

76. Accordingly, it is of crucial importance that all states, including those party to the Rome Statute, fully cooperate with the Office of the Prosecutor, and support the ICC more generally as international crimes committed by Israeli perpetrators are investigated and, in the future, prosecuted. In particular, it is worthwhile to recall the United States' now-rescinded Executive Order 13928 and related sanctions on Prosecutor Fatou Bensouda, and the Head of the Jurisdiction, Complementarity and Cooperation Division, Phakiso Mochochoko.¹¹⁸ Such attempts to derail the crucial work of the Court, and to shield Israeli perpetrators from being held accountable in accordance with international human rights, humanitarian, and criminal law must be condemned by all states.
77. As noted above, the construction and maintenance of illegal Israeli colonial settlements in the occupied West Bank, including East Jerusalem, is directly prosecutable as the war crime and crime against humanity of forcible transfer by the ICC. Further, these same acts constitute the underlying inhuman/inhumane acts of the crime against humanity of apartheid, similarly prosecutable by the ICC. While it is imperative that the Court vigorously and energetically pursue accountability by holding individual perpetrators accountable, the ICC is only one piece in the broader international accountability mechanism. It is, therefore, crucial that accountability is similarly pursued in parallel through other mechanisms in a way which complements its in-built limitations.¹¹⁹

5.2. *Third State responsibility*

78. While the ICC and international criminal law is chiefly concerned with individual criminal responsibility, states have an obligation under international law to oppose Israel's unlawful settler-colonial and apartheid regime, and its unlawful settler-colonial enterprise more broadly. As the prohibition against apartheid and the right to self-determination both constitute peremptory norms of international law, giving rise to obligations *erga omnes*,¹²⁰ all states are obliged, as outlined in the International Law

¹¹⁸ See Al-Haq, "Al-Haq Welcomes the Rescinding of US Executive Order 13928, Recalls the Necessity that the International Criminal Court Investigate the Situation in Palestine," 5 April 2021, available at: <https://www.alhaq.org/advocacy/18151.html>.

¹¹⁹ See Pearce Clancy and Rania Muhareb, "Putting the International Criminal Court's Palestine Investigation into Context," 2 April 2021 *Opinio Juris*, available at: <http://opiniojuris.org/2021/04/02/putting-the-international-criminal-courts-palestine-investigation-into-context/>.

¹²⁰ See above on the peremptory status of the right of self-determination, on the prohibition of apartheid, see John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory," 2013, 24(3) *European Journal of International Law*, p. 883; Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World," 2015, 2 *Oslo Law Review* pp. 107-108.

Commission’s Draft Articles on State Responsibility,¹²¹ to refrain from recognising the unlawful situation as legitimate nor to render aid or assistance to its maintenance,¹²² and to cooperate to bring the unlawful situation to an end through lawful means.¹²³ The Draft Articles do not proscribe how such cooperative action should be taken, or what form it must take; they do, however, call for these measures to be carried out as part of a joint and coordinated effort, including through international organisations.¹²⁴

79. Further, all High Contracting Parties to the Fourth Geneva Convention are bound to “ensure respect for the ... Convention in all circumstances.”¹²⁵ As Israel has demonstrated itself to be categorically unwilling to follow the substance of international humanitarian law, it is therefore incumbent upon the international community, under Common Article 1, to intervene.¹²⁶ This was put into exceptionally clear terms by the ICJ in its *Wall* opinion:

“Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”¹²⁷

80. Nonetheless, the international community has categorically failed in this regard. The Special Rapporteur was correct in his assessment in 2019 that “An international community that took seriously its legal responsibilities to challenge and end internationally wrongful acts would have concluded long ago that Israel, the occupying Power, was not sincere about seeking to end the occupation.”¹²⁸ In the context of settler-colonial domination and apartheid in Palestine, it is crucial that such measures

¹²¹ ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) (hereinafter the ‘Draft Articles’).

¹²² Article 41(2), Draft Articles.

¹²³ Article 41(1), Draft Articles.

¹²⁴ Commentary to Article 41, para 3, Draft Articles.

¹²⁵ Article 1, Fourth Geneva Convention; this Article is common to all four Geneva Conventions.

¹²⁶ See generally, Laurence Boisson de Chazournes and Luigi Condrelli, “Common Article 1 of the Geneva Conventions revisited: Protecting collective interests,” 2000, 837 *International Review of the Red Cross*.

¹²⁷ *Wall Opinion*, para 159; see also ICJ, “Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Se. Serbia and Montenegro) (Judgement),” 2007, para. 162.

¹²⁸ UNGA, Situation of human rights in the Palestinian territories occupied since 1967, 21 October 2019, UN Doc A/74/507, para. 78.

include such measures as targeted sanctions directed against the Israeli authorities.¹²⁹ At a minimum, meaningful and effective steps must be taken to prohibit the importation and trade in products and services originating from illegal Israeli colonial settlements. In this regard, inspiration can be taken from Ireland’s Occupied Territories Bill, which has remained unfortunately stalled in the Irish parliament.¹³⁰

5.3. Corporate accountability

81. Businesses and corporate entities play a central role in the sustainability of Israel’s settler-colonial enterprise and the maintenance of its apartheid regime. Corporate colonial settlements serve to provide employment, services, and infrastructure to Israeli settlers illegally transferred into the occupied West Bank, including East Jerusalem. Moreover, by engaging in these corporate settlements, multinational and Israeli corporations provide a veneer of legitimacy to these unlawful colonial constructs, and by marketing products originating from these colonial settlements as ‘Produce of Israel’, sustain the narrative that the oPt is Israeli, not Palestinian, territory.
82. The UN Guiding Principles on Business and Human Rights (UNGPs)¹³¹ are the primary framework by which the human rights responsibilities of business enterprises have been established and are articulated. These non-binding principles stress the responsibility of all corporate entities to avoid contributing to human rights abuses wherever they operate, in particular through undertaking due diligence assessments to identify actual and potential rights impact, and to mitigate against them. This responsibility is necessarily heightened in armed conflict and occupation settings, and should include ‘enhanced’ due diligence assessments.¹³²
83. The role of corporate entities in Israel’s settlement enterprise was addressed at length by a dedicated Fact-Finding Mission, established pursuant to Human Rights Council Resolution 19/17 (2012),¹³³ which determined that businesses enterprises have “enabled, facilitated, and profited from the construction and growth” of illegal Israeli

¹²⁹ Al-Haq, Al-Haq Response to ‘Regulation’ Bill: Time for Actions, Time for Sanctions (7 February 2017), available at: <http://www.alhaq.org/advocacy/6357.html>; Al-Haq, Al-Haq Condemns as Illegal Prime Minister Netanyahu’s Stated Plans to Annex West Bank Settlements and Calls on Third States to Apply Economic Sanctions on Israel (10 September 2019), available at: <http://www.alhaq.org/advocacy/15096.html>; Al-Haq, Al-Haq’s Open Letter to the UN Security Council on Israel’s Plans to Annex the West Bank (23 April 2020), available at: <http://www.alhaq.org/advocacy/16769.html>; see also James Crawford, ‘Opinion: Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories’ (25 January 2012), available at: <https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf>.

¹³⁰ Houses of the Oireachtas, “Control of Economic Activity (Occupied Territories) Bill,” 2018, available at: <https://www.oireachtas.ie/en/bills/bill/2018/6/>.

¹³¹ UN OHCHR, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, p. 13, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

¹³² Al-Haq and GLAN, “Business and Human Rights in Occupied Territory: Guidance for Upholding Human Rights,” 27 April 2020, available at: <https://www.alhaq.org/publications/16786.html>.

¹³³ UN Human Rights Council Resolution 19/17, 10 April 2012, UN Doc A/HRC/RES/19/17.

colonial settlements.¹³⁴ Specifically, the Mission's report identified the following business activities:

- “The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures;
- The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;
- The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops;
- The supply of security services, equipment and materials to enterprises operating in settlements;
- The provision of services and utilities supporting the maintenance and existence of settlements, including transport infrastructure;
- Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;
- The use of natural resources, in particular water and land, for business purposes;
- Pollution, and the dumping of waste in or its transfer to Palestinian villages;
- Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints;
- Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.”¹³⁵

84. It is accordingly crucial that meaningful and effective steps are taken by the international community to combat corporate complicity and collusion in Israel's unlawful settler-colonial enterprise, and that this is carried out in tandem with any effort by the Prosecutor of the ICC to tackle the crimes of population transfer and apartheid related to the construction, maintenance, and expansion of illegal Israeli colonial settlements. This may be done in a number of ways. First, as noted above, trade with colonial settlements should be prohibited at the national and regional level. Second,

¹³⁴ UNHRC, “Report of the independent international fact-finding mission to investigate the implications of 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, p. 20.

¹³⁵ *Ibid.*

states should actively engage with the ongoing process to adopt a legally binding instrument on business and human rights, which would allow for, *inter alia*, mandatory enhanced human rights due diligence,¹³⁶ and corporate criminal liability to hold corporations and corporate actors directly responsible.

85. In this context, the UN database of businesses involved in Israel's settler-colonial enterprise serves as an instrument of transparency and is a practical and effective tool to ensure that corporations do not continue to benefit from a situation of prolonged occupation, systematic and widespread human rights violations, and injustice. The database further strengthens the implementation of international law and the UN Guiding Principles on Business and Human Rights, in situations of conflict and occupation.
86. Human Rights Council resolution 31/36 (2016) mandated the High Commissioner "to produce a database of all business enterprises involved in the activities detailed" in the afore-mentioned fact-finding mission report, and "to be updated annually". While the resolution mandated the release of the initial report in February 2017, in light of undue and intense political pressure on the Office of the High Commissioner for Human Rights, the publication of the database was delayed until February 2020, a full three years after the mandated release date.
87. The initial report of the UN database included 112 Israeli and international companies, though the Office reviewed and considered 321 businesses and contacted 206. These omissions were not sufficiently explained by the Office; and were addressed by the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, who raised concerns that in the first report of the Database, "a number of companies with important supply relationships with the settlements and/or the occupation were not included."
88. Moreover, the database methodology remains silent on the matter of non-profit enterprises driving the colonial-settler advance. These include Israel's parastatal institutions (World Zionist Organization/Jewish Agency, Jewish National Fund and affiliates) registered and operating as tax-exempt "charities" in 50 countries, including 18 Member States of the Human Rights Council.
89. As the Human Rights Council mandate clearly provides for the annual updating of the database report, the Office of the High Commissioner for Human Rights was scheduled to release the updated list of companies in the form of a report during the 46th Human Rights Council session in February 2021. A mandate that has been reiterated by states and civil society organisations following the publication of the initial database report. However, on 18 March 2021, civil society organisations expressed deep concern following the statement by High Commissioner Michelle Bachelet during the 46th

¹³⁶ Al-Haq, "Al-Haq's Additional Textual Suggestions on the Revised Draft Legally Binding Instrument (LBI)," 29 February 2020, available at: <http://www.alhaq.org/advocacy/16546.html>.

Human Rights Council session, declaring that the database report was not completed due to budgetary constraints and resource challenges. This again raises concerns about continued pressure by some countries, especially Israel, aimed at preventing the High Commissioner and her Office from implementing their mandate; threatening their independence and impartiality in the implementation of all mandates entrusted to the Office.

90. In the database report, the Office of the High Commissioner for Human Rights recognised the importance of the annual update for listed businesses stating that “where there are reasonable grounds to believe that, based on the totality of the information available, the business enterprise is ceasing or no longer involved in the relevant activity, the business enterprise would be removed from the database”. Adding and removing companies from the UN database, in line with the Human Rights Council mandate, creates a necessary incentive and deterrent against engaging with Israel’s illegal colonial settlement industry.
91. In February 2021, Palestinian, regional, and international civil society organisations expressly called upon the Office of the High Commissioner for Human Rights to “increase transparency regarding the annual update process for the database, including by providing a clear and public timeline for the publication of the 2021 update.”¹³⁷

6. Conclusion and Recommendations

92. Israel’s unlawful settler-colonial enterprise, and the transfer of Israel’s civilian population into the oPt, constitutes the war crime and crime against humanity of population transfer. Further, illegal Israeli colonial settlements represent a key method by which Israel has established and maintained an institutionalised regime of racial domination and oppression, amounting to the crime of apartheid, over the Palestinian people as a whole. Despite being limited to the West Bank, including East Jerusalem, these structures are but one part of a larger strategy to ensure that the Palestinian people remain fragmented and scattered over both sides of the Green Line, and the world.
93. Israel’s violation of Article 43 of the Hague Regulations has enabled the entire settler-colonial enterprise across the oPt. The mandate of Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, which addresses the human rights conditions of only a fragment of the Palestinian people, has been shy to shed necessary attention on domestic Israel’s apartheid legal order in the oPt, as if that might constitute “mandate creep” into the rest of historic Palestine. Nonetheless, that

¹³⁷ UNHRC, “Joint written statement submitted by Cairo Institute for Human Rights Studies, Al-Haq, Law in the Service of Man, Habitat International Coalition, International Federation for Human Rights Leagues, Palestinian Centre for Human Rights, Women’s Centre for Legal Aid and Counseling, nongovernmental organizations in special consultative status,” 19 February 2021, UN Doc A/HRC/46/NGO/129, available at: <https://undocs.org/A/HRC/46/NGO/129>.

self-censorship is based on a false principle, since Israel itself crosses the line in this case, not the Special Rapporteur mandate.

94. Accordingly, it is imperative that the Office of the Prosecutor of the ICC, and the international community more generally, recognise the role played by illegal Israeli colonial settlements in this regime, and take meaningful and effective steps to address their negative impacts upon Palestinian rights outside of the limited scope of international criminal law. Our organisations therefore offer the following recommendations:

- i. The Special Rapporteur to address Israel's apartheid and settler-colonial regime in his report, as well as the role of corporations in the maintenance of Israel's settler-colonial enterprise;
- ii. All states must immediately recognise the institutional regime of racial domination and oppression, amounting to the crime of apartheid, imposed by Israel upon the Palestinian people as a whole, including those living on both sides of the Green Line and as refugees and exiles denied their right of return abroad, and take meaningful and effective steps to bring the unlawful situation to an end, in line with their obligations under international law;
- iii. The Office of the Prosecutor of the ICC must proceed swiftly in investigating the Situation in Palestine, and include all alleged international crimes, including war crimes and crimes against humanity, committed against the Palestinian people, including the crime of apartheid;
- iv. All states must lend their full support to the Office of the Prosecutor, and the ICC more generally, in this endeavour, and must refrain from all acts and omissions which may threaten its contribution to the fight against impunity, and struggle for accountability, for Palestinian victims of international crimes;
- v. All states must take meaningful and effective steps, at the national, regional, and international levels, in accordance with their obligations under international law, to implement measures, such as sanctions and the prohibition of settlement produce, designed to put pressure on the Israeli authorities to bring the occupation of the oPt, and the maintenance of an apartheid regime over the Palestinian people, to a prompt and unconditional end;
- vi. All states must strive to address the root causes of Palestinian dispossession and domination, and the undermining of the individual and collective rights of the Palestinian people, including the ongoing and prolonged occupation, *de jure* and *de facto* annexation, construction and maintenance of the settler-

colonial enterprise, and apartheid regime, and fully implement the findings and recommendations of all previous international accountability initiatives, including all UN Commissions of Inquiry, Fact-Finding Missions, and the ICJ advisory opinion;

- vii. All states, international organisations, and international civil society organisations should support the critical role of Palestinian local, regional, and international civil society in their monitoring and documentation of human rights violations and the commission of international crimes on the ground, as well as their advocacy at the local, regional, and international levels, particularly in the face of an ongoing and protracted smear campaign by the State of Israel and its affiliated bodies targeting human rights defenders;
- viii. All states must cooperate to bring to an end, including through coercive measures such as sanctions, Israel's occupation, colonisation, and apartheid regime, as well as the prolonged denial of the right to self-determination of the Palestinian people, and the right of return of Palestinian refugees to their homes, lands, and property, as mandated by international law;
- ix. All states must ensure and protect the right to engage in boycotts as a legitimate and effective means of peaceful protest, and to immediately repeal all legislation or measures which aim to criminalise boycotts of the State of Israel, in contravention with the right to freedom of expression;
- x. The Office of the High Commissioner for Human Rights to ensure the annual updating of the UN database in line with Human Rights Council Resolution 31/36, to increase transparency on the process and methodology and publicly provide a clear timeframe for the publication of the 2021 update. It is imperative that the UN database is a comprehensive and living instrument and tool in the pursuit for corporate accountability in the oPt;
- xi. All states must support the annual updating of the UN database on business enterprises engaged in illegal Israeli settler-colonial enterprise, and ensure that all Human Rights Council mandates, entrusted to the Office of the High Commissioner for Human Rights, are implemented in an independent and impartial manner; and
- xii. All states must vigorously and energetically engage with the ongoing process to produce and adopt a legally binding instrument, mandating enhanced human rights due diligence for all corporate entities involved in business activities in armed conflict and occupation settings, and corporate criminal liability for corporate complicity in international crimes.