

INTERNATIONAL COURT OF JUSTICE

**LEGAL CONSEQUENCES ARISING FROM THE POLICIES
AND PRACTICES OF ISRAEL IN THE
OCCUPIED PALESTINIAN TERRITORY,
INCLUDING EAST JERUSALEM
(REQUEST FOR ADVISORY OPINION)**

WRITTEN STATEMENT OF THE STATE OF QATAR

VOLUME I

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CHAPTER 1 INTRODUCTION

1.1. Pursuant to the Order of the Court dated 3 February 2023, the State of Qatar (“**Qatar**”) hereby submits this written statement on the questions presented in the United Nations General Assembly’s request for an advisory opinion concerning the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (the “**Request**”).

1.2. A century after the establishment of the League of Nations Mandate for Palestine in 1922, and more than a half century after the State of Israel (“**Israel**”) occupied the West Bank, including East Jerusalem, and Gaza in 1967, the international community has made clear that it refuses to accept a continuation of the *status quo*. That *status quo* is one in which a single State, Israel, persistently and systematically refuses to comply with the most basic principles of international law and unequivocal demands by competent international bodies calling upon it to cease its wrongful conduct. As a result of Israel’s intransigence, one people, the Palestinian people,¹ is forced to endure unspeakable suffering and affronts to human dignity on a daily basis, with no end in sight. At a time when States are coming to terms with their colonial pasts, an anachronistic settler-colonial regime continues to expand and entrench itself now well into the 21st Century.

¹ In the context of addressing the questions before the Court, Qatar refers in its submission to the Palestinian people, Palestinian Authority, and the Occupied Palestinian Territory. This is without prejudice to the fact that the State of Palestine is a Non-Member Observer State of the United Nations, a Member State of numerous international organizations, and fully entitled to appear as a State in proceedings before the Court.

1.3. This, of course, is not the first time the international community has come to the Court to answer questions of international law in the context of Israel’s occupation of Palestine. By the time the Court renders its opinion in these proceedings, two decades will have passed since it delivered its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (“**Wall Advisory Opinion**”). Faced with a question concerning the legality of Israel’s construction of a so-called security barrier (the “**Wall**”) in the Occupied Palestinian Territory (“**OPT**”),² the Court unequivocally held that “[t]he construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law”.³

1.4. In reaching that conclusion, the Court found that the Wall and its associated régime breached numerous norms of international humanitarian law (“**IHL**”) and international human rights law (“**IHRL**”), and that the resulting situation “severely impedes the exercise by the Palestinian people of its right to self-determination”.⁴ After concluding that Israeli settlements in the OPT violated international law, the Court expressed the concern that “the construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel,

² The OPT includes the West Bank, including East Jerusalem, and Gaza. Although Israel nominally disengaged from Gaza in 2005, it maintains the near-total military blockade over the territory discussed in Chapter 2, Section III(B), *infra*. There is broad consensus that the control Israel continues to exercise over Gaza by means of the blockade constitutes an occupation under international law. See Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 16. The OPT is distinct from “the territory of Israel”. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (hereinafter, “**Wall Advisory Opinion**”), para. 67.

³ *Wall Advisory Opinion*, para. 163(3)(a).

⁴ *Ibid.*, para. 122.

it would be tantamount to *de facto* annexation”.⁵ As a consequence, the Court found, *inter alia*, that:

Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto...⁶

1.5. In the nearly 20 years since, Israel has not taken any steps to cease its violations of international law. To the contrary, it has denounced⁷ and openly failed to comply with the Court’s ruling. It has likewise failed to comply with more than 99 percent of the hundreds of human rights recommendations made by competent United Nations bodies.⁸ The Wall not only still stands, Israel has actually expanded it,⁹ and the number of Jewish Israeli settlers in the OPT has nearly doubled from roughly 400,000 then to at least 700,000 today.¹⁰ Israel has also: expropriated

⁵ *Ibid.*, para. 121.

⁶ *Ibid.*, para. 163(3)(b).

⁷ See Government of Israel Official Website, *Press Release: PM’s Statement Regarding the Opinion of the International Court of Justice at the Hague* (11 July 2004), available at <https://tinyurl.com/bdek5f9t> (“[T]he State of Israel rejects outright the International Court of Justice at The Hague’s opinion”).

⁸ See Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009*, UN Doc. A/HRC/35/19 (12 June 2017), para. 60. As of 2017 more than 550 recommendations had been addressed to Israel, with dozens more made in recent years.

⁹ See OCHA, *The humanitarian impact of 20 years of the Barrier - December 2022* (30 Dec. 2022), available at <https://tinyurl.com/ysmyh52j> (noting that, as of 30 December 2022, 65 percent of the approved 713 kilometre length has been constructed, a length of approximately 463 kilometres); *Wall Advisory Opinion*, para. 82 (“As at 25 January 2004, according to the Written Statement of the Secretary-General, some 190 kilometres of construction had been complete”).

¹⁰ Peace Now, “Settlements Watch: Population” (last accessed: 24 Apr. 2023), available at <https://tinyurl.com/y6pt6bej>; Peace Now, “Settlements Watch: Jerusalem” (last accessed: 24 Apr. 2023), available at <https://tinyurl.com/59x5jesd>; Human Rights Council, *Report of the UN High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory*,

hundreds more hectares of Palestinian land;¹¹ demolished approximately 10,000 Palestinian homes and other structures, displacing more than 14,500 Palestinians;¹² and killed at least 7,500 Palestinians.¹³

1.6. Against this ever-worsening backdrop, the international community has once again turned to the Court seeking answers to two complementary questions:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?

including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/52/76 (15 Mar. 2023), para. 5; UN, “Human Rights Council Hears that 700,000 Israeli Settlers are Living Illegally in the Occupied West Bank – Meeting Summary (Excerpts),” *available at* <https://tinyurl.com/56nfhk7d>; Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para 9.

¹¹ Kerem Navot, *For the Common Good: Military Expropriation Orders in the West Bank, 1967-2022* (Dec. 2022), *available at* <https://tinyurl.com/bdfhxx8c>, p. 34.

¹² The OCHA reports 9,629 demolitions Palestinian structures and the displacement of 14,051 Palestinians since 2009, with the Israeli NGO B’Tselem reporting 140 demolitions and 768 displacements between 2006 and 2008. *See* OCHA, “Data on Demolition and Displacement in the West Bank” (last accessed: 12 July 2023), *available at* <https://tinyurl.com/n9e7x7x4>; B’Tselem, *House Demolitions: Demolition on the pretext of unlawful construction* (last accessed: 13 July 2023), *available at* <https://tinyurl.com/yc3tbt2f>.

¹³ The OCHA reports 6,334 Palestinian and 409 Israeli fatalities since January 2008, with the Israeli NGO B’Tselem reporting the deaths at the hands of Israeli forces of a further 1,232 Palestinians and 21 Israelis between 2005 and 2007. *See* OCHA, “Data on casualties” (last accessed: 11 July 2023), *available at* <https://tinyurl.com/2sdp43zu>; B’Tselem, “Fatalities: All data” (last accessed: 13 July 2023), *available at* <https://tinyurl.com/42wchrj2>.

1.7. Question (a) concerns past and present wrongs. Qatar considers that with its open-ended framing, this question calls upon the Court to examine the individual components of the occupation, to assess their legality, and to set forth the legal consequences and remedies international law requires. In answering this question, the Court is called upon to lay to rest any lingering doubts about the illegality of Israel's policies and practices, to expose them for what they are, and to provide a sense of justice to Israel's victims.

1.8. Question (b), on the other hand, is forward-looking. Qatar understands it to ask the Court to make a simple but historic assessment: in light of the myriad illegalities revealed by question (a), has the occupation itself become illegal? If the answer to that question is "yes", the consequences are obvious: the occupation must be brought to an end. In this sense, the Court now has before it what Judge Higgins, in her separate opinion in the *Wall* Advisory Opinion, referred to as "the larger problem", which was then "beyond the question put to the Court for an opinion".¹⁴ After a more than a century during which the Palestinian people have endured one injustice after another, the "Question of Palestine" is now squarely before the Court. As the principal judicial organ of the United Nations, Qatar respectfully submits that the Court can and should draw a bright line underscoring the illegality of Israel's occupation as a whole.

1.9. The intervention of the Court is needed now more than ever; the situation on the ground in the OPT continues to deteriorate at an alarming pace. In the first half of 2023 alone, Israel has approved new settlements in unprecedented numbers; killed more Palestinians in the West Bank than any time since 2004; indiscriminately bombed Gaza and the West Bank; beaten worshipers in the holiest

¹⁴ *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Separate Opinion of Judge Higgins* (9 July 2004), para. 30.

sites of Islam and Christianity; and tolerated (and even celebrated) mass violence by Jewish Israeli settlers against Palestinian civilians.

1.10. This has occurred alongside its ever-tightening control of all aspects of Palestinians' lives. For 16 years, the approximately two million Palestinians of Gaza have endured what the United Nations Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967 ("**OPT Special Rapporteur**") has called a "medieval military blockade".¹⁵ Children born since have known nothing but imprisonment, poverty and hunger. They have also lived through as many as half a dozen large-scale Israeli armed attacks just in their lifetimes, while the fear of Israeli drones and warplanes overhead is ever present. In the West Bank, Palestinians face daily humiliation at checkpoints, cannot access their homes and land, are excluded from Jewish-only highways and streets, are arbitrarily and indefinitely detained, and are routinely subjected to indiscriminate and excessive violence. In East Jerusalem, Palestinians are displaced and evicted from their homes, and their culture and religions are systematically oppressed, as Israel continues its efforts to strip the Holy City of its multicultural and multi-religious history and character.

1.11. Seeking "maximum Jews on maximum land with maximum security and with minimum Palestinians",¹⁶ Israel treats much of the West Bank, including East Jerusalem, as its own territory. It has declared the promotion of Jewish settlement a national value and provides full citizenship rights and generous benefits to Jewish Israelis there. At the same time, Israel maintains overtly discriminatory laws and

¹⁵ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 35.

¹⁶ G. S. Hoffmann, "Lapid: US helped Iran fund its next war against Israel," *Jerusalem Post* (26 Jan. 2016), available at <https://tinyurl.com/3yp3kyk9>.

policies, which exclude the rights of Palestinians to self-determination and equality before the law. Palestinians are relegated to tiny enclaves; the Israeli military rules over them as disenfranchised and second-class subjects.

1.12. Reporting on their June 2023 visit to the OPT on behalf of the Elders, former UN Secretary-General Ban Ki-Moon and former High Commissioner for Human Rights Mary Robinson

[W]arned that a ‘one-state reality’ is now rapidly extinguishing the prospect of a two-state solution foreseen in the 1993 Oslo Accords to bring peace and security to both the Israeli and the Palestinian peoples.

The Government of Israel’s intent to exercise sovereignty over all the territory between the Jordan River and the Mediterranean Sea undermines the democratic ideals of the Israeli state, denies the Palestinian people their right to self-determination, and risks an uncontrollable explosion of violence on both sides.

1.13. The former Secretary-General and High Commissioner went further, stating that there is

[E]ver-growing evidence that the situation meets the international legal definition of apartheid: the expansion and entrenchment of illegal Jewish settlements in the West Bank and East Jerusalem, the establishment of dual legal regimes and separation infrastructure in the occupied territories, and the institutionalised discrimination and abuses perpetrated against Palestinians ... [T]he declarations and policies of the current Israeli Government – whose Coalition Guidelines state that “the Jewish people have an exclusive and inalienable right to all parts of the Land of Israel” – clearly show an intent to pursue permanent annexation rather than temporary occupation, based on Jewish supremacy.¹⁷

¹⁷ The Elders, *Elders warn of consequences of ‘one-state reality’ in Israel and Palestine* (22 June 2023) (hereinafter, “**The Elders 2023 Report**”), available at <https://tinyurl.com/595fh8a2>, p. 1.

1.14. Their conclusions echo the findings of numerous UN special rapporteurs, commissions of inquiry and fact-finding missions, as well as the most reputable international, Israeli and Palestinian human rights organizations. The reality of the occupation can no longer be hidden. It is not a temporary military measure resulting from an international armed conflict, if it ever were. It is the culmination of a century-long settler-colonial project that presents an insurmountable obstacle to the self-determination of the Palestinian people and has become a regime of apartheid.

1.15. Qatar recognizes the ambitious scope of the Request. It calls on the Court to grapple with what is arguably the longest-standing unresolved legal problem facing the international community. To provide the necessary context for the Court's task, Qatar submits herewith two independent expert historical reports. The reports have been prepared by the two most preeminent historians of the Israeli-Palestinian conflict alive today: Professors Rashid Khalidi of Columbia University and Avi Shlaim of Oxford University.¹⁸ Between them, they have a century of experience in the field. From their respective perspectives as a Palestinian and an Israeli, they provide an overview of the history of Palestine and the Israeli-Palestinian conflict since the beginning of the 20th century.

1.16. In his report, Professor Khalidi discusses the origins of Zionism—*i.e.*, the movement calling for the establishment of a Jewish national polity in Palestine. As he explains, from its very outset, Zionism openly advanced a settler-colonial project. Born during the height of the colonial era in the late 19th century, early Zionists explicitly sought to displace and replace a predominantly Arab and multi-religious Palestinian indigenous population with European Jewish settlers. Backed by the British Mandate over Palestine, the Jewish population increased from just

¹⁸ Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023). Qatar Written Statement (“QWS”), Vol. II, Annex 1; Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023). QWS, Vol. II, Annex 2.

5-7 percent of the total in the years before World War I to 31 percent in 1939. After the British relinquished the Mandate, a 1947 UN Partition Plan called for giving a new State of Israel 56 percent of the territory of mandatory Palestine despite the fact that the Jewish population then constituted just one-third of the total. During the 1947-49 war by means of which Israel created itself, it captured fully 78 percent of the mandate territory. The war also led to the displacement of 750,000 Palestinians, the majority of the population, from their homes never to return. The Palestinians refer to these events as the “Nakba” or catastrophe.

1.17. Israel then continued the same settler-colonial project within the territories bounded by the 1949 armistice lines and, since 1967, in the OPT. All along, the international community—as reflected in the discriminatory terms of the 1922 Mandate, the 1947 UN Partition Plan, and even early General Assembly and Security Council resolutions—largely ignored the Palestinian people and their inherent right to self-determination.

1.18. For his part, Professor Shlaim explains that the events since 1967 reveal that Israel has seldom been, and has not been for decades, genuinely interested in a negotiated solution of the conflict and an end to the occupation. Rather, Israel has adopted what has been called “a diplomacy of deception”.¹⁹ While publicly proclaiming that it wants peace, it has taken concrete measures to render the occupation permanent. First and foremost among these are Jewish settlements. In other words, Israel uses the “peace process” to distract attention from its settler-colonial project in the OPT. Although Israel has reached individual peace agreements with some of its neighbours, including Egypt and Jordan, none address the problem of Palestine. And even the one glimmer of hope—the Oslo Accords—

¹⁹ Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023), p. 5. QWS, Vol. II, Annex 2.

was only possible because of very significant concessions by the Palestinians. But even then, Israel turned its back on Oslo. All international initiatives to obtain a negotiated end to the occupation have therefore failed and led instead to the further entrenchment of Israel's *fait accompli* in the OPT.

1.19. After a century of injustice, the time has come for a just and legal solution to the question of Palestine. That solution is not only long overdue, it is increasingly pressing in light of the facts on the ground today. All alternatives have been exhausted and the Court may now well be the last hope for future generations of Palestinians and Israelis alike. At the same time, the Court's answers to the questions the Request poses will also serve, in the recent words of the Elders, as "a litmus test for the credibility of an international system which should hold to account all those who break international law".²⁰

1.20. Qatar's submission is organized as follows.

1.21. **Chapter 2** provides a detailed overview of the discriminatory and oppressive policies and practices Israel deploys in maintaining the occupation, all of which serve its acquisitive settler colonial project in the OPT.

1.22. **Chapter 3** demonstrates that Israel has in the conduct of its occupation unlawfully annexed the West Bank and East Jerusalem, violated core norms of international humanitarian law, breached a wide range of human rights obligations, and committed crimes against humanity.

²⁰ The Elders 2023 Report, p. 2.

1.23. **Chapter 4** establishes that the occupation as a whole is itself illegal because it constitutes an insurmountable and permanent obstacle to the Palestinian people's inherent right to self-determination and is a regime of apartheid.

1.24. **Chapter 5** sets forth the legal consequences arising from Israel's ongoing breaches of international law—including peremptory norms—for Israel itself, for all States and for the United Nations.

1.25. **Chapter 6** shows, *ex abundanti cautela*, that the Court has the jurisdiction to give the requested advisory opinion and there is no reason it should decline to do so.

1.26. **Chapter 7** respectfully presents Qatar's conclusions concerning the Request.

CHAPTER 2

THE CONDUCT OF ISRAEL'S SETTLER-COLONIAL OCCUPATION OF PALESTINIAN TERRITORY

2.1 It is not possible to recount here—let alone detail—all of the abuses and cruelties the Palestinian people in the OPT have suffered in the course of Israel's occupation. As reflected by the dossier prepared by the Legal Counsel, these abuses and cruelties are documented in hundreds of official United Nations documents filling tens of thousands of pages. The purpose of this Chapter is twofold.

2.2 *First*, Qatar provides an overview of Israel's principal policies and practices in the OPT to show how widespread, systematic, and egregious they are. As demonstrated below, Israel's conduct is nothing short of shocking and the suffering of the Palestinian people immeasurable.

2.3 *Second*, Qatar demonstrates that, rather than the incidental or inevitable consequences of a military occupation or ethno-national conflict, Israel's practices and policies in the OPT are all designed to promote a single goal: the permanent colonization of the OPT for the exclusive benefit of the State of Israel and Jewish Israeli settlers. In other words, the discriminatory policies and practices of the occupation are all inextricable features of a single settler-colonial project. As summarized by the OPT Special Rapporteur in 2022:

Since the beginning of the occupation in June 1967, the rule of Israel over the Palestinian territory has been epitomized by two core features. The first is the establishment of designed-to-be irreversible 'facts-on-the-ground': the creation of 300 civilian settlements, with 700,000 Jewish settlers, meant to demographically engineer an unlawful sovereignty claim through the annexation of the occupied territory while simultaneously thwarting the Palestinians' right to self-determination. The second is the development of an oppressive system of military rule over the 2.7 million Palestinians in the West Bank, a shrunken and tenuous range of residency rights for the

360,000 Palestinians living in East Jerusalem, and a medieval military blockade of the 2 million Palestinians in Gaza.

These two features are deeply intertwined: it is impossible for an acquisitive occupying power to settle hundreds of thousands of its citizens into occupied territory, create for them attractive living conditions equivalent to the home territory, and expropriate and alienate huge swaths of land and resources for their benefit and security, without also immiserating the indigenous people and triggering their perpetual rebellion.²¹

2.4 As described more fully in the sections that follow, Israel's occupation of the OPT is characterized by the following main policies and practices, all of which serve to further its settler-colonial project:

- **Settlement.** Israel establishes Jewish Israeli settlements in the West Bank and East Jerusalem by seizing Palestinian lands, financing and facilitating the construction of housing and infrastructure for Jewish Israelis, and discriminatorily incentivizing Jews from around the world to settle there (**Section I**);
- **Displacement.** In order to make room for Jewish Israeli settlers, Israel permanently excludes hundreds of thousands of Palestinians from the OPT, and displaces those still present there from their homes and lands through demolitions, evictions and building restrictions (**Section II**);
- **Fragmentation.** In order to implement the demographic and physical control necessary to perpetuate the occupation and establish further settlements, Israel divides and isolates Palestinians in fragmented enclaves, restricts their movement, and renders their daily lives all but unliveable (**Section III**);
- **Violence.** Israel and its Jewish settlers employ brutal violence against Palestinians both to crush resistance to the occupation—including and principally nonviolent resistance—and to perpetuate a climate of fear

²¹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), paras. 35-36.

and repression that enables the further expansion of Jewish settlements (**Section IV**);

- **Discriminatory Military Justice.** Israel implements a draconian and inherently discriminatory military legal system in the West Bank, which privileges Jewish Israeli settlers while depriving similarly situated Palestinians of the most basic legal protections (**Section V**);
- **Cultural Erasure.** In furtherance of its mission to replace all of historic Palestine with “the Land of Israel”, Israel seeks to erase and suppress all manifestations of Palestinian culture and religions in the OPT, gradually reinventing not only its physical but also its cultural landscape (**Section VI**);
- **Economic Oppression.** As both a deliberate tactic and a consequence of its occupation, Israel has systematically thwarted the OPT’s economic development, impoverishing Palestinians while enriching Jewish Israelis through the exploitation of the OPT’s natural resources (**Section VII**); and
- **Preventing Accountability.** In an attempt to hide the harsh realities of the occupation from the world, Israel systematically persecutes all those who attempt to document or pursue accountability for the occupation, including journalists and human rights organizations (**Section VIII**).

2.5 As summarized by the OPT Special Rapporteur

The past 70 years has taught us that a covetous alien power has two choices: either to abandon the fever-dream of settler colonialism and recognize the freedom of the indigenous people, or instead to double-down with increasingly more sophisticated and harsher methods of population control as the inevitable consequence of entrenching permanent alien rule over a people profoundly opposed to their disenfranchisement and destitution.²²

²² Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 36.

This Chapter will show that Israel has unmistakably chosen the latter option, with the consequences for the Palestinian people worsening every day.

I. The Establishment and Facilitation of Settlements in the West Bank (Including East Jerusalem)

2.6 The establishment and development of Jewish Israeli settlements began immediately after Israel occupied the OPT in 1967. It has since been a key policy of successive Israeli governments and is the central feature of Israel's settler-colonial project in the OPT.

2.7 When Israel's policy to establish settlements in the OPT was first formulated in 1967,²³ the Legal Counsel of the Israeli Ministry of Foreign Affairs, Theodor Meron, told his superiors that "civilian settlement in the administered territories [*i.e.*, the OPT] contravenes the explicit provisions of the Fourth Geneva Convention".²⁴ Israel decided to go ahead anyway.

2.8 By 2004, there were approximately 400,000 Jewish Israeli settlers in East Jerusalem and "Area C" of the West Bank.²⁵ Under the Oslo Accords, Area C, which covers more than 60 percent of the West Bank, is "under full Israeli control for security, planning and construction purposes" and is predominantly comprised of Palestinian agrarian villages and agricultural land.²⁶ In its *Wall Advisory*

²³ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), Annex I, p. 26.

²⁴ *Ibid.* See also Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023), p. 8. QWS, Vol. II, Annex 2.

²⁵ Peace Now, "Settlements Watch: Population" (last accessed: 24 Apr. 2023), available at <https://tinyurl.com/y6pt6bej>.

²⁶ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and*

Opinion that year, the Court expressly determined that “Israeli settlements in the Occupied Palestinian Territory ... have been established in breach of international law”.²⁷

2.9 Since then, the number of Jewish Israeli settlements and settlers in both areas has increased significantly. In the past decade alone, the number of Jewish Israeli settlers increased by 43 percent, more than 20 times the population growth rate of Israel itself, which is at approximately 1.60 percent.²⁸ As of 2023, there are about 265 settlements and 500,000 settlers in Area C alone.²⁹ Between 2004 and 2020, Israel has also permitted more than 47,000 additional Jewish settlers to move to East Jerusalem;³⁰ the total is now about 200,000 settlers.³¹ Altogether some 700,000 settlers, or approximately 11 percent of Jewish Israelis, now live in the OPT.³²

cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/22/63 (7 Feb. 2013), p. 6.

²⁷ *Wall Advisory Opinion*, para. 120.

²⁸ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 34; World Population Review, “Israel Population (2023)” (last accessed: 15 July 2023), available at <https://tinyurl.com/yc5uzbhy>.

²⁹ Human Rights Council, *Report of the UN High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/52/76 (15 Mar. 2023), para. 5; C. Parker, “Jewish settler population in West Bank passes half a million,” *Washington Post* (2 Feb. 2023), available at <https://tinyurl.com/275bjwsf>.

³⁰ Peace Now, “Settlements Watch: Jerusalem” (last accessed: 24 Apr. 2023), available at <https://tinyurl.com/59x5jesd>. In 2004, the number of Jewish Israeli settlers was 181,962. In 2020, it increased to 229,377.

³¹ European Union, *2021 Report on Israeli settlements in the occupied West Bank, including East Jerusalem* (20 July 2022), available at <https://tinyurl.com/bdewbd86>.

³² Z. Tahhan, “Israel's settlements: Over 50 years of land theft explained,” *Al Jazeera* (21 Nov. 2017), available at <https://tinyurl.com/2s435w5e>.

2.10 Israel’s leaders, across the political spectrum, have made clear that the maintenance and expansion of Jewish Israeli settlements is a key policy goal. By entrenching settlements as irreversible “facts on the ground”,³³ Israel effectively stakes a permanent claim over as much land as possible and aims to permanently change the demographics of the OPT. As Yair Lapid—the current leader of Israel’s opposition—explained in 2016 shortly before he became Foreign Minister: “My principle says maximum Jews on maximum land with maximum security and with minimum Palestinians.”³⁴ Similarly, in 2019, Israel’s current Prime Minister Benjamin Netanyahu stated: “I will not evacuate any community [settlement] and I will make sure we control the territory west of Jordan.”³⁵ In the same year, Israel’s Defence Minister Benny Gantz declared that: “We will strengthen the settlement blocs ... from which we will never retreat”.³⁶

2.11 That the settlements are intended to Judaize the OPT is clear from, among other things, Israel’s “Jerusalem Master Plan”, the goal of which is to “maintain[] a Jewish demographic majority with a 60:40 ratio” in Jerusalem and surrounding areas.³⁷ It is also clear from Israel’s 2018 Basic Law: Israel – The Nation State of the Jewish People. The law, which has “quasi-constitutional status”,³⁸ expressly provides that “[t]he State views the development of Jewish settlement as a national

³³ See, e.g., Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 47.

³⁴ G. S. Hoffmann, “Lapid: US helped Iran fund its next war against Israel,” *The Jerusalem Post* (26 Jan. 2016), available at <https://tinyurl.com/54p37v2z>.

³⁵ “Netanyahu Says Will Begin Annexing West Bank if He Wins Israel Election,” *Haaretz* (7 Apr. 2019), available at <https://tinyurl.com/yh8nanww>.

³⁶ “Benny Gantz, Netanyahu Rival, Gives Campaign Launch Speech - Full English Transcript,” *Haaretz* (30 Jan. 2019), available at <https://tinyurl.com/yp24z6c3>.

³⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 44.

³⁸ *Ibid.*, para. 48.

value, and shall act to encourage and promote its establishment and consolidation”.³⁹

2.12 Israel implements its settlement policy in five principal ways.

2.13 *First*, Israel has seized land used and/or owned by Palestinians in East Jerusalem and Area C and made it available to Jewish Israelis for the purposes of building settlements and infrastructure to support them. Since 1967, Israel has made more than two million dunams (2,000 sq. km) of land—nearly *half* the area of the West Bank—available for settlements.⁴⁰ It has done so, and continues to do so, by, *inter alia*:

- Invoking the Absentee Property Law to seize privately-owned Palestinian lands that the owners were forced to abandon when they fled their homes during and in the aftermath of the 1948 and 1967 wars;⁴¹
- Declaring privately owned or unregistered Palestinian land as “State land” based on a manipulative use of the Ottoman Land Law of 1858⁴² (to date approximately 800,000 dunams (800 sq. km) of the West Bank have been seized in this way⁴³);

³⁹ Israel, *Basic Law: Israel – the Nation State of the Jewish People* (2018), available at <https://tinyurl.com/5n9b4nhs>, art. 7.

⁴⁰ B’Tselem, *This is Ours – And this, Too: Israel’s Settlement Policy in the West Bank* (Mar. 2021), available at <https://tinyurl.com/yfhp5jz3>, p. 6. See also Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), pp. 45-46. QWS, Vol. II, Annex 1.

⁴¹ Norwegian Refugee Council, Legal Memo, *The Absentee Property Law and its Application to East Jerusalem* (Feb. 2017), available at <https://tinyurl.com/2bawau4>, pp. 1-2, 5.

⁴² This law was absorbed in a number of Jordanian laws enacted over the years. Law No. 14 of 1961 – The Protection of State Land and Property Law, in Planning, Building and Land Laws defines which land is State land. B’Tselem, *Land Grab – Israel’s Settlement Policy in the West Bank* (May 2022), available at <https://tinyurl.com/crz2kxbn>, pp. 52-53, note 103.

⁴³ Kerem Navot, *For the Common Good: Military Expropriation Orders in the West Bank, 1967-2022* (Dec. 2022), available at <https://tinyurl.com/bdfhxx8c>, p. 29.

- Formally expropriating privately held or unregistered Palestinian land for “public purposes” pursuant to a Jordanian law that continued to apply in the OPT after 1967⁴⁴ (to date 313 such expropriations, covering 74,000 dunams (740 sq. km), have been carried out⁴⁵);
- Working with quasi-governmental agencies to purchase privately-owned Palestinian land for settlements (in August 2022, for example, the Jewish National Fund, at the urging of the Israeli Ministry of Defence, “voted to allocate 61 million shekels [(approximately EUR 17.7 million at then-prevailing rates)] for the purchase of land owned by Palestinians in the Jordan Valley”);⁴⁶ and
- Seizing privately-owned Palestinian land “temporarily” for military purposes⁴⁷ (over 112,000 dunams (112 sq. km) have been seized through more than 1,300 seizure orders since 1967);⁴⁸ in addition, thousands of “temporary closure orders” are used to create “settlement jurisdiction areas”.⁴⁹

The cumulative effect of these measures on the West Bank is illustrated in **Figure 2.1** following this page.

2.14 *Second*, on land that it acquires in East Jerusalem and Area C, Israel directly or indirectly permits and authorizes the establishment and expansion of

⁴⁴ The Land Law – Acquisition for Public Needs, Law No. 2 for 1953, amended by Israel through Order Regarding the Lands Law (Acquisition for Public Needs) (No. 321 and No. 949). See B’Tselem, *Land Grab – Israel’s Settlement Policy in the West Bank* (May 2022), available at <https://tinyurl.com/crz2kxbn>, p. 60, note 146.

⁴⁵ Kerem Navot, *For the Common Good: Military Expropriation Orders in the West Bank, 1967-2022* (Dec. 2022), available at <https://tinyurl.com/bdfhxx8c>, p. 3.

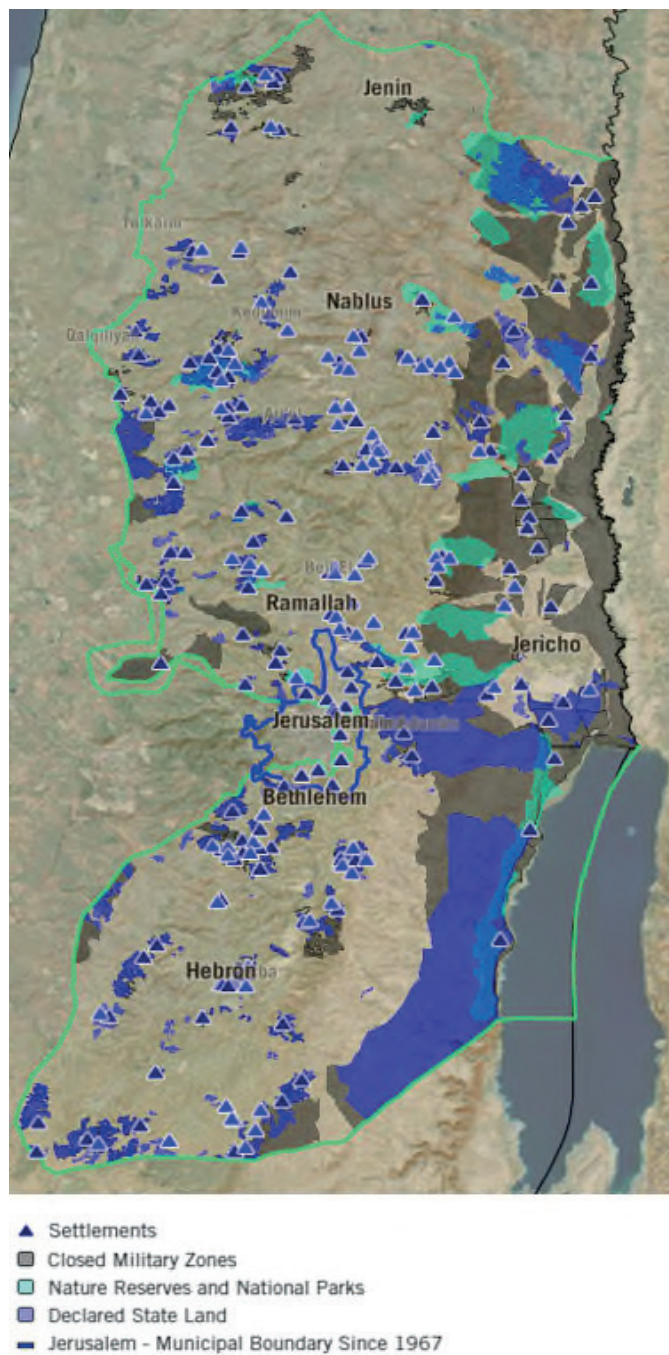
⁴⁶ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 38; H. Shezaf, “JNF Approves Funds to Buy Palestinian-owned Jordan Valley Land at Israel’s Request,” *Haaretz* (3 Aug. 2022), available at <https://tinyurl.com/8n5mwfu5>.

⁴⁷ Peace Now, “Methods of Confiscation – How does Israel justify and legalize confiscation of lands?” (1 Jan. 2009), available at <https://tinyurl.com/4embykwy>.

⁴⁸ Kerem Navot, “For the Common Good: Military Expropriation Orders in the West Bank, 1967-2022” (June 2023), available at <https://tinyurl.com/bdfhxx8c>, p. 29.

⁴⁹ *Ibid.*, p. 30.

The cumulative effect of Israel's measures regarding land in the OPT on the West Bank



Created using the interactive tool created by B'Tselem, available at: <https://conquer-and-divide.btselem.org/map-en.html>

Figure 2.1

settlements. Because Israel purports to have annexed East Jerusalem, it imposes no restrictions or special procedures on Jewish Israeli settlements, which are *ipso facto* authorized by law.⁵⁰ In the West Bank, the relevant Israeli authorities authorize settlements through, *inter alia*, adopting a government resolution, allocating land for construction, and issuing a building permit.⁵¹ As of July 2023, there are 132 authorized settlements in Area C and 14 in East Jerusalem.⁵²

2.15 For the period from 1 June 2021 to 31 May 2022, the UN Secretary-General reported a sharp increase in Israel’s settlement activity, “with plans for some 9,200 housing units in the occupied West Bank (7,200 in Area C, 2,000 in East Jerusalem), advanced or approved by the Israeli authorities, compared with 6,800 housing units in the previous reporting period”.⁵³

2.16 In the past year, Israel’s authorization of settlements has only accelerated further. In the first half of 2023 alone, more than double the number of settlements were approved as compared to the 2020-2021 reporting period. In June 2023, the *New York Times* reported that the Israeli government “decided to ease and expedite the process of approving new Jewish settlements in the occupied West Bank”⁵⁴ by removing the need for high-level political approval at various stages of the process,

⁵⁰ See Israel Policy Forum, “West Bank Settlements” (last accessed: 29 June 2023), note 2, available at <https://tinyurl.com/574fyk83>.

⁵¹ Office of the Prime Minister of Israel, *Summary of the Opinion Concerning Unauthorized Outposts* (10 Mar. 2005), available at <https://tinyurl.com/45mpp9ex>.

⁵² Israel Policy Forum, “West Bank Settlements” (last accessed: 29 June 2023), available at <https://tinyurl.com/574fyk83>; UN, “Human Rights Council hears that 700,000 Israeli settlers are living illegally in the occupied West Bank – Meeting Summary (Excerpts), available at <https://tinyurl.com/m4bnuaa6>.

⁵³ UNGA, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan*, UN Doc. A/77/493 (3 Oct. 2022) (Dossier No. 72) (Dossier notation refers to Materials Compiled Pursuant to art. 65, para. 2 of the Statute of the ICJ— Request for an Advisory Opinion pursuant to General Assembly Resolution 77/247), para. 4.

⁵⁴ I. Kershner, “Israel Eases West Bank Settlement Rules, Clearing Way for New Homes,” *New York Times* (18 June 2023), available at <https://tinyurl.com/3bxzw73j>.

paving the way for even more rapid expansion of settlements in the West Bank.⁵⁵ According to a report published by the *BBC* on 27 June 2023, this acceleration means that the last six months have seen more than 13,000 settlement homes constructed in the OPT—about three times as many as in all of 2022.⁵⁶

2.17 *Third*, Israel has tolerated, facilitated and retroactively approved so-called “outpost” settlements—that is, Jewish Israeli settlements that have been established without fulfilling all formal requirements under Israeli law. The Office of the UN High Commissioner on Human Rights (“**OHCHR**”) has reported that, as of 2023, there are 147 outpost settlements in the West Bank, about half of which have been established since 2012 alone.⁵⁷

2.18 Despite officially being illegal under Israeli law, the OHCHR explains that “outposts are often strategically placed and play a key role in the takeover of Palestinian land”, in large part due to their large scale and Israel’s failure to stop their expansion.⁵⁸ Far from stopping their expansion, Israel “develop[ed] a domestic legal path to enable [their] retroactive legalization”.⁵⁹ Since 1993, Israel has retroactively authorized more than 30 outposts,⁶⁰ including some built on land

⁵⁵ *Ibid.*

⁵⁶ See Y. Knell, “West Bank: US 'troubled' by Israeli settlement expansion plans,” *BBC* (27 June 2023), available at <https://tinyurl.com/3a26483c>.

⁵⁷ Human Rights Council, *Report of the UN High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/52/76 (15 Mar. 2023), para. 12.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, para. 14.

⁶⁰ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 26 (the number of retroactively authorized outposts as of September 2022 was 23).

privately owned by Palestinians.⁶¹ In February 2023 alone, it retroactively authorized nine outposts.⁶² These retroactive authorizations are facilitated by a law that allows Israel to expropriate privately-owned Palestinian land on which outposts have already been built.⁶³ For example, in January 2020, the Israeli High Court authorized the settlement of Ofra, shown below, despite acknowledging that it had been partly built on 12 acres of “accidentally expropriated” Palestinian land.⁶⁴ Needless to say, this continuing pattern of retroactively authorizing outposts only encourages settlers to establish still more.

⁶¹ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para. 54.

⁶² U.S. Department of State, *Press Statement: Israeli Settlement and Outpost Legalization Announcement* (13 Feb. 2023), available at <https://tinyurl.com/54y3h2vw>.

⁶³ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021) (hereinafter, “**HRW 2021 Report**”), available at <https://tinyurl.com/3s2vdjw9>, p. 72.

⁶⁴ J. Magid, “Court gives nod to settlement largely built on private Palestinian land,” *Times of Israel* (7 Jan. 2020), available at <https://tinyurl.com/2r953jw/>.



Figure 2.2: A view of the Israeli settlement of Ofra in the central West Bank, with the Palestinian town of Ein Yabrud on the range behind it, 17 November 2016⁶⁵

2.19 *Fourth*, Israel supports and encourages settlements in the OPT with funding and financial incentives. Although State investment in settlements is not an explicit line item in the public budget, Israel has invested “billions of dollars [into] the construction of settlements and of infrastructure to support them”.⁶⁶ Quasi-governmental entities that receive funding from Israel,⁶⁷ such as the World Zionist Organization, also provide funds to settlers and developers for the purchase of lands

⁶⁵ *Ibid.*

⁶⁶ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 25.

⁶⁷ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 21.

owned by Palestinians in the West Bank and for the construction of housing on that land.⁶⁸

2.20 In addition, the OHCHR reports that “[f]or decades, settlers have received economic and other incentives to relocate to the West Bank”.⁶⁹ This includes a multifaceted “governmental scheme of subsidies and incentives” to incentivize Jewish Israeli migrants to move to the West Bank (including East Jerusalem) and assist their economic development.⁷⁰ Settlements are defined as “national priority areas” and receive special housing and education benefits; incentives are also given to the industrial, agricultural and tourism sectors.⁷¹ These benefits include:

- Low-interest mortgages, exemption from penalties and capitalization fees in mortgage repayment, and development cost subsidies (granted by the Ministry of Construction and Housing);⁷²
- Low-cost leases of land and housing (granted by the Israel Land Administration);⁷³

⁶⁸ UNGA, *Note by the Secretary-General: Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 38.

⁶⁹ Human Rights Council, *Report of the UN High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/43/67 (30 Jan. 2020), para. 14.

⁷⁰ UNGA, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 22. See also Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 39.

⁷¹ B’Tselem, *This is Ours – And This, Too: Israel’s Settlement Policy in the West Bank* (Mar. 2021), available at <https://tinyurl.com/3bb8a25u>, p. 12.

⁷² *Ibid.*, p. 14.

⁷³ *Ibid.*

- Incentives for teachers to move to and work in settlements in the form of wage increases (provided by the Ministry of Education);⁷⁴
- Grants for investors to invest in, and for the construction of infrastructure servicing, industrial zones (provided by the Ministry of Industry and Trade);⁷⁵
- Financial support to new farmers and incentives for institutions providing agricultural mentoring programs (provided by the Ministry of Agriculture);⁷⁶ and
- Reductions in income tax for individuals and companies (provided by the Ministry of Finance).⁷⁷

2.21 *Fifth*, Israel facilitates settlements through the construction of infrastructure that serves the settlements and effectively integrates them into Israel’s pre-1967 borders. Some such infrastructure was constructed on privately-owned Palestinian land that Israel expropriated.⁷⁸ Israel has built roads, water and sewage systems, telecommunications and electrical systems, and educational and health care facilities to support the settlements.⁷⁹ None of this infrastructure serves nearby Palestinian communities.⁸⁰

⁷⁴ *Ibid.*, p. 16.

⁷⁵ *Ibid.*, p. 15.

⁷⁶ *Ibid.* pp. 15-16.

⁷⁷ *Ibid.*, p. 16.

⁷⁸ B’Tselem, *Land Grab – Israel’s Settlement Policy in the West Bank* (May 2022), available at <https://tinyurl.com/crz2kxbn>, pp. 61-62.

⁷⁹ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 25.

⁸⁰ Amnesty International, *Destination: Occupation – Digital Tourism and Israel’s Illegal Settlements in the Occupied Palestinian Territories* (2019), p. 29 (“the settlements and associated infrastructure are not temporary, do not benefit Palestinians and do not serve the legitimate security needs of the occupying power”), available at <https://tinyurl.com/yasp35vn>.

2.22 This segregation is most starkly illustrated by the water and road systems in the West Bank.

2.23 The Israeli national water company, Mekorot, has owned the West Bank water system since 1982. It operates “dozens of wells, trunk lines and reservoirs in Area C that abstract water inside Palestinian territory and provide service instead to the Israeli settlements in the West Bank”.⁸¹ Unlike Palestinian communities, many of which are not linked to the Mekorot network and which frequently suffer “lengthy water outages”,⁸² all Jewish Israeli settlements receive “developed-world levels of water for drinking, sanitation and commercial use”.⁸³

⁸¹ Human Rights Council, *Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/48/43 (15 Oct. 2021), para. 18.

⁸² ⁸² Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation*, UN Doc. A/HRC/40/73 (30 May 2019), para. 51.

⁸³ *Ibid.*, para. 52.



Figure 2.3: Swimming Pool in Ma'ale Adumim. With water supply roughly four times greater than that provided to Palestinian communities, Israeli settlements such as Ma'ale Adumim stand in stark contrast to their Palestinian neighbours⁸⁴

2.24 Since the occupation began in 1967, Israel has similarly configured the highway network to connect the West Bank settlements “with each other and with Israeli cities”.⁸⁵ In particular, the National Roads Authority of Israel has constructed hundreds of kilometres of roads in the West Bank that are designed to serve the settlements.⁸⁶ Palestinians are not even permitted to use some of the roads, as explained in Section III(A) below.

2.25 In addition, as recounted in detail in the Court’s Advisory Opinion in the *Wall* case, beginning in 2002, Israel constructed the 80-kilometre Wall that

⁸⁴ Amnesty International, “The Occupation of Water” (29 Nov. 2017), available at <https://tinyurl.com/428hpfv8>.

⁸⁵ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para. 50.

⁸⁶ See OCHA, *West Bank: The Humanitarian Impact of Israeli Settlement Activities* (21 Dec. 2017), available at <https://tinyurl.com/23w4y65k>.

significantly encroaches into the West Bank. The Court held that the construction of the Wall violated international law and that it must be dismantled.⁸⁷ Not only does it still stand, it has also been extended in the years since 2004. The Wall effectively incorporates territory in the West Bank where settlements are located into Israel’s pre-1967 borders. As of 2022, on the Israeli (*i.e.*, western) side of the Wall in what is known as the “Seam Zone” (*i.e.*, the area between the Green Line and the Wall) there were approximately 71 settlements, in which over 85 percent of Jewish Israeli settlers reside.⁸⁸



Figure 2.4: Jewish settlers who live in the Rachel’s Tomb compound enjoy their playground located next to a section of Israel’s Wall, separating them from the West Bank city of Bethlehem in the background, 8 March 2022⁸⁹

⁸⁷ *Wall Advisory Opinion*, para. 163.

⁸⁸ See OCHA, *The humanitarian impact of 20 years of the Barrier - December 2022* (30 Dec. 2022), available at <https://tinyurl.com/ysmyh52j>. See also *Wall Advisory Opinion*, paras. 84-85, 119.

⁸⁹ O. Balilty, “AP PHOTOS: Israel’s separation barrier, 20 years on,” *Associated Press* (27 June 2022), available at <https://tinyurl.com/n3pv5kmb>.

2.26 Israel facilitates the establishment, maintenance and expansion of settlements in still another way. As detailed in the following sections, Israel takes various measures that compel Palestinians who reside in the West Bank (including East Jerusalem) to leave their land and homes. These measures free up a significant amount of land in the OPT for Jewish Israeli settlements and supporting infrastructure.

II. The Exclusion and Displacement of Palestinians from the OPT

2.27 To consolidate its control over the OPT, secure as much land as possible for Jewish Israeli settlement, and alter the demographics in the territories it controls, Israel excludes Palestinians from the OPT (**Section A**); compels the displacement of Palestinians within the OPT through the control of residency rights (**Section B**); and adopts and enforces land use policies that impede Palestinians' ability to build housing and other structures, cause the demolition of Palestinian homes and other structures, and evict Palestinians from their homes (**Section C**).

A. THE EXCLUSION OF PALESTINIANS FROM THE OPT

2.28 As Professor Khalidi explains in his expert report submitted herewith, early Zionists like Theodor Herzl openly “called ... for the removal of inhabitants of Palestine to ‘other provinces and territories of the Ottoman Empire’”.⁹⁰ Israel today continues to heed Herzl's words by taking various steps to prevent Palestinians currently living outside the OPT from entering and residing in the OPT, thereby minimizing the Palestinian population. It does so in three principal ways.

⁹⁰ Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), p. 5. QWS, Vol. II, Annex 1.

2.29 *First*, Israel denies Palestinian refugees the right to enter or reside in the OPT.⁹¹ “Palestine refugees” are those refugees eligible to receive UNRWA’s services, *i.e.*, people (and their descendants) who were displaced from their homes in Mandatory Palestine during the *Nakba* in 1948.⁹² Today, there are approximately 5.9 million Palestine refugees.⁹³ While many live in the West Bank or Gaza, the majority live outside the OPT in Jordan, Syria and Lebanon.⁹⁴ Over a million of those outside the OPT remain stateless, with many living in crowded refugee camps that lack basic infrastructure.⁹⁵

⁹¹ HRW 2021 Report, p. 49.

⁹² UNRWA, “Palestine Refugees” (last accessed: 15 July 2023), *available at* <https://tinyurl.com/yc4wa2th>.

⁹³ *Ibid.*

⁹⁴ *See* UNRWA, “Where We Work” (last accessed: 15 July 2023), *available at* <https://tinyurl.com/4898vxnn>.

⁹⁵ *See* N. Citino *et al.*, “Generations of Palestinian Refugees Face Protracted Displacement and Dispossession,” *Migration Policy Institute* (3 May 2023), *available at* <https://tinyurl.com/bdexnka3>. The majority of Palestinian refugees, approximately 3.5 million, live outside the OPT. Of those, the large majority of the approximately 1.1 million living in Syria and Lebanon remain stateless, as well as approximately one quarter of the 2.4 million living in Jordan. *See also* HRW 2021 Report, p. 203.



Figure 2.5: A woman walks past clothes left to dry in Burj al-Barajneh refugee camp in Beirut, Lebanon, 29 January 2018⁹⁶

2.30 Israel denies Palestinian refugees living outside the OPT the possibility of residing there, even if they have family in the OPT.⁹⁷ In other words, despite being Palestinian—many without foreign citizenship—they cannot enter or settle in the OPT. This is in addition to Israel’s wholesale refusal to allow these refugees to return to their homelands within Israel’s pre-1967 borders. Israel considers that granting Palestine Refugees their right of return would mean the “destruction of Israel as a Jewish State”.⁹⁸ As noted by numerous UN Special Rapporteurs and human rights experts, these refugees “have been systematically denied of their right to return and forced to live in exile under precarious and vulnerable conditions

⁹⁶ “In Lebanese camp for Palestinian refugees, fears after aid cut,” *Reuters* (30 Jan. 2018), available at <https://tinyurl.com/msr4k7zj>.

⁹⁷ HRW 2021 Report, p. 49.

⁹⁸ *Ibid.*, p. 47.

outside the borders of Palestine”.⁹⁹ This exclusion “serve[s] the settler-colonial project pursued by Israel”.¹⁰⁰

2.31 *Second*, Israel denies residency rights in the OPT to Palestinians (and their descendants) who resided in, but were not physically present in, the OPT in September 1967. It does this through its control of “the population registry in the West Bank and Gaza Strip, [which] record[s] every Palestinian birth, marriage, divorce, address change, and death”.¹⁰¹ Inclusion in that registry is necessary to have a right to reside in the West Bank (including East Jerusalem) or Gaza.¹⁰² Yet at least 270,000 Palestinians who lived in the OPT before September 1967 were excluded from the population registry—and therefore lost their residency rights—because they were absent during the post-war census Israel conducted “either because they had fled during the 1967 war or were abroad for study, work, or other reasons”.¹⁰³ After 1967, Israel erected barriers to their return.¹⁰⁴ For example, until 2000, many seeking to return had to go through a “restrictive family reunification process ... based on low annual quotas and subject to arbitrary and evolving criteria that failed to take into account genuine familial or historical ties” to the West Bank or Gaza.¹⁰⁵ Since 2000, Israel has largely frozen family reunification, as discussed below at paragraph 2.33.¹⁰⁶

⁹⁹ OHCHR, *Press Statement of Special Rapporteurs and Experts, Right of return of Palestinian refugees must be prioritized over political considerations* (21 June 2023), available at <https://tinyurl.com/27je9h27>.

¹⁰⁰ *Ibid.*

¹⁰¹ HRW 2021 Report, p. 51

¹⁰² *Ibid.*, p. 16.

¹⁰³ *Ibid.*, p. 188.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, p. 190.

2.32 *Third*, after 1967, Israel struck hundreds of thousands more Palestinians who temporarily left the OPT from the population registry.¹⁰⁷ According to Human Rights Watch, between 1967 and 1994, for example, Israel “canceled the registry of 140,000 registered Palestinians, solely because they left the West Bank for a period of more than three years”.¹⁰⁸ During the same time period, Israel also “revoked the residency of 108,878 Palestinians from Gaza either for staying abroad for more than seven years or for not being present during censuses conducted in 1981 and 1988”.¹⁰⁹ Israel also revoked the permanent resident status of at least 14,701 Palestinians from East Jerusalem between 1967 and the end of 2020.¹¹⁰

B. RESTRICTIONS ON THE RIGHT TO RESIDE IN THE OPT OF PALESTINIANS
PRESENT IN THE OPT

2.33 Palestinians who *today* reside in the OPT also face restrictions on, and threats to, their right to reside there. By strictly controlling where Palestinians may live, Israel strengthens its control of the OPT and displaces Palestinians from areas where it seeks to develop settlements.

2.34 To begin with, Israel erects barriers to Palestinians who reside in the OPT, but are not registered in the population registry, to becoming registered, which is a requirement to obtain formal residency rights. Since 2000, Israel has largely “refused to update the population registry or process applications for residency by

¹⁰⁷ See Human Rights Watch, “*Forget About Him, He’s Not Here*”: *Israel’s Control of Palestinian Residency in the West Bank and Gaza* (Feb. 2012), available at <https://tinyurl.com/3jamdntv>, p. 62. Israeli rights groups B’Tselem and HaMoked also found it “likely that political and demographic reasons dictated this policy”. B’Tselem & HaMoked, *Perpetual Limbo: Israel’s Freeze on Unification of Palestinian Families in the Occupied Territories* (July 2006), available at <https://tinyurl.com/4zasntma>; B’Tselem, “Residents without Status” (21 July 2013), available at <https://tinyurl.com/3439ebh3>.

¹⁰⁸ HRW 2021 Report, p. 188.

¹⁰⁹ *Ibid.*, pp. 188-189.

¹¹⁰ *Ibid.*, p. 192.

unregistered Palestinians, their spouses, and close relatives, even if they had lived in the West Bank or Gaza for years and had families, homes, jobs, or other ties there”.¹¹¹ Israeli authorities have cited the “security situation following the outbreak of the second Intifada as the rationale for the freeze, but they have not explained why their blanket refusal to process new applications is necessary for security reasons”.¹¹² According to Human Rights Watch, they “simply refuse to process any new application without an explanation or to review whether the particular individual presents a security threat”.¹¹³ A survey conducted in 2005 estimated that “more than 640,000 Palestinians in the West Bank and Gaza had a parent, sibling, child, or spouse who was unregistered, even though 78.4 percent of them had filed a family reunification request that had not yet been processed”.¹¹⁴

2.35 Unregistered individuals are at risk of deportation, having no legal residency status in the OPT.¹¹⁵

2.36 In addition to expelling unregistered individuals, Israel has periodically resorted to forced expulsions, sometimes *en masse*, of Palestinians from the OPT as a punitive measure for suspected involvement in attacks on Israelis. For example, in December 1992, during the First Intifada, “Israel deported 415 Palestinians from the Occupied Territories to South Lebanon”, then occupied by

¹¹¹ *Ibid.*, p. 189.

¹¹² *Ibid.*, pp. 189-190.

¹¹³ *Ibid.*, p. 190.

¹¹⁴ *Ibid.*, p. 189.

¹¹⁵ *Ibid.*, p. 193.

Israel.¹¹⁶ This “was carried out following the killing that month of six members of the Israeli security forces by Palestinians”.¹¹⁷

2.37 Palestinians who are registered and legally reside in the OPT also face a number of restrictions on their residency in, and ability to relocate within, the OPT.

2.38 *First*, it is virtually impossible for those Palestinians registered in Gaza formally to transfer their residency to the West Bank or East Jerusalem.¹¹⁸ Palestinians who are registered in Gaza but live in the West Bank are considered to be “infiltrators” and face forced transfer to Gaza.¹¹⁹ In 2010, “around 35,000 Palestinians from Gaza were living in the West Bank with expired permits”.¹²⁰

2.39 *Second*, Palestinians registered in the West Bank who temporarily relocate to Gaza are often coerced into giving up their right to live in the West Bank when they try to leave Gaza.¹²¹ The Israeli human rights organization Gisha explains: “Palestinians registered as West Bank residents in the Palestinian population registry who reside in the Gaza Strip must sign a document stating that they have ‘settled’ in Gaza permanently in order to apply for an Israeli permit to exit Gaza

¹¹⁶ B’Tselem, *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992* (June 1993), available at <https://tinyurl.com/3y3k63az>, p. 7.

¹¹⁷ *Ibid.*

¹¹⁸ HRW 2021 Report, pp. 189-190.

¹¹⁹ *Ibid.*, p. 191. See also Gisha, *One-Way Ticket: Israel is committing forcible transfer of protected persons in the occupied Palestinian territory, and most of the victims are women* (25 Dec. 2022), available at <https://tinyurl.com/mw5ej6ch>, p. 3.

¹²⁰ HRW 2021 Report, pp. 190-191.

¹²¹ Gisha, *One-Way Ticket: Israel is committing forcible transfer of protected persons in the occupied Palestinian territory, and most of the victims are women* (25 Dec. 2022), available at <https://tinyurl.com/mw5ej6ch>, p. 3.

for any reason.”¹²² By making them sign this document, Israel effectively forces Palestinians to “waive their right to move back to the West Bank in the future”.¹²³

2.40 The practical consequence of this policy is that Palestinian families in which one spouse is registered as a Gaza resident and the other as West Bank resident can only live together in Gaza.¹²⁴ This affects women disproportionately, since women are often the ones who move to be near their spouse’s family after marriage.¹²⁵

2.41 *Third*, the right of Palestinians to reside in East Jerusalem is subject to arbitrary revocation. According to the Israeli human rights organization B’Tselem, Palestinian East Jerusalemites’ “permanent residency ... may be revoked at any time, at the complete discretion of the Minister of the Interior”.¹²⁶ As stated, between 1967 and the end of 2020, “Israel revoked the permanent resident status of at least 14,701 Palestinians from East Jerusalem”.¹²⁷

2.42 Human Rights Watch explains that the Israeli “[a]uthorities have justified most revocations based on a failure to prove a ‘center of life’ in Jerusalem, targeting those it said had been living in other parts of the OPT outside Jerusalem’s municipal borders or who had studied or lived abroad for extended periods of time”.¹²⁸ Though “[t]hose who lose their residency may challenge the revocation

¹²² *Ibid.*, p. 1.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 Jan. 2021), available at <https://tinyurl.com/4yzzwvuv>, p. 2.

¹²⁷ HRW 2021 Report, p. 192.

¹²⁸ *Ibid.*

as unlawful or petition the Interior Ministry to recover their status,” doing so requires going through “protracted legal and administrative processes that many cannot afford”.¹²⁹

2.43 Other expulsions from East Jerusalem are punitive in nature. For example, as documented by the UN Office for the Coordination of Humanitarian Affairs (“OCHA”) “[o]n 10 March 2016, the Israeli authorities forced the family of a suspected perpetrator of a shooting attack to leave East Jerusalem ... The four eldest siblings and their mother were transported by the Israeli police to the Qalandiya checkpoint and ordered to leave East Jerusalem”.¹³⁰

2.44 Palestinians who are Israeli citizens or hold East Jerusalem residency rights also face serious barriers to living there with their families. As the Committee on the Elimination of Racial Discrimination (“**CERD Committee**”) noted in 2020, the Citizenship and Entry into Israel Law “suspends the possibility, with certain rare exceptions, of family reunification of Israeli citizens or residents of East Jerusalem with Palestinian spouses living in the West Bank or Gaza Strip”.¹³¹ Moreover, even if a Palestinian East Jerusalemite’s child or spouse lives in East Jerusalem, the child or spouse cannot automatically obtain residency in East Jerusalem,¹³² placing them at risk of expulsion from that territory. Former Israeli Arab Member of the Knesset Haneen Zoabi explained the difficulty that East Jerusalemite’s spouses face: “ If an

¹²⁹ Human Rights Watch, “Israel: Jerusalem Palestinians Stripped of Status” (8 Aug. 2017), available at <https://tinyurl.com/4rmn4j5v>.

¹³⁰ OCHA, “Israeli bills would allow punitive expulsions from the West Bank” (26 Apr. 2016), available at <https://tinyurl.com/yaa728kf>.

¹³¹ CERD Committee, *Concluding observations on the combined seventeenth to nineteenth reports of Israel*, UN Doc. CERD/C/ISR/CO/17-19 (27 Jan. 2020) (hereinafter, “**2020 CERD Concluding Observations**”), para. 24.

¹³² Amnesty International, *Israel’s Apartheid Against Palestinians: Cruel System Of Domination And Crime Against Humanity* (1 Feb. 2022) (hereinafter, “**Amnesty International 2022 Report**”), available at <https://tinyurl.com/bdfscyf2>, p. 85.

Israeli man marries a Palestinian woman or vice versa, the authorities grant the West Bank partner a temporary residence permit, which must be continuously renewed, and the application is often rejected from the beginning”.¹³³

2.45 These restrictions on Palestinian residency in East Jerusalem are a centerpiece of Israel’s demographic control policies.¹³⁴ In 2021, the Israeli Foreign Minister confirmed the intentionally discriminatory nature of the Citizenship and Entry into Israel Law, explaining that the law is “one of the tools aimed at ensuring a Jewish majority in Israel”.¹³⁵ Among other laws and policies, the government’s plan for the municipality, the Jerusalem Master Plan, outright limited the number of Palestinian residents to 40 percent of the city.¹³⁶

2.46 As shown, Israel seeks to displace Palestinians living in the OPT to areas it considers less desirable for settlement. Palestinians in annexed East Jerusalem face the most precarious situation and are often displaced from there to other parts of the West Bank. In turn, those in the West Bank—where Israel’s settlements are

¹³³ “Why did MK Haneen Al Zoabi challenge the State of Israel?,” *DW* (8 Nov. 2014), available at <https://tinyurl.com/sxaaxwdx> (“1.2 million Palestinians live in isolation on the margins of society, and the majority of the Israeli society rejects their values, history and culture, according to Al Zoabi. It does not stop there, in Al Zoabi’s words. Discrimination against Palestinians, according to Al Zoabi, is evident by looking at many Israeli laws and she mentions some examples: take the issue of reunification, for example, as Al Zoabi says: If an Israeli man marries a Palestinian woman or vice versa, the authorities grant the West Bank partner a temporary residence permit, which must be continuously renewed, and the application is often rejected from the beginning, according to Al Zoabi (1.2 مليون فلسطيني يعيشون منعزلين على هامش المجتمع، والغالبية في المجتمع الإسرائيلي ترفض قيمهم وتاريخهم)”).

¹³⁴ Human Rights Watch, “Israel: Jerusalem Palestinians Stripped of Status” (8 Aug. 2017), available at <https://tinyurl.com/4rmn4j5v>.

¹³⁵ N. Shpigel, “Israel’s Parliament Votes to Extend Ban on Palestinian Family Unification,” *Haaretz* (6 Mar. 2023), available at <https://tinyurl.com/muva6ck2>.

¹³⁶ HRW 2021 Report, p. 63.

concentrated—are often displaced to Gaza. This “one way ticket”¹³⁷ toward Gaza serves Israel’s goal of “maximum Jews on maximum land ... with minimum Palestinians”.¹³⁸

C. CONSTRUCTION OF THE DEVELOPMENT OF PALESTINIAN COMMUNITIES
AND THE DESTRUCTION OF, AND EVICTION FROM, THOSE COMMUNITIES

2.47 In addition to displacing Palestinians from their homes in the West Bank (including East Jerusalem) by denying and revoking residency rights, Israel also constricts the development of Palestinian communities there through its land use policies. Those policies have the further effect of forcing Palestinians to abandon their homes located in areas that Israel deems desirable for Jewish Israeli settlement. This is achieved by four principal measures.

2.48 *First*, Israel makes much of the land in Area C of the West Bank and East Jerusalem unavailable for Palestinian use. As stated, Israel has designated over 70 percent of Area C as State land, nature reserves or military zones. Much of this land has been allocated to Jewish Israeli settlers,¹³⁹ allowing the construction of the

¹³⁷ Gisha, *One-Way Ticket: Israel is committing forcible transfer of protected persons in the occupied Palestinian territory, and most of the victims are women* (25 Dec. 2022), available at <https://tinyurl.com/mw5ej6ch>, p. 1.

¹³⁸ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 46.

¹³⁹ Human Rights Council, *Report of the UN High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/52/76 (15 Mar. 2023), para. 8.

settlements that are now home to approximately 500,000 Jewish Israeli settlers.¹⁴⁰ By contrast, Palestinians have been allocated only 0.7 percent of that land.¹⁴¹

2.49 In addition, as the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel reported, in the West Bank “[l]and available for Palestinian agriculture has been reduced from 2.4 million dunams [(240,000 hectares)] in 1980 to around 1 million dunams [(100,000 hectares)] in 2010”.¹⁴² And in East Jerusalem, as of 2017, Israel had expropriated about 38 percent of land—mostly private Palestinian land but some of it public—“for Jewish-only use, leaving Palestinian Jerusalemites with a diminished land base to accommodate their growing population”.¹⁴³

2.50 Israel has also “frozen the land registration process” for Palestinians throughout the West Bank and East Jerusalem.¹⁴⁴ This freeze applies only to non-Jewish landowners, as Jewish settlements have continued to be registered since the beginning of the occupation.¹⁴⁵ Today, approximately 50 percent of the land in East Jerusalem “is not registered in any form”.¹⁴⁶ According to Human Rights Watch,

¹⁴⁰ C. Parker, “Jewish settler population in West Bank passes half a million,” *Washington Post* (2 Feb. 2023), available at <https://tinyurl.com/275bjwsf>.

¹⁴¹ C. Levinson, “Just 0.7% of State Land in the West Bank has been allocated to Palestinians, Israel admits,” *Haaretz* (28 Mar. 2013), available at <https://tinyurl.com/46s6c9w2>.

¹⁴² UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 72.

¹⁴³ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 44.

¹⁴⁴ HRW 2021 Report, p. 112.

¹⁴⁵ Ir Amim, *Displaced in Their Own City: The Impact of Israeli Policy in East Jerusalem on the Palestinian Neighborhoods of the City beyond the Separation Barrier* (June 2015), available at <https://tinyurl.com/4mzmkjf5>, p. 10.

¹⁴⁶ *Ibid.*

this puts unregistered Palestinian lands at risk of confiscation and makes it difficult for their owners to obtain building permits.¹⁴⁷

2.51 *Second*, in the 30 percent of Area C of the West Bank that Israel has not designated as State land, nature reserves or military zones, and in East Jerusalem, Israel’s land use policies effectively prevent Palestinians from building new structures. As Amnesty International noted, “zoning and planning in Area C is subject to a combination of selectively applied Ottoman, British and Jordanian laws amended by a series of Israeli military orders issued since 1967 to advance Israeli territorial and demographic objectives in the area”.¹⁴⁸

2.52 In particular, Israel refuses to enact updated master plans that reflect the present and future needs of Palestinian communities, while simultaneously using outdated plans as a pretext for prohibiting virtually all construction and new infrastructure hook-ups for Palestinians in Area C.¹⁴⁹ The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel explained: “The Israeli Civil Administration and the Israeli courts continue to rely on these outdated plans when deciding on Palestinian construction permit requests while, at the same time, approving hundreds of new master plans to change the zoning to allow for the construction of Israeli settlements.”¹⁵⁰ The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel further observed that “[s]tatements made by Israeli officials indicate that Palestinian

¹⁴⁷ See HRW 2021 Report, p. 112.

¹⁴⁸ Amnesty International 2022 Report, p. 158.

¹⁴⁹ B’Tselem, *Acting the Landlord: Israel’s Policy in Area C, the West Bank* (June 2013), available at <https://tinyurl.com/bdjsyvf2>, pp. 13-15.

¹⁵⁰ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 43.

construction is seen as an impediment to Israeli settlement of the West Bank, requiring action such as confiscation, demolitions and displacement”.¹⁵¹

2.53 As a result of these policies, between 2009 and 2018, Israel approved only 2 percent of Palestinian construction applications in Area C of West Bank.¹⁵² In East Jerusalem between 1991 and 2018, Israeli municipal planners approved only 9,536 building permits for Palestinians, while approving 21,834 permits for Israelis.¹⁵³ Most Palestinian building permit applications are rejected “on the grounds that the relevant area has not been zoned for construction, even when the land is owned by the applicant”.¹⁵⁴

2.54 These zoning restrictions significantly contribute to the displacement of Palestinians. As explained by the OCHA, “[t]o meet their housing and livelihood needs, many Palestinians are left with little choice than to build without permits, risking demolition and displacement, or to move elsewhere”.¹⁵⁵ In addition, “the restrictive planning regime applied by Israel in Area C contributes to the creation of a coercive environment on residents, leading to risk of forcible transfer”.¹⁵⁶

¹⁵¹ *Ibid.*, para. 45.

¹⁵² Peace Now, “(Dis)approvals for Palestinians in Area C – 2009-2020” (31 Jan. 2021), available at <https://tinyurl.com/yc6zksdb>.

¹⁵³ Peace Now, *Press Statement: Jerusalem Municipal Data Reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem* (12 Sept. 2019), available at <https://tinyurl.com/y479vn5d>.

¹⁵⁴ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 42.

¹⁵⁵ OCHA, “Most Palestinian plans to build in Area C are not approved” (22 June 2021), available at <https://tinyurl.com/38tvf8jy>.

¹⁵⁶ *Ibid.*

2.55 *Third*, Israel systematically demolishes structures belonging to Palestinians in the OPT. Any construction carried out without a building permit—even a small addition or renovation to an existing home, for example—can result in the demolition of the structure.¹⁵⁷ Likewise, if a structure is not in compliance with zoning restrictions, it can be demolished. Indeed, to facilitate the demolition of Palestinian-owned structures, the Israeli government provides funds to Jewish-Israeli settlers to monitor Palestinian zoning violations and to identify structures for destruction.¹⁵⁸

¹⁵⁷ Z. Al Tahhan, “Palestinians face expulsions as Israel tightens hold on West Bank: Israeli officials push to increase the budget for settlers to monitor and restrict Palestinian construction to \$11m,” *Al Jazeera* (11 Apr. 2023), available at <https://tinyurl.com/3mvhmanz>.

¹⁵⁸ *Ibid.*



Figure 2.6: Palestinian Motasem Farrah (centre) and a friend tear down Farrah’s home in an Arab neighbourhood in east Jerusalem, 12 March 2012. Israel often tells Palestinians who build without permits that they must tear down the house themselves or they will be charged by Israel for the cost of knocking it down.¹⁵⁹

2.56 Just in East Jerusalem, between 2009 and 2020, Israel reportedly demolished 1,434 structures, citing the lack of a permit (which it refuses to give) in 98 percent of cases.¹⁶⁰ In contrast, Israeli authorities “almost never demolish the homes of Jewish Israelis in Jerusalem, even where there are building violations”.¹⁶¹ And, according to the OCHA, as of 11 July 2023, Israel has demolished more than

¹⁵⁹ L. Garcia-Navarro, “Walls of Palestinian Homes Come Tumbling Down,” *NPR* (10 July 2012), available at <https://tinyurl.com/59hx8xn2>.

¹⁶⁰ HRW 2021 Report, p. 114.

¹⁶¹ *Ibid.*, p. 115.

9,600 Palestinian structures in the West Bank since 2009,¹⁶² displacing over 14,000 Palestinians.¹⁶³

2.57 Moreover, it is virtually impossible for Palestinians to challenge demolition orders. As B’Tselem explained in 2019, “there has not been a single case in which the [Israeli High Court of Justice] granted a petition Palestinians filed against the demolition of their home”.¹⁶⁴



Figure 2.7: An Israeli army excavator demolishes a building in the Palestinian village of Sur Baher¹⁶⁵

2.58 In addition to demolishing Palestinians’ homes, Israeli authorities also demolish other structures that Palestinian communities use, including commercial, farm and industrial structures, and infrastructure, often under the pretext of zoning

¹⁶² OCHA, “Data on Demolition and Displacement in the West Bank,” (last accessed: 12 July 2023), available at <https://tinyurl.com/n9e7x7x4>.

¹⁶³ *Ibid.*

¹⁶⁴ B’Tselem, *Fake Justice: The Responsibility Israel’s High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians* (Feb. 2019), available at <https://tinyurl.com/yayeftnd>, p. 22.

¹⁶⁵ “Israeli crews demolish Palestinian homes in East Jerusalem,” *The Guardian* (22 July 2019), available at <https://tinyurl.com/22p7anue>.

violations.¹⁶⁶ Since the beginning of the occupation, Israel has demolished more than 50,000 structures in the OPT.¹⁶⁷ Most strikingly, Israel has destroyed schools serving Palestinian children in East Jerusalem and the West Bank. Since 2010, 20 such schools were demolished.¹⁶⁸ In the process of carrying out the demolitions, Israeli soldiers sometimes shoot “bullets, tear gas and sound bombs” at Palestinian children and their parents.¹⁶⁹ In May of this year, Israel demolished an EU-funded primary school in the village of Jabbet al-Dhib. The school, the remains of which are shown below, served dozens of children, and “had replaced another school demolished by Israel in 2019”.¹⁷⁰

¹⁶⁶ OCHA, *West Bank Demolitions and Displacement: An Overview* (Jan.-Mar. 2023), available at <https://tinyurl.com/cubturpr>, pp. 1-2.

¹⁶⁷ Amnesty International, “Israel’s Occupation: 50 Years of Dispossession” (last accessed: 30 June 2023), available at <https://tinyurl.com/bderjwbt>.

¹⁶⁸ S. Davidson, “Israel’s demolition surge: Schools become a primary target,” *Al Jazeera* (11 May 2023), available at <https://tinyurl.com/5n93ypwx>.

¹⁶⁹ *Ibid.*

¹⁷⁰ “Israel demolishes EU-funded Palestinian school, drawing criticism,” *Le Monde* (7 May 2023), available at <https://tinyurl.com/p2mr2mmy>; The Diplomatic Service of the European Union, *Press Statement: Israel/Palestine: Statement by the Spokesperson on the demolition of Jubbet Adh Dhib school* (7 May 2023), available at <https://tinyurl.com/y5t6fref>.



Figure 2.8: A Palestinian boy picks up papers and books from the site of a school that was demolished by the Israeli authorities in the village of Jabbet al-Dhib, east of Bethlehem in the occupied West Bank, 7 May 2023¹⁷¹

2.59 By denying Palestinians construction permits while simultaneously destroying those structures that they build without proper permits,¹⁷² Israel “pressures Palestinians to ... abandon their homes and livelihoods and relocate, usually to towns or cities under the administrative and civil control of the [Palestinian Authority]”.¹⁷³ School demolitions also compel displacement because, according to Save the Children, “there’s no way for their children to get an education”.¹⁷⁴

¹⁷¹ “Israel demolishes EU-funded Palestinian school, drawing criticism,” *Le Monde* (7 May 2023), available at <https://tinyurl.com/p2mr2mmy>.

¹⁷² See UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), paras. 41-42, 60.

¹⁷³ HRW 2021 Report, p. 185.

¹⁷⁴ S. Davidson, “Israel’s demolition surge: Schools become a primary target,” *Al Jazeera* (11 May 2003), available at <https://tinyurl.com/5n93ypwx>.

2.60 *Fourth*, in addition to demolishing Palestinian structures, Israel evicts Palestinians from their homes and land, often because of their inability to secure proper land tenure in light of Israel’s freeze on the registration of Palestinian land. For example, between 2005 and 2018, “Israeli authorities have issued hundreds of eviction orders against Palestinians” in the West Bank on grounds that they are “illegally holding” State land.¹⁷⁵ Nonetheless, Human Rights Watch reported that 41.5 percent of the territory encompassed by the 600 eviction orders against Palestinians between 2005 and 2018 “had not formally been declared by authorities as State land”.¹⁷⁶

2.61 In East Jerusalem, Palestinians also “face the risk of imminent forced displacement by the Israeli authorities”.¹⁷⁷ The case of the neighbourhood of Sheikh Jarrah is illustrative.¹⁷⁸ The families currently living there were displaced from West Jerusalem in 1948¹⁷⁹ and resettled in Sheikh Jarrah.¹⁸⁰ Now, the land upon which their homes were built, which had been owned by two Jewish organizations before 1948, is claimed by Jewish Israeli settlers “who argue that the Palestinians are, in effect, squatters”.¹⁸¹

2.62 As the OPT Special Rapporteur noted, the precarity of the residents of Sheikh Jarrah is “emblematic of the threats of forced displacement ... with the aim

¹⁷⁵ HRW 2021 Report, p. 178.

¹⁷⁶ *Ibid.*

¹⁷⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements*, UN Doc. A/HRC/47/57 (29 July 2021), para. 18.

¹⁷⁸ *Ibid.*

¹⁷⁹ P. Adams, “Jerusalem's Sheikh Jarrah: The land dispute in the eye of a storm,” *BBC* (26 May 2021), available at <https://tinyurl.com/yunj5ck8>.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

of establishing a Jewish majority in the city and creating irreversible demographic facts on the ground” and “underlines Israeli attempts to permanently change the Palestinian character of East Jerusalem and pave the way for further settler expansion”.¹⁸² The Special Rapporteur continued, explaining that “[t]his situation of forced eviction in Shaykh Jarrah is mirrored in other Palestinian neighbourhoods across East Jerusalem, including Bayt Hanina, Bayt Safafa, the Old City, Ra’s al-Amud and Silwan”.¹⁸³ In total, in 2021, “more than 970 people, including 424 children, [faced] the risk of displacement” due to pending evictions in East Jerusalem.¹⁸⁴ For example, as recently as 11 July 2023, Israel evicted Nora Ghaith and Mustafa Sub Laban from the home that they had lived in in East Jerusalem since 1953.¹⁸⁵

¹⁸² Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements*, UN Doc. A/HRC/47/57 (29 July 2021), para. 18.

¹⁸³ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/40/73 (30 May 2019), para. 21.

¹⁸⁴ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements*, UN Doc. A/HRC/47/57 (29 July 2021), para. 19.

¹⁸⁵ OHCHR, *Press Release: Israel: UN experts condemn forced eviction of east Jerusalem families* (12 July 2023), available at <https://tinyurl.com/ytbd7xf2>.



Figure 2.9: Nora Ghaith-Sub Laban, centre, is comforted by her son after her family’s eviction from their home to make way for Israeli settlers in Jerusalem’s Old City, 11 July 2023¹⁸⁶

III. Fragmentation of, and Restrictions on Movement Within, the OPT

2.63 In addition to strictly controlling where Palestinians may reside within the OPT and causing their displacement, Israel has fragmented the Palestinian population there through an elaborate regime that restricts Palestinians’ movement and physically isolates them from each other. According to the Israeli human rights organization Gisha, Israel uses this tool to pursue its “illegitimate demographic and political goals of isolating the Gaza Strip and advancing *de facto* annexation of the West Bank”.¹⁸⁷ Indeed, as explained by a former Special Rapporteur for the OPT,

¹⁸⁶ J. Frankel, “I will not stay quiet’: Israel evicts Palestinian family from home after 45-year legal battle,” *Associated Press* (11 July 2023), available at <https://tinyurl.com/sr7j7krx>.

¹⁸⁷ Gisha, *One-Way Ticket: Israel is committing forcible transfer of protected persons in the occupied Palestinian territory, and most of the victims are women* (25 Dec. 2022), available at <https://tinyurl.com/mw5ej6ch>, p. 3. See also Amnesty International 2022 Report, p. 19 (“Since the mid-1990s the Israeli authorities have imposed a closure system within the OPT and between the OPT and Israel, gradually subjecting millions of Palestinians who live in the West Bank, including East Jerusalem, and Gaza Strip to ever more stringent restrictions on movement based on their legal

“[a] central strategy of Israeli rule has been the fragmentation of the Palestinian territory into separate areas of population control, with Gaza, the West Bank and East Jerusalem physically divided from one another”.¹⁸⁸

2.64 At the same time, Israel isolates the OPT from the outside world. The OPT “lacks any secure land, sea or air access to the outside world”, and Israel controls all of its borders except the Rafah crossing between Gaza and Egypt.¹⁸⁹

2.65 These divisions “sever[] the Palestinians under occupation not only from each other socially, economically and politically, but also from Palestinians living in Israel and the wider world”.¹⁹⁰

2.66 The CERD Committee explained that this fragmentation and isolation is furthered by “the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively”.¹⁹¹ The Human Rights Committee (“**HRC**”)

status. These restrictions are another tool through which Israel segregates Palestinians into separate enclaves, isolates them from each other and the world, and ultimately enforces its domination”).

¹⁸⁸ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 42.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ 2020 CERD Concluding Observations, para. 22. *See also* Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 42 (noting that that the physical fragmentation of the OPT is achieved through “an elaborate series of walls, checkpoints, barricades, military closure zones, Palestinian-only roads and Israeli-only roads”); HRW 2021 Report, pp. 80-85.

and the Committee on Economic, Social and Cultural Rights (“CESCR”) have reached similar findings.¹⁹²

2.67 Israel invokes the pretence of security to justify these measures, but Human Rights Watch has observed that its restrictions on movement are implemented “in so sweeping a fashion that it is difficult to see them as motivated primarily by security—rather than demographic—considerations”.¹⁹³ This has led UN mandate holders to draw parallels between the Palestinian enclaves in the OPT and the nominally self-governing black homelands South Africa created during apartheid known as “Bantustans”.¹⁹⁴

2.68 Israel’s policy of fragmenting, isolating and restricting Palestinian movement manifests itself in different ways across the OPT. In the West Bank (including East Jerusalem), Israel’s military occupation and settlement activity has created a labyrinth of physical and bureaucratic barriers to Palestinians’ freedom of movement, affecting all aspects of their daily lives (**Section A**). In Gaza, Israel’s 16-year blockade has isolated 2.2 million Palestinians from the rest of the world, and created one of the world’s largest and longest standing humanitarian crises (**Section B**).

¹⁹² Human Rights Council, *Concluding observations on the fourth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/4 (21 Nov. 2014), para. 18; CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 11(c).

¹⁹³ HRW 2021 Report, p. 51.

¹⁹⁴ See UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 71; UN Commission on Human Rights, *Report of Special Rapporteur J. Ziegler on the right to food*, UN Doc. E/CN.4/2004/10/Add.2 (31 Oct. 2003), para. 62(h).

A. THE FRAGMENTATION OF, AND RESTRICTIONS ON MOVEMENT IN, THE WEST BANK (INCLUDING EAST JERUSALEM)

2.69 Israel has taken various measures to physically fragment the predominantly Palestinian areas of the West Bank (including East Jerusalem). Though East Jerusalem itself is treated as part of Israel proper, Palestinians there are physically cut off from the non-Palestinian parts of the city. And the remainder of the West Bank is “splintered into 165 disconnected enclaves”.¹⁹⁵ The most significant means by which Israel has achieved this is (i) the construction of the Wall; (ii) requiring Palestinians to have permits to travel from one part of the OPT to another; (iii) a system of checkpoints and roadblocks in the West Bank; and (iv) the maintenance of segregated roads and infrastructure in the West Bank.

2.70 *First*, through the construction of the Wall, Israel “broke up contiguous Palestinian urban and rural blocs, severed inter-community ties that had been forged and cemented over the course of many generations, and abruptly imposed an arbitrary reconfiguration of space based on settlement boundaries and to suit the convenience of Israeli security forces”.¹⁹⁶

2.71 In East Jerusalem, the Wall cuts through the predominantly Palestinian sections of the city. As a result, 120,000-140,000 Palestinian Jerusalemites live on the West Bank side of the Wall, physically separated from access to the city and its services.¹⁹⁷ They experience significant shortages of schools, higher housing

¹⁹⁵ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 42.

¹⁹⁶ B’Tselem, “The Separation Barrier” (11 Nov. 2017), available at <https://tinyurl.com/mjvsk9cs>.

¹⁹⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 44.

congestion, and poorer access to municipal services (including sewage and water) than the Jewish Israeli residents of East Jerusalem.¹⁹⁸



Figure 2.10: Palestinians wait at the Qalandia checkpoint along the Wall separating East Jerusalem from the rest of the West Bank, 29 April 2022¹⁹⁹

2.72 In Area C of the West Bank, the barrier has isolated “38 Palestinian localities that together cover 9.4% of the area of the West Bank, and has trapped them in enclaves known as ‘seam zones’”.²⁰⁰ As stated, these “seam zones” are “sections of Palestinian land within the West Bank that fall between the fence/wall and the Green Line and are therefore severed from the OPT”.²⁰¹ Because Israel has declared them closed military zones, “Palestinian residents of these localities or

¹⁹⁸ *Ibid.*

¹⁹⁹ O. Balilty, “AP PHOTOS: Israel’s separation barrier, 20 years on,” *Associated Press* (27 June 2022), available at <https://tinyurl.com/n3pv5kmb>.

²⁰⁰ Amnesty International 2022 Report, p. 97.

²⁰¹ *Ibid.* See also OCHA, *The humanitarian impact of 20 years of the Barrier - December 2022* (30 Dec. 2022), available at <https://tinyurl.com/ysmyh52j>.

Palestinians who want to visit have to obtain special permits for entry and exit to their homes and acquire separate permits to access their agricultural land”.²⁰²

2.73 Israel’s closure of the “seam zones” not only impacts the approximately 11,000 Palestinians who reside there but also members of the approximately 150 Palestinian communities outside the zones who own or use agricultural land within them.²⁰³ Even those who manage to obtain permits must contend with gates in the barrier that open at irregular and limited times.²⁰⁴ Jewish Israeli settlers, however, can move within the seam zones without restriction.²⁰⁵

2.74 These restrictions in and around the seam zones impede the ability of Palestinians there to access their places of work and essential services in the rest of the West Bank.²⁰⁶ Israel’s “gate-and-permit regime” further undermines the agricultural livelihoods of Palestinians who are unable freely to access their farming and grazing lands located in the seam zones.²⁰⁷ Likewise, the Palestinian communities there face challenges in timely receiving essential medical and fire services.²⁰⁸

²⁰² Amnesty International 2022 Report, p. 97.

²⁰³ See OCHA, *The humanitarian impact of 20 years of the Barrier - December 2022* (30 Dec. 2022), available at <https://tinyurl.com/ysmyh52j>; Human Rights Council, *Joint NGO Statement on the human rights situation in Palestine and other OATs/Seam zones*, UN Doc. A/HRC/21/NGO/58 (24 Aug. 2012) (“[Palestinians] who live within seam zones must apply to the Israeli Civil Administration for a ‘permanent resident ID’ in order to remain on their own land. Their movement is tightly controlled through the use of checkpoints and a permit regime, which in turn intrudes upon all aspects of their day-to-day activities and greatly compromises the quality of life”).

²⁰⁴ See OCHA, *The humanitarian impact of 20 years of the Barrier - December 2022* (30 Dec. 2022), available at <https://tinyurl.com/ysmyh52j>.

²⁰⁵ BADIL, *Seam Zones* (2012), available at <https://tinyurl.com/4s9v5zf5>, p. 7.

²⁰⁶ OCHA, *The humanitarian impact of 20 years of the Barrier - December 2022* (30 Dec. 2022), available at <https://tinyurl.com/ysmyh52j>.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

2.75 *Second*, Israel severely restricts the ability of West Bank Palestinians to travel to East Jerusalem, Gaza and abroad through a complex system of travel permits.²⁰⁹ This is so even though it agreed, as part of the Oslo Accords, that the West Bank and Gaza form “a single territorial unit”.²¹⁰ The restrictions apply to travel for essentially *any* purpose, including employment, training, studying, working, receiving medical treatment, and visiting a sick relative.²¹¹ These travel permits are difficult to obtain,²¹² in part because the requirements and procedures to be followed are often unpublished, and when published they are published in Hebrew and not translated into Arabic.²¹³ By comparison, Jewish Israeli settlers enjoy broad freedom of movement and do not require similar permits.²¹⁴

²⁰⁹ B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid position paper* (12 Jan. 2021), available at <https://tinyurl.com/4yzzwvuv>, p. 5.

²¹⁰ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) (28 Sept. 1995) (hereinafter, “**Oslo II**”), art. XI(1). Indeed, Israel has made specific undertakings to permit regular “safe passage” between the West Bank and Gaza. Israeli-Palestinian Protocol Concerning Safe Passage Between the West Bank and the Gaza Strip (5 Oct. 1999) (hereinafter, “**Protocol Concerning Safe Passage**”), art. 1; Government of Israel & Palestinian Authority, *Agreed Documents on Movement and Access from and to Gaza* (15 Nov. 2005) (hereinafter, “**Agreed Principles for Rafah Crossing**”).

²¹¹ Gisha, “Procedures and Policies” (2015), available at <https://tinyurl.com/38ecx5h9>. See also HRW 2021 Report, p. 83 (“Palestinians and settlers enjoy vastly different levels of freedom of movement. Israeli authorities bar West Bank Palestinians from entering large sections of the West Bank itself unless they have a difficult-to-obtain, time-limited permit”).

²¹² See, e.g., Gisha, “The Permit Regime: Testimonies” (28 July 2022), available at <https://tinyurl.com/4b8cm473> (“Under the permit regime, Palestinians in Gaza are only eligible to apply for a travel permit in a rigid and narrow set of circumstances; Israel’s criteria are purposefully strict so as to deprive the vast majority of the population from even being considered for travel.”). See also F. Akram, “For Palestinians, Israeli permits a complex tool of control,” *Associated Press* (30 Apr. 2018), available at <https://tinyurl.com/2p9czdk6> (“In Gaza, under blockade since a 2007 takeover by the militant Hamas, even the small number of permits for “exceptional” entry to Israel plummeted. Last year, fewer than 6,000 people a month left on average, roughly half the level of 2016, according to the Israeli rights group Gisha”).

²¹³ Gisha, “Procedures and Policies” (2015), available at <https://tinyurl.com/38ecx5h9>.

²¹⁴ B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid position paper* (12 Jan. 2021), available at <https://tinyurl.com/4yzzwvuv>, p. 5.

2.76 Because they are generally forbidden from traveling abroad through Israel,²¹⁵ “Palestinians from the West Bank, including those who hold foreign passports, can only travel abroad via the Allenby / King Hussein crossing with Jordan, which is controlled by Israel.”²¹⁶ The Israeli military and security forces can and frequently do ban Palestinians from exiting the OPT, “often on the basis of ‘secret information’ that Palestinians cannot review and therefore challenge”.²¹⁷

2.77 *Third*, Israel maintains over 600 checkpoints and roadblocks throughout the West Bank which further restrict Palestinians' ability to move freely within, to and from the West Bank.²¹⁸ This system of checkpoints and road obstacles allows Israeli forces to quickly close or open any given area, giving Israel what the OCHA has termed “an adaptable system of control” in the West Bank.²¹⁹

2.78 In July 2018, the OCHA “recorded 705 permanent obstacles across the West Bank restricting or controlling Palestinian vehicular, and in some cases pedestrian, movement”.²²⁰ The obstacles include “140 fully or occasionally-staffed checkpoints, 165 unstaffed road gates (of which nearly half are normally closed), 149 earth mounds and 251 other unstaffed obstacles (roadblocks, trenches, earth walls, etc.)”.²²¹ This dizzying array of obstacles is depicted in **Figure 2.11**, following this page.

²¹⁵ Amnesty International 2022 Report, p. 95.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ HRW 2021 Report, p. 83. *See also* Amnesty International 2022 Report, p. 97.

²¹⁹ OCHA, “Over 700 road obstacles control Palestinian movement within the West Bank” (8 Oct. 2018), available at <https://tinyurl.com/ywam97jp>.

²²⁰ *Ibid.*

²²¹ *Ibid.*

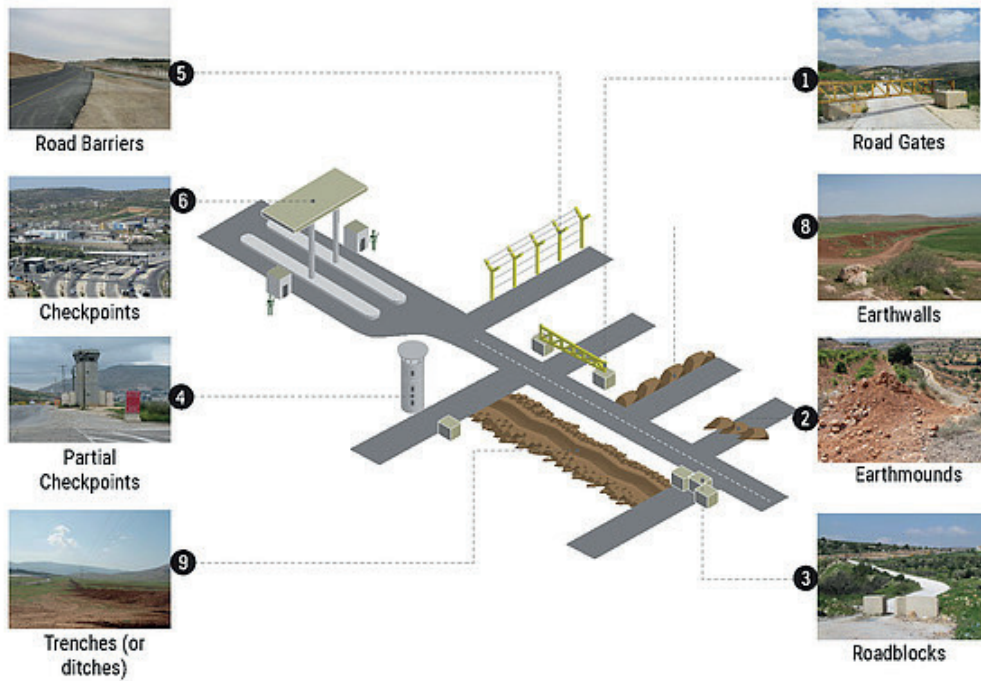
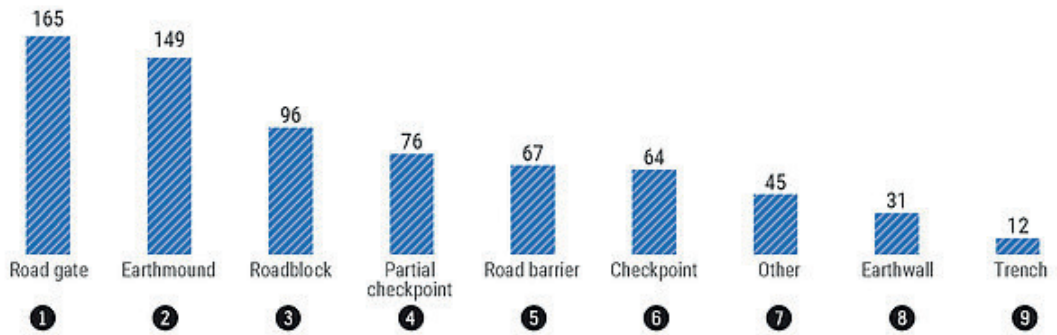


Figure 2.11

2.79 At these checkpoints, security forces have the authority “to turn back Palestinians without reason”.²²² By contrast, “Israeli settlers, residents, and visitors, along with foreign tourists” are given “largely unfettered freedom of movement throughout the West Bank”.²²³

2.80 The OPT Special Rapporteur has explained that Palestinians who attempt to exercise their freedom of movement by crossing checkpoints “are routinely harassed and obstructed”, often turning what should be a short commute into an hours-long, humiliating journey.²²⁴ Sometimes the harassment Palestinians face when trying to cross through the checkpoints is so severe that they are forced to abandon their journeys.²²⁵ The existence of the checkpoints and the harassment to which Palestinians are subjected impede the ability of Palestinians to reach their places of employment,²²⁶ attend school (especially female students),²²⁷ and access health care.²²⁸

2.81 To give just one example, pregnant women, including those in labour, are frequently delayed at checkpoints. According to the Information Health Centre of the Palestinian Ministry of Health, from 2000 to 2006, “69 cases of Palestinian

²²² HRW 2021 Report, p. 84.

²²³ *Ibid.*

²²⁴ UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), para. 13.

²²⁵ See B’Tselem, “Restrictions on Movement” (11 Nov. 2017), available at <https://tinyurl.com/3rtczs7y>.

²²⁶ See UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), para. 13.

²²⁷ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 64(c).

²²⁸ See Human Rights Council, *The issue of Palestinian pregnant women giving birth at Israeli checkpoints*, UN Doc. A/HRC/4/57 (23 Feb. 2007), paras. 4-5; WHO, *Right to Health: Barriers to health and attacks on health care in the occupied Palestinian territory* (2022), available at <https://tinyurl.com/43mv6tc5>.

pregnant women giving birth at Israeli checkpoints had been recorded”.²²⁹ According to the same figures, during the same time frame, 35 infant and five maternal deaths were recorded at checkpoints due to the lack of urgent care required.²³⁰

2.82 *Fourth*, Israel limits Palestinians’ freedom of movement in the West Bank by maintaining a segregated road system. Human Rights Watch has explained that “there are more than 40 kilometers of West Bank roads that authorities prohibit Palestinians from traveling on and another 19 kilometers of West Bank roads, not including in [the West Bank city of] Hebron, on which Palestinian travel is restricted”.²³¹ Palestinians instead must use a “rudimentary secondary road network”.²³² Access even to that network from Palestinian enclaves is controlled by gates; the Israeli authorities use the gates to “cut off traffic between different parts of the West Bank”.²³³ The segregated road system in the West Bank is illustrated in the infographic produced by the Canadian NGO Visualizing Impact, reproduced as **Figure 2.12** following this page.

2.83 The current situation in the West Bank city of Hebron is a microcosm of how Israel controls Palestinians’ movement. There, Israeli authorities “prohibit Palestinians from walking on large sections of what used to be the central thoroughfare of the city as part of a policy of making those areas ‘sterile’ of Palestinians, as per the parlance of the Israeli army”.²³⁴ In other parts of the city

²²⁹ Human Rights Council, *The issue of Palestinian pregnant women giving birth at Israeli checkpoints*, UN Doc. A/HRC/4/57 (23 Feb. 2007), para. 4.

²³⁰ *Ibid.*, para. 6.

²³¹ HRW 2021 Report, p. 93.

²³² *Ibid.*, p. 94.

²³³ *Ibid.* See also OCHA, “Over 700 road obstacles control Palestinian movement within the West Bank” (8 Oct. 2018), available at <https://tinyurl.com/ywam97jp>.

²³⁴ HRW 2021 Report, p. 93.

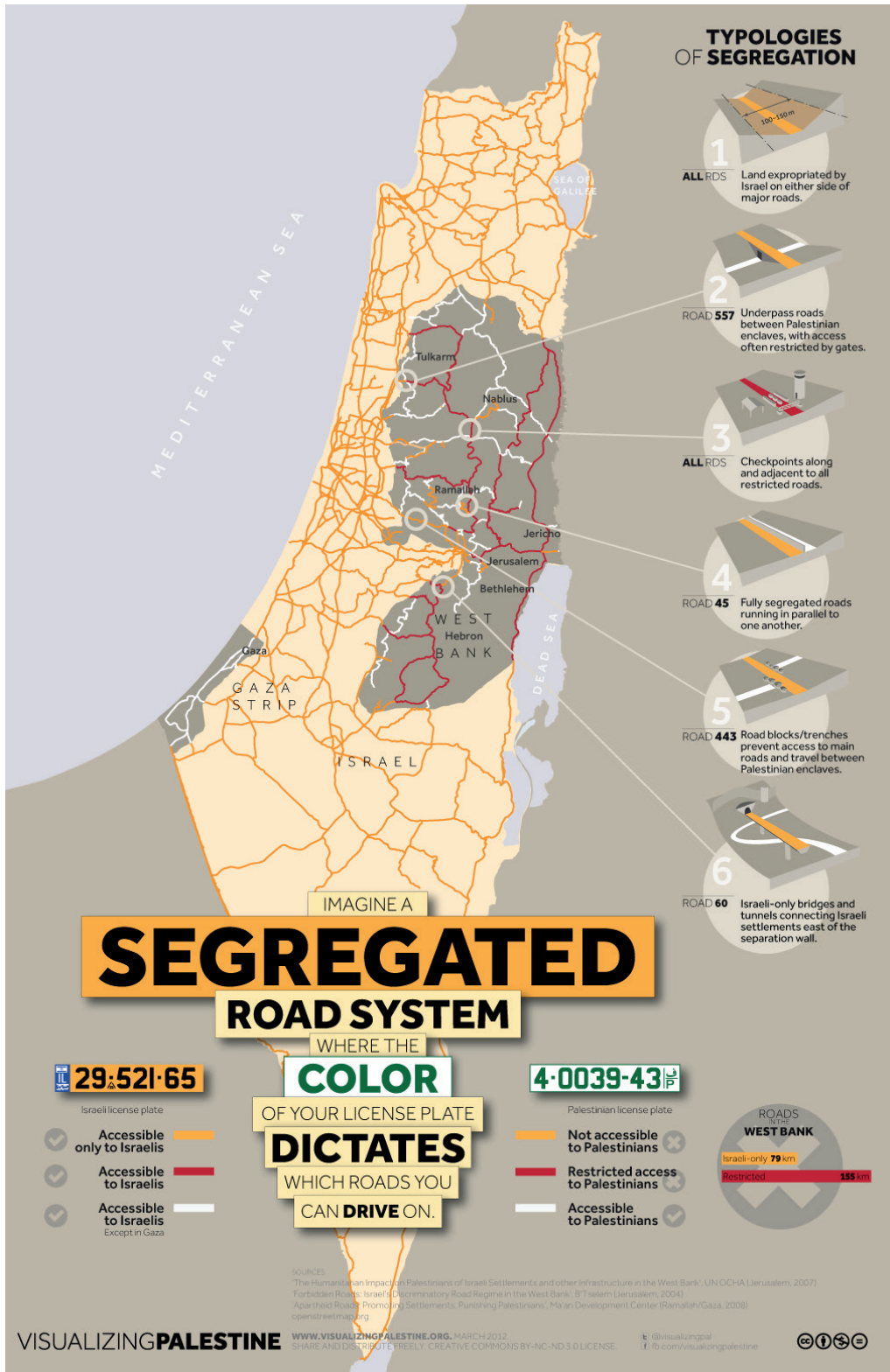


Figure 2.12

“Palestinians are barred from accessing certain streets even on foot, which are open only to Jewish settlers and foreign nationals”.²³⁵ A map produced by OCHA showing access-restricted areas in Hebron, shaded in grey, which is dotted with checkpoints, is reproduced as **Figure 2.13**, following page 62.²³⁶ That figure also depicts in red the roads that are closed to Palestinian vehicle or pedestrian traffic.

2.84 Palestinian homes and shops with entrances on such streets are barricaded shut, as shown below.



Figure 2.14: An Israeli settler walks past a Palestinian house with verandas covered in meshing along the Israeli-controlled Shuhada street in the West Bank city of Hebron, 28 January 2020²³⁷

²³⁵ Amnesty International 2022 Report, p. 98. See also B’Tselem, *Press Release: Separation not only on buses, but also on streets of Hebron* (6 Mar. 2013), available at <https://tinyurl.com/3mu5yjt>.

²³⁶ OCHA, “The isolation of Palestinians in the Israeli-controlled area of Hebron city continues” (13 Apr. 2017), available at <https://tinyurl.com/yxcpr6x4>.

²³⁷ A. Liel, “Trump’s Plan for Palestine Looks a Lot Like Apartheid,” *Foreign Policy* (27 Feb. 2020), available at <https://tinyurl.com/ymw6zr6c>.

2.85 The CERD Committee has taken note of these restrictions and expressed its shock “at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure”.²³⁸

B. ISRAEL’S ONGOING BLOCKADE OF GAZA

2.86 Since 2007, Israel has blockaded Gaza, an area of just 365 sq. km, by air, sea, and land. Home to approximately 2.2 million people, Gaza is among the most densely populated territories in the world.²³⁹ Half of Gaza’s population is children and more than two-thirds are refugees (*i.e.*, those displaced from Mandatory Palestine in 1948 and their descendants).²⁴⁰ Through what a former OPT Special Rapporteur described as a “medieval military blockade”,²⁴¹ Israel has completely isolated this already vulnerable population from the outside world. This constitutes the most draconian restriction on Palestinians’ freedom of movement and is the culmination of Israel’s policy of fragmenting Palestinians into isolated enclaves.

2.87 After its “disengagement” and the withdrawal of Israeli settlers and troops from Gaza in 2005, Israel began imposing increased restrictions on the movement of people and goods in and out of the territory. In January 2006, Hamas won the Palestinian legislative elections and took control of Palestinian governance of Gaza

²³⁸ 2020 CERD Concluding Observations, para. 22.

²³⁹ See OCHA, “Crisis Context and Impact (based on the 2023 Humanitarian Response Plan),” available at <https://tinyurl.com/ytjuefcd>.

²⁴⁰ See Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), paras. 15, 18. See also N. Citino *et al.*, “Generations of Palestinian Refugees Face Protracted Displacement and Dispossession,” *Migration Policy Institute* (3 May 2023), available at <https://tinyurl.com/3sjyur69>.

²⁴¹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 35.

ACCESS RESTRICTIONS IN SETTLEMENT AREA OF HEBRON CITY

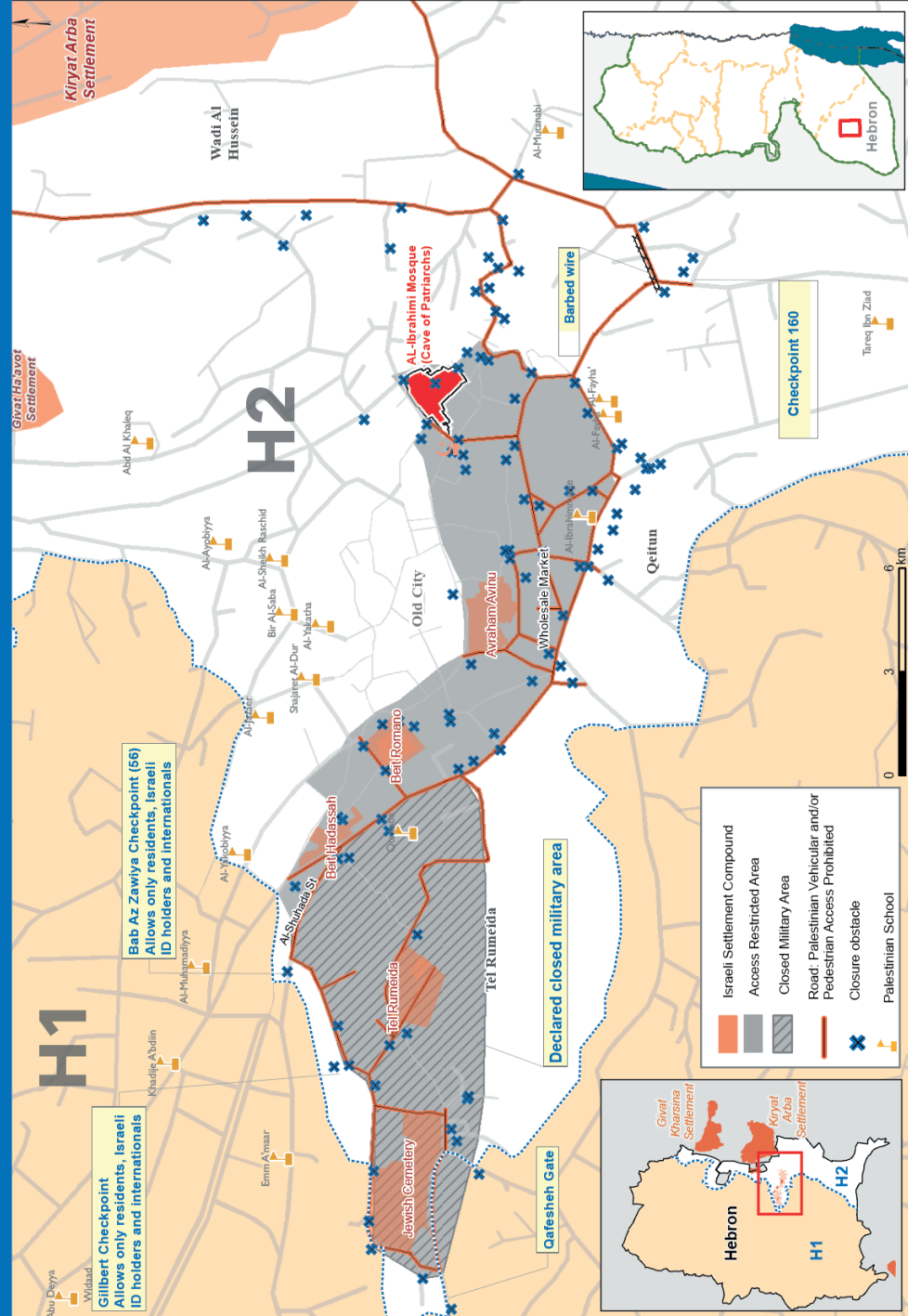


Figure 2.13

in June 2007.²⁴² At that juncture, “the Israeli Government declared Gaza ‘hostile territory’” and “citing security concerns, announced a number of new sanctions and restrictions on the access and movement of people and goods, ultimately amounting to a blockade by sea, air and land”.²⁴³ Since then, Palestinians have been literally trapped in the territory. NGOs such as Human Rights Watch and the Norwegian Refugee Council have called Gaza the “world’s largest open air prison, where the prison guard is Israel”.²⁴⁴

2.88 As a result of the blockade, residents of Gaza are suffering through an ongoing humanitarian crisis with disastrous effects on all aspects of their lives. In 2017 the United Nations forecast that Gaza would become “unliveable” by 2020,²⁴⁵ pointing to “an ever-deepening water, electricity, health, education and food crisis resulting from the blockade”.²⁴⁶ According to the most recent data available, in 2021, the conditions on the ground are dire in the extreme: approximately 62.2 percent of Gaza residents are food insecure,²⁴⁷ 50 percent are unemployed, and 60

²⁴² United Nations Country Team in the Occupied Palestinian Territories, *Gaza Ten Years Later* (July 2017) (hereinafter, “**Gaza Ten Years Later**”), available at <https://tinyurl.com/2sf8tbmd>, p. 5.

²⁴³ *Ibid.*, p. 7.

²⁴⁴ R. Høvring, “Gaza: The world’s largest open-air prison,” *Norwegian Refugee Council* (26 Apr. 2018), available at <https://tinyurl.com/2xnx4kw6>; “Gaza: Israel’s ‘Open-Air Prison’ at 15,” *Human Rights Watch* (14 June 2022), available at <https://tinyurl.com/5y2njj4x>. See also B. Wedeman, “Analyst: Gaza becomes the biggest open-air prison on earth,” *CNN* (26 May 2021), available at <https://tinyurl.com/4cus4edv>.

²⁴⁵ *Gaza Ten Years Later*, p. 28. See also United Nations Country Team in the occupied Palestinian territory, *Gaza in 2020: A Liveable Place?* (Aug. 2012), available at <https://tinyurl.com/bdr9uy5s>.

²⁴⁶ Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 17.

²⁴⁷ UN World Food Programme, *Infographic: Thousands of Palestinians face food insecurity amid escalating conflict* (June 2021), available at <https://tinyurl.com/bdzdv6a8>.

percent live in poverty.²⁴⁸ Meanwhile, rolling electricity blackouts last 11 hours per day and 78 percent of the available water is unfit for human consumption.²⁴⁹

2.89 The already grim situation is only exacerbated by Israel's periodic military assaults, which have killed and wounded thousands, and decimated all forms of infrastructure.²⁵⁰ In the words of Secretary-General Guterres, “[i]f there is a hell on earth, it is the lives of children in Gaza”.²⁵¹

2.90 Israel implements its blockade principally by (i) restricting the movement of people into and out of Gaza; (ii) restricting the movement of goods into and out of Gaza; (iii) restricting the provision of electricity to Gaza; and (iv) establishing land and sea buffer zones within Gaza.

2.91 *First*, Israel strictly controls the movement of people into and out of the territory. In order to leave Gaza, Palestinians must obtain a travel permit from the Israeli authorities.²⁵² Gisha, the Israeli human rights organization, recently explained that the criteria for granting a permit “are purposefully strict so as to

²⁴⁸ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 53. *See also* Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 17; Gaza Ten Years Later; UNRWA, *Occupied Palestinian Territory emergency appeal 2022* (Jan. 2022), available at <https://tinyurl.com/yz65etw6>, p. 9.

²⁴⁹ OCHA, *Gaza Strip: The Humanitarian Impact of 15 Years of the Blockade* (June 2022), available at <https://tinyurl.com/bdfxdpe3>.

²⁵⁰ *See infra* §§ IV(A) and IV(B).

²⁵¹ “Gaza children living in ‘hell on earth’, UN chief says, urging immediate end to fighting,” *UN News* (20 May 2021), available at <https://tinyurl.com/4h3su59s>.

²⁵² OCHA, *Movement in and out of Gaza: update covering September 2022* (17 Oct. 2022), available at <https://tinyurl.com/3z3umrww>. *See also* UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 26. *See also* Gisha, *Access Kit, A guide to procedures and protocols that regulate access to and from the Gaza Strip* (Oct. 2019), available at <https://tinyurl.com/2xbnecrj>.

deprive the vast majority of the population from even being considered for travel”.²⁵³ Indeed, “even for the few who do meet the criteria, the application process is a labyrinth of bureaucracy and often leads nowhere”.²⁵⁴

2.92 This has had a dramatic impact on the number of Palestinians able to travel into and out of Gaza. According to the OCHA, prior to the blockade, “up to half a million exits of people from Gaza into Israel, primarily workers, were recorded in a single month”.²⁵⁵ In contrast, “[f]or the first seven years of the blockade, this number declined to just over 4,000 on average, rising to 10,400 monthly over the next eight years”.²⁵⁶ Gaza residents are effectively prevented from traveling abroad through Israel and cannot travel to the rest of the OPT “even when the transit does not take place via Israeli territory”.²⁵⁷

2.93 There is widespread consensus among UN bodies that these restrictions on movement cannot be justified by security concerns.²⁵⁸

2.94 *Second*, Israel strictly controls the movement of goods into and out of Gaza. Restrictions were particularly draconian early in the blockade between 2007 and 2010, when Israel only allowed goods it defined as “vital for the survival of the

²⁵³ Gisha, *The Permit Regime: Testimonies* (28 July 2022), available at <https://tinyurl.com/4b8cm473> (emphasis added).

²⁵⁴ *Ibid.*

²⁵⁵ OCHA, *Gaza Strip: The Humanitarian Impact of 15 Years of the Blockade* (June 2022), available at <https://tinyurl.com/bdfxdpe3>, p. 1

²⁵⁶ *Ibid.*

²⁵⁷ Human Rights Watch, *Unwilling or Unable: Israeli Restrictions on Access to and from Gaza for Human Rights Workers* (2 Apr. 2017), available at <https://tinyurl.com/5cy9ay3s>.

²⁵⁸ See, e.g., HRC, *Concluding observations on the fourth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/4 (21 Nov. 2014), para. 12; UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 11(c); 2020 CERD Concluding Observations, para. 44.

civilian population” to be imported.²⁵⁹ Banned products included such basics as shoes, paper, coffee, and tea, among others.²⁶⁰ Israel even employed mathematical formulas to calculate the minimum amount of goods required for survival of the population and modulated restrictions accordingly.²⁶¹

2.95 In May 2010, in view of the appalling situation, a flotilla of ships belonging to international NGOs attempted to deliver humanitarian aid to Gaza.²⁶² As described in detail in Section IV(B) below, the flotilla was violently intercepted in international waters by Israeli forces, killing ten civilian passengers. Following this incident and the ensuing international outcry, Israel moderated its policy of restricting imports to Gaza to what was necessary for human survival.²⁶³ However, “significant restrictions remained”²⁶⁴ and, as of 2020, “the entry of goods into the Gaza Strip ha[d] been reduced to only basic humanitarian products”.²⁶⁵ Even the lone commercial crossing into Gaza, Karm Abu Salem (also known as Kerem Shalom), is periodically closed by Israeli authorities, thus preventing any goods at all from entering Gaza for periods lasting from several days to weeks.²⁶⁶

²⁵⁹ Gisha, “Entrance of goods to Gaza via Kerem Shalom” (3 July 2022), *available at* <https://tinyurl.com/5ctckevc>.

²⁶⁰ D. Poort, “History of Israeli blockade on Gaza,” *Al Jazeera* (2 Nov. 2011), *available at* <https://tinyurl.com/mr3mbxkn>.

²⁶¹ UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), para. 10.

²⁶² Human Rights Council, *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*, UN Doc. A/HRC/15/21 (27 Sept. 2010).

²⁶³ Gaza Ten Years Later, p. 8.

²⁶⁴ *Ibid.*

²⁶⁵ UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), para. 1.

²⁶⁶ See OHCHR, *Press Release: Closure of Gaza commercial crossing: UN expert calls on Israel to reverse decision* (13 July 2018), *available at* <https://tinyurl.com/mtrfx3y9>; “Israeli Authorities

2.96 A major component of Israel’s ongoing import restriction policy concerns so-called “dual-use” goods, *i.e.*, “products and technologies normally used for civilian purposes, but which may have military applications”.²⁶⁷ Israel conditions the import of all such goods on a complex permitting process,²⁶⁸ with applications “subject to frequent rejections or significant delays”.²⁶⁹ This applies to a wide range of basic goods necessary for normal civilian life, including “civilian machinery, spare parts, fertilizers, medical equipment, appliances, telecommunication equipment, metals ... construction materials; [and] raw material for the productive sectors, for example wood and pesticides”.²⁷⁰

2.97 Israel not only restricts imports into Gaza but also prevents exports from leaving the territory. From 2007 to 2014, Israel imposed a near-total ban on exports from Gaza, including even agricultural products.²⁷¹ Although Israel has somewhat eased the export ban since then, restrictions are often imposed—without

Close Karam Abu Salem Crossing,” *Qatar News Agency* (13 Dec. 2020), available at <https://tinyurl.com/2rbe2r4c>; “Karam Abu Salem crossing re-opened after seven-day closure,” *The Egyptian Gazette* (8 Aug. 2022), available at <https://tinyurl.com/mvju8x2n>.

²⁶⁷ World Bank, *Economic Monitoring Report to the Ad hoc Liaison Committee* (30 Apr. 2019) (hereinafter, “**World Bank 2019 Report**”), available at <https://tinyurl.com/2h2z24v7>, para. 21; Gisha, “Entrance of goods to Gaza via Kerem Shalom” (3 July 2022), available at <https://tinyurl.com/5ctckevc>.

²⁶⁸ World Bank 2019 Report, para. 26.

²⁶⁹ UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), para. 11.

²⁷⁰ *Ibid.*

²⁷¹ Euro-Med Human Rights Monitor, *A generation under blockade: Consequences of Israel’s 17-year-blockade of the Gaza Strip* (25 Jan. 2023), available at <https://tinyurl.com/385aapf2> (“In terms of exporting agricultural products from the Gaza Strip, Israel imposed a complete ban on the export of goods from the Strip after tightening its blockade in 2007. This decision reduced the amount of agricultural production marketed outside the Strip from approximately 3,544 tons per month until the first half of June 2007 to nearly zero in the subsequent period, exacerbating the Strip’s economic collapse.”). See also OHCHR, *Mandates of the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the right to food* (1 Oct. 2013), available at <https://tinyurl.com/ycku35a5>.

explanation—on basic agricultural products such as fish and tomatoes.²⁷² Even when agricultural products are allowed to be exported, Israel subjects them to lengthy inspection periods and enforces arbitrary export criteria, which leave fruit and vegetables destined for export to rot in hot weather, or at the very least reduce the shelf life of produce and its desirability to external markets.²⁷³

2.98 *Third*, Israel limits electricity supplies in Gaza. Gaza’s power grid is largely dependent on electricity supplied from Israel.²⁷⁴ The power Israel supplies to Gaza, however, is insufficient and irregular.²⁷⁵ Even the one power plant operating in Gaza periodically experiences fuel shortages and cannot operate at full capacity because it is dependent on fuel supplies from Israel which are subject to the same

²⁷² For instance, in August 2022, Israel imposed a ban on exporting fish from Gaza to the West Bank. See Euro-Med Human Rights Monitor, *A generation under blockade: Consequences of Israel’s 17-year-blockade of the Gaza Strip* (25 Jan. 2023), available at <https://tinyurl.com/385aapf2>. See also OCHA, “Exports from Gaza undermined by the blockade” (4 July 2017), available at <https://tinyurl.com/2b8sv25f>. See also “Israel bans Palestinian agricultural exports via Jordan – PA minister,” *Reuters* (8 Feb. 2020), available at <https://tinyurl.com/4yzabkn4>; OCHA, “New restrictions on the export of fresh tomatoes out of Gaza: – Mohammed’s story” (3 Nov. 2021), available at <https://tinyurl.com/5dszjva8>; “Israel bans fish exports from Gaza to West Bank,” *Middle East Monitor* (11 Nov. 2022), available at <https://tinyurl.com/y2ju9jsc>.

²⁷³ OCHA, “New restrictions on the export of fresh tomatoes out of Gaza: – Mohammed’s story” (3 Nov. 2021), available at <https://tinyurl.com/44z9skse> (“By the time the fresh produce reaches external markets its quality is compromised, especially during hot weather conditions. ... New restrictions were then imposed, including the demand that the green stem, the sprig, be removed from every single tomato before exiting Gaza. This negatively impacts on both the quality and shelf life of the product.”).

²⁷⁴ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 16; Gisha, *Scale of control: Israel’s Continued Responsibility in the Gaza Strip* (Nov. 2011), available at <https://tinyurl.com/3982k26y>, pp. 22-23; Gisha, *Red Lines Crossed: Destruction of Gaza’s Infrastructure* (Aug. 2009), available at <https://tinyurl.com/ynhuxce9>, p. 8 (“the power station’s generation capacity is dependent on Israel, because Israel is the only source for and controls the supply of the industrial diesel that is essential to operate the plant”).

²⁷⁵ OCHA, “Electricity in the Gaza Strip (2023)” (last accessed: 16 July 2023), available at <https://tinyurl.com/36sdr4n4>.

import controls.²⁷⁶ The net result is that electricity is sometimes available only a few hours per day.²⁷⁷ In 2021, the International Committee of the Red Cross (“ICRC”) reported that “80% of Gaza’s population live much of their lives in the dark, with only 10-12 hours of electricity per day”, “[w]ith electricity supply reduced to three to four hours a day during peak crisis times”.²⁷⁸

2.99 According to the OCHA, the lack of electricity “has severely affected the availability of essential services, particularly health, water and sanitation services, and undermined Gaza’s fragile economy, particularly the manufacturing and agriculture sectors”.²⁷⁹ For example, in the summer, “wastewater treatment plants [are] unable to operate”,²⁸⁰ meaning that untreated wastewater is pumped into the sea, polluting the Gaza shoreline and “contribut[ing] to the faster spreading of antibiotic-resistant bacteria, which endanger the health of people in Gaza and beyond”.²⁸¹

2.100 *Fourth*, Israel bans access to land and sea areas adjacent to Gaza’s land borders with Israel, referring to them as “Buffer Zone[s]” or “Access Restricted

²⁷⁶ See OHCHR, *Press Release: Closure of Gaza commercial crossing: UN expert calls on Israel to reverse decision* (13 July 2018), available at <https://tinyurl.com/mftrx3y9>; “Israeli Authorities Close Karam Abu Salem Crossing,” *Qatar News Agency* (13 Dec. 2020), available at <https://tinyurl.com/2rbe2r4c>; “Karam Abu Salem crossing re-opened after seven-day closure,” *The Egyptian Gazette* (8 Aug. 2022), available at <https://tinyurl.com/mvju8x2n>.

²⁷⁷ “As Israeli authorities close Erez and Karem Abu Salem crossings, Al Mezan warns of deteriorating humanitarian conditions in Gaza,” *Al Mezan* (3 Aug. 2022), available at <https://tinyurl.com/46k2hvnj>.

²⁷⁸ “Gaza: ICRC survey shows heavy toll of chronic power shortages on exhausted families,” *ICRC* (29 July 2021), available at <https://tinyurl.com/ktht3k5u>.

²⁷⁹ OCHA, “Electricity in the Gaza Strip (2023)” (last accessed: 16 July 2023), available at <https://tinyurl.com/36sdr4n4>.

²⁸⁰ “Gaza: ICRC survey shows heavy toll of chronic power shortages on exhausted families,” *ICRC* (29 July 2021), available at <https://tinyurl.com/ktht3k5u>.

²⁸¹ *Ibid.*

Areas”.²⁸² As a result, 35 percent of Gaza’s arable land is off-limits to the farmers who own it.²⁸³ Similarly, access to approximately 85 percent of the fishing waters of Gaza is restricted.²⁸⁴ Under the Oslo Accords, Israel agreed that the area 20 nautical miles offshore Gaza would be a fishing area.²⁸⁵ In practice, however, the area has most often ranged between three to six nautical miles,²⁸⁶ especially since the discovery of oil and gas off Gaza’s coast.²⁸⁷ Gaza’s fishermen are also “subjected to frequent violence, and those deemed by the Israeli navy to have exceeded the boundaries are arrested, have their boats confiscated and are sometimes shot at, killed or injured”.²⁸⁸ The buffer zones are depicted a map produced by OCHA, reproduced in **Figure 2.15**, following this page.

²⁸² See Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/31/44 (20 Jan. 2016), paras. 41-43 (“The enforcement measures used by the Israeli authorities against residents living and working in access-restricted areas significantly undermine the right of Palestinian fishermen and farmers to a livelihood, and have a devastating impact on the rights to life and to physical and mental health.”).

²⁸³ See Euro-Med Human Rights Monitor, *Gaza: The Dead-Zone. How life in the Gaza Strip changed over 14 years of Israel’s strangling blockade* (Jan. 2020), available at <https://tinyurl.com/n3y57rvu>, p. 30 (“The ‘off-limits’ land represented about 35% of the Gaza’s land suitable for agriculture. Israeli forces destroyed or contaminated much of this arable land.”).

²⁸⁴ Amnesty International 2022 Report, p. 24.

²⁸⁵ Oslo II, Annex I - Protocol Concerning Redeployment and Security Arrangements, art. XIV.

²⁸⁶ UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), para. 7. See also OCHA, “Gaza’s fisheries: record expansion of fishing limit and relative increase in fish catch; shooting and detention incidents at sea continue” (Oct. 2019), available at <https://tinyurl.com/zba3tnc4>; UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 26 (“The Israeli-imposed closures in Gaza, including unilaterally defined access-restricted areas inside Gaza and at sea, continued to have a profound impact on the rights of Palestinians in Gaza.”).

²⁸⁷ Amnesty International 2022 Report, p. 28.

²⁸⁸ UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), para. 7. See also OCHA, “Gaza’s fisheries: record expansion of fishing limit and relative increase in fish catch; shooting and detention incidents at sea continue” (Oct. 2019), available at <https://tinyurl.com/zba3tnc4> (one fisherman, Fadi, recounts: “We are suffering a lot from the Israeli naval forces ... They chase us, use water cannons and open fire towards us and detain us. I have

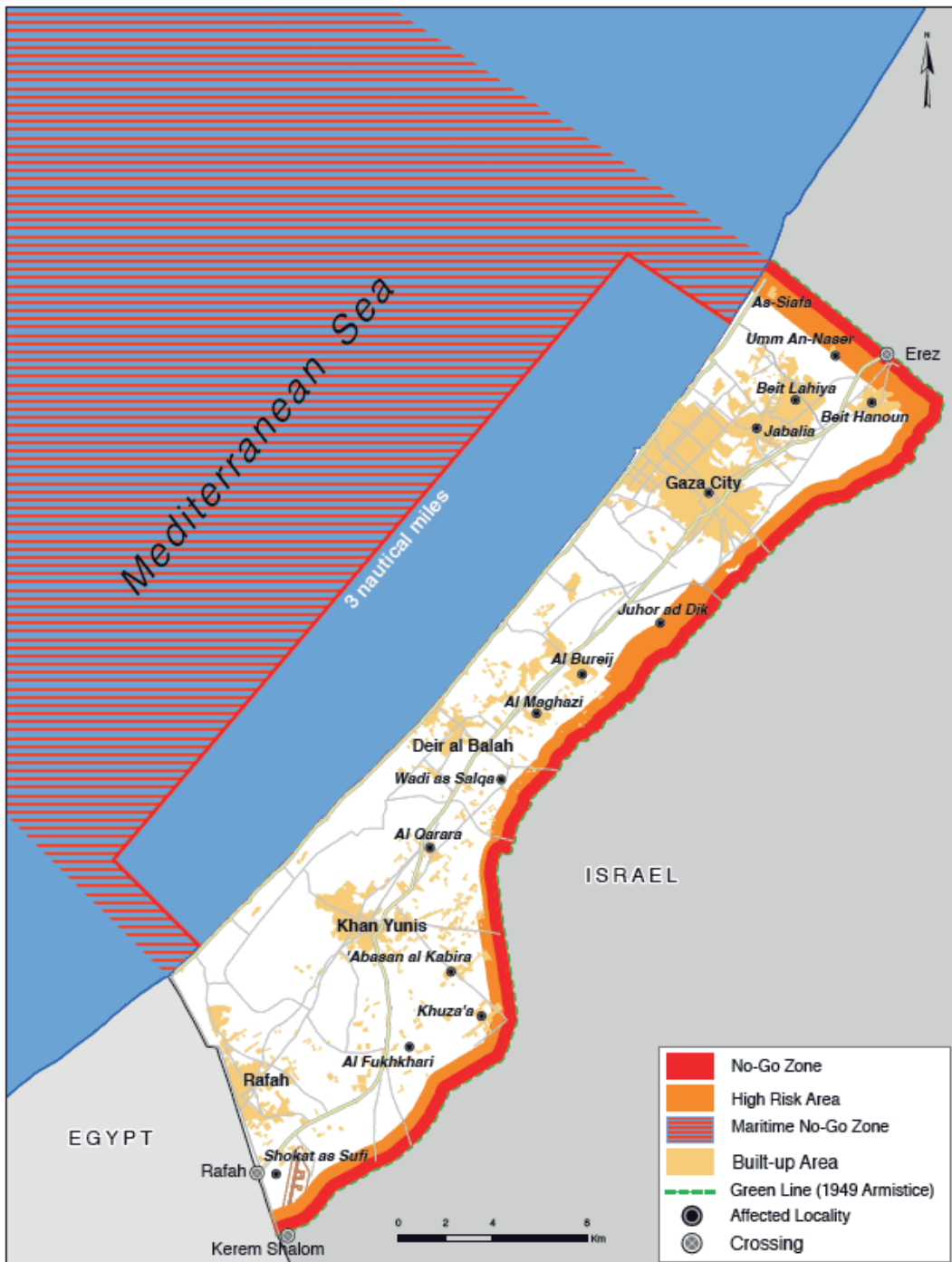


Figure 2.15

2.101 As a result, Gazans face major obstacles to conducting fishing and agriculture activities, whether for their own subsistence or to earn a living. As noted by Amnesty International, such drastic restrictions cannot be justified by security concerns.²⁸⁹ Rather, as explained by the Israeli NGO Gisha, “Israel routinely imposes and enforces sweeping, arbitrary restrictions for political interests that have little to do with security”.²⁹⁰

2.102 The cumulative result of the measures described above has been the “near collapse” of the economy of Gaza.²⁹¹ In the 11-year period from 2007 to 2018, the economy grew by a total of only 4.8 percent, despite the population increasing by nearly one million.²⁹² During that same time period, unemployment increased by 49 percent and poverty by 42 percent.²⁹³ In addition to collapsing the economy, Israel’s blockade, and in particular its dual-use restrictions, also impede the

been detained six times. I can’t remember how many times me and my sons have been injured by rubber bullets! They’ve confiscated three engines and one small boat, which they still haven’t returned. As fishermen, the sea should be always open for us, but we are trapped in a restricted zone.”). *See infra* §§ IV(A) and IV(B).

²⁸⁹ Amnesty International 2022 Report, p. 145 (“Israel claims that it maintains the ‘buffer zone’ to ensure the security of its soldiers and citizens. While such security concerns are legitimate and international humanitarian law authorizes Israel as the occupying power to prohibit or restrict access to certain areas as a necessary security measure, such measures cannot deprive the occupied population of their fundamental rights and must ensure their safety and well-being. Israel’s enforcement of the ‘buffer zone’ does not meet such requirements and often results in violations of international human rights and humanitarian law.”).

²⁹⁰ Gisha, “Closing in. Life and Death in Gaza’s Access Restricted Areas” (Aug. 2018), *available at* <https://tinyurl.com/333f8zyx>.

²⁹¹ UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), p. 2.

²⁹² *Ibid.* para. 18.

²⁹³ *Ibid.*

provision of public services and the construction and maintenance of infrastructure.²⁹⁴

2.103 The blockade has also had a “detrimental impact on food security” in Gaza.²⁹⁵ In 2022, the OCHA reported that over a 30-day period in June 2022, approximately 63 percent of Palestinians in Gaza (*i.e.*, more than 1.4 million people) faced moderate to severe food insecurity.²⁹⁶ In starker terms, the same report indicates that, 75.5 percent of Palestinians in Gaza were “worried about not having enough food to eat”, 39.7 percent “had to skip a meal” and 15.5 percent completely “ran out of food”.²⁹⁷

2.104 Public health has similarly suffered. As noted in 2022 by the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, “[s]everal United Nations mechanisms have stressed that the continuing blockade and repeated hostilities, resulting in the destruction of infrastructure and the deprivation of essential goods and services, have hindered access to water and sanitation and to the health-care system in Gaza”.²⁹⁸ Adequate medical care is not available within Gaza due to the

²⁹⁴ World Bank 2019 Report, paras. 30-31. *See also* “Gaza: Israel’s May Airstrikes on High-Rises: Apparently Unlawful Attacks Cause Major Lasting Harm,” *Human Rights Watch* (23 Aug. 2021), available at <https://tinyurl.com/2bp3zsa2> (“These restrictions have sharply reduced the population’s access to construction material and other goods vital to the rebuilding of Gaza and its infrastructure. The Israeli military argues that armed groups in Gaza use cement to build tunnels and estimate that constructing a kilometer of tunnel requires a few hundred tons of cement. But people in Gaza need over a million tons of cement annually to build and maintain homes, schools, health clinics, the water system, and other vital infrastructure.”).

²⁹⁵ Amnesty International 2022 Report, p. 171.

²⁹⁶ OCHA, *Multi-Sectoral Needs Assessment* (July 2022), available at <https://tinyurl.com/cyk4ccfr>, p. 2.

²⁹⁷ *Ibid.*

²⁹⁸ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 54.

limitations on the import of medical equipment, medication, and other supplies.²⁹⁹ For example, “as of October 2018, almost half of essential medicines were completely depleted in Gaza”.³⁰⁰

2.105 At the same time, most patients cannot travel abroad for treatment. According to the WHO, in 2022 alone, Israel failed to timely approve more than 16,000 medical permit applications for travel outside Gaza.³⁰¹ For cancer patients, this is especially problematic; the WHO has previously documented “a statistically significant correlation between the denial or delay of initial [travel] permit applications and higher patient mortality”.³⁰²

2.106 Israel’s blockade has also created a mental health emergency in Gaza. Children, 85 percent of whom have never known life outside of the blockade, are particularly severely affected.³⁰³ According to Médecins Sans Frontières, “40 percent of young Gazans suffer from mood disorders, 60 to 70 percent suffer from post-traumatic stress disorder, and 90 percent suffer from other stress-related

²⁹⁹ WHO, *Report by the Director-General on Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (17 May 2023), Doc. No. A/76/15, para. 20. See also WHO, *Rights to Health. Barriers to health and attacks on health care in the occupied Palestinian territory, 2019 to 2021* (2022), available at <https://tinyurl.com/2uhpc95x>, pp. 45-48.

³⁰⁰ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 54.

³⁰¹ WHO, *Report by the Director-General on Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan* (17 May 2023), Doc. No. A/76/15, para. 22.

³⁰² UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 29 (citing WHO, *Right to Health in the Occupied Palestinian Territory: 2018*, available at <https://tinyurl.com/3xtk2kwu>, pp. 35 and 43).

³⁰³ Save the Children, *Trapped: The Impact of 15 Years of Blockade on the Mental Health of Gaza’s Children*, available at <https://tinyurl.com/4ufnxeb7>, pp. 7, 24.

conditions”.³⁰⁴ An alarming 2022 report by Save the Children found that 55 percent of children in Gaza have contemplated suicide, and 80 percent reported emotional distress.³⁰⁵

IV. Systematic Violence in the OPT and Excessive Use of Force by Israel Against Palestinians

2.107 Another key tool Israel uses to control Palestinians in the OPT is the creation and maintenance of an environment characterized by systematic violence and use of force against Palestinians. This is not a recent phenomenon. Professor Khalidi explains that as early as 1923, Zionist Vladimir Jabotinsky “affirmed that the constant use of massive force against the [Palestinians] would be necessary to implement th[e] program for ‘transforming’ Palestine into Israel”.³⁰⁶ Israeli violence, and the spectre of it, have been part of the fabric of life for Palestinians for decades, since at least the *Nakba* in 1947-49.³⁰⁷ Among other systematic practices are Israel’s repeated disproportionate armed attacks on Gaza (**Section A**), its violent enforcement of its illegal blockade of Gaza (**Section B**), its brutal policing tactics in the West Bank (**Section C**), and its endorsement of and failure to prevent or punish Israeli settler violence (**Section D**).

³⁰⁴ *Médecins sans frontières*, “In Gaza, lingering trauma is worsening a mental health crisis” (30 June 2021), available at <https://tinyurl.com/3fv8uryr>. See also UNRWA, Department of Health, *Annual Report 2022*, available at <https://tinyurl.com/ycksnvn3>, p. 31.

³⁰⁵ Save the Children, *Trapped: The Impact of 15 Years of Blockade on the Mental Health of Gaza’s Children*, available at <https://tinyurl.com/4ufnxeb7>, pp. 5, 24.

³⁰⁶ Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), p. 7. QWS, Vol. II, Annex 1.

³⁰⁷ See *ibid.*, pp. 26-34.

A. ISRAEL'S SYSTEMATIC AND DISPROPORTIONATE MILITARY ATTACKS ON
GAZA

2.108 Following its ostensible “disengagement” from Gaza in 2005 and beginning in 2006, Israel has carried out numerous violent—indeed, brutal—armed attacks on Gaza, which have lasted from several days to nearly two months. At the time of this writing, the United Nations reports that Israeli attacks have killed at least 5,282 Palestinians in Gaza, the majority of whom were undisputedly civilians, including 1,189 children and 581 women.³⁰⁸

2.109 The six most deadly armed attacks were:³⁰⁹

1. December 2008 to January 2009: This attack lasted 22 days and was code-named “Operation Cast Lead”. Approximately 1,400 Palestinians were killed, most of whom were civilians, including 339 children.³¹⁰ Nine Israelis were killed, of whom three were civilians.³¹¹
2. November 2012: This attack lasted eight days and was code-named “Operation Pillar of Defense”. Approximately 170 Palestinians were

³⁰⁸ See OCHA, “Data on casualties” (last accessed: 11 July 2023), available at <https://tinyurl.com/2sdp43zu>. The OCHA lists 5,364 Palestinian casualties in the Gaza Strip since 1 January 2008. Of these, 5,317 are listed with “Israeli forces” as the “perpetrator”, and 47 deaths are attributed to “unknown” perpetrators. 2,788 deaths have been determined to be civilian, with 1,572 listed as “disputed”. Of the 1,206 deaths of children, 1,193 have been attributed to Israeli forces, with 13 attributed to unknown perpetrators.

³⁰⁹ There have been several other attacks since 2006, including those code-named by Israel as operation “Summer Rains” (June 2006), operation “Autumn Clouds” (Nov. 2006), operation “Hot Winter” (Feb. 2008), operation “Returning Echo” (Mar. 2012), and operation “Black Belt” (Nov. 2019), as well as recent attacks in February, April, May, and July 2023.

³¹⁰ See OCHA, “Data on casualties” (last accessed: 3 July 2023), available at <https://tinyurl.com/2sdp43zu>.

³¹¹ See *ibid.*

killed, most of whom were civilians, including 36 children.³¹² Four Israeli civilians were killed.³¹³

3. July and August 2014: This attack lasted 50 days and was code-named “Operation Protective Edge”. Approximately 2,250 Palestinians were killed, most of whom were civilians, including more than 550 children.³¹⁴ Seventy-three Israelis were killed, of whom six were civilians.³¹⁵
4. May 2021: This attack lasted 11 days. Approximately 260 Palestinians were killed, at least half of whom were civilians, including 67 children.³¹⁶ Ten civilians were killed in Israel.³¹⁷
5. August 2022: This attack lasted three days. Approximately 50 Palestinians were killed, the majority of whom were civilians, including 17 children.³¹⁸ No Israelis were killed.³¹⁹ Abou Shehadeh, an Israeli Arab member of Knesset, “referred to th[is] ... operation in Gaza as a ‘war crime,’ adding, ‘Every killing without a trial is a crime, and if Jews carry it out, it doesn’t make it legitimate’”.³²⁰

³¹² See *ibid.*

³¹³ See OCHA, *The Monthly Humanitarian Monitor: Oct.-Nov. 2012* (19 Dec. 2012), available at <https://tinyurl.com/yzh4dev7>.

³¹⁴ See OCHA, “Data on casualties” (last accessed: 3 July 2023), available at <https://tinyurl.com/2sdp43zu>. The OCHA data lists 1,694 undisputed civilian deaths caused by Israeli forces.

³¹⁵ See OCHA, “Key figures on the 2014 hostilities” (23 June 2015), available at <https://tinyurl.com/2p9umcay>.

³¹⁶ See OHCHR, *Statement: Occupied Palestinian Territory* (25 Mar. 2022), available at <https://tinyurl.com/y627954h>.

³¹⁷ *Ibid.*

³¹⁸ OHCHR, *Press Release: Bachelet alarmed by number of Palestinian children killed in latest escalation, urges accountability* (11 Aug. 2022), available at <https://tinyurl.com/472tpm7t>.

³¹⁹ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 6.

³²⁰ “Israel: Joint List lawmakers condemn Operation ‘Breaking Dawn,’” *i24 News* (8 Aug. 2022), available at <https://tinyurl.com/c8hxx6jd>.

6. May 2023: This attack just two months ago lasted five days. Approximately 34 Palestinians were killed, including at least 12 civilians, among them six children.³²¹ One Israeli civilian was killed.³²²

2.110 Israel claims its security concerns justify its armed attacks on Gaza. It points to the firing of rockets and mortars by Palestinian militant groups, which most often occurs in response to Israel's violent attacks or provocations in Gaza or the West Bank.³²³ Qatar certainly agrees that the indiscriminate firing of rockets into civilian areas is unlawful.³²⁴ Yet these rocket attacks, which primarily consist of short-range, "often crude" steel artillery rockets,³²⁵ cannot possibly justify Israel's disproportionate and excessive use of force against Gaza, still less against its civilian population. Up to 97 percent of rockets are intercepted by Israel's Iron Dome defence system³²⁶ and, as shown by the figures cited above, result in exponentially fewer civilian casualties than those caused by Israel's armed attacks

³²¹ OCHA, *Protection of Civilians Report: 2-15 May 2023* (19 May 2023), available at <https://tinyurl.com/2p95kny9>.

³²² *Ibid.*

³²³ See, e.g., Human Rights Council, *Report of the Independent International Commission of Inquiry on the occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 41 ("Armed hostilities broke out again in Gaza in May 2021, with reports of the recurrence of many of the patterns described above. As noted by the High Commissioner for Human Rights, the escalation was triggered by protests against the impending eviction of Palestinian families from their homes in Sheikh Jarrah for the benefit of settlers, increasing nationalistic and ethnic tensions, and restrictions and the use of force by Israel against Palestinians in East Jerusalem during Ramadan.").

³²⁴ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 11.

³²⁵ A. Taylor & B. Shammas, "Here's how rockets from Gaza test Israel's Iron Dome," *Washington Post* (11 May 2023), available at <https://tinyurl.com/y8z6a9sm>.

³²⁶ "Iron Dome at 97% success rate after 580 rockets fired from Gaza since Friday," *Times of Israel* (7 Aug. 2022), available at <https://tinyurl.com/34fb93cc>. See also Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 10.

on Gaza. Rather than feeling threatened by rockets, there is a well-documented pattern of Israelis gathering on nearby hilltops to watch the bombs fall on Gaza.³²⁷



Figure 2.16: Israelis gathered on a hilltop outside the town of Sderot on Monday to watch the bombardment of Gaza, 14 July 2014³²⁸

2.111 As stated, Gaza is among the most densely populated territories in the world.³²⁹ The population is tightly packed into urban areas. People are also unable to leave because of the blockade, as described above. They therefore have no shelter from Israel’s attacks. Even so, Israel typically deploys massive, indiscriminate force; it does not exercise restraint by conducting a limited number of precision strikes directed at legitimate military targets.³³⁰

³²⁷ R. Mackey, “Israelis Watch Bombs Drop on Gaza From Front-Row Seats,” *New York Times* (14 July 2014), available at <https://tinyurl.com/ymccsvkr>.

³²⁸ *Ibid.*

³²⁹ See Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 15.

³³⁰ While Israel claims to use “precision strikes”, its aerial bombardment is anything but. See R. Abdulrahim, “Israel Called Them ‘Precision Strikes’. But Civilian Homes Were Hit Too,” *New York Times* (31 May 2023), available at <https://tinyurl.com/445ckdk4>.

2.112 For example, over the course of 51 days in 2014, Israel conducted more than 6,000³³¹ aerial bombings and launched approximately 50,000 artillery shells.³³² In all, Israel dropped an estimated 21,000 tons of explosives on Gaza.³³³ During one 24-hour period on 19-20 July, Israel fired 7,000 artillery shells—each with a “kill radius” of 50 meters—into a single neighbourhood.³³⁴ According to senior United States military officials, this “massive”, “huge” and “absolutely disproportionate”³³⁵ use of force used the same amount of weaponry that would normally accompany two entire battalions of 40,000 U.S. troops.³³⁶

2.113 Over the course of these numerous armed attacks, UN bodies and reputable human rights organizations have documented hundreds of strikes on residential buildings killing thousands of civilians, including hundreds of children.³³⁷ In many

³³¹ See Human Rights Council, *Report of the Independent Commission of Inquiry established pursuant to Human Rights Council Resolution S-21/2*, UN Doc. A/HRC/29/52 (24 June 2015), para. 35.

³³² See R. Khalidi, “The Dahiya Doctrine, Proportionality, and War Crimes,” 44(1) JOURNAL OF PALESTINE STUDIES (2014), available at <https://tinyurl.com/tamptyp8> (“During its latest campaign, stretching over a period of fifty days in July and August of 2014, Israel’s air force launched more than six thousand air attacks, and its army and navy fired about fifty thousand artillery and tank shells.”).

³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ *Ibid.*

³³⁶ M. Perry, “Why Israel’s Bombardment of Gaza Neighborhood Left US Officers ‘Stunned,’” *Al Jazeera America* (27 Aug. 2014), available at <https://tinyurl.com/yt79ecyz>.

³³⁷ See, e.g., Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict: Human Rights in Palestine and Other Occupied Arab Territories*, UN Doc. A/HRC/12/48 (25 Sept. 2009), paras. 53, 449; Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/22/35/Add. 1 (4 July 2013), paras. 11-15; Human Rights Council, *Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1*, UN Doc. A/HRC/29/52 (24 June 2015), paras. 35-56, 59-66; UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), paras. 10-12; OCHA, *Protection of Civilians Report: 2-15 August 2022* (19 Aug. 2022), available at <https://tinyurl.com/yypbup36v>; UNSC, *Meeting Coverage: Recent Deadly Escalation between Israeli Forces, Palestinian Armed Groups ‘Another Reminder’ of Volatile Situation*, *Special*

instances, there are indications that Israeli military forces *deliberately* targeted civilians and civilian structures.³³⁸ Writing about the 2021 attack, for example, Amnesty International described instances of Israel “bombing residential buildings full of civilian families without warning ... [with] large explosive weapons, like aircraft bombs that have a blast radius of many hundreds of meters”.³³⁹

Coordinator Tells Security Council, UN Doc. SC/15293 (24 May 2023), available at <https://tinyurl.com/ycxpuurh>.

³³⁸ See, e.g., “Israel’s Indiscriminate and Disproportionate Attacks on Palestinian Civilians Violates International Humanitarian law, Indicate War Crimes,” *Al-Haq* (8 Aug. 2022), available at <https://tinyurl.com/4uwrf4pc>; The Euro-Mediterranean Human Rights Monitor, *Inescapable Hell: The Israeli military attack on the Gaza Strip (21 - 10 May, 2021)* (May 2021), available at <https://tinyurl.com/jc8s2cyb>, pp. 59-60.

³³⁹ Amnesty International, *Press Release: Israel/ OPT: Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes* (17 May 2021), available at <https://tinyurl.com/yc3mhp95>.



Figure 2.17: Palestinians walk next to the remains of a destroyed 15 story building after being hit by Israeli airstrikes on Gaza City, 13 May 2021³⁴⁰

³⁴⁰ “AP PHOTOS: Fear and grief grip Gaza anew amid familiar glare,” *Associated Press* (16 May 2021), available at <https://tinyurl.com/yuz43pch>.



Figure 2.18: Ibrahim Al-Masri, 10, sits for a portrait in his bedroom that was damaged when an airstrike destroyed the neighbouring building, 26 May 2021³⁴¹

2.114 Below are three examples of independent investigations finding that Israel targeted civilians and used disproportionate force causing avoidable civilian deaths.

2.115 *First*, as documented by Amnesty International, on 7 August 2022, Israeli airstrikes killed five children visiting a relative's grave in the Al-Falluja Cemetery in northern Gaza; a sixth child was gravely wounded.³⁴²

2.116 The father of Nadhmi Abu Karsh, one of the victims, recounted:

Suddenly, we heard the sound of a missile exploding very close to us. I rushed to the cemetery like almost everyone else in the

³⁴¹ J. Minchillo, "AP PHOTOS: Shattered rooms show Gaza war's toll on children," *Associated Press* (1 June 2021), available at <https://tinyurl.com/yj5bj5bw>.

³⁴² Amnesty International, *'They Were Just Kids': Evidence of War Crimes During Israel's August 2022 Gaza Offensive* (25 Oct. 2022), available at <https://tinyurl.com/24b3dj4u>, p. 12.

neighbourhood. People started to collect body parts, carrying shreds. Parents could not recognize the bodies of their own children. They did not know if the bits they were holding belonged to their sons. I was hoping that for some reason Nadhmi would have left the cemetery before the strike, but I saw pieces of his shoe near his mother's grave and knew that he hadn't.³⁴³

2.117 Following its investigation, Amnesty International concluded that there are “strong indications that the attack on Al-Falluja cemetery was either a direct attack on civilians or an indiscriminate attack where Israel failed to comply with the obligation to take all feasible precautions to distinguish between civilians and fighters”.³⁴⁴

³⁴³ *Ibid.*, p. 14.

³⁴⁴ *Ibid.*, p. 3.



Figure 2.19: The five children who were killed in the attack on Al-Falluja cemetery on 7 August 2022: Jamil Ihab Nejem, aged 14 (top left); Nadhmi Abu Karsh, aged 15 (top right); Hamed Haidar Nejem (left) and Muhammad Salah Nejem (right), both aged 16 (bottom left); and Jamil Najmiddine Nejem, aged four (bottom right)³⁴⁵

2.118 *Second*, as documented by Human Rights Watch, on 16 May 2021, Israel without warning bombed several neighbouring residential apartment buildings on Al-Wahda street in the centre of Gaza City. The “25 to 30 strikes” killed 45 Palestinians—“all identified as civilians by OHCHR”, including 18 children and 14 women—and injured dozens more.³⁴⁶ Of those killed, 22 were members of a single family, the al-Qoulaq family. In the process “at least 35 stores and eight

³⁴⁵ *Ibid.*, p. 13.

³⁴⁶ UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/76/333 (20 Sept. 2021) (Dossier No. 862), para. 7 (“In the early hours of 16 May, Israeli security forces hit Al-Wahda Street and its surroundings, a densely populated area in central Gaza City, with 25 to 30 strikes, killing 45 people (all identified as civilians by OHCHR)”).

multi-storey buildings, as well as the building housing the Gaza Ministry of Labour, were destroyed”.³⁴⁷

2.119 Following a site visit and investigation, “Human Rights Watch did not find any evidence of a military target at or near the site of the airstrikes”.³⁴⁸ The UN Secretary-General likewise stated that “[w]hile Israel claims that many of the structures were hosting armed groups or being used for military purposes, OHCHR has not seen evidence in that regard”.³⁴⁹ Moreover, Human Rights Watch underscored that, even assuming there was a military target in the vicinity, “[t]he [Israeli] military has also not said why circumstances did not permit providing an effective advance warning to residents of al-Wahda Street to evacuate their buildings before the attack”.³⁵⁰

2.120 *Third*, regarding Israel’s summer 2014 attack on Gaza, a UN Commission established to investigate the attack examined “15 cases of strikes on residential buildings across Gaza, in which a total of 216 people were killed, including 115 children and 50 women”.³⁵¹ The Commission “identified patterns of strikes by

³⁴⁷ *Ibid.*, p. 4 (“In the early hours of 16 May, Israeli security forces hit Al-Wahda Street and its surroundings, a densely populated area in central Gaza City, with 25 to 30 strikes, killing 45 people (all identified as civilians by OHCHR)”).

³⁴⁸ Human Rights Watch, “Gaza: Apparent War Crimes During May Fighting” (27 July 2021), available at <https://tinyurl.com/356perty>.

³⁴⁹ UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/76/333 (20 Sept. 2021) (Dossier No. 862), p. 3.

³⁵⁰ Human Rights Watch, “Gaza: Apparent War Crimes During May Fighting” (27 July 2021), available at <https://tinyurl.com/356perty>.

³⁵¹ Human Rights Council, *Report of the Independent Commission of Inquiry established pursuant to Human Rights Council Resolution S-21/2*, UN Doc. A/HRC/29/52 (24 June 2015), para. 36.

Israeli forces on residential buildings”,³⁵² which were conducted at times of day that would likely lead to extremely high civilian casualties:

The commission found that the fact that precision-guided weapons were used in all cases indicates that they were directed against specific targets and resulted in the total or partial destruction of entire buildings. This finding is corroborated by satellite imagery analysis. Many of the incidents took place in the evening or at dawn, when families gathered for *iftar* and *suhhur*, the Ramadan meals, or at night, when people were asleep. The timing of the attacks increased the likelihood that many people, often entire families, would be at home. Attacking residential buildings rendered women particularly vulnerable to death and injury.³⁵³

2.121 The Commission further concluded that, in most cases, “there is little or no information available to explain why residential buildings, which are *prima facie* civilian objects immune from attack, were considered to be legitimate military objectives”.³⁵⁴ Even in those cases where a potential explanation for the airstrikes could be discerned, “the potential targets were mostly individuals who were or who could have been present in the building at the time it was hit, presumably on account of their alleged links to the police, Hamas or an armed group”.³⁵⁵ The Commission questioned whether these individuals were actually participating directly in hostilities.³⁵⁶ In any event, the Commission concluded that “there are strong indications that these attacks could be disproportionate” given “the residential nature of the targeted buildings; their location in densely populated

³⁵² *Ibid.*

³⁵³ *Ibid.*, para. 37.

³⁵⁴ *Ibid.*, para. 38.

³⁵⁵ *Ibid.*, para. 39.

³⁵⁶ *Ibid.*

areas; the timing of the attacks; and the frequent use of large bombs that were apparently meant to cause extensive damage”.³⁵⁷

2.122 This well-documented pattern of conduct is characteristic of Israel’s attacks on Gaza over the past two decades. Indeed, this disproportionate and excessive use of force is a deliberate policy known as the “Dahiya Doctrine”.³⁵⁸

2.123 Maj. Gen. Gadi Eizenkot is reported to have developed this policy of disproportionate force when he oversaw Israel’s massive aerial bombardments of the Dahiya neighbourhood of Beirut during Israel’s 2006 war with Lebanon. Eizenkot, who later served as deputy chief and then chief of Israel’s military until 2019, first publicly revealed the doctrine to Israeli media in 2008:

What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on ... We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. ... This is not a recommendation. This is a plan. And it has been approved.³⁵⁹

2.124 In addition to killing and maiming thousands of Palestinian civilians, Israel has destroyed countless homes, businesses, schools, infrastructure, and public utilities during its repeated armed attacks on Gaza. The sheer scope of destruction

³⁵⁷ *Ibid.*, para. 40.

³⁵⁸ R. Khalidi, “The Dahiya Doctrine, Proportionality, and War Crimes,” 44(1) *JOURNAL OF PALESTINE STUDIES* (2014), available at <https://tinyurl.com/tamptyp8>.

³⁵⁹ See “Israel Warns Hizballah War Would Invite Destruction,” *Ynet* (3 Oct. 2008), available at <https://tinyurl.com/2tp2auw7>. See also Y. London, “The Dahiya Strategy,” *Ynet* (6 Oct. 2008), available at <https://tinyurl.com/mrymxyy5>.

from Israel’s attacks defies imagination. In 2014 alone, Israel partly or completely destroyed 18,000 homes, leaving 100,000 Palestinians homeless.³⁶⁰



Figure 2.20: Palestinians inspect their destroyed homes following overnight Israeli airstrikes in the town of Beit Hanoun, northern Gaza Strip, 14 May 2021³⁶¹

2.125 There is a well-documented pattern of Israel targeting schools in Gaza, which are owned and operated by UNRWA. The UN Board of Inquiry established to investigate incidents occurring on UN premises in Gaza during the 2014 war documented numerous incidents of “extensive” and “very significant damage” to UNRWA schools.³⁶² Since UNRWA schools and UN facilities are often used as

³⁶⁰ OCHA, *Occupied Palestinian Territory: Humanitarian Facts and Figures* (2017), available at <https://tinyurl.com/3csz3tzy>, p. 6.

³⁶¹ “AP PHOTOS: Fear and grief grip Gaza anew amid familiar glare,” *Associated Press* (16 May 2021), available at <https://tinyurl.com/yuz43pch>.

³⁶² UNSC, *Letter from the Secretary-General addressed to the President of the Security Council*, UN Doc. S/2015/286 (27 Apr. 2015) (Dossier No. 1368), Annex 1, paras. 40, 46.

civilian shelters during Israel’s armed attacks, “at least 44 Palestinians were killed as a result of Israeli actions and at least 227 injured”.³⁶³ The Board documented one incident on 30 July 2014 in which the Jabalia Elementary Girls School

[W]as hit by a barrage of four 155 mm high-explosive projectiles, an artillery indirect fire weapon. Between 17 and 18 people were killed, including an UNRWA staff member and two of his sons ... Ninety-nine residents of the shelter suffered injuries. Very significant damage was done to the school. ... The Board found that the incident was attributable to the actions of IDF and that no prior warning had been given by the Government of Israel of the firing of 155 mm high-explosive projectiles on, or in the surrounding area of, the school.³⁶⁴

³⁶³ *Ibid.*, p. 3.

³⁶⁴ *Ibid.*, Annex 1, para. 40.



Figure 2.21: Palestinians collect human remains from a classroom inside Jabaliya school after it was hit by shelling, 30 July 2014³⁶⁵

2.126 In keeping with the “Dahiya Doctrine”, Israel also has a well-documented pattern of targeting of critical infrastructure. With respect to the 2008-2009 attack on Gaza, the UN Fact-Finding Mission on the Gaza Conflict found that Israel had an “overall policy of disproportionate destruction of a significant part of Gaza’s infrastructure”.³⁶⁶ This included “a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations” and to engage in the “systematic destruction of food production, water services and construction industries”.³⁶⁷

³⁶⁵ E. Harris, “Will Israel Charge Soldiers In Gaza Civilian Deaths?,” *NPR* (16 May 2015), available at <https://tinyurl.com/jmha69k7>.

³⁶⁶ Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, UN Doc. A/HRC/12/48 (25 Sept. 2009), para. 1027.

³⁶⁷ *Ibid.*, paras. 1026-1027.

2.127 In 2006, Israel bombed Gaza’s one power plant (which, as stated, operates with difficulty on the best of days). As a result, “[t]he power station was put out of commission, and in one blow, 43% of the Strip’s power supply was cut off”.³⁶⁸ This led to power outages up to 18 hours per day and water supply disruptions lasting for more than 20 hours per day.³⁶⁹

2.128 In July 2014, Israel again shelled the power plant, shutting it down once more, thus “curtail[ing] the pumping of water to households and the treatment of sewage”, and overall worsening the “the humanitarian crisis for the territory’s 1.7 million people”.³⁷⁰ As Human Rights Watch’s deputy Middle East and North Africa director, pointed out: “If there were one attack that could be predicted to endanger the health and well-being of the greatest number of people in Gaza, hitting the territory’s sole electricity plant would be it”.³⁷¹

³⁶⁸ Gisha, *Red Lines Crossed: Destruction of Gaza’s Infrastructure* (Aug. 2009), available at <https://tinyurl.com/ynhuxce9>, pp. 7-8.

³⁶⁹ See OCHA, “Special Focus: Power Capacity in the Gaza Strip” (14 May 2007), available at <https://tinyurl.com/24jrrp6j>, p. 1.

³⁷⁰ “Gaza: Widespread Impact of Power Plant Attack Curtailed Sewage Treatment, Food and Water Supply, Hospital Operations,” *Human Rights Watch* (10 Aug. 2014), available at <https://tinyurl.com/4zpadppu>.

³⁷¹ *Ibid.*



Figure 2.22: Smoke and fire rise from the explosion at the Gaza power plant, 29 July 2014³⁷²

2.129 Israel has routinely carried out similarly crippling attacks against critical water infrastructure.³⁷³

B. ISRAEL'S VIOLENT ENFORCEMENT OF ITS BLOCKADE OF GAZA

2.130 As described in Section III(B) above, Israel has maintained a land, air and sea blockade of Gaza for the last 16 years. To enforce that blockade, and aside from the disproportionate armed attacks discussed above, Israel routinely resorts to

³⁷² A. Greenblatt, "Bombing Ruins Gaza's Only Power Plant," *NPR* (29 July 2014), available at <https://tinyurl.com/y4k2c8ct>.

³⁷³ See, e.g., N. Murray, "'Water apartheid': How Israel weaponises water in the Gaza Strip," *Middle East Eye* (22 Mar. 2023), available at <https://tinyurl.com/y3tppay5> (In May 2021, Israel damaged "13 water wells, three desalination plants and 250,000 meters of water pipes, reportedly including the main pipeline carrying water purchased from [Israel]"). Water infrastructure was also targeted in previous attacks on Gaza: "Operation Cast Lead in 2008–9 damaged or destroyed 11 wells and four reservoirs, along with pumping stations, a sewage treatment plant, 19,920 meters of water pipes, 2,445 meters of sewage pipes, and sections of the electricity network vital for wastewater treatment. Operation Protective Edge in 2014 inflicted more damage on wells, water reservoirs, wastewater treatment plants, desalination plants and pumping stations." *Ibid.*

deadly force against civilian protestors, humanitarian missions, and Palestinians attempting to farm their lands or fish their sea.

2.131 One of the most notorious incidents is Israel's May 2010 attack on an international NGO flotilla. As stated, given the dire situation in Gaza, the flotilla was attempting to deliver humanitarian aid to Gaza.³⁷⁴ Israel intercepted it in international waters and Israeli troops stormed the ships.³⁷⁵ When boarding the lead ship, the *Mavi Marmara*, Israeli soldiers opened fire on civilian passengers, who were either unarmed or crudely armed with sticks or kitchen knives.³⁷⁶ Nine passengers were killed and 50 were injured, including one who later died in hospital after being in a coma for four years.³⁷⁷ The UN Fact-Finding Mission appointed to investigate the incident found that:

The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds. It constituted a grave violation of human rights law and international humanitarian law.³⁷⁸

³⁷⁴ Human Rights Council, *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*, UN Doc. A/HRC/15/21 (27 Sept. 2010).

³⁷⁵ *Ibid.*, para. 114.

³⁷⁶ *Ibid.*, paras. 112-128.

³⁷⁷ Human Rights Council, *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*, UN Doc. A/HRC/15/21 (27 Sept. 2010), para. 117; "Turk injured in Gaza flotilla dies after four-year coma," *Haaretz* (24 May 2014), available at <https://tinyurl.com/msmud4mf>.

³⁷⁸ Human Rights Council, *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from*

2.132 Another example of Israel’s disregard for the life of Palestinian civilians is its response to the 2018-2019 civilian demonstrations against the blockade and demanding the return of Palestinian refugees displaced from mandatory Palestine following the 1948 and the 1967 wars,³⁷⁹ known as the “Great March of Return”. During the demonstrations, thousands of unarmed Palestinians peacefully approached or entered the “buffer zone” Israel unilaterally established within Gaza. From the safety of their fortified positions beyond their security barrier, Israeli soldiers, “mostly [] snipers”, shot over 8,000 Palestinians with live ammunition, killing 214, virtually all of whom were civilians, including 46 children.³⁸⁰ Israel killed 60 demonstrators in a single day, on 14 May 2018.³⁸¹

the Israeli attacks on the flotilla of ships carrying humanitarian assistance, UN Doc. A/HRC/15/21 (27 Sept. 2010), para. 264.

³⁷⁹ See Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), paras. 14, 18.

³⁸⁰ OCHA, “Two years on: people injured and traumatized during the “Great March of Return” are still struggling” (6 Apr. 2020), available at <https://tinyurl.com/37tvk37a>. The figures reported by OCHA in 2020 represent an increase from those identified by the Commission of Inquiry a year earlier. See Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 37.

³⁸¹ Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 58.



*Figure 2.23: Israeli snipers at the Great March of Return, 13 April 2018*³⁸²

2.133 Israel’s security forces claimed to have perceived a new “security threat” in these demonstrations “as being closely linked with Palestinian armed groups and an attempt to mask ‘terror activities’”.³⁸³ The claim was a lie. The UN Commission of Inquiry established to investigate the incident concluded that “the demonstrations were civilian in nature, had clearly stated political aims and, despite some acts of significant violence, did not constitute combat or a military campaign”.³⁸⁴

2.134 The OCHA estimated that Israeli forces injured 23,313 Palestinians repressing the demonstrations, “contributing to the highest toll of injuries recorded

³⁸² H. Glazer, “‘42 Knees in One Day’: Israeli Snipers Open Up About Shooting Gaza Protesters,” *Haaretz* (6 May 2020), available at <https://tinyurl.com/4z9dcprv>.

³⁸³ *Ibid.*, para. 29.

³⁸⁴ *Ibid.*, para. 32.

in the Occupied Palestinian Territory since 2005”.³⁸⁵ Many were maimed for life. According to the United Nations, 156 victims had limbs amputated and over 1,200 required or still require specialized limb reconstruction treatment.³⁸⁶ The maiming of these civilians was no accident. The rules of engagement Israeli authorities adopted permitted snipers to shoot at the legs of the “major inciters”. One Israeli soldier admitted that he shot “42 knees in one day”.³⁸⁷



Figure 2.24: In this combination of 10 photos taken on 19 September 2018, Palestinians shot in the legs during demonstrations at the Gaza strip’s border with Israel pose as they await treatment at a Gaza City clinic run by MSF (Doctors Without Borders)³⁸⁸

³⁸⁵ *Ibid.*, para. 38.

³⁸⁶ OCHA, “Two years on: people injured and traumatized during the “Great March of Return” are still struggling” (6 Apr. 2020), available at <https://tinyurl.com/37tvk37a>.

³⁸⁷ H. Glazer, “‘42 Knees in One Day’: Israeli Snipers Open up about Shooting Gaza Protesters,” *Haaretz* (6 Mar. 2020), available at <https://tinyurl.com/mryd5njj>.

³⁸⁸ T. Pitman, “In Gaza protests, Israeli troops aim for the legs,” *Associated Press* (9 Dec. 2018), available at <https://tinyurl.com/4nc5tznj>.

2.135 The Commission investigated many of these killings and maimings, including that of a 16-year-old schoolboy who, on 30 March 2018, was shot in the face by the Israeli forces “as he distributed sandwiches to demonstrators, 300 m from the separation fence”.³⁸⁹ This teenager permanently lost his hearing. The same day, another student journalist, Youssef Kronz, was shot in the legs with two bullets in immediate succession. Kronz was “wearing a blue vest marked ‘Press’ while photographing the demonstrations approximately 800 m from the separation fence”.³⁹⁰ His right leg had to be amputated.³⁹¹ An Israeli sniper also killed Razan Najjar, a nurse “who at the time was wearing a white paramedic vest and standing with other volunteer paramedics approximately 110 m from the separation fence”.³⁹²

³⁸⁹ Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 44.

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

³⁹² *Ibid.*, para. 69.



Figure 2.25: Palestinian nurse Razan Najjar at the protest site before she was killed by an Israeli sniper, 2018³⁹³

2.136 Even outside the context of protests against the blockade, Israel uses lethal force to restrict the access of Palestinians civilians to the so-called buffer zones, covering large swathes of Gaza’s land and sea territory. Israel regularly fires shots in the direction of Palestinians working in the buffer zones on land and in the sea, “in some cases directly targeting them”.³⁹⁴ The restrictions on access to the offshore zones, for example, are “enforce[d] [by] ... live ammunition, rubber-coated bullets and water cannons”.³⁹⁵

³⁹³ I. Lee, “Israeli forces kill medic, wound 100 protesters in Gaza unrest, Palestinian ministry says,” *CNN* (1 June 2018), available at <https://tinyurl.com/4ppap4sa>.

³⁹⁴ Human Rights Council, *Report of the UN High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/16/71 (3 Mar. 2011), para. 9.

³⁹⁵ UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 26. See also UNGA, *Economic Costs of the Israeli Occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, UN Doc. A/75/310 (13 Aug. 2020) (Dossier No. 487), para. 7 (“People working in the fishing industry are subjected to frequent violence, and those deemed by the Israeli navy to have exceeded the boundaries are arrested, have their boats confiscated and are sometimes shot at, killed or injured.”); OCHA, “Gaza’s fisheries: record

2.137 In addition to subjecting Palestinian residents of Gaza to the gruesome violence described above, Israel has left them without effective remedies to compensate for their human suffering or material losses. When it comes to civil remedies, as explained by the Israeli human rights organization Adalah, the Legal Center for Arab Minority Rights in Israel, “Israel actively seeks to evade responsibility for compensating the victims and has placed numerous barriers and obstacles in their way to receiving legal remedy from the Israeli courts”.³⁹⁶ They include an unreasonably short statute of limitations, barriers to entering Israel to pursue legal proceedings against the State or to meet with their attorneys and appear in court, and high court costs.³⁹⁷

2.138 The Israeli Civil Wrongs Law further impedes the ability of Palestinian residents of Gaza to obtain remedies. Under that law, residents of “enemy territory”, including Gaza, are ineligible from receiving compensation from Israel.³⁹⁸ In July 2022, applying this law, the Israeli Supreme Court “rejected an appeal demanding that the State of Israel pay tort compensation damages for the Israeli military’s shooting and serious injury of 15-year-old Palestinian Attiya

expansion of fishing limit and relative increase in fish catch; shooting and detention incidents at sea continue” (Oct. 2019), *available at* <https://tinyurl.com/3r6ffwx9> (one fisherman, Fadi, recounts: “We are suffering a lot from the Israeli naval forces ... They chase us, use water cannons and open fire towards us and detain us. I have been detained six times. I can’t remember how many times me and my sons have been injured by rubber bullets! They’ve confiscated three engines and one small boat, which they still haven’t returned. As fishermen, the sea should be always open for us, but we are trapped in a restricted zone.”).

³⁹⁶ F. El-‘Ajou, “Obstacles for Palestinians in Seeking Civil Remedies for Damages before Israeli Courts,” *Adalah* (May 2013), *available at* <https://tinyurl.com/bddutu56>, p. 1.

³⁹⁷ *See ibid.*

³⁹⁸ *Ibid.*, p. 10.

Nabaheen in November 2014”.³⁹⁹ Describing the lower court ruling that this decision affirmed, the UN Independent International Commission of Inquiry on the Protests in the OPT explained that this denies “Gazan victims of violations ... the main avenue to fulfil their right to ‘effective legal remedy’ from Israel that is guaranteed to them under international law.⁴⁰⁰ Nor does there appear to be an “alternative mechanism employed by Israel to compensate Palestinian victims for damage caused unlawfully by the security forces”.⁴⁰¹

C. ISRAEL’S EXCESSIVE USE OF FORCE IN THE WEST BANK (INCLUDING EAST JERUSALEM)

2.139 In the West Bank (including East Jerusalem), Israeli forces have killed and injured thousands of Palestinian civilians “often in circumstances suggesting that the killings were systematic, unlawful and arbitrary, and with near total impunity” since the start of the occupation in 1967.⁴⁰² The OHCHR has determined that “Israeli security forces’ use of lethal force has become a pervasive practice in the Occupied Palestinian Territory, often employed regardless of the specific level of gravity of the potential threat detected and often as a first rather than as a last resort”.⁴⁰³ Last year was the deadliest year in the West Bank since the United

³⁹⁹ “In a most dangerous precedent, Israeli Supreme Court OKs sweeping immunity for the state, denies all civil remedies to Gaza victims of war crimes,” *Adalah* (7 July 2022), available at <https://tinyurl.com/55cdtvmf>.

⁴⁰⁰ Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/CRP.2 (18 Mar. 2019), para. 756.

⁴⁰¹ *Ibid.*

⁴⁰² Amnesty International 2022 Report, p. 31.

⁴⁰³ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 26.

Nations started keeping statistics in 2005. As of 14 December 2022, Israeli forces had killed 150 Palestinians in the West Bank, including 33 children.⁴⁰⁴

2.140 Israel’s violence has manifested itself in four principal ways: (i) the killing of unarmed civilians during routine interactions with Israeli forces; (ii) the excessive use of force against civilians in the context of protests or other confrontations; (iii) the excessive use of force in heavily populated civilian areas, including refugee camps, in the course of nominal security operations; and (iv) recourse to extrajudicial executions, including targeted assassinations and the execution of suspected attackers who have been disarmed.

2.141 *First*, Israeli forces regularly use excessive and lethal force against unarmed civilians in law enforcement and nominal security operations in which no imminent threat is actually posed. As the Israel advocacy director at Human Rights Watch has explained, this is not merely a question of a few “rogue soldiers, but also about senior Israeli officials who publicly tell security forces to unlawfully shoot to kill”.⁴⁰⁵

⁴⁰⁴ OHCHR, *Press Release: Israel: UN experts condemn record year of Israeli violence in the occupied West Bank* (15 Dec. 2022), available at <https://tinyurl.com/48jmtsxt>.

⁴⁰⁵ Human Rights Watch, “Israel/Palestine: Some Officials Backing ‘Shoot-to-Kill’” (2 Jan. 2017), available at <https://tinyurl.com/uxt534ch>.

2.142 Killings and assaults of unarmed civilians regularly occur at checkpoints and roadblocks, or simply as Palestinians go about their daily lives.⁴⁰⁶ The victims often include young children,⁴⁰⁷ women,⁴⁰⁸ the elderly⁴⁰⁹ and the disabled.⁴¹⁰

2.143 Merely by way of example, in one instance in July 2021, Israeli soldiers killed an 11-year-old boy who was “in a car that was slowly driving away from soldiers when some of them started running after the vehicle and opened fire”.⁴¹¹ In another incident at a temporary checkpoint on 6 April 2021, Israeli forces “stopped the car of a Palestinian couple, parents of five children, who were driving home from a medical appointment” and “opened fire at the car when the couple drove away, resulting in the death of the man and the wounding of his wife”.⁴¹²

2.144 People with disabilities are disproportionately affected due to Israeli forces’ quick recourse to force against any Palestinian deemed to be behaving suspiciously. For example, in May 2020, Iyad Hallaq, “a 31-year-old Palestinian with autism, was shot and killed by Israeli security forces while walking from his home in the

⁴⁰⁶ UNGA, *Report of Special Rapporteur S.M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), p. 5.

⁴⁰⁷ See Human Rights Watch, *Submission to the United Nations Committee on the Rights of the Child Review of Israel* (Nov. 2022), available at <https://tinyurl.com/eh6bzzyd>; Defense for Children International – Palestine, “Israeli forces shoot, kill 14-year-old Palestinian girl near Ramallah” (16 Nov. 2022), available at <https://tinyurl.com/286d9yr4> (“Fulla was in the passenger seat of a car driving on Mahmoud Imwasi street when Israeli forces opened fire on the car, firing at least 20 live bullets.”).

⁴⁰⁸ See Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), paras. 32-39.

⁴⁰⁹ See I. Tina, “Violence Against the Elderly: Palestine,” *United Nations Population Fund* (2019), available at <https://tinyurl.com/yc54sepa>, pp. 42-45.

⁴¹⁰ See *infra* para. 2.144.

⁴¹¹ UNGA, *Report of Special Rapporteur S.M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), para. 7.

⁴¹² *Ibid.*, para. 14.

Wadi al-Jawz neighbourhood to a vocational training centre for persons with disabilities in Jerusalem's Old City".⁴¹³ In July 2023, an Israeli court acquitted the responsible officer ("whose name the courts have barred from publication"), finding that he had made an "honest mistake".⁴¹⁴ The court reached this conclusion despite independent findings that "the deceased posed no danger to police and civilians in the area".⁴¹⁵ The undisputed court record reported by the *New York Times* is telling:

The officers cornered Mr. al-Hallaq in a trash storage area, where the officer shot him in his lower body, according to court filings. Mr. al-Hallaq fell to the ground and the officer's commander ordered a halt to the shooting, prosecutors said. Mr. al-Hallaq's teacher, who also arrived on the scene, said she shouted in Hebrew that he was disabled and posed no threat. But after Mr. al-Hallaq made a movement, the officer fired a second time at Mr. al-Hallaq's upper body, killing him as he lay on the ground.⁴¹⁶

2.145 As reported by *Haaretz*, Israeli officials welcomed the acquittal, and the officer is now being promoted to the rank of commander:

Itamar Ben-Gvir, Israel's far-right national security minister, applauded the sentence in a statement, saying that the 'hero soldiers who protect the State of Israel with their lives will get a hug and full backing from me and from the Israeli government.'

⁴¹³ Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/46/22 (15 Feb. 2021), para. 19.

⁴¹⁴ A. Boxerman, "Israeli Court Acquits Police Officer Who Killed Autistic Palestinian Man," *New York Times* (6 July 2023), available at <https://tinyurl.com/2s3numb7>.

⁴¹⁵ Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/46/22 (15 Feb. 2021), para. 19.

⁴¹⁶ A. Boxerman, "Israeli Court Acquits Police Officer Who Killed Autistic Palestinian Man," *New York Times* (6 July 2023), available at <https://tinyurl.com/2s3numb7>.

The commander of Israel's Border Police, Amir Cohen, also welcomed the verdict, saying that the officer will return to border police and go to a commanders' course in a few weeks.⁴¹⁷



Figure 2.26: Khairi and Rana al-Hallaq, the parents of an autistic Palestinian man fatally shot by an Israeli police officer, with a photo of their son⁴¹⁸

2.146 Similarly, in July 2022, “Israeli security forces shot a 59-year-old man with severe mental disabilities at Huwwara checkpoint, near Nablus”.⁴¹⁹ The unarmed man was apparently initially shot in the legs by Israeli security forces from a military tower as he approached the checkpoint.⁴²⁰ According to witnesses, while

⁴¹⁷ N. Hasson, “Family of Palestinian Man Killed by Israeli Police Officer Attends Anti-judicial Coup Protest,” *Haaretz* (8 July 2023), available at <https://tinyurl.com/2p9x33ne>.

⁴¹⁸ A. Boxerman, “Israeli Court Acquits Police Officer Who Killed Autistic Palestinian Man,” *New York Times* (6 July 2023), available at <https://tinyurl.com/2s3numb7>.

⁴¹⁹ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 21.

⁴²⁰ *Ibid.*

the injured and unarmed man was limping away from the checkpoint, Israeli security forces arrived in a military jeep and shot him in the upper body several times from close range, as he did not stop as directed.⁴²¹

2.147 Those coming to the aid of victims of violence often become victims themselves. As recounted by the OHCHR, in March 2019, 23-year-old Ahmad Mansara was “shot multiple times with live ammunition in the chest and shoulders while helping the family of a Palestinian man, Ala Ghayadeh, who had himself been shot and seriously wounded by Israeli security forces in the immediate aftermath of his car breaking down at a junction near the village of El-Hadar, close to Bethlehem”.⁴²²

2.148 As noted by the OPT Special Rapporteur:

The lack of accountability is a systemic and deeply ingrained issue. It helps to perpetuate a cycle of continued violence, as soldiers appear to act with impunity, with the message being sent that Palestinian lives do not matter, while the Palestinian population becomes both more fearful and more desperate.⁴²³

2.149 Numerous studies have confirmed this culture of impunity. For example, Amnesty International, in its report, *Lethal Force and Accountability for Unlawful Killings by Israeli Forces in Israel and the Occupied Palestinian Territories*, concluded that Israeli military investigations are neither independent, nor impartial; and that where there are investigations at all, they lack of independence,

⁴²¹ *Ibid.*

⁴²² Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/46/22 (15 Feb. 2021), para. 16.

⁴²³ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/71/554 (19 Oct. 2016), para. 17.

impartiality, thoroughness and transparency.⁴²⁴ Although Israel has denounced some of the actions described, it has failed to bring about any real accountability. This allows a climate of “widespread impunity” to prevail.⁴²⁵ According to the OHCHR in 2019, “[t]he vast majority of investigations into killings of Palestinians by Israeli security forces were closed by the Military Advocate General without further action”.⁴²⁶ In 2021, the OHCHR observed that “[t]he prevailing climate of impunity described in previous reports of the Secretary-General and the High Commissioner persisted”.⁴²⁷ The same was noted in 2023.⁴²⁸

2.150 The impunity is glaring, given the human lives that have been devastated by Israeli conduct. Even killings of the most obviously defenceless—from the oldest to the youngest—are met with indifference by Israel. Take the example of the January 2022 death of a 78-year-old Palestinian-American man, Omar Assad.⁴²⁹ Mr. Assad “was stopped by soldiers while driving home from a friend’s house, during a routine incursion by the Israeli Army into an area of the West Bank administered by the Palestinian Authority”.⁴³⁰ He was subsequently detained,

⁴²⁴ Amnesty International, *Memorandum: Lethal Force and Accountability for Unlawful Killings by Israeli Forces in Israel and the Occupied Palestinian Territories* (28 Sept. 2016), available at <https://tinyurl.com/8b963kzx>.

⁴²⁵ UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), para. 14.

⁴²⁶ Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territories, Including East Jerusalem*, UN Doc. A/HRC/40/43 (14 Mar. 2019), para. 22.

⁴²⁷ *Ibid.*, para. 4.

⁴²⁸ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 5.

⁴²⁹ P. Kingsley & H. Yazbek, “No Charges for Israeli Soldiers in Death of Detained Palestinian American,” *New York Times* (14 June 2023), available at <https://tinyurl.com/4s8vt2tf>.

⁴³⁰ *Ibid.*

gagged and left unconscious in a building site.⁴³¹ He was later found lying face down and unresponsive and pronounced dead shortly thereafter.⁴³² In a statement published in June 2023, the IDF stated that the soldiers involved in the event would face “disciplinary measures” but because “no causal link was found between the errors in the conduct of the soldiers and Assad’s death”, no criminal investigation would be opened.⁴³³

2.151 Impunity also prevails for the killer of three-year-old Muhammad Al-Tamimi. In June 2023, Israeli forces shot the toddler in the head, shortly after his father had buckled him into his car seat to take him to visit his uncle in the village of Nabi Saleh.⁴³⁴ His father recounted to *CNN*:

As soon as I started the car I heard gunshots and I saw the Israeli soldiers out of the military tower ... I looked at Muhammad and couldn’t believe what I saw. He was shot in the head and there was blood all over his body. I took him in my arms and then realized that I’m also shot in my right shoulder.⁴³⁵

2.152 As reported by the *Guardian*, although there were no hostilities or gunfire at the time, Israeli officials presented a “shifting narrative” about what happened to Muhammad:

After initially blaming the wounding of the father and son on Palestinian crossfire, IDF officials later said that it was not clear

⁴³¹ *Ibid.*

⁴³² *Ibid.*

⁴³³ *Ibid.*

⁴³⁴ B. McKernan, “Three-year-old Palestinian boy shot by Israeli soldiers dies in hospital,” *The Guardian* (5 June 2023), available at <https://tinyurl.com/569ysvvn>.

⁴³⁵ A. Salman & H. Gold, “Palestinian boy, 3, dies of injuries days after being shot by Israeli troops” *CNN* (5 June 2023), available at <https://tinyurl.com/2b52z4e4>.

who had shot them and that an investigation had been opened, and later said that the pair had been injured by Israeli fire.⁴³⁶

2.153 Less than two weeks later, the Israeli military announced that it was closing its initial investigation, and “said it would reprimand one of the officers involved in the killing”.⁴³⁷ Muhammad’s father reacted:

Of course we were not expecting justice, but this report feels to us like a crime on top of the original crime ... This is all they have to say when my son is killed in cold blood, when his life is cut off before I could discover what kind of person he’d become.⁴³⁸



Figure 2.27: Muhammad Al-Tamimi⁴³⁹

2.154 *Second*, many killings of Palestinians have occurred “as a result of demonstrations and clashes between demonstrators and security forces, many of

⁴³⁶ B. McKernan, “Three-year-old Palestinian boy shot by Israeli soldiers dies in hospital,” *The Guardian* (5 June 2023), available at <https://tinyurl.com/569ysvvn>.

⁴³⁷ I. Debre, “Israeli military admits killing Palestinian toddler by mistake, closes initial investigation,” *ABC News* (14 June 2023), available at <https://tinyurl.com/3z3pf5zc>.

⁴³⁸ *Ibid.*

⁴³⁹ A. Salman, “Palestinian boy, 3, dies of injuries days after being shot by Israeli troops,” *CNN* (5 June 2023), available at <https://tinyurl.com/2b52z4e4>.

which were held to protest against settlements and settlement expansion”.⁴⁴⁰ The Committee against Torture has expressed concern “at allegations of excessive use of force, including lethal force, by security forces, mostly against Palestinians in the West Bank, including East Jerusalem ... particularly in the context of demonstrations”.⁴⁴¹ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also reported on Israeli authorities “dispers[ing] protests using crowd control methods even when these demonstrations are peaceful”.⁴⁴²

2.155 Similarly, Amnesty International and other human rights organizations have documented a pattern on Israeli violence against protestors for decades.⁴⁴³ In 2021, Amnesty reported that “Israeli forces have used unnecessary or excessive force, unlawfully killing hundreds of Palestinian protesters, including children,

⁴⁴⁰ UNGA, *Report of Special Rapporteur S.M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), p. 4.

⁴⁴¹ CAT Committee, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CAT/C/ISR/CO/5 (3 June 2016), para. 32.

⁴⁴² OHCHR, *Press Statement: Statement by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at the conclusion of his visit to Israel and the occupied Palestinian territory* (18 Dec. 2011), available at <https://tinyurl.com/43bsxh2c>.

⁴⁴³ See, e.g., Amnesty International, *Israel/Occupied Territories and the Palestinian Authority: Five years after the Oslo Agreement: Human rights sacrificed for security* (31 Aug. 1998), available at <https://tinyurl.com/yc46exrh>; Amnesty International, *Israel and the Occupied Territories: Excessive use of lethal force* (18 Oct. 2000), available at <https://tinyurl.com/bdfsjp9m>; Amnesty International, *Israel and the Occupied Territories: State assassinations and other unlawful killings* (21 Feb. 2001), available at <https://tinyurl.com/mwnvzwrp>; Amnesty International, *Israel and the Occupied Territories: Broken lives – A year of intifada* (13 Nov. 2001), available at <https://tinyurl.com/4z3v4c64>; Amnesty International, *Israel and the Occupied Territories and the Palestinian Authority: Killing the future: Children in the line of fire* (20 Nov. 2002), available at <https://tinyurl.com/ysdfs4ae>; Amnesty International, *Israel and the Occupied Territories: Israel must put an immediate end to the policy and practice of assassinations* (3 July 2003), available at <https://tinyurl.com/4hsufxbc>; Amnesty International, *Israel and the Occupied Palestinian Territories: Enduring occupation: Palestinians under siege in the West Bank* (4 June 2007), available at <https://tinyurl.com/4aztds9>; Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank* (27 Feb. 2014), available at <https://tinyurl.com/u9a99c6y>; Amnesty International, *Press Release: One year on from protests, Gaza civilians' devastating injuries highlight urgent need for arms embargo on Israel* (28 Mar. 2019), available at <https://tinyurl.com/248ubvzb>.

when there was no imminent threat to life and wounding thousands more often seriously”.⁴⁴⁴

2.156 During protests, “demonstrators often resort to low-level violence, throwing stones and rocks at Israeli soldiers but without posing any serious risk to them due to the distance and the heavily protected nature of their positions”.⁴⁴⁵ In response, Israeli forces use a variety of violent measures against the protesters, including tear gas, pepper spray, stun grenades (sound bombs) and hand-held batons. They also often resort to lethal means like firing rubber-coated metal bullets and even live ammunition at protesters.⁴⁴⁶ In some cases, Israeli forces “have also killed or injured demonstrators by firing tear gas directly at them from close range or by using tear gas in enclosed spaces causing asphyxiation”.⁴⁴⁷

2.157 In one instance, in the summer of 2021, Israel responded with “repeated, unwarranted and excessive force” to protests in East Jerusalem calling for a halt to forced evictions from the neighbourhood of Sheikh Jarrah and an end to the ongoing forced displacement of Palestinians from East Jerusalem.⁴⁴⁸ Saleh Higazi, Deputy Director for the Middle East and North Africa at Amnesty International stated: “Evidence gathered by Amnesty International reveals a chilling pattern of Israeli forces using abusive and wanton force against largely peaceful Palestinian

⁴⁴⁴ Amnesty International 2022 Report, p. 250.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ Amnesty International, *Press Release: Israel/ OPT: End brutal repression of Palestinians protesting forced displacement in occupied East Jerusalem* (10 May 2021), available at <https://tinyurl.com/ye23hnr>.

protesters in recent days. Some of those injured in the violence in East Jerusalem include bystanders or worshippers making Ramadan prayers”.⁴⁴⁹

2.158 Amnesty International has concluded that the “pattern of unlawful killings and infliction of serious injuries against Palestinian demonstrators appears to be aimed at eliminating opposition to Israel’s policies and practices in the OPT”⁴⁵⁰ and at “stifl[ing] dissent and freedom of expression”.⁴⁵¹

2.159 The shooting of stone-throwers, including children, typifies Israel’s routine recourse to excessive and lethal force in confrontations with Palestinians. Between November 2021 and October 2022, the OHCHR reported that “nearly half [*i.e.*, about 65] of the Palestinians were killed in the context of stone-throwing confrontations or otherwise during operations of Israeli security forces (*i.e.*, without exchange of fire)”.⁴⁵² For example, “on 9 August, Israeli security forces killed a 16-year-old boy during stone throwing by Palestinians in Hebron”.⁴⁵³ Eyewitnesses reported that “an Israeli sniper, lying prone on the street, fired several rounds of live ammunition at stone throwers approximately 70 metres away, hitting the boy in the chest”.⁴⁵⁴

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Amnesty International 2022 Report, p. 250.

⁴⁵¹ *Ibid.*

⁴⁵² Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 20.

⁴⁵³ *Ibid.*, para. 24.

⁴⁵⁴ *Ibid.*

2.160 *Third*, violence against Palestinians in the West Bank (including East Jerusalem) often happens in the context of so-called security operations in densely populated civilian areas.

2.161 The OHCHR reported on the many clashes between Israelis and Palestinians during Israeli raids against armed Palestinian groups in the cities of Jenin and Nablus in the period between November 2021 and October 2022.⁴⁵⁵ Both Jenin and Nablus are home to large refugee camps. As reported by three UN Special Rapporteurs, the “Jenin Refugee Camp, often portrayed by Israel as the hotbed of Palestinian resistance, has been subject to frequent incursions and raids by Israeli forces, resulting in arbitrary arrests, killings and collective punishment of many among its 14,000 residents”.⁴⁵⁶

2.162 According to the OHCHR, during the raids, “[h]eavy troop deployment by Israeli security forces and their use of heavy weaponry in densely populated areas exposed Palestinian residents and bystanders, including children, to serious harm and loss of life”.⁴⁵⁷ During a January 2023 raid on the Jenin Refugee Camp, for example, Israeli forces “fired live ammunition, killing at least nine Palestinians, including one elderly woman and two children”.⁴⁵⁸ On 19 June 2023, Israeli forces conducted a similar raid, killing five Palestinians, including a 15-year-old boy, and

⁴⁵⁵ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, U.N. Doc. A/HRC/52/75 (13 Feb. 2023), para. 17.

⁴⁵⁶ OHCHR, *Press Release: Israel/Palestine: UN experts condemn renewed violence and Israeli killings of Palestinians in occupied West Bank* (27 Jan. 2023), available at <https://tinyurl.com/3cff6jh9>.

⁴⁵⁷ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, U.N. Doc. A/HRC/52/75 (13 Feb. 2023), para. 17.

⁴⁵⁸ OHCHR, *Press Release: Israel/Palestine: UN experts condemn renewed violence and Israeli killings of Palestinians in occupied West Bank* (27 Jan. 2023), available at <https://tinyurl.com/3cff6jh9>.

wounding 91 other people.⁴⁵⁹ In the same raid, Israeli forces even deployed an attack helicopter, which fired into the densely populated city.⁴⁶⁰

2.163 Similarly, during a raid in Nablus' old city on 9 August 2022, "Israeli security forces shot dead two Palestinians—including a 16-year-old boy—and injured with live ammunition 76 Palestinians, including 15 boys".⁴⁶¹ This took place "as Israeli security forces in the outer cordon used firearms extensively against Palestinians throwing stones at Israeli security forces vehicles and seeking to enter the old city".⁴⁶²

2.164 Less than a year later, in February 2023, Israel conducted another armed raid in Nablus. The ostensible goal of the operation was to apprehend three members of an armed Palestinian group in a safe house but after a fight broke out with three gunmen there, "chaos and violence spread well beyond the stated targets and into the busy surrounding streets".⁴⁶³ As IDF support vehicles entered the city, they were pelted with stones and oranges, and sometimes fired upon by other Palestinian gunmen.⁴⁶⁴ In addition to killing the three men in the safe house and another gunman, "videos show that Israeli soldiers used deadly force against unarmed Palestinians, killing at least four people who did not appear to pose a

⁴⁵⁹ B. Lynfield, "Israeli Forces Launch Helicopter Raid on Jenin in Occupied West Bank," *The Guardian* (19 June 2023), available at <https://tinyurl.com/37uxndd9>.

⁴⁶⁰ *Ibid.*

⁴⁶¹ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 20.

⁴⁶² *Ibid.*

⁴⁶³ H. Willis *et al.*, "How an Israeli Raid on a Safe House Ended with Civilians Killed," *New York Times* (1 May 2023), available at <https://tinyurl.com/yye7238w>.

⁴⁶⁴ *Ibid.*

threat”.⁴⁶⁵ Videos also show Israeli military vehicles swerving into crowds of civilians at high speed during the same incident.⁴⁶⁶

2.165 A reconstruction of the incident by the *Washington Post* using 3D modelling software shows that Israeli forces “fired at least 14 times from inside their armored vehicle as it moved down a street and then came to a halt next to a short wall behind which the civilians huddled”.⁴⁶⁷ The report found that Israeli forces “continued firing even after those people would have been visible from the vehicle’s windows”.⁴⁶⁸ According to the Palestinian Health Ministry, 11 people were killed and over 100 wounded in the incident.⁴⁶⁹ Among them was a 16-year-old who was waiting for a ride home after school.⁴⁷⁰

2.166 Just weeks ago, on 3 July 2023, Israel launched a two-day offensive in the Jenin refugee camp in the West Bank, allegedly intended to crack down on Palestinian militants after recent attacks.⁴⁷¹ It was “the most intense Israeli military operation in the occupied West Bank in nearly two decades”.⁴⁷² Under the guise of confiscating and destroying weapons, Israel “carried out airstrikes and sent in hundreds of troops in an operation that was reminiscent of the bloody period two

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*

⁴⁶⁷ M. Berger *et al.*, “3D analysis shows how Israeli troops fired into group of civilians,” *Washington Post* (10 Mar. 2023), available at <https://tinyurl.com/242cv4xn>.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ H. Willis *et al.*, “How an Israeli Raid on a Safe House Ended With Civilians Killed,” *New York Times* (1 May 2023), available at <https://tinyurl.com/yye7238w>.

⁴⁷⁰ M. Berger *et al.*, “3D analysis shows how Israeli troops fired into group of civilians,” *Washington Post* (10 Mar. 2023), available at <https://tinyurl.com/242cv4xn>.

⁴⁷¹ M. Harb, “As Israel ends 2-day West Bank offensive, Palestinian residents emerge to scenes of vast destruction,” *Associated Press* (5 July 2023), available at <https://tinyurl.com/42m4xbp7>.

⁴⁷² *Ibid.*

decades ago known as the second intifada”.⁴⁷³ In one instance, Israeli soldiers cracked through the wall of an apartment building, jolting the family inside awake. They then forced all “12 family members into a living room, took away their phones, zip tied the wrists of the males under age 50 and ordered everyone to stay silent”.⁴⁷⁴ The family remained there for about 10 hours, “with soldiers even standing outside the door when they went to the bathroom”, terrifying a 9-year-old so much that she vomited repeatedly.⁴⁷⁵

2.167 The operation had a devastating impact on the people living in the densely populated camp. Homes were targeted and destroyed, cars were smashed and scorched, and power lines were downed resulting in outages.⁴⁷⁶ Videos show “massive army bulldozers tearing through camp alleys”,⁴⁷⁷ ripping up more than two kilometres of roads and cutting off the supply of water to thousands.⁴⁷⁸

⁴⁷³ *Ibid.* See also “Israel stages a deadly large-scale raid on Palestinian Jenin camp in the West Bank,” *NPR* (3 July 2023), available at <https://tinyurl.com/ybah26zk>.

⁴⁷⁴ H. Yazbek & B. Hubbard, “Palestinians, Facing Political Stagnation, Despair After Israeli Raid,” *New York Times* (7 July 2023), available at <https://tinyurl.com/pzdn8dn2>.

⁴⁷⁵ *Ibid.*

⁴⁷⁶ M. Harb, “As Israel ends 2-day West Bank offensive, Palestinian residents emerge to scenes of vast destruction,” *Associated Press* (5 July 2023), available at <https://tinyurl.com/42m4xbp7>.

⁴⁷⁷ M. Mohammed & I. Isseid, “As Israel Ends Its Largest Raid on the West Bank in 20 Years, Palestinians Grapple With Destruction (5 July 2023), available at <https://tinyurl.com/yy4e9nj9>.

⁴⁷⁸ D. Estrin, “The view from Jenin refugee camp in West Bank after Israel's withdrawal,” *NPR* (5 July 2023), available at <https://tinyurl.com/5bpwmy3f>.



Figure 2.28: The destroyed streets of the Jenin refugee camp following Israel’s July 2023 operation⁴⁷⁹

2.168 Thousands of Palestinians were forced to flee, around one hundred were injured and 12 were killed, including four children.⁴⁸⁰ Among them was 16-year-old Abdul Rahman Hardan, who was shot in the head by an Israeli sniper as he stood waiting to donate blood outside a hospital in the camp. CCTV footage obtained by international media outlets shows that he “was unarmed when he was

⁴⁷⁹ H. Gold & R. Picheta, “Israel ended a huge military operation in Jenin. Here’s what you need to know,” *CNN* (5 July 2023), available at <https://tinyurl.com/ms78bc7w>.

⁴⁸⁰ M. Harb, “As Israel ends 2-day West Bank offensive, Palestinian residents emerge to scenes of vast destruction,” *Associated Press* (5 July 2023), available at <https://tinyurl.com/42m4xbp7>. See also A. Sawafta, “Israeli troops withdraw in West Bank, Gaza rockets fired,” *Reuters* (5 July 2023), available at <https://tinyurl.com/babsycr3>; T. Bateman, “Jenin: Palestinian boy killed during Israeli assault was unarmed – family,” *BBC* (11 July 2023), available at <https://tinyurl.com/2aj27mby>.

shot” and that “[n]o weapons are visible in the area where the teenager fell nor elsewhere in the footage”.⁴⁸¹



Figure 2.29: Abdul Rahman Hardan before and after he was shot by Israeli forces, July 2023⁴⁸²

2.169 Israel’s grossly disproportionate use of force is no accident. As Israeli Arab member of Knesset explained about this attack: the “Jenin operation is part of a plan to annex parts of the West Bank”.⁴⁸³

2.170 *Fourth*, Israeli violence against Palestinians in the West Bank (including East Jerusalem) also manifests itself in the form of extrajudicial executions, including targeted assassinations. The OHCHR reported a recent example from October 2022 when “a Palestinian man, reported to be a leader of a loose group of

⁴⁸¹ T. Bateman, “Jenin: Palestinian boy killed during Israeli assault was unarmed - family,” *BBC* (11 July 2023), available at <https://tinyurl.com/2fjcraj>.

⁴⁸² C. Philip, “Palestinian boy killed by Israeli sniper in Jenin was unarmed, CCTV suggests,” *The Times* (9 July 2023), available at <https://tinyurl.com/bdheuvpt>.

⁴⁸³ C. Keller-Lynn, “Opposition heads back government on Jenin raid but demand retreat on judicial blitz,” *Times of Israel* (3 July 2023), available at <https://tinyurl.com/bdf9asp2>.

armed Palestinians in Nablus, was killed when an explosive device attached to a motorcycle detonated near him in the old city”.⁴⁸⁴ Although the IDF did not comment on the explosion, “the modus operandi is consistent with previous Israeli extrajudicial executions”.⁴⁸⁵

2.171 The OHCHR also documented several other instances of apparent extrajudicial executions, “where Israeli security forces used lethal force against attackers when they were wounded or subdued and no longer presenting imminent threat, to ‘confirm the kill’”.⁴⁸⁶ For example, “on 7 March [2022], Israeli security forces killed a 22-year-old Palestinian man at an Al-Aqsa Compound gate in East Jerusalem after he stabbed police officers”.⁴⁸⁷ According to an eyewitness, after an altercation with an Israeli officer left the man “lying on the ground barely conscious”, a second officer fired five or six bullets into him.⁴⁸⁸ A video shows the

⁴⁸⁴ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 18. *See also* E. Fabian, “Alleged assassination in Nablus may signal major Israeli policy change in West Bank,” *Times of Israel* (23 Oct. 2022), available at <https://tinyurl.com/2bnjhwjtj>.

⁴⁸⁵ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 18. *See also* E. Fabian, “Alleged assassination in Nablus may signal major Israeli policy change in West Bank,” *Times of Israel* (23 Oct. 2022), available at <https://tinyurl.com/2bnjhwjtj>.

⁴⁸⁶ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 19.

⁴⁸⁷ *Ibid.* *See also* O. Liebermann *et al.*, “Video shows Israeli soldier shooting an attack suspect lying in street,” *CNN* (24 Mar. 2023), available at <https://tinyurl.com/ydukemsk>.

⁴⁸⁸ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 19.

same officer later firing yet another shot at close range at the upper body of the man.⁴⁸⁹

2.172 In another example, in March 2016, IDF Sergeant Elor Azaria shot an incapacitated alleged Palestinian attacker, ‘Abd al-Fatah a-Sharif, in the head. The incident was captured on a video obtained by B’Tselem:

In video footage captured by Hebron resident ‘Imad Abu Shamsiyeh, who sent it to B’Tselem, [a-Sharif] is seen lying on the road injured, with none of the soldiers or medics present giving him first aid or paying him any attention at all. At a certain point, a soldier is seen aiming his weapon at a-Sharif and shooting him in the head from close range, killing him. Although this occurs in the plain view of other soldiers and officers, they do not seem to take any notice.⁴⁹⁰

⁴⁸⁹ *Ibid.*

⁴⁹⁰ B’Tselem, “Video: Soldier executes Palestinian lying injured on ground after the latter stabbed a soldier in Hebron” (24 Mar. 2016), *available at* <https://tinyurl.com/9jenek3s> [WARNING GRAPHIC].



Figure 2.30: Israeli soldier Elor Azaria moments before shooting the wounded Abd al-Fatah a-Sharif in the head, 24 March 2016⁴⁹¹

2.173 While the perpetrator was eventually tried and convicted of manslaughter in Israel, the OHCHR expressed “grave concern” that “[h]is already lenient initial sentence of 18 months’ imprisonment ... was reduced to 14 months by the Israel Defense Forces Chief of General Staff”.⁴⁹² In the end, he was “granted early release after having served two thirds of his sentence, that is, after nine months”.⁴⁹³ According to the OHCHR, this case is “emblematic of a pattern of killings of Palestinians who did not pose a threat at the time they were shot, as corroborated

⁴⁹¹ M. Zonszein, “VIDEO : Israeli soldier executes unarmed, wounded Palestinian attacker,” +972 Magazine (24 Mar. 2016), available at <https://tinyurl.com/yckhk8wf>.

⁴⁹² Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territories, Including East Jerusalem*, UN Doc. A/HRC/40/43 (14 Mar. 2019), para. 21.

⁴⁹³ *Ibid.*

by eyewitnesses and additional evidence, such as video footage, and in which the perpetrators were known”.⁴⁹⁴

2.174 In addition to using excessive force against Palestinians, Israeli authorities have, since the beginning of the occupation, retained the bodies of hundreds of Palestinians who either died in prison or were killed during security incidents. According to the Jerusalem Legal Aid & Human Rights Center, Israel keeps “some in freezers for years at the National Center of Forensic Medicine, or [it] bur[ies] them in graves with no headstones in what Palestinians call ‘the cemetery of numbers’”.⁴⁹⁵

2.175 Israel also uses the corpses of dead Palestinians as “bargaining chips” in negotiations or potential prisoner swap deals.⁴⁹⁶ For example, in May 2023, the *New York Times* carried a story reporting that Israel’s refusal to return the body of a prominent prisoner Khader Adnan, who died on a hunger strike, drew renewed attention to Israel’s practice of “keeping the remains of scores of Palestinians in freezers and numbered graves, partly as leverage to obtain the bodies of Israelis held by Palestinian groups”.⁴⁹⁷ Naftali Bennett, then Minister of Defence and later Prime Minister, frankly admitted in 2020: “We hoard the bodies of terrorists in order to hurt and put pressure on the other side”, and we “keep them with us as a bargaining chip”.⁴⁹⁸

⁴⁹⁴ *Ibid.*, para. 22.

⁴⁹⁵ R. Abdulrahim, “Palestinians Demand Israel Hand Over Body of Prominent Prisoner,” *New York Times* (5 May 2023), available at <https://tinyurl.com/3yvn3zkk>.

⁴⁹⁶ N. Erakat & R. Eghbariah, “The Jurisprudence of Death: Palestinian Corpses & the Israeli Legal Process,” *Jadaliyya* (8 Feb. 2023), available at <https://tinyurl.com/55auwhrb>.

⁴⁹⁷ R. Abdulrahim, “Palestinians Demand Israel Hand Over Body of Prominent Prisoner,” *New York Times* (5 May 2023), available at <https://tinyurl.com/3yvn3zkk>.

⁴⁹⁸ *Ibid.*

2.176 This practice denies Palestinian families the chance to bury their loved ones, including children, in accordance with their cultural and religious traditions.⁴⁹⁹ In the case of Yusuf Abu Jazar, his parents are “still waiting for Israeli authorities to return [their] son’s remains following a 2018 incident where Israeli forces seemingly shot and killed Yousef Abu Jazar, then 15 years old”.⁵⁰⁰ Yet, “Israeli authorities have not directly informed them of his death, and in the absence of an official notice from Israeli authorities confirming Yousef was indeed killed, they cling to the hope that he may still be alive.”⁵⁰¹



Figure 2.31: Yousef Abu Jazar, 15, believed to have been killed by Israeli forces in April 2018⁵⁰²

2.177 Palestinians in the West Bank not only must endure violence from Israeli forces, they have no hope of accountability. As the Israeli human rights organization B’Tselem has documented, there is a vanishing chance that the IDF

⁴⁹⁹ Defense for Children International, “Withheld bodies: No closure for Palestinian families waiting for their child’s remains” (3 Aug. 2020), available at <https://tinyurl.com/2t48b4xp>.

⁵⁰⁰ *Ibid.*

⁵⁰¹ *Ibid.*

⁵⁰² *Ibid.*

will hold conduct investigations into situations where “soldiers killed, injured, or beat Palestinians, used them as human shields, or damaged Palestinian property”⁵⁰³ or that anything will come of such investigations. Of 739 instances of alleged misconduct from 2000 to 2015, “in a quarter of these cases (182), no investigation was ever launched, in nearly half (343), the investigation was closed with no further action, and only in very rare instances (25), were charges brought against the implicated soldiers”.⁵⁰⁴ In other words, “the chance of a complaint leading to an indictment is just roughly 3%”.⁵⁰⁵ In July 2023, the *New York Times* reported that the rate of indictment is even lower in the most recently available statistics, according to which only “1.2 percent of complaints against officers in 2021 resulted in criminal indictments”.⁵⁰⁶

2.178 And when Palestinians attempt to seek civil remedies for these incidents, there is no “genuine opportunity to file for damages in Israeli courts”.⁵⁰⁷ B’Tselem explains that legislation exempting Israel from paying compensation and the relevant case law in Israeli courts have “almost completely eliminated the possibility of Palestinians receiving compensation for injury caused them by Israeli security forces”.⁵⁰⁸

⁵⁰³ B’Tselem, *No Accountability* (11 Nov. 2017), available at <https://tinyurl.com/6pzj6er6>.

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Ibid.*

⁵⁰⁶ A. Boxerman, “Israeli Court Acquits Police Officer Who Killed Autistic Palestinian Man,” *New York Times* (6 July 2023), available at <https://tinyurl.com/2s3numb7>.

⁵⁰⁷ B’Tselem, *No Accountability* (11 Nov. 2017), available at <https://tinyurl.com/6pzj6er6>.

⁵⁰⁸ *Ibid.*

D. ISRAEL'S CONDONING OF, AND FAILURE TO PREVENT AND PUNISH,
SETTLER VIOLENCE

2.179 Israeli authorities also tacitly, and sometimes explicitly, condone Jewish Israeli settler attacks on Palestinians in the West Bank. In the words of the OPT Special Rapporteur, these attacks “ha[ve] an inescapable impact on Palestinians’ lives in the West Bank, creating a lingering sense of terror and intimidation”.⁵⁰⁹ The majority of victims of settler violence are children, women and the elderly, who are “attacked as they performed their daily tasks—walking to school or the market, grazing their livestock, tending their fields or harvesting their crops”.⁵¹⁰ In certain instances, it has caused whole Palestinian communities to abandon their homes and flee.⁵¹¹ The OCHA has recorded the role and centrality of settler violence in the consolidation of settler presence in the OPT and in the subjugation of the local Palestinian population:

The temporal and geographical proximity between these violent attacks and takeover of new areas suggests that settler violence

⁵⁰⁹ UNGA, *Report of Special Rapporteur S.M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), para. 19.

⁵¹⁰ See, e.g., OCHA, *Unprotected: Israeli settler violence against Palestinian civilians and their property* (Dec. 2008), available at <https://tinyurl.com/us82byec> (“Approximately half of all Palestinian injuries from settler violence each year since 2006 have been made up of children, women, and the elderly over 70 years of age ... The majority of settler incidents recorded by OCHA since 2006 have been undertaken by groups of Israeli settlers against Palestinian civilians as they performed their daily tasks – walking to school or the market, grazing their livestock, tending their fields or harvesting their crops. Children as young as eight-years-old and the elderly as old as 95 years have been the targets of attack.”).

⁵¹¹ H. Shezaf, “‘I Left for My Children’: West Bank Palestinian Village Residents Flee Amid Ongoing Israeli Settler Violence,” *Haaretz* (24 May 2023), available at <https://tinyurl.com/2p9rsjaj> (noting that in May 2023, for example, about 200 residents of Ein Samia in the West Bank “decided to leave their home, which they have been inhabiting since the 1980s, due to ongoing Israeli settler violence”).

against Palestinians is not random but is often a calculated step towards settlement expansion.⁵¹²

2.180 Settler violence has increased in recent years. As reported by the OHCHR, between 1 November 2021 and 31 October 2022, “settler violence continued unabated—with 2 Palestinian men killed and 248 injured by settlers—while 2 Palestinian boys were killed either by Israeli security forces or settlers, who both used firearms simultaneously”.⁵¹³ In 2021 there were 496 attacks and in 2020 there were 358.⁵¹⁴ Women and girls, in particular, are subjected to harassment and violent attacks by settler; victims and witnesses report the frequent use of racist and sexist language by settlers and soldiers.⁵¹⁵

2.181 Although Israel is obligated to protect the occupied population, “the military permits settlers to be armed and rarely intervenes to protect Palestinians”.⁵¹⁶ In fact, Israeli security forces “have been documented standing by and observing violent attacks by settlers and, on occasion, collaborating with such attacks”.⁵¹⁷ Moreover, when violent incidents are brought to the attention of Israeli

⁵¹² OCHA, “The humanitarian impact of de facto settlement expansion: common features, conclusions and the way forward” (11 Mar. 2017), available at <https://tinyurl.com/3sudzn7m>.

⁵¹³ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 4.

⁵¹⁴ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 64.

⁵¹⁵ *Ibid.*, para. 59.

⁵¹⁶ *Ibid.*, para. 64 (citing Y. Kubovich & A. Harel, “Israeli army and police blame each other as settler violence rages on,” *Haaretz* (7 Feb. 2022), available at <https://tinyurl.com/37ku6k56>).

⁵¹⁷ *Ibid.*, para. 66.

officials, they are very rarely addressed.⁵¹⁸ The OHCHR reports that, as a result, Israeli settlers enjoy “a general sense of lawlessness and impunity”.⁵¹⁹

2.182 An episode that occurred in February 2023 in the wake of a Palestinian gunman’s killing of two Israeli settlers in the northern West Bank is illustrative. In “one of the most intense episodes of settler-led violence in memory, standing out even in a year with the deadliest start in the West Bank since 2000”, “[s]ettlers burned and vandalized at least 200 buildings in four Palestinian villages”.⁵²⁰ In the village of Huwara, “[h]undreds of settlers, some of them armed with knives and guns, set ablaze hundreds of cars and homes in the five-hour rampage”.⁵²¹ The settlers chanted “death to the Arabs, we want to wipe out Huwara”.⁵²²

⁵¹⁸ See, e.g., UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian Territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), p. 7; UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), p. 21.

⁵¹⁹ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 67.

⁵²⁰ P. Kingsley & I. Kershner, “Revenge Attacks After Killing of Israeli Settlers Leave West Bank in Turmoil,” *New York Times* (27 Feb. 2023), available at <https://tinyurl.com/y34z57m4>.

⁵²¹ *Ibid.*

⁵²² G. Mezzofiore *et al.*, “Israel’s military called the settler attack on this Palestinian town a ‘pogrom.’ Videos show soldiers did little to stop it,” *CNN* (15 June 2023), available at <https://tinyurl.com/2r7dxav7>.



Figure 2.32: An aerial view shows vehicles torched by Israeli settlers in an attack on Huwara, 26 February 2023⁵²³

2.183 Following a “monthslong CNN investigation, based on analysis of videos from the scene, exclusive testimony from an Israeli soldier, as well as interviews with seven eyewitnesses”, the news agency concluded that Israeli forces not only failed to intervene, but actively intervened to prevent Palestinians from defending themselves:

CNN found that, not only did the forces fail to stop the riots in Huwara, they did not protect residents as settlers set fire to Palestinian homes and businesses and blocked emergency services from responding. Instead, when residents threw rocks in reaction to the settlers’ aggression, Israeli forces fired at the Palestinians with

⁵²³ G. Mezzofiore, “Israel’s military called the settler attack on this Palestinian town a ‘pogrom.’ Videos show soldiers did little to stop it,” *CNN* (15 June 2023), available at <https://tinyurl.com/2r7dxav7>.

tear gas and stun grenades, according to analysis of the footage and eyewitness accounts.⁵²⁴

2.184 International observers and even one Israeli general have referred to the incident as a “pogrom”.⁵²⁵ Speaking about the violence, Huwara resident Ammar Damedi remarked: “This is the tax for living in Palestine”.⁵²⁶

2.185 Rather than condemn the violence, senior Israeli officials explicitly endorsed it. A few days after the attacks on Huwara, Israel’s Minister of Finance, Bezalel Smotrich, publicly stated “I think that Huwara needs to be erased”. But this should not be done by settlers, he clarified: “I think that the State of Israel needs to do it.”⁵²⁷

V. Discriminatory Application of Military Criminal Law in the West Bank

2.186 In the West Bank, there are two legal systems. One applies to Jewish Israeli settlers and another to Palestinians. Israeli domestic law applies to Jewish settlers, who are afforded full rights and protections guaranteed to citizens under domestic Israeli law.⁵²⁸ For Jewish Israeli settlers, the occupied West Bank is no different

⁵²⁴ G. Mezzofiore *et al.*, “Israel’s military called the settler attack on this Palestinian town a ‘pogrom.’ Videos show soldiers did little to stop it,” *CNN* (15 June 2023), available at <https://tinyurl.com/2r7dxav7>.

⁵²⁵ A. Stroehlein, “Daily Brief: A Pogrom in Palestine,” *Human Rights Watch* (1 Mar. 2023), available at <https://tinyurl.com/2c34wh64>.

⁵²⁶ P. Kingsley & I. Kershner, “Revenge Attacks After Killing of Israeli Settlers Leave West Bank in Turmoil,” *New York Times* (27 Feb. 2023), available at <https://tinyurl.com/y34z57m4>.

⁵²⁷ R. Ayyub & A. Sawafta, “Netanyahu under pressure from US, Israeli protests grow,” *Reuters* (1 Mar. 2023), available at <https://tinyurl.com/2fhv86hw>.

⁵²⁸ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 39. See also generally The Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank* (Oct. 2014), available at <https://tinyurl.com/4p3zdcpx>.

from Israel itself. These same rights, however, are not extended to Palestinians in the West Bank.⁵²⁹ Instead, they are subject to a distinct system of martial law, which offers few procedural and substantive protections.⁵³⁰

2.187 Human Rights Watch concluded that the “application of dual bodies of laws has created a reality where two people live in the same territory, but only one enjoys robust rights protection”.⁵³¹ The existence of a dual legal system has been characterized by the HRC as “institutionalized discrimination against Palestinians”.⁵³²

2.188 The former OPT Special Rapporteur Michael Lynk has highlighted how the military legal regime affects all facets of Palestinians’ lives:

The lives of the Palestinians in the West Bank are governed by more than 1800 military orders issued since 1967 by the Commander of the Israeli Defence Forces, covering such issues as security, taxation, transportation, land planning and zoning, natural resources, travel and the administration of justice.⁵³³

2.189 The existence of a military criminal justice system exclusively for Palestinians entails the application to them of a different set of criminal laws and procedural rights (**Section A**), permits the widespread practice of administrative

⁵²⁹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 40.

⁵³⁰ *Ibid.*, para. 41. See also UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/77/328 (14 Sept. 2022), p. 15.

⁵³¹ HRW 2021 Report, p. 86.

⁵³² Human Rights Council, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, UN Doc. A/HRC/12/48 (15 Sept. 2009), para. 206.

⁵³³ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41.

detention (**Section B**), and allows Israeli authorities to severely curtail Palestinians' civil and political rights (**Section C**).

A. THE DISCRIMINATORY MILITARY CRIMINAL LEGAL SYSTEM

2.190 Discrimination pervades “every aspect of the criminal law” Israel applies to Palestinians in the West Bank.⁵³⁴ Unlike the Israeli law applicable to Jewish Israeli settlers, “[t]he focus of the military legal system is the regulation of security, which covers such offences as participating in protests and non-violent civil disobedience, standard criminal acts, traffic violations, terrorism, membership in over 400 banned organizations, taking part in political meetings and engaging in civil society activities”.⁵³⁵

2.191 In addition to being subject to an entirely different set of laws, Palestinians also face limited fair trial and due process rights as compared to Jewish Israeli settlers.⁵³⁶ Palestinians face such discrimination from their very first interactions with the criminal justice system:

- When Palestinians in the West Bank are stopped and searched, none of the requirements that apply to Israeli settlers (such as obtaining a warrant for the search) apply;⁵³⁷

⁵³⁴ HRW 2021 Report, p. 86.

⁵³⁵ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41.

⁵³⁶ See Addameer, *In the case of The Palestinian People vs. Military Courts* (Mar. 2021), available at <https://tinyurl.com/d4ej7wby>; B'Tselem, *Presumed Guilty: Remand in Custody by Military Courts in the West Bank* (June 2015), available at <https://tinyurl.com/2sk3nnt6>.

⁵³⁷ HRW 2021 Report, p. 86.

- Once detained, Palestinians can be held for twice as long as Israeli settlers before they are required to be brought before a judge;⁵³⁸
- Israeli authorities can also “deny Palestinians access to counsel for twice as long as to settlers”.⁵³⁹

2.192 Those who are brought to trial face a system of military courts that falls short on nearly every dimension of due process rights.⁵⁴⁰ Palestinians are deprived of the right to be tried before an independent and impartial tribunal. The prosecutors, administrative officers, and, most importantly, judges in the military courts are all Israeli military officers.⁵⁴¹

2.193 Moreover, access to legal counsel is inadequate. Neither the lawyers nor the detainees are informed of the details of the evidence against them,⁵⁴² and military courts “do not provide the legal defense of detainees with the necessary documents and information to prepare for their defense”.⁵⁴³ Lawyers representing Palestinian

⁵³⁸ *Ibid.*, pp. 86-87.

⁵³⁹ *Ibid.*, p. 87.

⁵⁴⁰ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41; Addameer, *In the case of The Palestinian People vs. Military Courts* (Mar. 2021), available at <https://tinyurl.com/d4ej7wby>; B’Tselem, *Presumed Guilty: Remand in Custody by Military Courts in the West Bank* (June 2015), available at <https://tinyurl.com/2sk3nnt6>.

⁵⁴¹ See Addameer, “The Israeli Military Court System” (July 2017), available at <https://tinyurl.com/ysjx4pbe>.

⁵⁴² Amnesty International 2022 Report, p. 241.

⁵⁴³ Addameer, *In the case of The Palestinian People vs. Military Courts* (Mar. 2021), available at <https://tinyurl.com/d4ej7wby>, p. 20. See also B’Tselem, *Presumed Guilty: Remand in Custody by Military Courts in the West Bank* (June 2015), available at <https://tinyurl.com/2sk3nnt6>; Human Rights Watch, *Born Without Civil Rights* (Dec. 2019), available at <https://tinyurl.com/da7scynh>.

detainees are also regularly subject to movement restrictions and denied permission to meet with their clients.⁵⁴⁴

2.194 Trials are also conducted in Hebrew, which many Palestinians do not speak,⁵⁴⁵ and the military courts consistently fail to provide professionally trained interpreters.⁵⁴⁶

2.195 Unsurprisingly, “the conviction rate is over 99 per cent”.⁵⁴⁷

2.196 Children are particularly vulnerable under martial law. Israeli civil law “protects children against nighttime arrests, provides the right to have a parent present during interrogations, and limits the amount of time children may be detained before being able to consult a lawyer and to be presented before a justice”.⁵⁴⁸ In contrast, “Palestinian children in the West Bank enjoy far fewer protections”.⁵⁴⁹ Israeli forces “regularly arrest children during nighttime raids, interrogate them without a guardian present, and hold those as young as 12 in lengthy pretrial detention”.⁵⁵⁰ They are also frequently bound, blindfolded, strip-searched, subjected to physical violence and verbal abuse, and coerced to sign

⁵⁴⁴ Addameer, *In the case of The Palestinian People vs. Military Courts* (Mar. 2021), available at <https://tinyurl.com/d4ej7wby>, pp. 19-21.

⁵⁴⁵ *See ibid.*, pp. 18-19.

⁵⁴⁶ *See ibid.*, p. 17.

⁵⁴⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41.

⁵⁴⁸ HRW 2021 Report, p. 87.

⁵⁴⁹ *Ibid.*

⁵⁵⁰ *Ibid.*

confessions in Hebrew, a language that most Palestinian children do not understand.⁵⁵¹

2.197 The OHCHR reports that

of 80 children detained by Israeli security forces in 2017, 65 per cent were arrested in night raids, 94 per cent were hand-tied upon arrest, 78 per cent were blindfolded or hooded following arrest, 65 per cent were subjected to physical abuse, 66 per cent were strip-searched and 81 per cent were denied access to a lawyer prior to questioning.⁵⁵²

As reported by the OPT Special Rapporteur in June 2023, 82 percent of children were interrogated without a parent present, and “[p]arents are rarely informed of their children’s whereabouts upon arrest”.⁵⁵³

⁵⁵¹ Defense for Children International, “Military Detention,” available at <https://tinyurl.com/mrymp8vk>.

⁵⁵² Human Rights Council, *Implementation of Human Rights Council resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/40/39 (15 Mar. 2019), para. 33.

⁵⁵³ Human Rights Council, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/53/59 (9 June 2023), para. 67.



Figure 2.33: Israeli forces detain Palestinian Fevzi El-Junidi, 14, following clashes in the West Bank city Hebron, December 2017⁵⁵⁴

2.198 Each year, between 500-700 Palestinian children under the age of 18 are prosecuted in Israeli military courts.⁵⁵⁵ The most common charge is throwing stones, a crime that is punishable under military law by up to 20 years in prison, if committed with “intent to cause injury” and up to 10 years if committed “without intent to cause injury”.⁵⁵⁶

⁵⁵⁴ N. Ahituv, “‘Endless Trip to Hell’: Israel Jails Hundreds of Palestinian Boys a Year. These Are Their Testimonies,” *Haaretz* (16 May 2019), available at <https://tinyurl.com/yspfftk>.

⁵⁵⁵ Defense for Children International, “Military Detention” (last accessed: 16 July 2023), available at <https://tinyurl.com/mrymp8vk>.

⁵⁵⁶ *Ibid.*

2.199 The story of one family, recounted by the OHCHR, is illustrative of many aspects of Israel's military justice system as applied to children:

[T]hree brothers (15, 14 and 13 years of age) from a village in the West Bank close to Hallamish settlement were arrested, detained and ill-treated by Israeli security forces between September 2018 and April 2019. On 1 September 2018, Israeli security forces arrested the two elder brothers on suspicion of throwing stones. They were taken, handcuffed and blindfolded on the floor of a military jeep, to a military outpost inside Hallamish settlement. The boys reported to OHCHR that, at first, Israeli soldiers kicked them repeatedly in the abdomen and knees and, afterwards, a group of young settlers called in by soldiers hit them with sticks. The 14-year old was detained at Ofer prison and released after 15 days without being charged. The 15-year old spent four and a half months at Ofer prison, until he struck a plea bargain for stone-throwing. Having missed his first school term, he now attends school only occasionally. On 3 March 2019, Israeli security forces also arrested their 13-year old brother in the village outskirts. He was detained at Ofer prison and released after two days without being charged. He reported that, during his detention, he was shown a picture of his 14-year old brother and asked if he knew him. On 1 April, the 14-year old brother was reportedly by a water spring when four settlers grabbed him and brought him to Israeli soldiers, who blindfolded him and pressured him to admit to stone-throwing, under threat of his family being harmed and house being destroyed. Only at a later stage of the interrogation was he allowed to speak to a lawyer by telephone. He reportedly agreed to sign papers in Hebrew, a language that he does not understand, in order to bring the interrogation to an end. On 15 April 2019, after having previously raided the boy's house three times, Israeli security forces carried out a night raid at the house and arrested and detained the 15-year old brother again. The two elder brothers were released from Ofer prison on 29 April 2019, after pleading guilty.⁵⁵⁷

⁵⁵⁷ UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 19.

2.200 Another case that garnered international attention was that of 16-year-old Ahd Tamimi. In December 2017, Ahd was filmed attempting to kick and slap an Israeli soldier in full military gear in front of her home after she learned that her 15-year-old cousin had been shot in the head by Israeli troops.⁵⁵⁸ The OHCHR recounted:

The girl was arrested in the middle of the night and interrogated without the presence of her parents or lawyer. According to her lawyer, she was subjected to ill-treatment and threats during interrogation, and requests by the lawyer to release her on bail before and during the proceedings were refused. Following closed hearings, she accepted a plea bargain and was sentenced to eight months of imprisonment.⁵⁵⁹

⁵⁵⁸ “After prison release, Palestinian teen considers law study,” *Associated Press* (29 July 2018), available at <https://tinyurl.com/2nsnxzd7>.

⁵⁵⁹ Human Rights Council, *Implementation of Human Rights Council resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/40/39 (15 Mar. 2019), para. 34.



Figure 2.34: Ahed Tamimi, in handcuffs and prison uniform, being escorted into an Israeli military court, 15 January 2018⁵⁶⁰

B. ADMINISTRATIVE DETENTION

2.201 One of the most draconian and discriminatory components of the separate criminal justice system applicable to Palestinians is the practice of “administrative detention”. This practice allows Palestinians to be detained for security purposes “without charge or trial based on undisclosed evidence for indefinite periods, without an opportunity to meaningfully challenge the detention”.⁵⁶¹

2.202 Israeli military law provides that, even without the intervention of a judge, a military commander may authorize the “administrative” detention of a Palestinian individual not charged with a crime if the commander has reasonable grounds to

⁵⁶⁰ A. Sawafta, “Palestinian teen on trial for striking Israeli soldier agrees plea deal,” *Reuters* (21 Mar. 2018), available at <https://tinyurl.com/329drv7>.

⁵⁶¹ Human Rights Council, *Implementation of Human Rights Council resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/40/39 (15 Mar. 2019), para. 32.

believe that the individual “must be held in detention for reasons to do with regional security or public security”.⁵⁶² Detentions can be indefinitely extended if a military judge finds that the detention is “justified”,⁵⁶³ proceedings in which, as B’Tselem explains, “detainees have no real opportunity to mount a reasonable defense”.⁵⁶⁴ In contrast, “administrative detention has rarely been used to detain Jewish citizens of Israel”.⁵⁶⁵ In order to place Israeli settlers under administrative detention, there must be “reasonable grounds to presume that the security of the state or public security require the detention”.⁵⁶⁶ Additionally, “orders against Israeli settlers (and other Israeli citizens) must be reviewed within 48 hours by an Israeli civilian judge in a district court”.⁵⁶⁷

2.203 According to the OHCHR, as of 31 October 2022, Israel was holding 820 Palestinians in administrative detention without charge or trial—“the highest number since 2008, and a dramatic increase from the 500 in the previous reporting

⁵⁶² Israel, *Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651)*, art. 285, available at <https://tinyurl.com/bdduwba5>. See also Amnesty International 2022 Report, p. 241.

⁵⁶³ B’Tselem, *Presumed Guilty: Remand in Custody by Military Courts in the West Bank* (June 2015), available at <https://tinyurl.com/2sk3nnt6>, p. 15.

⁵⁶⁴ B’Tselem, *Administrative Detention* (last accessed: 12 July 2023), available at <https://tinyurl.com/ah5r3wjy>.

⁵⁶⁵ Amnesty International 2022 Report, p. 31.

⁵⁶⁶ *Ibid.*, p. 243.

⁵⁶⁷ *Ibid.*

period”.⁵⁶⁸ Among the victims of arbitrary detention and arrest are children as young as 12.⁵⁶⁹ Between 500–700 minors are held yearly.⁵⁷⁰

2.204 Data shows that, “while the vast majority of administrative detainees held between January 2011 and July 2020 received orders lasting up to a year, many others were held for up to two years and a minority for over that time”.⁵⁷¹ Some detainees have been held as long as eight years and one, Mazen Natsheh, was cumulatively held for ten and a half years between 1994 and 2015.⁵⁷²

2.205 Human rights organizations report that when Palestinians are administratively detained, they are subjected to torture and ill treatment, including beating and physical assault.⁵⁷³ The Committee against Torture has expressed its concern at the use of “stress positions and sleep deprivation” in the context of interrogations.⁵⁷⁴ Israel has entirely failed to address these concerns. Amnesty

⁵⁶⁸ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 40.

⁵⁶⁹ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 59.

⁵⁷⁰ *Ibid.*

⁵⁷¹ Amnesty International 2022 Report, p. 241.

⁵⁷² Addameer, *Administrative Detention in the Occupied Palestinian Territory: A Legal Analysis Report* (2016), available at <https://tinyurl.com/4vd9whjs>, p. 31.

⁵⁷³ See HRC, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 44.

⁵⁷⁴ CAT, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CAT/C/ISR/CO/5 (3 June 2016), para. 30 (“The Committee is concerned at allegations of torture and other cruel, inhuman or degrading treatment or punishment of persons deprived of liberty, including minors. According to these allegations, torture and ill-treatment are mostly perpetrated by law enforcement and security officials, mainly from the Israel Security Agency, the police and the Israeli Defence Forces, particularly during arrest, transfer and interrogation. In addition, the Committee remains concerned at allegations that Israel Security Agency interrogators continue to resort to interrogation methods that are contrary to the Convention, such as stress positions and sleep deprivation, and regrets the lack of clarity about the use of restraints during interrogations.”).

International reported that, as of 2017, *none* of the more than 1,000 torture complaints filed in the Israeli military court system since 2001 had been investigated.⁵⁷⁵

2.206 Evidence collected by Amnesty International and other human rights organizations shows that Israel does not use administrative detention to genuinely guard against security threats. Rather, Israel uses it to “detain individuals, including prisoners of conscience, solely for the non-violent exercise of their right to freedom of expression and association, and punish them for their views challenging the policies of the occupation”.⁵⁷⁶ Put simply, Israel uses administrative detention to “persecute Palestinians rather than as an extraordinary and selectively used preventative measure”.⁵⁷⁷

2.207 The case of Palestinian-French human rights activist Salah Hammouri is emblematic. Hammouri was arrested on 7 March 2021 and “subsequently placed under administrative detention for three months, which was extended twice, based on secret evidence”.⁵⁷⁸ Shortly after he wrote to the President of France protesting his detention, Israeli authorities categorized Hammouri as an “extremely dangerous prisoner”, making him subject to a number of restrictions, including solitary

⁵⁷⁵ Amnesty International, “Israel’s Occupation: 50 Years of Dispossession” (7 June 2017), available at <https://tinyurl.com/yc6nc7sc>.

⁵⁷⁶ Amnesty International 2022 Report, p. 242. See also Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/42 (21 Feb. 2018); Human Rights Watch, *Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank* (Nov. 2019), available at <https://tinyurl.com/da7scynh>. See also Amnesty International 2022 Report, p. 241 (“[P]ractice and evidence have shown that this is a pretext to persecute and deprive people of their fundamental rights and freedoms because they challenge Israel’s occupation and its policies.”).

⁵⁷⁷ Amnesty International 2022 Report, p. 241.

⁵⁷⁸ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 41.

confinement.⁵⁷⁹ In October 2021, seven months after his detention, his East Jerusalem residency permit was revoked for “breach of allegiance” to Israel.⁵⁸⁰ More than a year later, Israel deported Hammouri to France against his will.⁵⁸¹

2.208 Israel’s practice of administrative detention is routinely and roundly condemned by United Nations human rights experts and officials, who have repeatedly called upon Israel “to end the practice of administrative detention and to ensure that all administrative detainees are promptly charged or released”.⁵⁸²

2.209 Faced with no effective recourse to challenge their administrative detentions, some Palestinian detainees have resorted to hunger strikes, a step that has become “a last recourse for resistance against what Palestinians see as unjust incarcerations”.⁵⁸³ Khader Adnan, a prominent Palestinian prisoner, was imprisoned by Israel 12 times during his life, often under administrative detention.⁵⁸⁴ In 2023, he began a hunger strike to protest his detention.⁵⁸⁵ He died in an Israeli prison 87 days later.⁵⁸⁶

⁵⁷⁹ *Ibid.*

⁵⁸⁰ *Ibid.*

⁵⁸¹ OHCHR, *Press Release: Israeli deportation order against French-Palestinian activist Salah Hammouri could constitute war crime: UN experts* (2 Dec. 2022), available at <https://tinyurl.com/4fux4ce6>.

⁵⁸² Human Rights Council, *Implementation of Human Rights Council resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/40/39 (15 Mar. 2019), para. 32.

⁵⁸³ “Palestinian prisoner dies in Israel after long hunger strike,” *NPR* (2 May 2023), available at <https://tinyurl.com/zzkjyynu>.

⁵⁸⁴ OHCHR, *Press Release: Israel: UN experts demand accountability for death of Khader Adnan and mass arbitrary detention of Palestinians* (3 May 2023), available at <https://tinyurl.com/5yfmmmbkh>.

⁵⁸⁵ R. Abdulrahim, “Palestinian Detainee Dies in Israeli Prison After Hunger Strike,” *New York Times* (3 May 2023), available at <https://tinyurl.com/bdeyxwty>.

⁵⁸⁶ *Ibid.*

C. RESTRICTIONS ON CIVIL AND POLITICAL RIGHTS

2.210 Israel also uses the discriminatory dual legal system to curtail the civil and political rights of Palestinians in the West Bank.

2.211 Unlike Jewish Israeli settlers, Israeli citizenship rights are not extended to Palestinians. As such, they have no voting power to influence the military-legal system that exerts control over their lives.⁵⁸⁷

2.212 Moreover, under the military legal system, Palestinians have no freedom of speech, association, assembly or demonstration. As B'Tselem, the Israeli human rights organization, explains, Palestinians in the OPT “are not allowed to demonstrate; many associations have been banned; and almost any political statement is considered incitement”.⁵⁸⁸ While settlers enjoy freedom of speech, “which Israeli law restricts only if there is ‘a near certainty’ that it would ‘seriously jeopardize’ vital security interests”, Palestinians “can face up to ten years in prison for attempting to influence public opinion in a manner that ‘may’ harm public peace or public order”.⁵⁸⁹

2.213 Military orders also broadly define “security offenses” to include disturbance of the public order and participation in non-violent protests.⁵⁹⁰

⁵⁸⁷ B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 Jan. 2021), available at <https://tinyurl.com/4yzzwvuv>, p. 6 (noting that in 2003, the Israeli Knesset passed an order banning the issuance of Israeli citizenship to West Bank Palestinians who marry Israeli citizens); The Association for Civil Rights in Israel, *One Rule, Two Legal Systems* (Oct. 2014), available at <https://tinyurl.com/4p3zdcpx>.

⁵⁸⁸ B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 Jan. 2021), available at <https://tinyurl.com/4yzzwvuv>, p. 6.

⁵⁸⁹ HRW 2021 Report, p. 86.

⁵⁹⁰ See Addameer, “The Israeli Military Court System” (July 2017), available at <https://tinyurl.com/ysjx4pbe>.

Palestinians can be jailed for “participating in a gathering of more than ten people without a permit on an issue ‘that could be construed as political,’ while settlers can demonstrate without a permit unless it involves more than 50 people, takes place outdoors and involves ‘political speeches and statements’”.⁵⁹¹

VI. Oppression of Cultural and Religious Expression and Identity

2.214 As part of its settler-colonial enterprise, Israel is engaged in an ongoing effort to erase and supplant Palestinian cultural and religious identity in the OPT. As explained by the OPT Special Rapporteur, regimes of colonial domination have long been “achieved through cultural subordination of the natives”, since “any display of collective identity and (re)claimed sovereignty from the subjugated people represents a threat to the regime itself”.⁵⁹² In the case of the OPT, Israel is pursuing an “endeavour to ‘deconstruct and replace’ Palestine from the collective imagination through a combination of cultural appropriation and ... erasure”.⁵⁹³

2.215 In concrete terms, Israel implements its policy of cultural suppression and erasure in four main ways: the destruction and reinvention of the cultural and religious heritage of the OPT (**Section A**); the placing of restrictions on Palestinians’ access to religious sites, and their ability to freely worship and practice their religions (**Section B**); the restriction and censoring of expressions of Palestinian cultural identity, including the Palestinian flag, cultural celebrations, and education on Palestinian history (**Section C**); and the tolerance of hate speech

⁵⁹¹ HRW 2021 Report, p. 86.

⁵⁹² UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), paras. 13, 53.

⁵⁹³ *Ibid.*, para. 54.

and incitement targeting Palestinians, creating a climate of fear among Palestinians practicing their culture and religion (**Section D**).

A. DESTRUCTION AND REINVENTION OF CULTURAL HERITAGE

2.216 Since the beginning of the occupation in 1967, Israel has engaged in the destruction, erasure and reinvention of Palestinian cultural heritage in the West Bank (including East Jerusalem).

2.217 According to Amnesty International, this includes instances in which Israel has “irreversibly destroyed or damaged numerous Palestinian archaeological” and cultural heritage sites.⁵⁹⁴ The OPT Special Rapporteur explains that this practice can be traced to the very beginning of the occupation, and is directly linked to the replacement of Palestinian cultural sites with Jewish Israeli ones:

The Moroccan [Mughrabi] Quarter in the Old City of Jerusalem, destroyed at the beginning of the occupation to make space for the Wailing Wall esplanade, is one of the first recorded cases of Palestinian venues destroyed or seized and converted to Israeli cultural sites soon after June 1967.⁵⁹⁵

Israel’s destruction of the Mughrabi Quarter involved the “dynamiting and bulldozing of 135 houses dating from the fourteenth century”.⁵⁹⁶

⁵⁹⁴ Amnesty International 2022 Report, p. 192 (note 1060).

⁵⁹⁵ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 54.

⁵⁹⁶ Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem* (31 Aug. 1997), available at <https://tinyurl.com/5xjbn64y>, p. 13.



Figure 2.35: Israeli Government Press Office aerial picture taken on 12 June 1967 shows the remaining buildings in the Mughrabi Quarter in Jerusalem's Old City by the Western Wall and the Al-Aqsa mosque compound following the Six Day War⁵⁹⁷

2.218 Indeed, the Old City, located in East Jerusalem, has been a principal target for Israel's campaign to remake the culture and character of the OPT. As shown in the map below, the Old City is home to distinct Muslim, Christian, Jewish and Armenian quarters, and home to some of the holiest sites for Islam, Christianity and Judaism.

⁵⁹⁷ "Fears for remains of Jerusalem's lost Mughrabi quarter," *France 24* (12 Feb. 2023), available at <https://tinyurl.com/yzajz7zv>.

The Old City of Jerusalem

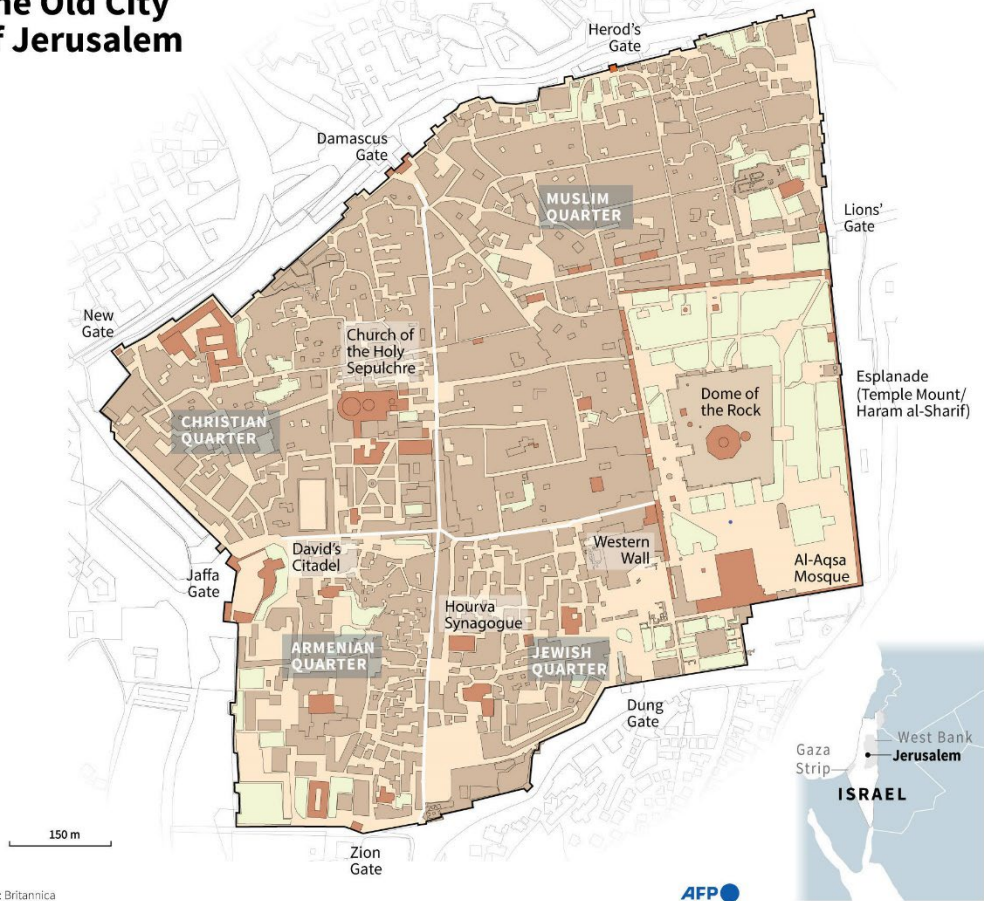


Figure 2.36: The Old City of Jerusalem and its Quarters⁵⁹⁸

2.219 Rather than respecting its multicultural and multi-religious character, Israel continues to put its non-Jewish heritage at risk. Beginning in 1968, Israel has excavated a tunnel along the western wall of al-Haram al-Sharif (also known as the al-Aqsa Mosque compound or the Temple Mount) to allow access to additional portions of the western wall either hidden underground or behind the buildings of the Muslim Quarter.⁵⁹⁹ This has given rise to “serious fears for the stability of the

⁵⁹⁸ *Ibid.*

⁵⁹⁹ Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem* (31 Aug. 1997), available at <https://tinyurl.com/5xjbn64y>, p. 16. See also M. Fischel, “Excavating Jerusalem’s Ancient Secrets at the City of David,” *ISRAEL21c* (1 Sept. 2022), available at <https://tinyurl.com/5d73vpnf>.

Islamic monuments [*i.e.*, al-Haram al-Sharif], particularly following the appearance of cracks in the walls and the partial collapse of some of the buildings”.⁶⁰⁰ As recently as June 2022, the Director-General of the Jerusalem Waqf, an organ of Jordan that administers the al-Haram al-Sharif, “warned that the mosque could be in danger of collapse if the digging continued at its current intensity”.⁶⁰¹

2.220 These and other excavations have been condemned by numerous UN bodies. As far back as 1981, the UN General Assembly determined that the excavations “seriously endanger the historical, cultural and religious sites of Jerusalem”.⁶⁰² The UN Educational, Scientific and Cultural Organization (“UNESCO”) has issued similar condemnations on dozens of occasions.⁶⁰³ Most recently, in May 2023, the UNESCO Executive Board expressed its regret at “the failure of the Israeli occupying authorities to cease the persistent excavations, tunneling, works and projects in East Jerusalem, particularly in and around the Old City of Jerusalem”.⁶⁰⁴ Despite repeated efforts, Israeli authorities have refused to

⁶⁰⁰ Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem* (31 Aug. 1997), available at <https://tinyurl.com/5xjbn64y>, p. 16.

⁶⁰¹ M. Najib, “Jerusalem’s Al-Aqsa Mosque ‘in danger of collapsing’ due to Israeli excavation work: Site official,” *Arab News* (24 June 2022), available at <https://tinyurl.com/bddz4hb7>. See also “Israeli excavations and blocking of restoration eat away at the fabric of Al-Aqsa Mosque,” *Middle East Monitor* (23 Feb. 2023), available at <https://tinyurl.com/2ubrs8hp>.

⁶⁰² UNGA, Resolution 36/15, *Recent developments in connection with excavations in eastern Jerusalem*, UN Doc. A/RES/36/15 (28 Oct. 1981) (Dossier No. 614), Preamble.

⁶⁰³ UNESCO, *Decision adopted by the Executive Board of UNESCO at its 216th Session* (10-24 May 2023) (hereinafter, “UNESCO 2023 Board Decision”) available at <https://tinyurl.com/38sje3y3>, p. 42, para. 7 (“recalling the twenty-three decisions of the Executive Board ... and the eleven World Heritage Committee Decisions”).

⁶⁰⁴ UNESCO 2023 Board Decision, p. 42, para. 8.

permit the establishment of a UNESCO monitoring mechanism in East Jerusalem.⁶⁰⁵

2.221 Similar excavations, construction works, and alterations threaten other Palestinian sites in the West Bank, affecting the “authenticity and integrity” of the sites, and their “original character”.⁶⁰⁶ Currently, four cultural heritage sites in the OPT are listed on UNESCO’s list of World Heritage in Danger, including in Jerusalem and Hebron.⁶⁰⁷ In Hebron, for example, the Ibrahimi Mosque has been partially converted into a synagogue,⁶⁰⁸ with the Wall encircling the site.⁶⁰⁹

2.222 As the UN Fact-Finding Mission on Israeli Settlements in the OPT has observed, “policies and acts aimed at altering the composition of Jerusalem and Hebron by erasing cultural heritage on the basis of religious affiliation ... are being carried out with the involvement of the Government of Israel, with pernicious effects”.⁶¹⁰

2.223 Other instances of destruction of Palestinian cultural and religious sites have occurred in the course of Israel’s security operations and armed attacks. For

⁶⁰⁵ *Ibid.*, p. 42, para. 9.

⁶⁰⁶ *Ibid.*, p. 43, paras. 14-15.

⁶⁰⁷ UNESCO World Heritage Committee, “State of conservation of the properties inscribed on the List of World Heritage in Danger,” UNESDOC WHC/21/44.COM/7A.Add.2 (12 July 2021), pp. 2, 6, 9. The sites are: the Old City of Jerusalem and its Walls, the Al-Haram Al-Ibrahimi / Tomb of the Patriarchs in Hebron, and Palestine: Land of Olives and Vines (Cultural Landscape of Southern Jerusalem).

⁶⁰⁸ See, e.g., OHCHR, *Press Release: Israel: UN expert condemns brutal attacks on Palestinians at Al-Aqsa Mosque* (6 Apr. 2023), available at <https://tinyurl.com/pwu2xk6s>.

⁶⁰⁹ UNESCO 2023 Board Decision, p. 43, paras. 14-15.

⁶¹⁰ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 61.

example, Israel “enforced the siege of the Church of the Nativity in Bethlehem in 2004, destroying parts of the Church”.⁶¹¹ Reports have also documented extensive destruction of cultural and religious sites during Israel’s armed attacks on Gaza.⁶¹² In its May 2021 attack on Gaza alone, Israel damaged or destroyed “124 places of worship,” including churches and mosques, as well as archaeological sites and ruins.⁶¹³

2.224 In addition to the outright destruction and replacement of heritage, Amnesty International reports that “Israeli authorities found and excavated 980 archaeological sites” in the West Bank, “including 349 in East Jerusalem, between 1967 and 2007”.⁶¹⁴ These excavations, carried out without the consent of the Palestinian population of the OPT, are often promoted by Israeli authorities in order to “reinforce the connection between the ‘Land of Israel’” and the OPT, with a focus on “sites support[ing] Israeli / Jewish cultural heritage in the West Bank” and an “over-emphasis of biblical archaeology, while entrenching the under-representation of Muslim and other heritage”.⁶¹⁵

⁶¹¹ Amnesty International 2022 Report, p. 192 (note 1060).

⁶¹² Al-Haq, *Cultural Apartheid: Israel’s Erasure of Palestinian Heritage in Gaza* (Jan. 2022), available at <https://tinyurl.com/54cnc9cx>.

⁶¹³ *Ibid.*, pp. 10-11.

⁶¹⁴ Amnesty International 2022 Report, pp. 191-192.

⁶¹⁵ Diakonia International Humanitarian Law Resource Centre, *Occupation Remains: A Legal Analysis of Israeli Archeology Policies in the West Bank: An International Law Perspective* (Dec. 2015), available at <https://tinyurl.com/4wby4n3n>, p. 29. See also Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 59 (“It has been alleged that these archaeological excavations are intended to emphasize Jewish cultural heritage while disregarding – or worse undermining – the rich heritage of other cultures that have contributed to the millenary history of the city.”).

B. RESTRICTIONS ON ACCESS TO RELIGIOUS SITES AND ABILITY TO WORSHIP

2.225 Israel has regularly impeded and restricted Muslim and Christian worshippers' ability to access holy sites in Jerusalem, despite having recognized the binding nature of "specific guarantees of access to the Christian, Jewish and Islamic Holy Places".⁶¹⁶

2.226 According to the UN Special Rapporteur on freedom of religion or belief, as a result of the "elaborate system" restricting the movement of Palestinians in the OPT, "millions of Muslims and Christians have reportedly been impeded since 1993 from worshipping at some of the sites they consider to be their most holy places in the world, especially in Jerusalem".⁶¹⁷

2.227 Since the beginning of the occupation in 1967, for example, Israel has regularly entirely or partially prohibited Muslims from worshipping at al-Haram al-Sharif.⁶¹⁸ Although the Jerusalem Waqf administers al-Haram al-Sharif and other Islamic holy places,⁶¹⁹ Israel is in effective control of access to them.⁶²⁰ Israeli authorities frequently limit access to the site to Muslims over a certain age,

⁶¹⁶ *Wall Advisory Opinion*, para. 129. See General Armistice Agreement between Israel and Jordan (3 Apr. 1949) (hereinafter, "**Israel-Jordan General Armistice**"), available at <https://tinyurl.com/mrfshwjx>, art. VIII(2) (recognizing that "agreement in principle already exists ... [on] free access to the Holy Places"); Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan (26 Oct. 1994) (hereinafter, "**Israel-Jordan Peace Treaty**"), available at <https://tinyurl.com/yc2uc4ve>, art. 9(1) (expressly obliging Israel to "provide freedom of access to places of religious and historical significance").

⁶¹⁷ Human Rights Council, *Report of Special Rapporteur A. Jahangir on freedom of religion or belief*, UN Doc. A/HRC/10/8/Add.2 (12 Jan. 2009), para. 26.

⁶¹⁸ Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem* (31 Aug. 1997), available at <https://tinyurl.com/5xjbn64y>, p. 17.

⁶¹⁹ *Ibid.*, p. 16.

⁶²⁰ *Ibid.*

especially during religiously significant times such as the Muslim holy month of Ramadan.⁶²¹

2.228 Israel has done the same with Christian holy sites. In 2022 and 2023, for example, Israel restricted Christians' access to the Holy Light Ceremony in the Church of Holy Sepulchre, one of the most important Orthodox Christian ceremonies.⁶²²

2.229 Some holy sites of importance to all three monotheistic faiths are open only to Jews, such as the World Heritage Site of Bilal Ibn Rabah Mosque / Rachel's Tomb in Bethlehem, where UNESCO has condemned "the strict ban on access of Palestinian Christian and Muslim worshippers".⁶²³

2.230 These restrictions on access to holy sites are often enforced with "excessive force".⁶²⁴ During Ramadan, in April 2023, according to the OPT Special Rapporteur, "Israeli forces violently entered Al-Aqsa Mosque, used stun grenades and tear gas, fired sponge-tipped bullets, and indiscriminately beat Muslim

⁶²¹ See, e.g., Human Rights Council, *Report of Special Rapporteur A. Jahangir on freedom of religion or belief*, UN Doc. A/HRC/10/8/Add.2 (12 Jan. 2009), para. 28; "Tension Overshadows Ramadan Prayers in Jerusalem," *VOA* (27 Oct. 2009), available at <https://tinyurl.com/35dyunf6>; UN Division for Palestinian Rights, "Chronological Review of Events Relating to the Question of Palestine" (31 July 2011), available at <https://tinyurl.com/mpjdmeb5>, para. 1 ("Israeli police limited access to the Al-Aqsa and Dome of the Rock Mosques in Jerusalem for Muslim men under the age of 45 as a precautionary measure, a spokeswoman said."); "Al-Aqsa: Israel bars Muslim men under 50 amid protests," *Al Jazeera* (21 July 2017), available at <https://tinyurl.com/m83bjvct>.

⁶²² A. Horowitz & L. Kellman, "Church: Israel limiting rights of 'Holy Fire' worshippers," *Associated Press* (12 Apr. 2023), available at <https://tinyurl.com/36phzbf9>; "Holy Fire celebrated by Christians in Jerusalem amid Israeli police restrictions," *BBC* (15 Apr. 2023), available at <https://tinyurl.com/298wtbfe>; J. Krauss, "Israeli restrictions on 'Holy Fire' ceremony ignite Christian outrage," *Los Angeles Times* (23 Apr. 2022), available at <https://tinyurl.com/ymc33x57>.

⁶²³ UNESCO 2023 Board Decision, p. 43, para. 15.

⁶²⁴ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements*, UN Doc. A/HRC/47/57 (29 July 2021), para. 7.

worshippers—including elderly people and women—with batons and rifle butts. At least 450 Palestinian men were reportedly arrested, and some were kicked and slapped by escorting soldiers as they were led out of the Haram Al-Sharif compound in handcuffs”.⁶²⁵ Also in April 2023, during the Orthodox Christian Holy Week, Israeli police violently enforced access restrictions to the Church of the Holy Sepulchre. As reported by *Haaretz*: “Footage showed Israeli police dragging and beating several worshippers, thrusting a Coptic Priest against the stone wall and tackling one woman to the ground.”⁶²⁶

2.231 In addition to perpetrating violence directly against worshippers, Israel fails to prevent and punish violence by Jewish Israeli settlers against Christians and Muslims, their holy sites, and their property. The UN Fact-Finding Mission on Israeli Settlements in the OPT reported in 2013 that “since 2008, mosques and Christian churches have been targeted ... including at least nine ... arson attacks against Palestinian mosques and 21 incidents where graffiti was used to desecrate mosques, churches and burial grounds with provocative slogans of a racist or a sacrilegious nature, intended to inflame the situation”.⁶²⁷ According to the *Associated Press*, “2023 is shaping up to be the worst year for Christians [in Jerusalem] in a decade”.⁶²⁸ There have been “at least seven serious cases of

⁶²⁵ OHCHR, *Press release: Israel: UN expert condemns brutal attacks on Palestinians at Al-Aqsa Mosque* (6 Apr. 2023), available at <https://tinyurl.com/22c5pxet>. See also “Israel/OPT: Second night of horror at al-Aqsa mosque,” *Amnesty International* (6 Apr. 2023), available at <https://tinyurl.com/2s3ntskz>.

⁶²⁶ N. Hasson, “Israeli Police Violently Beat Several Holy Fire Worshippers Trying to Defy Capacity Limits,” *Haaretz* (15 Apr. 2023), available at <https://tinyurl.com/mv6kjdrb>.

⁶²⁷ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 60.

⁶²⁸ I. Debre, “Holy Land Christians say attacks rising in far-right Israel,” *Associated Press* (13 Apr. 2023), available at <https://tinyurl.com/s4zxtxfy>.

vandalism of church properties from January to mid-March – a sharp increase from six anti-Christian cases recorded in all of 2022.”⁶²⁹ By way of example:

In March, a pair of Israelis burst into the basilica beside the Garden of Gethsemane, where the Virgin Mary is said to have been buried. They pounced on a priest with a metal rod before being arrested.

In February, a religious American Jew yanked a 10-foot rendering of Christ from its pedestal and smashed it onto the floor, striking its face with a hammer a dozen times at the Church of the Flagellation on the Via Dolorosa, along which it’s believed Jesus hauled his cross toward his crucifixion. ‘No idols in the holy city of Jerusalem!’ he yelled.

Armenians found hateful graffiti on the walls of their convent. Priests of all denominations say they’ve been stalked, spat on and beaten during their walks to church. In January, religious Jews knocked over and vandalized 30 graves marked with stone crosses at a historic Christian cemetery in the city.⁶³⁰

C. RESTRICTING AND CENSURING EXPRESSIONS OF PALESTINIAN CULTURAL IDENTITY

2.232 Israeli policies and practices ban or suppress symbols and manifestations of Palestinian culture, history and identity.

2.233 Israel has, for example, banned Palestinian textbooks and closed Palestinian schools for teaching Palestinian history. As observed by the UN Special Rapporteur on freedom of expression, “sections of textbooks used in Palestinian schools have been censored by the Israeli Ministry of Education”.⁶³¹ Similarly, the OPT Special

⁶²⁹ *Ibid.*

⁶³⁰ *Ibid.*

⁶³¹ Human Rights Council, *Report of Special Rapporteur F. La Rue on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/20/17/Add.2 (11 June 2012), para. 93.

Rapporteur noted that “attempts to erase the Palestinian character of what is left of Palestinian ancestral land include: the elimination of Palestinian history in East Jerusalem schools” and “the revocation of licences to Palestinian schools not adhering to Israeli curriculum policies”.⁶³²

2.234 Israel also bans and prohibits Palestinian cultural gatherings, events and organizations.⁶³³ The UN Secretary-General found in 2019 that “[i]n East Jerusalem, Israeli authorities cancelled or closed several Palestinian civic or cultural events for being allegedly funded or sponsored by the Palestinian Authority”.⁶³⁴ This echoes similar findings in 2012 that “[v]arious Arab cultural events and activities in East Jerusalem have reportedly been prohibited by the Israeli authorities”.⁶³⁵

2.235 Palestinian flags and other symbols of Palestinian identity are also targeted. The OPT Special Rapporteur explained in 2022 that “Palestinian ‘symbols’, like the Palestinian flag, are systematically attacked and torn down, in public places, during public events, protests and even funerals, with the display of Palestinian national identity being *de facto* banned”.⁶³⁶ As of 2023, this *de facto* ban on the Palestinian flag has become official Israeli policy. Israel’s Security Minister, Itamar Ben-Gvir, formally instructed Israeli police to remove Palestinian flags

⁶³² UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 54.

⁶³³ *Ibid.*, paras. 53-55.

⁶³⁴ UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 36.

⁶³⁵ Human Rights Council, *Report of Special Rapporteur F. La Rue on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/20/17/Add.2 (11 June 2012), para. 95.

⁶³⁶ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 53.

from all public spaces: “It cannot be that lawbreakers wave terrorist flags, incite and encourage terrorism, so I ordered the removal of flags supporting terrorism from the public space”.⁶³⁷

D. TOLERATION OF HATE SPEECH

2.236 Israel tolerates rampant hate speech and incitement against Palestinians by government officials and private individuals, the result of which is to denigrate their cultural and religious identity, create a climate of fear, and encourage similar forms of hatred amongst the populace directed at Palestinians. In 2020, the CERD Committee observed that there has been a “tide of racist hate speech in public discourse, in particular by public officials, political and religious leaders, in certain media outlets and in school curricula and textbooks”.⁶³⁸ It also noted a “proliferation of racist and xenophobic acts that in particular target non-Jewish minorities, especially Palestinian citizens of Israel [and] Palestinians residing in the Occupied Palestinian Territories”.⁶³⁹

2.237 By way of example only, the UN Secretary-General reported on the following incidents of incitement and hate speech against Palestinians by Israeli officials between just March and June 2022:

- An “inflammatory annual flag march through the Damascus Gate and the Muslim quarter was approved by Israeli authorities and went ahead on 29 May”;
- “At a high school in [a] West Bank settlement, a deputy minister in the Government of Israel said that ‘if there were a button you could press

⁶³⁷ A. Rabinovitch, “Israel’s Ben-Gvir tells police to remove Palestinian flags from public space,” *Reuters* (8 Jan. 2023), available at <https://tinyurl.com/2p92hrrv>.

⁶³⁸ 2020 CERD Concluding Observations, para. 26(a).

⁶³⁹ *Ibid.*, para. 26(b).

that would make all the Arabs disappear ... I would press that button””;
and

- “Speaking at a plenary session of the Knesset, a member of the Knesset threatened Israeli Arab students who flew Palestinian flags at Israeli universities, telling them to ‘remember ... your Nakbah’ in 1948, adding that, ‘if you don’t calm down, we will teach you a lesson that will not be forgotten.’”⁶⁴⁰

VII. Restrictions on the Development of the Palestinian Economy and Exploitation of the OPT’s Natural Resources

2.238 Israel not only restricts the development of the Palestinian economy through its policies and practices in the OPT, it also uses the occupied territories for its own economic benefit, by exploiting its natural resources and carrying out economic activities in the OPT.

2.239 *First*, Israel’s policies described in the preceding sections—especially those aimed at controlling the land, land use, infrastructure and the Palestinian people’s freedom of movement—severely constrain the Palestinian economy. Indeed, “the largest and most visible constraint on Palestinian development is the occupation”.⁶⁴¹

2.240 As explained in Section III(B) above, Israel’s blockade has transformed Gaza into an “unliveable” open-air prison, into which the import of goods are

⁶⁴⁰ UNSC, *Implementation of Security Council resolution 2334 (2016)*, UN Doc. S/2022/504 (22 June 2022) (Dossier No. 1397), paras. 72, 74-75 (covering the reporting period of 19 March to 16 June 2022, *see* para. 1).

⁶⁴¹ International Labour Organization, *The Occupied Palestinian Territory: An Employment Diagnostic Study* (2018), available at <https://tinyurl.com/4s4xvhjr>, p. 21. *See also* UN Country Team, *Leave no one behind: A perspective on vulnerability and structural disadvantage in Palestine* (2016), available at <https://tinyurl.com/bdfn577d>, p. 11.

limited to “humanitarian” materials.⁶⁴² Under these conditions, there is no hope of economic development: factories are bombed out or shuttered; most of the sea cannot be fished; large swathes of farming areas are restricted by the “buffer zone”; and agricultural exports are often allowed to perish in the heat while they undergo “security” inspections.⁶⁴³ Unemployment hovers around 50 percent.⁶⁴⁴ In 2020, the UN Conference on Trade and Development (“UNCTAD”)

[A]ssessed the impact of the prolonged Israeli blockade and economic and movement restrictions on poverty and socioeconomic conditions in Gaza. It estimated the cumulative economic cost of these factors and of military operations at \$16.7 billion (in constant 2015 United States dollars), equivalent to six times the value of Gaza GDP [(gross domestic product)], or 107 per cent of Palestinian GDP, in 2018. In addition, the poverty rate in Gaza could have been 15 per cent in 2017 instead of the actual rate of 56 per cent.⁶⁴⁵

2.241 The economy of the West Bank is under a similar stranglehold. For example, “as a result of mobility restrictions, Palestinians lose 60 million work hours per year, equivalent to [US]\$274 million”.⁶⁴⁶ And, as explained above, the land available for Palestinian agricultural activities has shrunk as Israel’s settlements have expanded.⁶⁴⁷ Israel’s land policies have also resulted in the

⁶⁴² See *supra* paras. 2.94-2.96.

⁶⁴³ See *supra* § III(B).

⁶⁴⁴ See *supra* para. 2.88.

⁶⁴⁵ UNGA, *Economic costs of the Israeli occupation for the Palestinian people: the toll of the additional restrictions in Area C, 2000-2020*, UN Doc. A/77/295 (16 Aug. 2022) (Dossier No. 489), para. 24 (citing UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade* (Dec. 2020), available at <https://tinyurl.com/2p8d893a>).

⁶⁴⁶ UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: Arrested Development and Poverty in the West Bank* (Dec. 2021), available at <https://tinyurl.com/3cu8r8n8>, p. 9.

⁶⁴⁷ See *supra* para. 2.49.

destruction of approximately “two-thirds of all grazing land, and more than 2.5 million productive trees”,⁶⁴⁸ including 800,000 olive trees.⁶⁴⁹

2.242 The inevitable consequence of Israel’s land policies is the precipitous contraction of Palestinian agriculture—the integral driver of the Palestinian economy. Its share in Palestine’s GDP decreased from 33.2 percent in 1972 to 8.1 percent in 2019 and around four percent in recent years.⁶⁵⁰

2.243 As the UN Economic and Social Commission for Western Asia (“ESCWA”) put it, these policies are “in themselves ... enough to incapacitate the normal operation of market forces in the Palestinian economy. However, their impact is multiplied when coupled with measures that specifically target Palestinian economic activity.”⁶⁵¹ According to ESCWA:

These include restrictions over the use of natural resources, massive resource transfers from the de-developed Palestinian economy to the developed Israeli economy, inhibition of business activities by an imposed regulatory regime, fiscal compression and diversion, severance of the Palestinian economy from its natural environment and markets, tying the fortunes of Palestinian labour to the Israeli economy, fragmentation of the Palestinian market, and raising transaction costs.⁶⁵²

⁶⁴⁸ UN ESCWA, *Palestine Under Occupation III: Mapping Israel’s Policies and Practices and their Economic Repercussions in the Occupied Palestinian Territory* (June 2022) (hereinafter, “**ESCWA 2022 Report**”), available at <https://tinyurl.com/2e9p4eje>, p. 21.

⁶⁴⁹ UN Trade and Development Board, *Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*, UN Doc. TD/B/63/3 (28 Sept. 2016), para. 42(d).

⁶⁵⁰ See ESCWA 2022 Report, p. 42; UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/77/328 (14 Sept. 2022), para. 72.

⁶⁵¹ ESCWA 2022 Report, p. 36.

⁶⁵² *Ibid.*

2.244 Moreover, Israel systematically deprives the Palestinian Authority of the ability to adopt and implement policies to promote economic development. As explained by the UN Country Team in the OPT:

The Palestinian government has no control over its borders – land, air or sea – or of its customs revenues. It does not have its own currency or authority to print money. It lacks access and policy prerogative over Area C. ... The PA’s fiscal space is restricted. A major part of the PA’s revenue (60%-70%) comes from the clearance revenues system, in which all taxes and revenues due at borders, seaports and by air on Palestinian goods and services are collected by the Israeli fiscal authorities on behalf of the PA in return for a 3% administrative charge to Israel.⁶⁵³

2.245 Israel even goes so far as to suspend periodically its transfer of hundreds of millions of dollars of these tax revenues as retaliation against the Palestinian Authority.⁶⁵⁴ Most recently, this tactic was used to “sanction” the Palestinian Authority for the General Assembly’s request for an advisory opinion by the Court in the present proceedings.⁶⁵⁵

2.246 Under these conditions, the Palestinian Authority has no “economic policy space to promote growth of the Palestinian economy”,⁶⁵⁶ such as through public spending or the promotion of trade and foreign direct investment.

2.247 *Second*, even as it actively chokes the Palestinian economy in the OPT, Israel both freely exploits the natural resources there for its own benefit and incentivizes the development of Israeli industry in the OPT. The OPT Special

⁶⁵³ UN Country Team, *Leave no one behind: A perspective on vulnerability and structural disadvantage in Palestine* (2016), available at <https://tinyurl.com/bdfn577d>, p. 12.

⁶⁵⁴ ESCWA 2022 Report, pp. 37, 48.

⁶⁵⁵ “Israel to Withhold PA tax revenue, impose other sanctions after Abbas’s UN successes,” *Times of Israel* (6 Jan. 2023), available at <https://tinyurl.com/4yn58e3r>.

⁶⁵⁶ ESCWA 2022 Report, p. 37.

Rapporteur has explained that Israel treats the OPT's natural resources just as "a sovereign country would use its own assets".⁶⁵⁷ This is especially true with regard to water, hydrocarbons and minerals.

2.248 **Water.** Israel controls all sources of natural fresh water in the West Bank.⁶⁵⁸ In exercising this control, the Israeli national water company, Mekorot, "prioritizes Israeli settlements to ensure their permanent water supply, [including] during summer droughts".⁶⁵⁹ As a result, Jewish Israeli settlers enjoy access to water comparable to those living in developed countries.⁶⁶⁰ In contrast, Palestinian communities in Area C that Mekorot also serves endure lengthy water shortages.⁶⁶¹

2.249 In Areas A and B of the West Bank, where the Palestinian Authority is responsible for water provision,⁶⁶² Israel impedes it from adequately doing so by blocking "Palestinian projects relating to developing and maintaining water

⁶⁵⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation*, UN Doc. A/HRC/40/73 (30 May 2019), para. 56.

⁶⁵⁸ This was achieved through Military Order No. 92 of 1967, which remains in force today. See Human Rights Council, *Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/48/43 (15 Oct. 2021), para. 18.

⁶⁵⁹ *Ibid.*, para 32.

⁶⁶⁰ On average, Israelis, including those living in settlements, use 247 liters of water per day per person. In comparison, a French person uses about 290 liters of water per day, while a Singaporean person uses about 141 liters per day. See US Centers for Disease Control and Prevention, "Water Use Around the World" (last updated: 2 Jan. 2020), available at <https://tinyurl.com/46ev2nsv>; Public Utilities Board, "Singapore Water Story" (last accessed: 6 July 2023), available at <https://tinyurl.com/2rra4fmd>.

⁶⁶¹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation*, UN Doc. A/HRC/40/73 (30 May 2019), para. 51; Amnesty International, "Israel's Occupation: 50 Years of Dispossession" (7 June 2017), available at <https://tinyurl.com/yc6nc7sc>.

⁶⁶² Human Rights Council, *Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/48/43 (15 Oct. 2021), para. 28.

infrastructure”.⁶⁶³ To make matters worse, Israeli authorities have destroyed and confiscated water infrastructure in the West Bank and allowed Israeli settlers to take over, destroy or block Palestinian access to water resources.⁶⁶⁴

2.250 As a result of Israel’s measures, Palestinians in the West Bank face chronic shortages of water. The average Palestinian there uses 73 litres per day, well below the World Health Organization (“WHO”)’s 100-litre per day recommendation.⁶⁶⁵ This figure is also at least four times lower than the amount of water Jewish Israeli settlers use each day.⁶⁶⁶ In 2021, the OHCHR reported that approximately 660,000 Palestinians in the West Bank—approximately 13 percent of the total Palestinian population there—have limited access to water and roughly 140,000 have no connection to a water network and are thus “at high risk for water scarcity”.⁶⁶⁷

2.251 Palestinians living in East Jerusalem also face severe restrictions in accessing water under Israeli control. While those living in certain parts of the city are serviced by the Water Authority of Israel, “older East Jerusalem houses and structures are not connected to any water grid”.⁶⁶⁸ The HRC reported that Palestinians in East Jerusalem have access to roughly four times less water than Israeli settlers do in the neighbouring settlement of Ma’ale Adumim.⁶⁶⁹

⁶⁶³ *Ibid.* See also *ibid.*, paras. 29-30.

⁶⁶⁴ *Ibid.*, paras. 31, 34.

⁶⁶⁵ Amnesty International, “The Occupation of Water” (29 Nov. 2017), available at <https://tinyurl.com/428hpfv8>.

⁶⁶⁶ *Ibid.*

⁶⁶⁷ Human Rights Council, *Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/48/43 (15 Oct. 2021), para. 26.

⁶⁶⁸ *Ibid.*, para. 41.

⁶⁶⁹ *Ibid.*, para. 32.

2.252 **Hydrocarbons.** Israel also prevents Palestinians from developing “energy reserves located within their land and coastal waters”.⁶⁷⁰ This includes oil reserves in Area C as well as natural gas off the Gaza coast. These resources are estimated to be worth hundreds of billions of dollars and belong to the Palestinian people.⁶⁷¹

2.253 According to a study prepared by UNCTAD in 2019, however, Israel has “de facto integrated [the Gaza natural gas fields] ... into Israel’s offshore installations”, which are “linked to Israel’s energy transport corridor”.⁶⁷² Although Israel made a statement to the media in June 2023 announcing that it preliminarily approves of the exploitation of some of Gaza’s natural gas reserves by the Palestinian Authority, it has said it will impose as yet undisclosed measures to “preserv[e] the State of Israel’s security and diplomatic needs”.⁶⁷³

2.254 In the West Bank, Israel is extracting oil and natural gas from the Meged field, which straddles the Israel-Palestine border north of Jerusalem, although most of its reserves are “situated beneath the Palestinian territory occupied since 1967”.⁶⁷⁴

⁶⁷⁰ UNGA & ECOSOC, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan*, UN Doc. A/77/90-E/2022/66 (8 June 2022) (Dossier No. 147), para. 70.

⁶⁷¹ *Ibid.*, para. 70; ESCWA 2022 Report, p. 46; UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (2019), available at <https://tinyurl.com/2nhvyfmh>, p. 31.

⁶⁷² UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (2019), available at <https://tinyurl.com/2nhvyfmh>, pp. 22-23.

⁶⁷³ “Israel gives nod to Gaza Marine gas development, wants security assurances,” *Reuters* (18 June 2023), available at <https://tinyurl.com/5n7dzf9s>.

⁶⁷⁴ UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (2019), available at <https://tinyurl.com/2nhvyfmh>, p. 25.

2.255 **Minerals.** Israel further grants permits to Israeli companies to extract and sell the mineral resources of the West Bank. In 2015, Israeli companies extracted 17 million tons of stone from the West Bank, 94 percent of which was “shipped to Israel for construction and infrastructure purposes”.⁶⁷⁵ It has also given Israeli companies permission to harvest minerals from the West Bank coast of the Dead Sea to make products for domestic and export markets.⁶⁷⁶ In 2015, Israel’s sales of Dead Sea minerals amounted to approximately USD 3 billion, one percent of its GDP.⁶⁷⁷ Palestinians, in contrast, are completely barred from economically exploiting the Dead Sea’s resources.⁶⁷⁸

2.256 In addition to monopolizing the OPT’s natural resources, Israel also promotes the development of Israeli industry and agriculture in the OPT. Israeli businesses are offered “reductions in the price of land, grants for the development of infrastructure, and preferential tax treatment”.⁶⁷⁹ At the same time, Israel readily approves permits and licensing for Israeli businesses operating in or servicing the settlements.⁶⁸⁰ To facilitate those businesses’ market access, Israel allows products originating in Area C of the West Bank to be labelled as “made in Israel”⁶⁸¹ and

⁶⁷⁵ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation*, UN Doc. A/HRC/40/73 (30 May 2019), para. 57.

⁶⁷⁶ *Ibid.*, para. 26.

⁶⁷⁷ ESCWA 2022 Report, p. 46.

⁶⁷⁸ *Ibid.*; Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation*, UN Doc. A/HRC/40/73 (30 May 2019), para. 58.

⁶⁷⁹ Human Rights Council, *Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/39 (1 Feb. 2018), para. 43.

⁶⁸⁰ *Ibid.*, para. 44.

⁶⁸¹ J. Lis & B. Samuels, “Israel slams Norway for marking products made in West Bank settlements,” *Haaretz* (11 June 2022), available at <https://tinyurl.com/3nsfhe8t>.

takes steps to prevent other States from “distinguishing between Israeli-manufactured products and those coming from settlements”.⁶⁸²

2.257 At the same time, Palestinian-owned businesses not only do not receive the same incentives that Israeli businesses in the West Bank do, they actually confront heightened hurdles. They face high tariffs; import and export restrictions; and the denial of, or substantial delays in granting, applications for land acquisition and construction permits.⁶⁸³ These barriers further “depress the Palestinian economy and ... reduce opportunities for Palestinian businesses to thrive”.⁶⁸⁴

2.258 Overall, Israel’s occupation and economic policies have had a devastating impact on the Palestinian economy. According to UN estimates, without many of Israel’s discriminatory practices and policies in the OPT, the West Bank GDP per capita in 2019 would have been 44 percent higher than it actually was.⁶⁸⁵ The World Bank reported that, “[d]uring 2017-19, annual GDP growth [of the Palestinian economy] averaged 1.3%—lower than the population growth rate”,⁶⁸⁶

⁶⁸² UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 36.

⁶⁸³ ESCWA 2022 Report, pp. 36-37, 63. *See supra* paras. 2.51-2.53.

⁶⁸⁴ Human Rights Council, *Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/39 (1 Feb. 2018), para. 52.

⁶⁸⁵ *See* UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: Arrested Development and Poverty in the West Bank* (Dec. 2021), UNCTAD/GDS/APP/2021/2 and UNCTAD/GDS/APP/2021/2/Corr.1, available at <https://tinyurl.com/3cu8r8n8>.

⁶⁸⁶ *See* The World Bank, “Palestinian Territories’ Economic Update – April 2022” (14 Apr. 2022), available at <https://tinyurl.com/4hmtm9v7>.

which was about 2.5 percent.⁶⁸⁷ In 2020, the “poverty rate [in Palestine] spiked to 29.7%”, meaning that 1.5 million Palestinians live in poverty.⁶⁸⁸ Israel has caused the “de-development”⁶⁸⁹ of the Palestinian economy and its complete dependency on Israel. This “forced dependency ... undermines severely the potential for an independent, viable Palestinian state”.⁶⁹⁰

VIII. Suppression of Journalists, Civil Society, and NGOs Opposing the Occupation

2.259 Finally, Israel also systematically suppresses nonviolent forms of resistance against it by targeting and obstructing the work of journalists seeking to document or publicize the occupation’s brutality (**Section A**); and repressing the efforts of Palestinian human rights activists and NGOs (**Section B**).

A. THE SYSTEMATIC TARGETING AND OBSTRUCTION OF JOURNALISTS

2.260 Israel has a well-documented pattern of targeting journalists attempting to report on the occupation. As the press freedom NGO Reporters Sans Frontières (“**RSF**”) recently explained: “Whenever tension or violence erupts in Jerusalem or the West Bank, Israeli forces systematically target Palestinian journalists, obstructing them or attacking them in order to prevent them from filming or taking photos.”⁶⁹¹ Israel harasses and intimidates journalists in the OPT by, *inter alia*,

⁶⁸⁷ The World Bank, “Population growth (annual %) – West Bank and Gaza,” available at <https://tinyurl.com/bdhpnyee>.

⁶⁸⁸ See The World Bank, “Palestinian Territories’ Economic Update – April 2022” (14 Apr. 2022), available at <https://tinyurl.com/4hmtm9v7>.

⁶⁸⁹ ESCWA 2022 Report, p. 1.

⁶⁹⁰ *Ibid.*, p. 2.

⁶⁹¹ See “Israel must stop targeting Palestinian journalists,” *RSF* (last updated: 19 June 2023), available at <https://tinyurl.com/ycxhsxea>.

(i) subjecting them to violence; (ii) arbitrarily detaining them; and (iii) restricting their access to and within the OPT.

2.261 *First*, Israeli forces have repeatedly used violence against journalists reporting on Israeli military operations and other uses of force against Palestinians. Since 2001, the IDF has killed at least 20 journalists.⁶⁹² Many more have been assaulted. In 2021 alone, the Palestinian Center for Development and Media Freedom documented 158 incidents of violence against Palestinian journalists by Israel.⁶⁹³

2.262 The most notorious example is the killing of Palestinian-American reporter Shireen Abu Akleh in May 2022. Abu Akleh was a widely respected journalist and one of *Al Jazeera*'s leading reporters in the OPT for more than 20 years. While covering a military operation by Israeli security forces in the West Bank city of

⁶⁹² Committee to Protect Journalists, *Deadly Pattern: 20 journalists died by Israeli military fire in 22 years. No one has been held accountable* (9 May 2023), available at <https://tinyurl.com/4xtzc6pw>, p. 5. See also UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/67/372 (14 Sept. 2012) (Dossier No. 853), para. 22 (“Journalists should be allowed to report on protests in safety and free from intimidation and violence. OHCHR documented four cases during the first half of 2012, where journalists or photographers appear to have been directly targeted by IDF or the Border Police, including with rubber-coated metal bullets, despite being clearly visible as members of the press by wearing ‘PRESS’ vests and carrying cameras or other equipment. The targeting by Israeli security forces of journalists and photographers covering protests in the West Bank, including East Jerusalem, is a cause of concern.”).

⁶⁹³ The Palestinian Center for Development and Media Freedom (“MADA”), *The Annual Report 2021: The Media Freedom Violations in Palestine* (2021), available at <https://tinyurl.com/38na9t6t>, p. 11 (recording 155 instances of physical violations and 3 killings). See also H. Abushkhaideem, “Not just Shireen: how Israel has attacked journalists and newsrooms in Palestine,” *Reuters Institute* (6 July 2022), available at <https://tinyurl.com/ywz9va4b>. MADA also reported that “31 news organisations were either closed or destroyed by Israel in 2021, 30 of them during the latest Israeli attack on Gaza in May 2021”. *Ibid.*

Jenin and wearing a blue vest emblazoned with the word “PRESS”, she was fatally shot in the head.⁶⁹⁴



Figure 2.37: Shireen Abu Akleh⁶⁹⁵

⁶⁹⁴ A. Sawafta, “Palestinians hand bullet that killed journalist to U.S. for examination,” *Reuters* (2 July 2022), available at <https://tinyurl.com/yxpac9rt> (“Video footage showed that Abu Akleh, 51, was wearing a blue vest clearly marked ‘Press’ when she was shot.”); Forensic Architecture, “Shireen Abu Akleh: The Extrajudicial Killing of a Journalist” (20 Sept. 2022), available at <https://tinyurl.com/69u9h9fa> (“Shireen and her colleagues were clearly identifiable as journalists when they were shot at. Reconstruction based on digital modelling, physical reconstruction and optical analysis confirms that the journalists followed standard protocols for self-identification and that their large ‘PRESS’ insignia were clearly visible from the position of the IOF shooter in the moments surrounding the shooting. Furthermore, the autopsy report demonstrated that Shireen was positioned away from the shooter in such a way that her PRESS vest should have been easily legible.”).

⁶⁹⁵ Encyclopedia Britannica, “Shireen Abu Akleh” (online version) (last updated: 14 July 2023), available at <https://tinyurl.com/e852h4tb>.

2.263 Independent investigations by experts and human rights organizations including the OHCHR,⁶⁹⁶ the Israeli human rights organization B’Tselem,⁶⁹⁷ the Palestinian human rights organization Al-Haq,⁶⁹⁸ and *CNN*⁶⁹⁹ have all attributed the fatal gunfire to Israeli forces. A report by Al-Haq states that “Shireen and her journalist colleagues were clearly identifiable as journalists to the [IDF] marksman [who] repeatedly and deliberately targeted [them] with the intention to kill ... Shireen was deliberately denied first aid after being shot ...”.⁷⁰⁰ To add insult to injury, during her funeral procession, Israeli forces attacked mourners, “kicking and hitting people with batons and causing mourners carrying her coffin to lose balance and drop it to the ground”.⁷⁰¹ Many of the thousands of people gathered waved Palestinian flags—a rare sight in occupied East Jerusalem, where Israel “forbids public displays of Palestinian flags and often prevents people from hoisting them at rallies and protests in the city”.⁷⁰² A video from the day shows an Israeli officer warning mourners: “If you don’t stop these chants and [Palestinian]

⁶⁹⁶ In a statement issued on 24 June 2022 in Geneva, the spokesperson for the UN High Commissioner for Human Rights said: “All information we have gathered ... is consistent with the finding that the shots that killed Abu Akleh and injured her colleague Ali Sammoudi came from Israeli Security Forces and not from indiscriminate firing by armed Palestinians, as initially claimed by Israeli authorities.” See OHCHR, *Press Briefing Notes: Killing of journalist in the occupied Palestinian territory* (24 June 2022), available at <https://tinyurl.com/yc5e2whx>.

⁶⁹⁷ B’Tselem, Tweet (11 May 2022), available at <https://tinyurl.com/274e58jb>.

⁶⁹⁸ Forensic Architecture & Al-Haq, *Report: Shireen Abu Akleh: The Extrajudicial Killing of a Journalist* (4 Nov. 2022), available at <https://tinyurl.com/b766fc4m>.

⁶⁹⁹ Z. Saifi *et al.*, “‘They were shooting directly at the journalists’: New evidence suggests Shireen Abu Akleh was killed in targeted attack by Israeli forces,” *CNN* (last updated: 26 May 2022), available at <https://tinyurl.com/m5mchkt6>.

⁷⁰⁰ Forensic Architecture, *Video Report: Shireen Abu Akleh: The Extrajudicial Killing of a Journalist*, available at <https://tinyurl.com/69u9h9fa>, at 10:00-10:41; “RSF backs request by Shireen Abu Akleh’s family for ICC investigation,” *RSF* (21 Sept. 2022), available at <https://tinyurl.com/yc278wn9>.

⁷⁰¹ S. Taha, “Israeli police attack funeral procession for shot journalist Shireen Abu Aqleh,” *The Guardian* (13 May 2023), available at <https://tinyurl.com/38fh4npj>.

⁷⁰² *Ibid.*

nationalistic songs we will have to disperse you using force and we won't let the funeral take place".⁷⁰³

2.264 Israel has moreover conducted no effective or meaningful investigation into the incident. More than a year after her murder, no one has been held accountable.⁷⁰⁴ Far from it: on 7 September 2022, Israeli Prime Minister, Yair Lapid, said he was opposed to prosecuting the soldier who shot Abu Akleh, stating: "I will not allow the prosecution of a soldier who was protecting himself from terrorist shots, just to get congratulations from abroad."⁷⁰⁵

2.265 Abu Akleh's killing is far from the only recent example of Israel's violence against members of the press. In March 2018 alone, the IDF shot 20 journalists covering the Great March of Return in Gaza, killing two of them.⁷⁰⁶ Section B, *supra*, recounted the story of a student journalist, Youssef Kronz, who was shot in the legs with two bullets in immediate succession. Kronz was "wearing a blue vest marked 'Press' while photographing the demonstrations approximately 800 m from the separation fence".⁷⁰⁷ His right leg had to be amputated.

2.266 Israel has also bombed journalists' offices and destroyed their equipment. For example, in May 2021, Israeli air strikes targeted and destroyed a building in Gaza housing the offices of 23 Palestinian and international media outlets,

⁷⁰³ *Ibid.*

⁷⁰⁴ See "Israel must complete a full and transparent investigation into Shireen Abu Akleh's killing," *RSF* (6 Sept. 2022), available at <https://tinyurl.com/2ynt9mn>.

⁷⁰⁵ *Ibid.*

⁷⁰⁶ "RSF asks ICC to investigate Israeli sniper fire on Palestinian journalists," *RSF* (15 May 2018), available at <https://tinyurl.com/ar5th6yk>.

⁷⁰⁷ Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 44(a).

including the *Associated Press* and *Al Jazeera*.⁷⁰⁸ While Israel attempted to justify this attack after the fact by claiming that there were legitimate military targets in the building, Human Rights Watch noted that it “provided no evidence to support any of [its] allegations”.⁷⁰⁹ Attacks like this are one of the reasons why several UN Special Rapporteurs have called for an ICC probe into Israel’s 2021 military campaign in Gaza.⁷¹⁰

⁷⁰⁸ “RSF asks ICC prosecutor to say whether Israeli airstrikes on media in Gaza constitute war crimes,” *RSF* (16 May 2021), available at <https://tinyurl.com/24ks9cxe>.

⁷⁰⁹ “Gaza: Israel’s May Airstrikes on High-Rises,” *Human Rights Watch* (23 Aug. 2021), available at <https://tinyurl.com/2bp3zsa2>.

⁷¹⁰ OHCHR, *Press Release: Gaza-Israel: UN experts welcome ceasefire, call for ICC probe* (21 May 2021), available at <https://tinyurl.com/2umhx9db>.



Figure 2.38: The building housing the offices of the Associated Press and other media in Gaza City collapses after it was hit by an Israeli airstrike, 15 May 2021⁷¹¹

2.267 *Second*, Israel frequently deprives Palestinians journalists operating in the OPT of their liberty. From 2020 to mid-2022, Israel administratively detained or prosecuted at least 26 Palestinian journalists in the West Bank.⁷¹² On the rare

⁷¹¹ J. Federman, ““Shocking and horrifying’: Israel destroys AP office in Gaza,” *Associated Press* (15 May 2021), available at <https://tinyurl.com/4rs6vkrx>.

⁷¹² Y. Abraham, “Israel Charges Palestinian Journalists With Incitement — For Doing Their Jobs,” *The Intercept* (5 Apr. 2022), available at <https://tinyurl.com/vvbnkbwa>. See also Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements*, UN Doc. A/HRC/47/57 (29 July 2021), para. 19 (stating that in May and June 2021, the Israeli Security Forces also arrested a number of activists and journalists covering the peaceful demonstrations that took place in Sheikh Jarrah in response to the forced displacement of Palestinians); UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/76/433 (22 Oct. 2021), para. 9 (“Palestinian journalists who report on human rights violations in the Occupied Palestinian Territory faced harassment and violence in an attempt to intimidate them and prevent media coverage of peaceful Palestinian protests. On 27 August 2021, Israeli security forces arrested seven Palestinian

occasions when charges are brought, they are frequently for the vague offense of “incitement”.⁷¹³ This was the case for Hazem Nasser, whose experience exemplifies Israel’s use of arrest and detention as an intimidation tactic.

2.268 Nasser is a journalist for the Palestinian television network Falastin Al-Ghad. On 10 May 2021, he filmed an encounter between Palestinians protesters and the IDF in the West Bank. On his way home afterwards, he was stopped by Israeli soldiers at the Huwara checkpoint and interrogated. He recalls:

All the questions were about my journalism ... They put images from my video reports on the table, including a funeral of a dead Palestinian, people gathering for a protest, a square honoring a shaheed [martyr], a march with Hamas flags. The interrogator told me I cannot photograph these things, because they are incitement. I told him that I am a journalist and this is my job—to show images of things that are happening, and that Israeli outlets do the same thing. He yelled at me to stop.⁷¹⁴

2.269 Nasser was then prosecuted in a military court on charges of incitement. He chose to plead guilty “in order to be released”.⁷¹⁵ A week before he was to be released, Nasser learned that an administrative detention order had been issued

journalists who were covering a peaceful demonstration against the establishment of new outposts and violence by settlers in the southern hills of Hebron. The journalists were arrested and their equipment confiscated when they headed to their cars shortly after the protest ended, although they identified themselves as journalists to the soldiers. They were handcuffed, left to sit in the scorching sun for an hour, and later taken to the Qiryat Arba’ police station, where they were interrogated. Two of the journalists claimed that they were attacked and beaten by the soldiers during the arrest.”).

⁷¹³ Y. Abraham, “Israel Charges Palestinian Journalists With Incitement — For Doing Their Jobs,” *The Intercept* (5 Apr. 2022), available at <https://tinyurl.com/vvbnkbwa>; “Palestine: Israeli court extends detention of Palestinian journalist Lama Ghosheh,” *Middle East Eye* (8 Sept. 2022), available at <https://tinyurl.com/5hkehzk5>.

⁷¹⁴ Y. Abraham, “Israel Charges Palestinian Journalists With Incitement — For Doing Their Jobs,” *The Intercept* (5 Apr. 2022), available at <https://tinyurl.com/3j7e28z4>.

⁷¹⁵ *Ibid.*

against him, pursuant to which he was detained for an additional five months.⁷¹⁶ Nasser has been released but now rarely publishes anything. Like many Palestinian journalists, he lives in constant fear of reprisal and self-censors.⁷¹⁷

2.270 A pattern of similar incidents has prompted RSF to “condemn[] Israel’s misuse of administrative detention to hound Palestinian reporters”.⁷¹⁸ The International Federation of Journalists has likewise “call[ed] on the Israeli authorities to investigate every incident to make sure all journalists can carry out their duties without being targeted or harassed”.⁷¹⁹ As of May 2021, 13 journalists were in administrative detention.⁷²⁰

2.271 *Third*, Israel restricts journalists’ access to parts of the OPT as well as their freedom of movement within the territory. Journalists frequently do not even attempt to obtain a travel permit to enter Gaza, “knowing that the procedures are lengthy and complicated and usually end with rejection”.⁷²¹ Within the West Bank, journalists face travel bans as reprisals for their reporting. As the Euro-Mediterranean Human Rights Monitor reports, Israel has banned “journalists from entering certain areas and neighborhoods in the Palestinian territories to prevent them from covering events that are taking place there”.⁷²² In other instances,

⁷¹⁶ *Ibid.*

⁷¹⁷ *Ibid.*

⁷¹⁸ RSF, “Israel now holding 13 Palestinian journalists” (28 May 2021), *available at* <https://tinyurl.com/mr25b6u5>.

⁷¹⁹ IFJ, “Israel: Israeli Palestinian journalists harassed and attacked” (27 May 202), *available at* <https://tinyurl.com/y6r7phva>.

⁷²⁰ RSF, “Israel now holding 13 Palestinian journalists” (28 May 2021), *available at* <https://tinyurl.com/mr25b6u5>.

⁷²¹ Euro-Mediterranean Human Rights Monitor, *Punishing Journalists: Israel's restrictions on freedom of movement and travel against Palestinian journalists* (29 Nov. 2021), *available at* <https://tinyurl.com/6x2j6k75>, p. 10.

⁷²² *Ibid.*

journalists have been banned from traveling abroad and from returning to their homes in the OPT from abroad, also as reprisals for the content of their reporting.⁷²³

2.272 Israel’s suppression of journalists is designed to obscure the reality on the ground and perpetuate a climate of impunity. In the words of RSF Secretary-General Christophe Deloire: “By intentionally destroying media outlets, the Israel Defence Forces are not only inflicting unacceptable material damage on news operations” but they “are also, more broadly, obstructing media coverage of a conflict that directly affects the civilian population”.⁷²⁴

B. REPRESSION OF CIVIL SOCIETY AND POLITICAL DISSENT

2.273 Israel also uses repressive tactics to undermine civil society and quash political dissent in the OPT. According to Amnesty International, this “pattern of harassment” of NGOs and human rights defenders is “designed to curtail their vital work”.⁷²⁵

2.274 *First*, just as with journalists, there is an “intentional Israeli policy to detain individuals, including prisoners of conscience held solely for the exercise of their rights to freedom of expression and association and to punish them for their views and activism challenging the policies of occupation”.⁷²⁶ For example, following his participation in a peaceful demonstration on 8 January 2021, Sami Huraini, a Palestinian activist known for his nonviolent resistance against Jewish Israeli

⁷²³ *Ibid.*, pp. 3-4.

⁷²⁴ “RSF asks ICC prosecutor to say whether Israeli airstrikes on media in Gaza constitute war crimes,” *RSF* (16 May 2021), available at <https://tinyurl.com/24ks9cxe>.

⁷²⁵ Amnesty International, *Press Release: Israel must stop attacks on Palestinian NGOs and human rights defenders* (11 Dec. 2022), available at <https://tinyurl.com/ytnw2a3h>.

⁷²⁶ Amnesty International, *Urgent Action: Palestinian Lawyer in Arbitrary Detention* (15 Mar. 2022), available at <https://tinyurl.com/2ja6ddzf>, p. 2.

settlements in the West Bank, was prosecuted for “allegedly obstructing and assaulting a soldier and entering a closed military zone”.⁷²⁷ Four UN Special Rapporteurs denounced his prosecution, stating that it “clearly show[ed] an aggravating trend of Israel’s criminalisation and harassment of human rights defenders, aimed at silencing them and rooting out human rights work in the region”.⁷²⁸

2.275 *Second*, Israel harasses and otherwise impedes the work of Palestinian human rights organizations. It is, for example, not uncommon for Israeli authorities to raid the offices of human rights organizations.⁷²⁹ Israel has hacked the electronic devices of human rights defenders.⁷³⁰ And in 2021, it designated six prominent Palestinian human rights and civil society organizations⁷³¹—which were well-

⁷²⁷ OHCHR, *Press Release: Israel: Criminalisation and harassment of human rights defenders in Masafer Yatta must end, say UN experts* (2 Aug. 2022), available at <https://tinyurl.com/2p8843ht>.

⁷²⁸ *Ibid.* The four Special Rapporteurs are: Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967; Balakrishnan Rajagopal, Special Rapporteur on the right to adequate housing; Cecilia Jimenez-Damary, Special Rapporteur on the human rights of internally displaced persons; Mary Lawlor, Special Rapporteur on the situation of human rights defenders.

⁷²⁹ See, e.g., “Occupation forces raid the offices of Bisan Center for Research and Development,” *Bisan* (29 July 2021), available at <https://tinyurl.com/hab5ha4k>; Amnesty International, *Press Release: Israel ramps up assault on civil society with chilling raid on Palestinian NGO Addameer* (19 Sept. 2019), available at <https://tinyurl.com/5d3fjneq>; Adalah, *Press Release: Adalah: Israeli army raid on Palestinian NGO’s office is direct attack on human rights* (19 Sept. 2019), available at <https://tinyurl.com/22vbx7f2>; OHCHR, *Press Release: UN experts condemn raid on West Bank NGO, urge Israel meaningfully probe child deaths* (13 Aug. 2021), available at <https://tinyurl.com/2n7bmtpt>; UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 60.

⁷³⁰ See Front Line Defenders, *Six Palestinian human rights defenders hacked with NSO Group’s Pegasus Spyware* (8 Nov. 2021), available at <https://tinyurl.com/rsfnyuks>; Amnesty International, *Devices of Palestinian Human Rights Defenders Hacked with NSO Group’s Pegasus Spyware* (8 Nov. 2021), available at <https://tinyurl.com/yc5nssur>; UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 60.

⁷³¹ These organizations are Addameer, Al-Haq, Defense for Children International - Palestine, the Union of Agricultural Work Committees, the Bisan Center for Research and Development, and the Union of Palestinian Women Committees.

known for their work with Palestinian women and girls, children, low-income families, prisoners, and civil society activists, providing direct services and monitoring human rights abuses by Israeli authorities⁷³²—as “terrorist organizations”, thus preventing them from operating in the OPT and receiving funding.⁷³³ Israel alleged that the organizations “were active under the cover of civil society organizations, but in practice belong and constitute an arm of the [Popular Front for the Liberation of Palestine]”⁷³⁴, a group designated as a terrorist organization by the United States,⁷³⁵ but it has not substantiated this claim. As the OHCHR observed, “[w]ithout adequate substantive evidence, these decisions appear arbitrary, and further erode the civic and humanitarian space in the Occupied Palestinian Territory”.⁷³⁶

2.276 *Third*, and relatedly, Israel takes punitive measures against prominent Palestinians who oppose the occupation, as part of its “effort to suppress Palestinian

⁷³² UNGA, *Meeting Coverage: Outraged over Israel’s Designation of Six Civil Society Groups as Terrorists, Speakers Tell Palestinian Rights Committee Harassment against Human Rights Defenders Must End*, UN Doc. GA/PAL/1443 (7 Dec. 2021), available at <https://tinyurl.com/8umw9tnb>; “US lawmakers denounce blacklisting of Palestinian NGOs by Israel,” *Al Jazeera* (18 July 2022), available at <https://tinyurl.com/yc8a83me>.

⁷³³ “Israel/OPT: The stifling of Palestinian civil society organizations must end,” *Amnesty International* (18 Aug. 2022), available at <https://tinyurl.com/2wpaf49s>.

⁷³⁴ A. Boxerman, “Israeli ‘terror’ designation of Palestinian NGOs sparks furious int’l backlash,” *Times of Israel* (22 Oct. 2021), available at <https://tinyurl.com/yrdj3z8h>.

⁷³⁵ US Department of State, “Foreign Terrorist Organizations” (last accessed: 18 July 2023), available at <https://tinyurl.com/4k8dw4wj>.

⁷³⁶ UNGA, *Meeting Coverage: Outraged over Israel’s Designation of Six Civil Society Groups as Terrorists, Speakers Tell Palestinian Rights Committee Harassment against Human Rights Defenders Must End*, UN Doc. GA/PAL/1443 (7 Dec. 2021), available at <https://tinyurl.com/8umw9tnb>. Similarly, nine EU Member States issued a statement affirming that “no substantial information was received from Israel that would justify reviewing our policy towards the six Palestinian NGOs on the basis of the Israeli decision to designate these NGOs as ‘terrorist organizations’”. See also OHCHR, *Press Release: Israel/Palestine: UN experts call on governments to resume funding for six Palestinian CSOs designated by Israel as ‘terrorist organisations’* (25 Apr. 2022), available at <https://tinyurl.com/3tf3r645>.

political processes”.⁷³⁷ For example, Israel routinely detains on arbitrary grounds Palestinian political leaders, including elected representatives, ministers and mayors.⁷³⁸ As of July 2023, four Palestinian Legislative Council members in the West Bank were in detention.⁷³⁹ It has also carried out extrajudicial killings of Palestinian activists, as the Palestinian human rights organization Al-Haq has documented.⁷⁴⁰ Furthermore, as the OPT Special Rapporteur reports, Israel has since 2002 developed a pattern of deporting to Gaza individuals “believed to be leading resistance, such as public servants, religious leaders and activists, lawyers, journalists and students involved in political activities”.⁷⁴¹ Threats of punitive measures are made even to members of the Knesset. For example, in 2018, “[a] senior minister from Prime Minister Benjamin Netanyahu’s Likud party ... said Arab [members of Knesset] reportedly seeking United Nations condemnation of Israel for passing the controversial nation-state law last month should be tried for treason”.⁷⁴²

2.277 *Fourth*, Israel denies entry to the OPT by human rights defenders. In particular, it has refused to allow Human Rights Watch staff to enter Gaza since

⁷³⁷ Addameer, “Arrest of Legislative Council Members” (Nov. 2018), available at <https://tinyurl.com/bdkmj4a6>. See also UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), paras. 56, 61-62.

⁷³⁸ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 59; Addameer, “Administrative Detention Fact Sheet 2022 (20 Jan. 2022), available at <https://tinyurl.com/3ywm7mt5>.

⁷³⁹ Addameer, “Statistics” (last updated: 11 July 2023)), available at <https://tinyurl.com/ydwuxe95>.

⁷⁴⁰ Al-Haq, *Wilful Killing: The Assassination of Palestinians in the Occupied Palestinian Territories by the Israeli Security Forces* (Feb. 2001), available at <https://tinyurl.com/bp96rm8w>.

⁷⁴¹ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 59.

⁷⁴² M. Bachner, “Minister urges prosecution of Arab MK ‘traitors’ who seek UN censure of Israel,” *Times of Israel* (27 Aug. 2018), available at <https://tinyurl.com/5n84nfzx>.

2008⁷⁴³ and, in 2019, deported the organization's Israel and Palestine director.⁷⁴⁴ Similarly, Israel has denied access to consecutive UN Special Rapporteurs on the OPT.⁷⁴⁵ In 2017, in furtherance of this policy, Israel passed an anti-boycott law that allows authorities to deny entry into Israel of people who support boycotting Israel and the Jewish Israeli settlements in the OPT.⁷⁴⁶ As of 2019, at least 14 people have been denied entry based on this law, including American and French politicians, European Union parliamentarians, and international human rights defenders.⁷⁴⁷

2.278 *Finally*, Israel retaliates against Palestinians' attempts to seek justice before international courts and tribunals, including this Court. In January 2023, Israel's security cabinet approved a series of sanctions against the Palestinian Authority in response to the passage in the General Assembly of the present request for an Advisory Opinion.⁷⁴⁸ Among the measures approved were seizing tax revenues

⁷⁴³ "Gaza: Apparent War Crimes During May Fighting," *Human Rights Watch* (27 July 2021), available at <https://tinyurl.com/356perty> ("Human Rights Watch on May 30 requested permits for senior Human Rights Watch researchers to enter Gaza to conduct further investigation of the hostilities, but Israeli authorities on July 26 rejected the request. Israeli authorities have since 2008 refused access to Gaza for Human Rights Watch international staff, except for a single visit in 2016. Israel's allies should push for access to Gaza for human rights organizations to investigate and document human rights abuses.").

⁷⁴⁴ "Israel Expels Human Rights Watch Director Today," *Human Rights Watch* (25 Nov. 2019), available at <https://tinyurl.com/4z37ccvy>.

⁷⁴⁵ See OHCHR, *Press Release: Occupied Palestinian Territory: UN human rights expert says Israel bent on further annexation* (12 July 2019), available at <https://tinyurl.com/mr4bzyre>; OHCHR, "Special Rapporteur on Occupied Palestinian Territory resigns due to continued lack of access to OPT" (4 Jan. 2016), available at <https://tinyurl.com/ye25wxhb>.

⁷⁴⁶ Israel, *Amendment No. 28 to the Entry Into Israel Law (No. 5712-1952)* (6 Mar. 2017). See also O. Liebermann, "Israel's travel ban: Boycott supporters to be turned away," *CNN* (7 Mar. 2017), available at <https://tinyurl.com/yc83cbdm>.

⁷⁴⁷ N. Chokshi, "The Anti-Boycott Law Israel Used to Bar Both Omar and Tlaib," *New York Times* (15 Aug. 2019), available at <https://tinyurl.com/4z58szsz>.

⁷⁴⁸ "Israel to withhold PA tax revenue, impose other sanctions after Abbas's UN success," *Times of Israel* (6 Jan. 2023), available at <https://tinyurl.com/4rkpceb>.

Israel collects on behalf of the Palestinian Authority and freezing the already severely constrained Palestinian construction in much of the West Bank.⁷⁴⁹

⁷⁴⁹ *Ibid.*

CHAPTER 3
THE CONDUCT OF ISRAEL’S SETTLER-COLONIAL OCCUPATION
OF PALESTINIAN TERRITORY VIOLATES ITS OBLIGATIONS
UNDER THE UN CHARTER, INTERNATIONAL HUMAN RIGHTS
LAW, INTERNATIONAL HUMANITARIAN LAW AND THE
PROHIBITION OF CRIMES AGAINST HUMANITY

3.1 The foregoing policies and practices through which Israel conducts its settler-colonial occupation of the OPT amount to numerous discrete breaches of international law. This Chapter highlights four major categories: Israel’s violation of the UN Charter by the illegal annexation of East Jerusalem and Area C of the West Bank (**Section I**), its wholesale failure to comply with its obligations under IHRL (**Section II**), its persistent breach of core norms of IHL (**Section III**), and the commission of crimes against humanity (**Section IV**).

I. Israel Has Illegally Annexed East Jerusalem and Area C of the West Bank

3.2 Article 2(4) of the UN Charter provides in relevant part that States “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”.⁷⁵⁰ The UN General Assembly, in its 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, declared: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”⁷⁵¹ The UN Security Council has likewise recognized “the inadmissibility of the acquisition of territory by war”.⁷⁵² In the *Wall* Advisory Opinion, the Court made

⁷⁵⁰ Charter of the United Nations (hereinafter, “**UN Charter**”), art. 2(4).

⁷⁵¹ UNGA, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UN Doc. A/RES/2625(XXV) (24 Oct. 1970) (hereinafter, “**UNGA Res. 2625 (XXV)**”).

⁷⁵² See, e.g., UNSC, Resolution 242, *The Situation in the Middle East*, UN Doc. S/RES/242(1967) (22 Nov. 1967) (Dossier No. 1245) (hereinafter, “**UNSC Res. 242 (1967)**”); UNSC, Resolution 2334, *The Situation in the Middle East*, UN Doc. S/RES/2334 (2016) (23 Dec. 2016) (Dossier No.

clear that the rule establishing “the illegality of territorial acquisition resulting from the threat or use of force” had the status of customary international law.⁷⁵³

3.3 Because an occupation by definition results from the use of force, the annexation of any part of the OPT violates international law. Indeed, the annexation of occupied territory is antithetical to one of the “foundational principles of the laws of occupation, which stipulates that the occupying power’s tenure is inherently temporary”.⁷⁵⁴

3.4 The annexation of occupied territory is also illegal because it constitutes a gross violation of the right to self-determination of the people whose territory is occupied. The UN Charter sets out the foundational nature of the right to “self-determination of peoples”,⁷⁵⁵ to which the General Assembly has declared “[a]ll peoples have the right”.⁷⁵⁶ The Court recognized in the *East Timor* case that the notion that “the right of peoples to self-determination ... has an *erga omnes* character, is irreproachable”.⁷⁵⁷ The International Law Commission (“ILC”) subsequently observed that “the right to self-determination” is one of the “peremptory norms that are clearly accepted and recognized”.⁷⁵⁸

1372) (hereinafter, “UNSC Res. 2334 (2016)”) (“the acquisition of territory by force [is inadmissible]”).

⁷⁵³ *Wall* Advisory Opinion, para. 87.

⁷⁵⁴ E. Benvenisti, *THE INTERNATIONAL LAW OF OCCUPATION* (2nd Ed., OUP, 2012), p. 6.

⁷⁵⁵ UN Charter, art. 1(2).

⁷⁵⁶ UNGA, Resolution 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples*, UN Doc. A/RES/1514(XV) (14 Dec. 1960) (Dossier No. 55) (hereinafter, “**Colonial Declaration (14 Dec. 1960)**”).

⁷⁵⁷ *Case Concerning East Timor (Portugal v. Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 90 (hereinafter, “**East Timor Judgment**”), para. 29. *See also Wall* Advisory Opinion, para. 156.

⁷⁵⁸ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, in *YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2001* (Vol. II, Pt. 2), Article 26 Commentary, para. 5.

3.5 The prohibition on the annexation of occupied territory applies not only to *de jure* annexations but also *de facto* annexations; *i.e.*, those carried out by “establishing ‘facts on the ground’ that are intended to be irreversible and permanent while avoiding any formal proclamation” of annexation⁷⁵⁹. In the *Wall* Advisory Opinion, the Court recognized the possibility that situations might exist that “would be tantamount to *de facto* annexation”.⁷⁶⁰ The former OPT Special Rapporteur, Michael Lynk, explained that “if the prohibition against annexation is to be coherent and effective ... then the liberal purposes of international law should ensure that the absolute prohibition against annexation extends to those incremental, yet substantive, measures being taken by a State in violation of international humanitarian law to lay the ground for a future claim of sovereignty over conquered and/or occupied territory”.⁷⁶¹

A. ISRAEL’S *DE JURE* ANNEXATION OF EAST JERUSALEM VIOLATES INTERNATIONAL LAW

3.6 Israel has annexed East Jerusalem *de jure* by, *inter alia*, the following measures:

- In June 1967, it issued Law and Administration Order (No. 11), which extended the “the law, jurisdiction and administration” of Israel to the territory of East Jerusalem and the “Jerusalem Declaration” expanding the municipal boundaries of Jerusalem to that territory.⁷⁶²

⁷⁵⁹ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 13. See also *Wall* Advisory Opinion, para. 121.

⁷⁶⁰ *Wall* Advisory Opinion, para. 121.

⁷⁶¹ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para. 30.

⁷⁶² R. Levush, “Israel: Legal Aspects of Ceding Israeli Territory,” THE LAW LIBRARY OF CONGRESS (Oct. 2018), available at <https://tinyurl.com/mr3stwy4>, pp. 2, 4-5.

- In 1980, the Knesset passed the “Basic Law: Jerusalem, Capital of Israel”, which provides that “[t]he complete and united Jerusalem is the capital of Israel”.⁷⁶³ Interpreting this provision in 1993, the Israeli Supreme Court concluded that it, along with the 1967 measures, “established the sovereignty of the State of Israel over whole and united Jerusalem, as the capital of Israel”.⁷⁶⁴
- In 2000, the Knesset amended the Basic Law: Jerusalem, Capital of Israel to further clarify Israel’s claim of sovereignty over Jerusalem. It provides that “the limits of Jerusalem include, for the purpose of this Basic Law, the whole area described in the addendum to the declaration of the expansion of the limits of the Jerusalem municipality” of 1967.⁷⁶⁵

3.7 Because international law prohibits the annexation of occupied territory, Israel’s annexation of occupied East Jerusalem is internationally wrongful and without legal effect.

3.8 The UN General Assembly and UN Security Council have repeatedly recognized as much. Indeed, as early as 1967, the UN General Assembly issued Resolution 2253 (ES-V), which called the measures annexing Jerusalem “invalid” and “[c]all[ed] upon Israel to rescind” them.⁷⁶⁶ The Security Council likewise deemed Israel’s 1967 measures “invalid” and called upon Israel to desist from

⁷⁶³ Israel, *Basic Law: Jerusalem, Capital of Israel (1980)*, available at <https://tinyurl.com/2b7ztwtv>, art. 1.

⁷⁶⁴ M. Elon *et al.*, *Temple Mount Faithful – Amutah Et Al v. Attorney-General, Inspector-General of the Police, Mayor of Jerusalem, Minister of Education and Culture, Director of the Antiquities Division, Muslim WAQF - In the Supreme Court Sitting as the High Court of Justice* [September 23, 1993],” 45(3) CATHOLIC UNIVERSITY LAW REVIEW 866 (1996), available at <https://tinyurl.com/4etvmmud>, para. 34.

⁷⁶⁵ Israel, *Basic Law: Jerusalem, Capital of Israel (1980)*, available at <https://tinyurl.com/2b7ztwtv>, art. 5.

⁷⁶⁶ UNGA, Resolution 2253 (ES-V), *Measures taken by Israel to change the status of the city of Jerusalem*, UN Doc. A/RES/2253(ES-V) (4 July 1967) (Dossier No. 1200).

taking any further action which “tends to change the status of Jerusalem”.⁷⁶⁷ Both bodies issued similar statements in the following years.⁷⁶⁸

B. ISRAEL’S *DE FACTO* ANNEXATION OF AREA C OF THE WEST BANK VIOLATES INTERNATIONAL LAW

3.9 In the *Wall* Advisory Opinion, the Court warned that the establishment of Jewish Israeli settlements in the West Bank, combined with the construction of a barrier wall in the West Bank and East Jerusalem and its associated regime,⁷⁶⁹ could “be tantamount to *de facto* annexation”.⁷⁷⁰ Whether or not Israel’s actions amounted to a *de facto* annexation then, they unmistakably do now. In the nearly 20 years since 2004, Israel has created additional “irreversible facts on the ground”⁷⁷¹ that evidence its *de facto* annexation of Area C of the West Bank in violation of international law, as well as its intent eventually to annex all of the West Bank, excluding East Jerusalem.

3.10 The former OPT Special Rapporteur Michael Lynk has proposed four indicia for assessing whether facts on the ground have crystallized into a *de facto*

⁷⁶⁷ UNSC, Resolution 252 (1968), *On the Status of Jerusalem*, UN Doc. S/RES/252 (1968) (21 May 1968) (Dossier No. 1247).

⁷⁶⁸ See, e.g., UNSC, Resolution 478 (1980), *On the Status of Jerusalem*, UN Doc. S/RES/478 (1980) (20 Aug. 1980) (Dossier No. 1274) (hereinafter, “UNSC Res. 478 (1980)”), para. 3; UNSC Res. 2334 (2016), Preamble; *ibid.*, paras. 2, 3; UNGA, Resolution 36/120, *Question of Palestine*, UN Doc. A/RES/36/120 (10 Dec. 1981) (Dossier No. 389), Part D, para 6; *ibid.*, Part E, para. 1; UNGA, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, UN Doc. A/RES/77/126 (12 Dec. 2022) (Dossier No. 36) (hereinafter, “UNGA Res. 77/126”).

⁷⁶⁹ This “associated regime” refers to the establishment of the part of the West Bank lying between the Green Line and the Wall as a “Closed Area”. *Wall* Advisory Opinion, para. 85.

⁷⁷⁰ *Wall* Advisory Opinion, para. 121. See also UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para 29.

⁷⁷¹ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 75.

annexation.⁷⁷² The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel endorsed that test.⁷⁷³ The four indicia are:

1. Whether the State is in “effective control of the occupied territory”;⁷⁷⁴
2. Whether the State has adopted “measures ... consistent with permanency and a sovereign claim over parts or all of the territory”;⁷⁷⁵
3. Whether the State’s political leaders or institutions have expressed the intent to “permanently annex parts or all of the occupied territory”;⁷⁷⁶ and
4. Whether the State has refused to apply international law, including the laws of occupation, or to comply therewith, in the occupied territory.⁷⁷⁷

3.11 Israel’s policies and practices in Area C of the West Bank satisfy all these criteria. It has therefore illegally annexed the Area C *de facto*. It has also evidenced its intent to annex the entire West Bank.

3.12 *First*, Israel plainly maintains effective control over Area C of the West Bank. Under the terms of the Oslo Accords and in fact, Israel exercises exclusive

⁷⁷² UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), paras. 30-31.

⁷⁷³ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 13, note 9. *See also* O. Dajani, “Israel’s Creeping Annexation,” 111 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 51 (2017), pp. 52-53.

⁷⁷⁴ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para 31.

⁷⁷⁵ *Ibid.*

⁷⁷⁶ *Ibid.*

⁷⁷⁷ *See ibid.*

administrative and security functions there, which comprises more than 60 percent of the West Bank.⁷⁷⁸

3.13 *Second*, Israel’s policies and practices in Area C of the West Bank are consistent with permanency and a sovereign claim over the territory.

3.14 At the most basic level, Israel has clearly demonstrated the permanency of its occupation and its effective claim of sovereignty over the Area C of West Bank by maintaining that occupation of the territory for over 55 years—among the longest-running military occupations in modern history⁷⁷⁹—despite repeated calls from the international community to bring it to an end.⁷⁸⁰

3.15 Israel’s permission and facilitation of the expansion of settlements in Area C, in the face of the Court’s clear pronouncement that they are illegal under international law, is itself evidence of permanency and a claim of sovereignty. As the former OPT Special Rapporteur pointed out, “the political purpose of the Israeli settlement enterprise has always been to establish sovereign facts on the ground”.⁷⁸¹

⁷⁷⁸ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para 51.

⁷⁷⁹ See “Decisive international action needed to end Israeli occupation: UN experts,” *UN News* (23 Oct. 2019), available at <https://tinyurl.com/2vysdsna>.

⁷⁸⁰ See, e.g., UNSC Res. 242 (1967), para. 1 (calling on Israel to withdraw its armed forces from “territories occupied in [] recent conflict”); UNGA, Resolution 247, *Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources*, UN Doc. A/RES/71/247 (21 Dec. 2016) (Dossier No. 266), Preamble (General Assembly calling for “without delay an end to the Israeli occupation”).

⁷⁸¹ UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para. 49.

3.16 The specific measures undertaken by Israel to establish and maintain these settlements, described above in Chapter 2 are also consistent with permanency and a claim of sovereignty. They have the effect of converting territory in Area C into *de facto* Israeli territory. The most salient of those measures are: (i) supporting and facilitating the establishment and maintenance of Jewish Israeli settlements, permanently changing the demographic composition of the territory and expanding Israeli control over it;⁷⁸² (ii) applying Israeli domestic law to Jewish Israeli settlers;⁷⁸³ (iii) constructing and maintaining the Wall, which incorporates Palestinian territory into Israel;⁷⁸⁴ and (iv) seizing and exploiting land and natural resources.⁷⁸⁵

3.17 *Third*, Israel and its political leaders have expressed an intent to annex permanently parts of all of the occupied territory.⁷⁸⁶ Official publications of the State of Israel treat the entire West Bank as part of its territory. For example the Israeli Ministry of Foreign Affairs' official briefing paper defending Israeli settlements in the West Bank explicitly states that Israel "has valid claims to title in this territory," which it refers to it as "Judea and Samaria".⁷⁸⁷ This claim is reflected in the official map published by the Survey of Israel, which shows no

⁷⁸² See *supra* Chapter 2, §§ I and II.

⁷⁸³ See *supra* Chapter 2, §§ V(A), (C).

⁷⁸⁴ See *supra* Chapter 2, paras. 2.25, 2.70-2.74.

⁷⁸⁵ See *supra* Chapter 2, § VII.

⁷⁸⁶ See UNGA, *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/73/447 (22 Oct. 2018), para 31(c); BADIL, *Creeping Annexation: A Pillar of the Zionist-Israeli Colonization of Mandatory Palestine* (Working Paper No. 25) (Dec. 2020). See also O. Dajani, "Israel's Creeping Annexation," 111 AMERICAN JOURNAL OF INTERNATIONAL LAW 51 (2017), pp. 52-53.

⁷⁸⁷ Ministry of Foreign Affairs of Israel, "General Information: Israeli Settlements and International Law" (30 Nov. 2015), available at <https://tinyurl.com/bdheme9b>.

separation between Israel and the West Bank.⁷⁸⁸ That map is reproduced as **Figure 3.1** following page 190. As the Court will see, it effectively erases the distinction between Israel and the OPT.

3.18 Israel’s political leaders have also, since 1967, consistently expressed the intent to act as a sovereign in the West Bank. Following the occupation, the Israeli Foreign Minister declared Israel’s ambition that “the authority of the Israel Government extend[] from the Jordan [River] [*i.e.*, eastern boundary of the West Bank] to the Suez Canal [*i.e.*, including the Sinai Peninsula]”.⁷⁸⁹ In 1979, the Prime Minister of Israel, Menachem Begin, stated that “the green line [separating Israel from the West Bank] no longer exists—it has vanished forever”.⁷⁹⁰

3.19 Israel’s 21st century leaders continue to affirm this intent. For example, upon Israeli Prime Minister Netanyahu’s re-election in 2020, he stated that he planned formally to “extend [Israel’s] sovereignty to areas of the West Bank”.⁷⁹¹ And in May 2022, then-Israeli Prime Minister Naftali Bennett, while addressing settlers in Elkana, a settlement in the West Bank, made clear his view that the settlements formed an integral part of the State of Israel: “With the help of God, we will also be here at the celebrations of Elkana’s fiftieth and seventy-fifth, 100th, 200th and 2,000th birthdays, within a united and sovereign Jewish State in the Land of Israel.”⁷⁹²

⁷⁸⁸ See GovMap, “Survey of Israel” (last accessed: 12 July 2023), available at <https://tinyurl.com/5726439z>.

⁷⁸⁹ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 39.

⁷⁹⁰ *Ibid.*

⁷⁹¹ “Netanyahu said to tell Likud MKs: West Bank annexation on for July,” *Times of Israel* (25 May 2020), available at <https://tinyurl.com/jy6z5era>.

⁷⁹² UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para.

3.20 *Fourth*, Israel steadfastly and adamantly refuses to apply or comply with international law, including the law of occupation, in the West Bank

3.21 Israel does not apply IHL in the West Bank. In particular, it does not consider that the Fourth Geneva Convention (“GC IV”) applies to the West Bank. It has held and maintained this view since the proceedings in the *Wall* Advisory Opinion, in which it argued that the GC IV did not apply in the West Bank because it “is ‘not a territory of a High Contracting Party as required by the Convention’”.⁷⁹³ That position has not changed, as reflected in Israel’s 2021 statement defending Israeli settlements in the West Bank. It argued there that that “there was no previous legitimate sovereign [over the West Bank]”.⁷⁹⁴ Israel’s statement led the General Assembly to “demand[] that Israel accept the de jure applicability of the Convention in the Occupied Palestinian Territory”.⁷⁹⁵

3.22 *Second*, Israel’s policies and practices in the West Bank violate various obligations under international law, particularly IHRL, IHL and the prohibition on crimes against humanity. These violations are detailed in Sections II, III, and IV below. The occupation also permanently deprives the Palestinian people of the right to self-determination and constitutes a regime of apartheid as detailed in Chapter 4. Qatar respectfully refers the Court to those sections.

53 (citing Prime Minister Bennett, during a visit to the Elkana local council to mark its forty-fifth anniversary (17 May 2022)).

⁷⁹³ *Wall* Advisory Opinion, para. 90.

⁷⁹⁴ Ministry of Foreign Affairs of Israel, “General Information: Israeli Settlements and International Law” (30 Nov. 2015), available at <https://tinyurl.com/bdheme9b>.

⁷⁹⁵ UNGA, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, UN Doc. A/70/497 (24 Nov. 2015), p. 14.

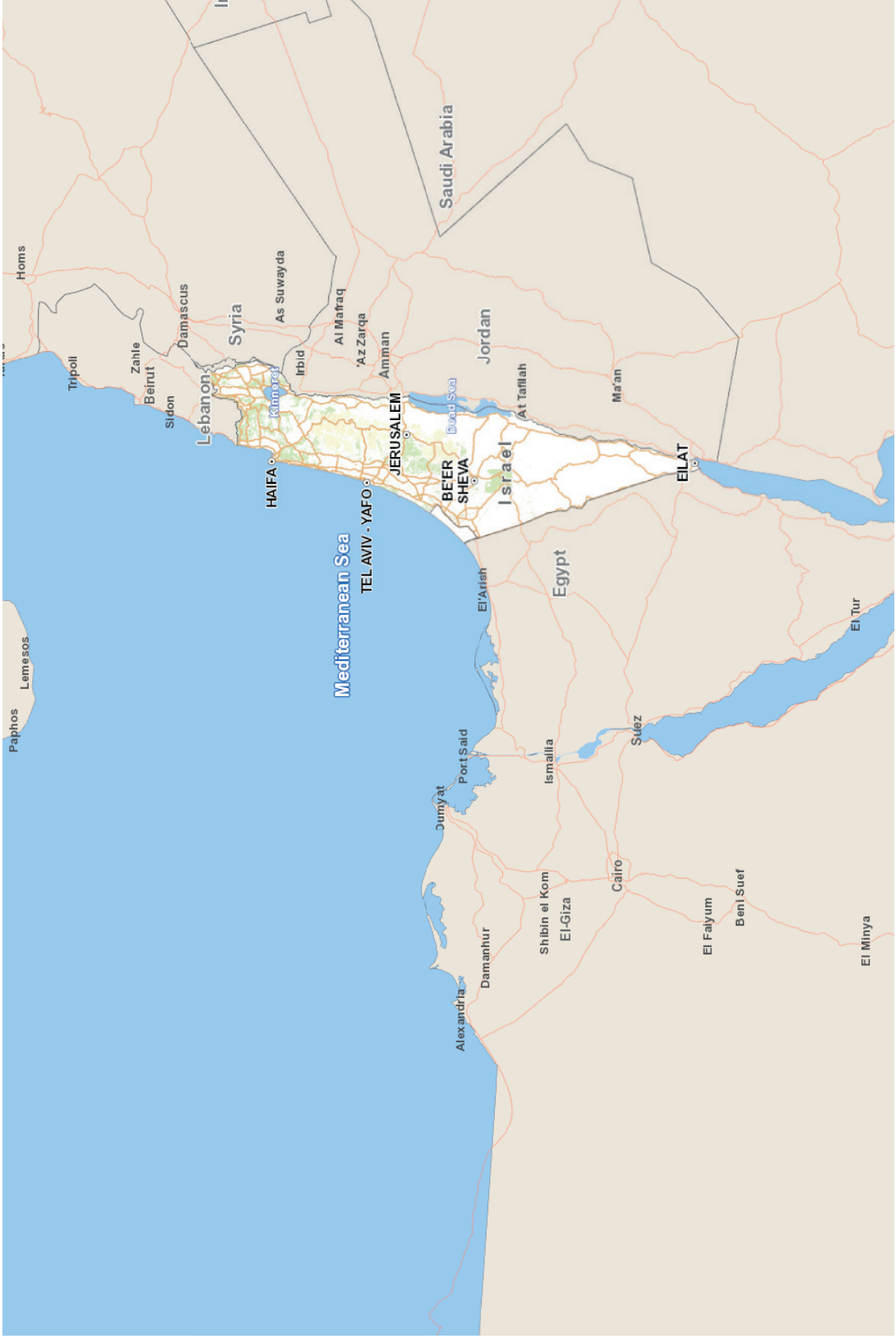


Figure 3.1

3.23 For all the foregoing reasons, Israel has illegally annexed Area C of the West Bank *de facto*.

II. The Conduct of the Occupation Violates International Human Rights Law

3.24 In carrying out its occupation of the OPT, Israel has committed numerous violations of IHRL.

3.25 As concerns IHRL, the Court previously held in the *Wall* Advisory Opinion that the International Covenant on Civil and Political Rights (“**ICCPR**”),⁷⁹⁶ the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”),⁷⁹⁷ and the Convention on the Rights of the Child (“**CRC**”)⁷⁹⁸ apply within the OPT.

3.26 Other human rights instruments also apply, including the International Convention on the Elimination of All Forms of Racial Discrimination (“**CERD**”)—to which Israel is a State Party.⁷⁹⁹ It does not matter that Israel does not have sovereignty over the OPT. In its Order granting provisional measures in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, where violations of Articles 2 and 5 of the CERD were alleged, the Court observed that “there is no restriction of a general nature in CERD relating to its territorial application” and that “neither Article 2 nor Article 5 of CERD ... contain a specific

⁷⁹⁶ *Wall* Advisory Opinion, para. 111.

⁷⁹⁷ *Ibid.*, para. 112.

⁷⁹⁸ *Ibid.*, para. 113.

⁷⁹⁹ UN, “Status of Treaties: CERD” (last accessed: 15 July 2023), available at <https://tinyurl.com/bdeawtc4>.

territorial limitation”.⁸⁰⁰ Accordingly, it ruled that “these provisions of CERD generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory”.⁸⁰¹

3.27 The Court’s position accords with the views of the CERD Committee. As early as 1998, the CERD Committee made clear that “Israel is accountable for implementation of the [CERD] ... in all areas over which it exercises effective control”.⁸⁰² And following the Court’s order in *Georgia v. Russian Federation*, the CERD Committee stated that the argument that the CERD “does not apply in the [OPT] ... cannot be sustained under the letter and spirit of the Convention, or under international law, as also affirmed by the International Court of Justice”.⁸⁰³ More recently, in its decision on jurisdiction over the inter-State communication submitted by the State of Palestine against Israel, the CERD Committee found that Israel “has an obligation to comply with the Convention with respect to the OPT”.⁸⁰⁴ Because Palestinians are undeniably a national or ethnic group distinct from Jewish Israelis, the CERD Convention applies to discriminatory distinctions Israel makes between Palestinians and Jewish Israelis.

⁸⁰⁰ *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Order on Request for Provisional Measures, I.C.J. Reports 2008*, p. 353, para. 109.

⁸⁰¹ *Ibid.*

⁸⁰² CERD Committee, *Racial Discrimination Convention – Consideration of Israel’s combined 7th to 9th periodic reports*, UN Doc. CERD/C/304/Add.45 (30 Mar. 1998), para. 12.

⁸⁰³ CERD Committee, *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (14 June 2007), para. 32.

⁸⁰⁴ CERD Committee, *Inter-State communication submitted by the State of Palestine against Israel: preliminary procedural issues and referral to the Committee*, UN Doc. CERD/C/100/3 (15 June 2021), para. 2.9.

3.28 The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)—to which Israel is also a Party⁸⁰⁵—also governs Israel’s conduct in the OPT. Like the CERD, it does not contain any restriction relating to its territorial application. The Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) explained in its General Comment No. 28: “The obligations of States parties apply ... without discrimination both to citizens and non-citizens ... within their territory or effective control, even if not situated within the territory. States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.”⁸⁰⁶

3.29 This section describes Israel’s most egregious human rights violations. As is demonstrated in Sections III and IV, some of these violations also amount to violations of Israel’s obligations under IHL as an occupying Power and constitute war crimes or crimes against humanity.

A. ISRAEL VIOLATES THE RIGHTS TO LIFE AND SECURITY OF PERSON

3.30 **The Right to Life.** Article 6(1) of the ICCPR guarantees the right to life and provides that “[n]o one shall be arbitrarily deprived of life”. This right “must be respected and ensured without distinction of any kind, such as race”.⁸⁰⁷ Article 6 of the CRC recognizes the child’s “inherent right to life” and requires States to “ensure to the maximum extent possible the survival and development of the child”.

⁸⁰⁵ UN, CEDAW Information Note 4: List of State Parties, *available at* <https://tinyurl.com/ye258y6m>.

⁸⁰⁶ CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (16 Dec. 2010), para. 12.

⁸⁰⁷ HRC, *General Comment No. 36*, UN Doc. CCPR/C/GC/36 (3 Sept. 2019), para. 61.

3.31 To comply with its obligation to respect this right in using military force, such as in Gaza, Israel must refrain from “targeting ... civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks” and “fail[ing] to apply the principles of precaution and proportionality”.⁸⁰⁸

3.32 In carrying out law enforcement activities in the West Bank (including East Jerusalem), according to the Human Rights Committee (“HRC”)’s General Comment No. 36, Israel is under an obligation to “take all necessary measures to prevent arbitrary deprivation of life by [its] law enforcement officials, including soldiers charged with law enforcement missions”.⁸⁰⁹ Accordingly, “[t]he use of potentially lethal force for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat”.⁸¹⁰ Israel must also “investigate and, where appropriate, prosecute the perpetrators of ... incidents [of potentially unlawful deprivations of life], including incidents involving allegations of excessive use of force with lethal consequences”.⁸¹¹

3.33 **The Right to Security of Person.** Article 9(1) of the ICCPR establishes “the right to ... security of person”. According to the HRC, “[t]he right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they

⁸⁰⁸ *Ibid.*, para. 64.

⁸⁰⁹ *Ibid.*, para. 13.

⁸¹⁰ *Ibid.*, para. 12.

⁸¹¹ HRC, *General Comment No. 36*, UN Doc. CCPR/C/GC/36 (3 Sept. 2019), para. 27.

unjustifiably inflict bodily injury”.⁸¹² Article 5(b) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.34 Israel’s **military attacks on Gaza** plainly violate its obligations to respect the rights to life and security of person. The excessive and indiscriminate force deployed during those attacks, described above in paragraphs 2.108-2.129, targets civilians and thus amount to arbitrary deprivations of the right to life and the right to security of person. Further, by subjecting Palestinians living in Gaza to the constant threat of violence, Israel violates Article 9(1) of the ICCPR by “intentional[ly] inflict[ing] ... mental injury”⁸¹³ on them. Israel’s violent **measures to enforce the blockade of Gaza**, described in paragraphs 2.130-2.136, likewise employ excessive and disproportionate force inconsistent with its obligations to respect the rights to life and security of person.

3.35 In the West Bank (including East Jerusalem), Israel violates its obligations to respect and ensure the rights to life and security of person in carrying out **law enforcement activities**. These include the killing of unarmed civilians during routine law enforcement situations (described in paragraphs 2.141-2.153); the excessive use of force against civilians (including journalists) in the context of protests or other confrontations (described in paragraphs 2.154-2.159 and 2.261-2.266); the excessive use of force in heavily populated civilian areas, including refugee camps, in the course of military security operations (described in paragraphs 2.160-2.169); and extrajudicial executions, including targeted assassinations and the execution of suspected attackers who have been disarmed (described in paragraphs 2.170-2.172). Moreover, Israel’s **failure to redress violations** of the rights to life and security of person carried out by members of its

⁸¹² HRC, *General Comment No. 35*, UN Doc. CCPR/C/GC/35 (16 Dec. 2014), para. 9.

⁸¹³ *Ibid.*

security forces or the IDF (described in paragraphs 2.137-2.138, 2.148-2.151, 2.173, 2.177-2.178, and 2.164), including through its **tolerance of settler violence** (described in paragraphs 2.179-2.185), also constitutes a violation of those rights.

3.36 Because Israel’s violations of the right to security of person are targeted at Palestinians and not Israeli Jews, they amount to a violation of Article 5(b) of the CERD. Likewise, because measures violating the rights to life and security of person also affect children, they violate Article 6 of the CRC.

3.37 Israel’s violations of Palestinians’ rights to life and security of person have been the subject of concluding observations by various human rights treaty bodies. For the sake of brevity, Qatar here (and with respect to each right discussed in the sections below) highlights two especially pertinent findings:

- In 2013, the Committee on the Rights of the Child (“**CRC Committee**”) expressed its concern that “children on both sides of the conflict continue to be killed and injured, children living in the OPT being disproportionately represented among the victims” and that “hundreds of Palestinian children have been killed and thousands injured over the reporting period as a result of the State party military operations, especially in Gaza where [Israel] proceeded to air and naval strikes on densely populated areas with a significant presence of children, thus disregarding the principles of proportionality and distinction”.⁸¹⁴ It further noted with concern that “in most of the cases Israeli military forces not only fail to intervene to prevent violence and to protect children”, and that “in most of the cases, perpetrators are not brought to justice and enjoy full impunity for their crimes”.⁸¹⁵
- In 2022, the HRC expressed its concern about the “continuing and consistent reports of the excessive use of lethal force by the Israeli

⁸¹⁴ CRC Committee, *Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session*, UN Doc. CRC/C/ISR/CO/2-4 (7 July 2013), para. 25.

⁸¹⁵ *Ibid.*, para. 25(b).

security forces against Palestinian civilians, including children, and the lack of accountability for these acts, resulting in a general climate of impunity”⁸¹⁶ and in particular, the “excessive force used in policing demonstrations, including the Great March of Return between March 2018 and December 2019, during which 183 people, including children, paramedics, journalists and persons with disabilities, were shot dead”.⁸¹⁷ The Committee also expressed its concern about the fact “that no perpetrator has been brought to justice for excessive force used against 260 Palestinians, including children, during the escalation of hostilities in Gaza in May 2021”.⁸¹⁸

3.38 The OHCHR, mandate holders, and commissions of inquiry have reached similar conclusions.⁸¹⁹

B. ISRAEL VIOLATES THE RIGHTS TO LIBERTY OF PERSON AND TO BE FREE FROM TORTURE

3.39 **The Right to Liberty of Person.** Article 9(1) of the ICCPR provides:

Everyone has the right to liberty ... of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

⁸¹⁶ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 26.

⁸¹⁷ *Ibid.*

⁸¹⁸ *Ibid.*

⁸¹⁹ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 50(a); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 64; Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), paras. 5, 17, 26; Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/49/85 (28 Apr. 2022), paras. 52, 55; Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 61.

3.40 Article 37 of the CRC establishes similar protections specifically for children.

3.41 The HRC has determined that, a general matter, the “notion of ‘arbitrariness’ ... must be interpreted ... to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality”.⁸²⁰ Unjust, unreasonable, unnecessary or disproportionate arrest or detention thus violates the right under Article 9(1). “Enforced disappearances ... constitute a particularly aggravated form of arbitrary detention.”⁸²¹

3.42 Moreover, Israel’s obligation to respect this right imposes strict requirements on it when it subjects Palestinians to administrative detentions for purported security reasons. According to the HRC, administrative detention, carried out “not in contemplation of prosecution on a criminal charge,” is permissible only insofar as it is not arbitrary.⁸²² “[D]etention as punishment for the legitimate exercise of the rights as guaranteed by the [ICCPR] is arbitrary”.⁸²³ Moreover, for the administrative detention of a given detainee to be permissible, it must be the only way to guard against a legitimate threat posed by the particular detainee.⁸²⁴ Once detained, Article 9 of the ICCPR also obliges Israel to permit detainees to avail themselves of “[p]rompt and regular review by a court or other tribunal” of their detention, along with “access to independent legal advice”.⁸²⁵

⁸²⁰ HRC, *General Comment No. 35*, UN Doc. CCPR/C/GC/35 (16 Dec. 2014), para. 12.

⁸²¹ *Ibid.*, para. 17.

⁸²² *Ibid.*, para. 15.

⁸²³ *Ibid.*, para. 17.

⁸²⁴ *Ibid.*, para. 15.

⁸²⁵ *Ibid.*

3.43 **The Right to Be Free from Torture and Cruel, Inhuman or Degrading Treatment.** Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Articles 2 and 16 of the Convention Against Torture (“CAT”), to which Israel is also a party, establish similar prohibitions. According to the HRC, Israel must refrain from subjecting individuals “to acts that cause physical pain ... [and] to acts that cause mental suffering to the victim”.⁸²⁶ Article 37(a) of the CRC is to the same effect. Acts of torture include denying the family of a detained person the right to know the truth about his or her whereabouts and the right to have their family member’s remains returned to them.⁸²⁷

3.44 Israel’s practices of arbitrary arrest, administrative detention, and the conditions in which administrative detainees and prisoners are held violate its obligations in respect of the right to liberty of person and to be free from torture. This includes:

- The **draconian practices** to which suspects detained and arrested, including children, are subjected (described in paragraphs 2.191-2.200), and withholding information regarding the whereabouts of detained children from their parents (as described in paragraph 2.197);
- Its widespread practice of subjecting Palestinians, including children and journalists, to **administrative detention** not justified by security concerns but instead used to stifle dissent or otherwise punish Palestinians (described in paragraphs 2.201-2.209 and 2.267-2.270);

⁸²⁶ HRC, *General Comment No. 20*, UN Doc. HRI/GEN/1/Rev.1 (29 July 1994), para. 5.

⁸²⁷ See Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN Doc. A/HRC/16/48 (26 Jan. 2011), p. 15; CAT Committee, *Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concerning Communication No. 456/2011*, UN Doc. CAT/C/54/D/456/2011 (26 June 2015), para. 6.4.

- Denying those detained administratively the **ability effectively to challenge their detention** (described at paragraphs 2.201-2.202);
- Subjecting those in administrative detention and in prison to **torture and ill treatment** (described in paragraph 2.205); and
- **Desecrating and withholding the corpses** of deceased Palestinians (described in paragraphs 2.175-2.176).

3.45 Several human rights treaty bodies have expressed concern about, and condemned, Israel’s violations of Palestinians’ rights to liberty of person and to be free from torture, including:

- In 2022, the HRC condemned “the widespread practice of arbitrary arrest and detention, including in facilities located in Israel, of Palestinians, including journalists, human rights defenders and children”.⁸²⁸ It noted with concern that Israel subjected these individuals to “administrative detention ... without charge or trial and without the guarantee of fundamental legal safeguards”.⁸²⁹
- The HRC also stated it was “deeply concerned about reports of the widespread and systematic practice of torture and ill-treatment by Israel Prison Service guards and the Israeli security forces against Palestinians, including children, at the time of arrest and in detention. It is particularly concerned about the use of physical and psychological violence, sleep deprivation, stress positions and prolonged solitary confinement, including against children and detainees with intellectual or psychosocial disabilities.”⁸³⁰

⁸²⁸ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 34.

⁸²⁹ *Ibid.* See also CAT, *Initial report submitted by the State of Palestine under article 19 of the Convention, due in 2015*, UN Doc. CAT/C/PSE/CO/1 (26 Aug. 2019), para. 24.

⁸³⁰ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 30. See also CAT, *Initial report submitted by the State of Palestine under article 19 of the Convention, due in 2015*, UN Doc. CAT/C/PSE/CO/1 (26 Aug. 2019), para. 28 (CAT stated it was troubled by “consistent reports indicating that persons in custody, including in the facilities under the authority of the security forces and intelligence services in both

3.46 The UN Secretary-General, OHCHR, mandate holders, commission of inquiry, and fact-finding missions have reached similar conclusions.⁸³¹

C. ISRAEL VIOLATES THE RIGHT TO LIBERTY OF MOVEMENT AND
FREEDOM TO CHOOSE ONE’S OWN RESIDENCE

3.47 Article 12(1) of the ICCPR guarantees the rights to freedom of movement and to choose one’s own residence to “everyone lawfully within the territory of a state[], within that territory”. Article 12(2) guarantees the right “to leave any country, including [one’s] own” and Article 12(4) forbids states from “arbitrarily depriv[ing] [one] of the right to enter [one’s] own country”.

3.48 Israel may only restrict Palestinians’ rights to movement and residence insofar as restrictions are “necessary to protect national security, public order

the West Bank and the Gaza Strip, are subjected to torture or ill-treatment, in particular during the investigation stage of proceedings.”).

⁸³¹ See, e.g., Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 45 (“During the reporting period, OHCHR continued to document allegations of ill-treatment, in some cases possibly amounting to torture, in Palestinian detention facilities in the West Bank and Gaza.”); Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 50(a) (“the military courts incarcerate thousands of Palestinians on security charges through a judicial system that offers few of the international protections regarding due process or the prevention of arbitrary arrest and detention. Additionally, hundreds of Palestinians languish in administrative detention under open-ended confinement.”); *ibid.*, para. 50(e) (“torture continues to be used in practice by Israel against Palestinians in detention. Methods of torture include sleep deprivation, beating and slapping, humiliation, unhygienic conditions and extended shackling in contorted positions.”); Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/42 (21 Feb. 2018), para. 61 (there is a “high risk that Palestinians face of being arbitrarily deprived of their liberty, both by the Israeli Security Forces and the Preventive Security Services. This is especially the case for Palestinians openly opposing the Israeli occupation, or the policies of their government in the West Bank or in Gaza. Journalists and human rights defenders have been particularly targeted within this context.”); UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/76/333 (20 Sept. 2021) (Dossier No. 862), para. 21 (“Arbitrary arrest, detention and ill-treatment increasingly targeted Palestinian women, including human rights defenders, leaders, journalists and students.”).

(ordre public), public health or morals or the rights and freedoms of others”.⁸³² As the Court recognized in the *Wall* Advisory Opinion,⁸³³ the HRC’s General Comment No. 27 makes clear that limitations on the exercise of these rights “must conform to the principle of proportionality” and “must be the least intrusive instrument amongst those which might achieve the desired result”.⁸³⁴ Article 5(d)(i) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.49 Israel’s **restrictions on travel between, within, into and out of the West Bank and Gaza** (described in paragraphs 2.63 and 2.69-2.85) violate its obligation to respect the right to movement. As stated, Israel agreed, as part of the Oslo Accords, that the West Bank and Gaza form “a single territorial unit”.⁸³⁵ Moreover, the HRC has made clear that as the internationally-recognized occupied Palestinian territories, the West Bank and Gaza should be treated together as “the territory of a state” in which all individuals lawfully present have the rights to movement and residence.⁸³⁶

3.50 Yet, as explained in paragraphs 2.63-2.85 and 2.91-2.93, it is extremely difficult for Palestinians to travel between the West Bank and Gaza, to travel within those areas, to leave the OPT, or to re-enter the OPT from abroad. These broadly applied restrictions are not proportionate to, nor necessary to guard against, any

⁸³² International Covenant on Civil and Political Rights (16 Dec. 1966), 999 U.N.T.S. 171 (hereinafter, “**ICCPR**”), arts. 12(1), (3).

⁸³³ *Wall* Advisory Opinion, para. 136.

⁸³⁴ HRC, *General Comment No. 27*, UN Doc. CCPR/C/21/Rev.1/Add.9 (1 Nov. 1999), paras. 13-14.

⁸³⁵ Oslo II, art. XI(1). Indeed, Israel has made specific undertakings to permit regular “safe passage” between the West Bank and Gaza. Protocol Concerning Safe Passage, art. 1; Agreed Principles for Rafah Crossing.

⁸³⁶ See HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 36.

security threat and, as such, violate the right to movement. Indeed, the HRC has held that restrictions on an individual from “travelling internally without a specific permit” do not “meet the test of necessity and the requirements of proportionality”.⁸³⁷

3.51 Among others, the restrictions Israel places on freedom of movement *within* the OPT that do not meet the requirements of necessity and proportionality, and therefore violate the guarantee of freedom of movement in Article 12(1), include:

- Israel’s restrictions on movement within the West Bank through a panoply of **checkpoints and physical impediments to travel** (described in paragraphs 2.77-2.81);
- The impediments on free movement created by the **separation wall**, including the requirement to obtain permits to travel to the “seam zone” and the periodic closure of access thereto (described in paragraphs 2.70-2.74)—which already in 2004 the Court found do not meet the requirements of necessity and proportionality;⁸³⁸
- The maintenance of **separate and segregated roads** in the West Bank (described in paragraphs 2.82-2.84);
- The requirement to obtain **permits to enter East Jerusalem** from the rest of the West Bank (described in paragraphs 2.75);
- The **blockade of Gaza**, including severe restrictions on travel from Gaza to the West Bank and East Jerusalem (described in paragraphs 2.91-2.93);
- The enforcement of **land and sea “buffer zones” in Gaza** (described in paragraphs 2.100-2.101); and

⁸³⁷ HRC, *General Comment No. 27*, UN Doc. CCPR/C/21/Rev.1/Add.9 (1 Nov. 1999), para. 16.

⁸³⁸ *Wall* Advisory Opinion, para. 136.

- The **bans on journalists' ability to access** certain areas of the OPT (described in paragraphs 2.271-2.272).

3.52 The **restrictions on travel into and out of the OPT** also violate the right to freedom of movement. The broadly applied restrictions on Palestinians' ability to leave the OPT (described in paragraphs 2.75-2.76) are not necessary or proportionate and violate Article 12(2). And the impediments Palestinians face in returning to the OPT from abroad, including the denial of residency rights in the OPT for individuals who were displaced in 1948 and their descendants, and other Palestinians who were not registered in the Palestinian population registry (described in paragraphs 2.29-2.32) violate Article 12(4), especially given that, as the HRC has recognized, "there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable".⁸³⁹

3.53 Israel's **measures restricting Palestinians' ability to reside in the West Bank (including East Jerusalem)** (described in paragraphs 2.28-2.46) violate its obligation to respect the right to freedom to choose one's own residence. The indiscriminate application of those restrictions cannot be said to be proportionate or necessary to achieving any security objective.

3.54 Further, because these restrictions apply to Palestinians but not to Jewish Israelis, they contravene Article 5(d)(i) of the CERD, which requires that the rights to freedom of movement and to choose one's own residence must be respected and guaranteed without regard to ethnic origin.

⁸³⁹ HRC, *General Comment No. 27*, UN Doc. CCPR/C/21/Rev.1/Add.9 (1 Nov. 1999), para. 21.

3.55 Israel’s restrictions on Palestinians’ movement have been the subject of concluding observations by various human rights treaty bodies, including.⁸⁴⁰

- In 2022 the HRC expressed “its deep concern about the continuing restrictions on freedom of movement imposed by the State party throughout the Occupied Palestinian Territory, including East Jerusalem, through its discriminatory permit regime and the designation of access-restricted areas”.⁸⁴¹ And with respect to Gaza, it was “deeply concerned about ... [the blockade’s] adverse impact on the enjoyment of the right to freedom of movement”.⁸⁴²
- In 2020, the CERD Committee stated that it was “appalled” at the discriminatory “implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime”.⁸⁴³ It also “note[d] with concern that the blockade continues to violate the right to freedom of movement”.⁸⁴⁴

3.56 Israel’s restrictions on Palestinians’ residency rights have also been the subject of concluding observations by various human rights treaty bodies.⁸⁴⁵ For example, with respect to residency in East Jerusalem, in 2020, the CERD

⁸⁴⁰ See CEDAW Committee, *Concluding observations on the sixth periodic report of Israel*, UN Doc. CEDAW/C/ISR/CO/6 (17 Nov. 2017), para. 31(a) (reiterating its prior recommendation that Israel “Immediately put an end to all human rights abuses and violations perpetrated against women and girls in the Occupied Palestinian Territory and remove any restrictions on freedom of movement”); CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, UN Doc. CEDAW/C/ISR/CO/5 (5 Apr. 2011), para. 23.

⁸⁴¹ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 36.

⁸⁴² *Ibid.*, para. 38.

⁸⁴³ 2020 CERD Concluding Observations, para. 22.

⁸⁴⁴ *Ibid.*, para. 44.

⁸⁴⁵ See CEDAW Committee, *Concluding observations on the sixth periodic report of Israel*, UN Doc. CEDAW/C/ISR/CO/6 (17 Nov. 2017), para. 31(a) (reiterating its prior recommendation that Israel “Immediately put an end to all human rights abuses and violations perpetrated against women and girls in the Occupied Palestinian Territory and remove any restrictions on freedom of movement”); CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, UN Doc. CEDAW/C/ISR/CO/5 (5 Apr. 2011), para. 23.

Committee expressed concern over “Amendment No. 30 of 2018 to the already discriminatory Entry into Israel Law (Law No. 5712-1952), which grants the Israeli Minister of Interior broad discretion to revoke the permanent residency permit of Palestinians living in East Jerusalem”.⁸⁴⁶ The amended law imposes “disproportionate and adverse restrictions” on Palestinians’ ability to reside in East Jerusalem and permits the arbitrary “withdrawal of [residency] permits”.⁸⁴⁷

3.57 The UN Secretary-General, OHCHR, mandate holders, and commissions of inquiry have reached similar conclusions.⁸⁴⁸

D. ISRAEL VIOLATES THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION
AND THE RIGHT OF PEACEFUL ASSEMBLY

3.58 **The Right to Freedom of Opinion and Expression.** Article 19 of the ICCPR protects the rights to freedom of opinion and expression. According to the HRC: “This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others.... It includes political

⁸⁴⁶ 2020 CERD Concluding Observations, para. 15.

⁸⁴⁷ *Ibid.*, para. 24.

⁸⁴⁸ See UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 43; Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 50(b); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), paras. 20, 55, 58, 59; Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), paras. 13, 14, 35; Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/49/85 (28 Apr. 2022), paras. 10, 34, 35, 52; Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 43.

discourse, commentary ... on public affairs ... discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.”⁸⁴⁹

3.59 Article 19(3) provides that this right may only be restricted “[f]or the protection of national security or of public order (*ordre public*), or of public health or morals”. The HRC has made clear such restrictions “must not be overbroad”⁸⁵⁰ and must be justified by “demonstrat[ing] in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.⁸⁵¹ Article 5(d)(viii) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.60 **The Right of Peaceful Assembly.** Article 21 of the ICCPR guarantees the “right of peaceful assembly”. The right of peaceful assembly “protects the non-violent gathering by persons for specific purposes, principally expressive ones”.⁸⁵²

3.61 Like the right to freedom of expression and opinion, this Article 21 makes clear that this right may only be subject to restrictions “imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”. As the HRC explains, this means that Israel may not “prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor ... sanction participants or organizers without legitimate cause”.⁸⁵³ Moreover, “[t]he approach of the

⁸⁴⁹ HRC, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (12 Sept. 2011), para. 11.

⁸⁵⁰ *Ibid.*, para. 34.

⁸⁵¹ *Ibid.*, para. 35.

⁸⁵² HRC, *General Comment No. 37*, UN Doc. CCPR/C/GC/37 (17 Sept. 2020), para. 4.

⁸⁵³ *Ibid.*, para. 23.

authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral, and must not be based on the identity of the participants or their relationship with the authorities”.⁸⁵⁴ Article 5(d)(ix) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.62 Israel’s **measures targeting journalists and impeding their work** violate its obligations to respect the right to freedom of opinion and expression. The HRC has stated that, under Article 19 of the ICCPR, “journalists should not be penalized for carrying out their legitimate activities”,⁸⁵⁵ including for “being critical of the government or the political social system espoused by the government”.⁸⁵⁶ Yet that is exactly what Israel does (as explained in paragraphs 2.260-2.272).

3.63 Similarly, its measures aimed at **repressing Palestinian civil society, human rights NGOs and political dissent** (described in paragraphs 2.273-2.278) violate the rights to freedom of opinion and expression. According to the HRC, actions to “muzzl[e] ... advocacy of ... human rights” are impermissible restrictions on the rights to freedom of opinion and expression.⁸⁵⁷ Israel’s acts to curb the activities of human rights advocates and organizations in the OPT, with no evidence that such advocates and organizations pose any security risk, cannot be justified.

3.64 Israel’s **actions repressing peaceful protests in the OPT** (described in paragraphs 2.132-2.135, 2.212-2.213, and 2.235), including through violence (described in paragraphs 2.132 and 2.154-2.159), violate its obligations to respect

⁸⁵⁴ *Ibid.*, para. 22.

⁸⁵⁵ HRC, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (12 Sept. 2011), para. 46.

⁸⁵⁶ *Ibid.*, para. 42.

⁸⁵⁷ *Ibid.*, para. 22.

the rights to freedom of expression and opinion and of peaceful assembly. There are no security reasons justifying Israel's broad restrictions on, and suppression of, Palestinian protest against the occupation and Israel's human rights violations, which are not "in principle ... content neutral".⁸⁵⁸

3.65 Israel's restrictions on the right to freedom of opinion and expression and the right of peaceful assembly have been the subject of various reports by UN bodies. For example, in 2022, the HRC called on Israel to "[g]uarantee the effective protection of journalists and human rights defenders against any kind of threat, pressure, intimidation, attack and arbitrary arrest and detention"⁸⁵⁹ and "[r]efrain from intimidating, harassing, arresting, detaining or prosecuting for terrorist offences journalists and human rights defenders who are exercising their right to freedom of expression".⁸⁶⁰

3.66 The OHCHR, mandate holders, and commissions of inquiry have reached similar conclusions.⁸⁶¹

⁸⁵⁸ HRC, *General Comment No. 37*, UN Doc. CCPR/C/GC/37 (17 Sept. 2020), para. 22.

⁸⁵⁹ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 49(b).

⁸⁶⁰ *Ibid.*, para. 49(c).

⁸⁶¹ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 50(b); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 47; Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), paras. 29-21; Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/49/85 (28 Apr. 2022), paras. 30, 41, 55.

E. ISRAEL VIOLATES THE RIGHTS TO FAMILY UNIFICATION
AND TO A FAMILY LIFE

3.67 Article 23(2) of the ICCPR protects the right “to marry and to found a family” and Article 17(1) thereof demands respect for the privacy of the family. Article 10(1) of the ICESCR provides that “[t]he widest possible protection and assistance should be accorded to the family”.⁸⁶² Article 5(d)(iv) of the CERD requires Israel to guarantee the “right to marriage and choice of spouse” without distinction as to ethnic origin. The HRC has observed that “[t]he right to found a family implies, in principle, the possibility to ... live together”, which “implies the adoption of appropriate measures ... to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons”.⁸⁶³

3.68 For children in particular, Article 16(1) of the CRC provides that “[n]o child shall be subjected to arbitrary or unlawful interference with his or her ... family”. Interpreting this provision of the CRC, among others, the CRC Committee has stated that “[p]rotection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life”.⁸⁶⁴

⁸⁶² See also Amnesty International, *Public Statement: Israel/OPT: Israel must repeal the discriminatory Citizenship and Entry into Israel Law* (19 Feb. 2017), available at <https://tinyurl.com/49wmf6hk>, p. 3.

⁸⁶³ HRC, *General Comment No. 19*, UN Doc. HRI/GEN/1/Rev.1 (27 July 1994), para. 5.

⁸⁶⁴ CMW, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, UN Doc. CMW/C/GC/4-CRC/C/GC/23 (16 Nov. 2017), para. 27.

3.69 Measures that unreasonably impede the unification of families are inconsistent with Israel’s obligations concerning the respect for, and protection of, the family.

3.70 Israel’s policies impeding the ability of Palestinians to reside with family members who are residents of East Jerusalem or of the West Bank (described in paragraphs 2.34, 2.40, and 2.44) violate the right to family unity and family life, as do the policies of excluding Palestinians abroad from the OPT (described in paragraphs 2.29-2.32). For those individuals who are in the OPT, these policies prevent families from living together in the OPT anywhere but Gaza.

3.71 These policies also violate the CRC because the “deprive[] [children] of their right to live and grow up in a family environment with both of their parents or with their siblings and [] thousands live under the fear of being separated because of the severe restrictions on family reunification”.⁸⁶⁵ And they plainly violate the CERD because they prevent Palestinians from living with their family in the West Bank (including East Jerusalem), but do not similarly restrict Jewish Israeli families from living together there.⁸⁶⁶

3.72 Concluding observations by various human rights treaty bodies have highlighted the UN’s concern about the impact of Israel’s policies on the rights to family unification and family life, including:

- In 2019, the CESCR expressed its concern “about the fact that the Citizenship and Entry into Israel Law (Temporary Order) prohibits Palestinians from the West Bank or the Gaza Strip and who are married

⁸⁶⁵ CRC Committee, *Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session*, UN Doc. CRC/C/ISR/CO/2-4, para. 49.

⁸⁶⁶ See 2020 CERD Concluding Observations, para. 24 (restrictions on residence in East Jerusalem “suspend[] the possibility, with certain rare exceptions, of family reunification of Israeli citizens or residents of East Jerusalem with Palestinian spouses living in the West Bank or Gaza Strip”).

to Israeli or East Jerusalem residents to exercise family reunification with their spouses and that this prevents them from enjoying their right to family life” and “that many families in the West Bank, including East Jerusalem, who have relatives in the Gaza Strip remain separated for years due to the closure policy of [Israel]”.⁸⁶⁷

- In 2020, the CERD Committee stated it was “deeply concerned about the disproportionate and adverse restrictions imposed by the Citizenship and Entry into Israel Law (Temporary Provision), which suspends the possibility, with certain rare exceptions, of family reunification of Israeli citizens or residents of East Jerusalem with Palestinian spouses living in the West Bank or Gaza Strip”.⁸⁶⁸

3.73 The OHCHR, mandate holders, and commissions of inquiry have reached similar conclusions.⁸⁶⁹

F. ISRAEL VIOLATES THE RIGHT TO WORSHIP

3.74 Article 18 of the ICCPR establishes the right to “manifest [one’s] religion or belief in worship” and provides that the “[f]reedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. The HRC has made clear that those “[l]imitations may be

⁸⁶⁷ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 40.

⁸⁶⁸ 2020 CERD Concluding Observations, para. 24. *See also* HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 44 (expressing concern about the fact “the Citizenship and Entry into Israel Law (Temporary Order) continues to prohibit family reunification of Israeli citizens with their Palestinian spouses living in the West Bank or Gaza Strip, or with spouses living in States classified as ‘enemy States’”).

⁸⁶⁹ *See* UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 6; UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 23; Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 46.

applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”⁸⁷⁰ Article 5(d)(vii) of the CERD specifically requires Israel to guarantee this right without distinction as to ethnic origin.

3.75 Israel’s **measures impeding the ability of Palestinians to worship**, particularly at sites of deep religious significance (described in paragraphs 2.225-2.229), and its **attacks on worshippers** (described in paragraph 2.230) violate its obligation to respect the right to worship. None are necessary and proportionate restrictions. The same is true of the **restrictions on Palestinians in Gaza traveling to the West Bank (including East Jerusalem)** (described in paragraphs 2.91-2.93), which prevents them from accessing religiously significant sites there.⁸⁷¹

3.76 Moreover, because Jewish Israelis do not face the same restrictions on their right to worship as Palestinians do (described in paragraph 2.229), these restrictions violate Article 5(d)(vii) of the CERD.

3.77 Israel’s violations of Palestinians’ right to worship has been the subject of concluding observations by various human rights treaty bodies, including:

⁸⁷⁰ HRC, *General Comment No. 22*, UN Doc. CCPR/C/21/Rev.1/Add.4 (30 July 1993), para. 8.

⁸⁷¹ See CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 70 (“Palestinians living in the Gaza Strip are impeded from visiting religious sites in the West Bank, including East Jerusalem, due to the closure policy of the State party and that Palestinians living in the West Bank too are restricted from visiting religious sites in East Jerusalem.”).

- In 2010, the HRC noted its concern “at frequent disproportionate restrictions on access to places of worship for non-Jews”.⁸⁷²
- In 2019, the CESCR expressed its concern about the fact “that Palestinians living in the Gaza Strip are impeded from visiting religious sites in the West Bank, including East Jerusalem, due to the closure policy of [Israel] and that Palestinians living in the West Bank too are restricted from visiting religious sites in East Jerusalem”.⁸⁷³

3.78 Different UN mandate holders have reached similar conclusions.⁸⁷⁴

3.79 Restrictions on access to the Holy Sites in Jerusalem also violate the so-called *status quo* of Jerusalem, *i.e.*, “specific guarantees of access to the Christian, Jewish and Islamic Holy Places ... without distinction as to nationality, subject to requirements of national security, public order and decorum”,⁸⁷⁵ the binding nature of which Israel has affirmed.⁸⁷⁶

G. ISRAEL VIOLATES THE RIGHT TO EDUCATION

3.80 Article 13(1) of the ICESCR “recognize[s] the right of everyone to education”, which “shall be directed to the full development of the human

⁸⁷² CCPR, *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee*, UN Doc. CCPR/C/ISR/CO/3 (3 Sept. 2010), para. 20.

⁸⁷³ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 70.

⁸⁷⁴ See Human Rights Council, *Report of Special Rapporteur A. Jahangir on freedom of religion or belief*, UN Doc. A/HRC/13/40/Add.1 (16 Feb. 2010), paras. 165-166; OHCHR, *Press Release: Israel: UN expert condemns brutal attacks on Palestinians at Al-Aqsa Mosque* (6 Apr. 2023), available at <https://tinyurl.com/22c5pxet>.

⁸⁷⁵ *Wall Advisory Opinion*, para. 129.

⁸⁷⁶ See Israel-Jordan General Armistice, art. VIII(2) (recognizing that “agreement in principle already exists ... [on] free access to the Holy Places”); Israel-Jordan Peace Treaty, art. 9(1) (expressly obliging Israel to “provide freedom of access to places of religious and historical significance”).

personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”. The CESCR’s General Comment No. 13 states that “education in all its forms and at all levels shall” be available, accessible, acceptable and adaptable; “the best interests of the student” is the primary consideration.⁸⁷⁷ Article 28 of the CRC likewise recognizes “the right of the child to education” and Article 10 of the CEDAW requires Israel to take steps to ‘ensure to [women] equal rights with men in the field of education”. Finally, Article 5(e)(v) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.81 Israel violates Palestinians’ right to education under these instruments by, *inter alia*, **demolishing and closing schools** in the West Bank (described in paragraph 2.58); **bombing schools in Gaza** (described in paragraphs 2.124-2.125); **banning Palestinian textbooks** and **eliminating Palestinian history curricula** (described in paragraph 2.233); and **maintaining restrictions on movement** that prevent children (and girls in particular⁸⁷⁸) from attending schools (described in paragraph 2.80).⁸⁷⁹ Jewish Israelis do not face similar restrictions or impediments; as such, Israel fails to comply with its obligation to guarantee the right to education without regard to ethnic origin.

⁸⁷⁷ CESCR, *General Comment No. 13*, UN Doc. E/C.12/1999/10 (8 Dec. 1999), paras. 6-7.

⁸⁷⁸ See CEDAW Committee, *Concluding observations on the sixth periodic report of Israel*, UN Doc. CEDAW/C/ISR/CO/6 (17 Nov. 2017), para. 30(a) (“[o]wing to restrictions on freedom of movement in the Occupied Palestinian Territory, Palestinian women and girls continue to be subjected to harassment at checkpoints and by settlers on their way to and from school and work”).

⁸⁷⁹ See CRC Committee, *Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session*, UN Doc. CRC/C/ISR/CO/2-4 (4 July 2013), para. 63(c) (The Committee on the Rights of the Child expressed its concern that “the restrictions on freedom of movement imposed by the wall, closures, checkpoints and permit regimes continue to prevent some Palestinian children from attending schools”).

H. ISRAEL VIOLATES CULTURAL RIGHTS

3.82 Article 15(1)(a) of the ICESCR guarantees the right “[t]o take part in cultural life”. The CESCR’s General Comment No. 21 makes clear this includes the exercise of “cultural practices and with access to cultural goods and services”,⁸⁸⁰ including the right to “have access to [one’s own] ... cultural and linguistic heritage” and “the right to be taught about one’s own culture”.⁸⁸¹

3.83 The CESCR has explained that any limitations on the exercise of this right “must pursue a legitimate aim, be compatible with the nature of th[e] right and be strictly necessary for the promotion of general welfare in a democratic society” and must “be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed”.⁸⁸² Furthermore, States must “[r]espect and protect cultural heritage in all its forms”.⁸⁸³

3.84 Israel has violated its obligation to respect this right by:

- **Prohibiting Palestinian cultural gatherings, events and organizations** (described in paragraph 2.234);
- **Targeting manifestations of Palestinian identity** (described in paragraph 2.235);
- **Banning of the teaching of Palestinian history** (described in paragraph 2.233); and

⁸⁸⁰ CESCR, *General Comment No. 21*, UN Doc. E/C.12/GC/21 (21 Dec. 2009), para. 6. *See also ibid.*, para. 44.

⁸⁸¹ *Ibid.*, para. 49(d).

⁸⁸² *Ibid.*, para. 19.

⁸⁸³ *Ibid.*, para. 50(a).

- **Destroying and failing to protect Palestinian cultural heritage sites** (described in paragraphs 2.216-2.224).

3.85 Article 5(e)(vi) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin. But Jewish Israelis face no similar barriers to exercising their right to take part in cultural life. To the contrary, Israel actively promotes Jewish Israeli culture and identity while simultaneously suppressing Palestinian culture and identity. Likewise, Israel’s discriminatory conduct with respect to Palestinian as compared to Jewish cultural heritage sites (described in paragraphs 2.217 and 2.221) are also inconsistent with its obligations under the CERD.

3.86 Israel’s violations of Palestinians’ cultural rights have been the subject of concluding observations by various human rights treaty bodies:

- In 2013, the CRC Committee expressed its concern “at the removal of significant information on Palestinian history, heritage, flag and cities from school textbooks distributed in 2011 to all private and public schools in East Jerusalem”.⁸⁸⁴
- In 2019, the CESCR expressed its deep concern “about the severe impact of the policies adopted by the State party relating to the Occupied Palestinian Territory, namely the closure policy and the related permit regime regarding the Gaza Strip and the occupation and settlement policy in the West Bank, including East Jerusalem, on the enjoyment of Covenant rights by people living there, including ... to their cultural rights”.⁸⁸⁵

⁸⁸⁴ CRC Committee, *Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session*, UN Doc. CRC/C/ISR/CO/2-4 (7 July 2013), para. 65.

⁸⁸⁵ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 10.

3.87 Similar concerns have been voiced by the UN fact finding mission and commission of inquiry.⁸⁸⁶

I. ISRAEL VIOLATES THE RIGHT TO AN ADEQUATE STANDARD OF LIVING AND THE RIGHT TO HEALTH

3.88 Article 11(1) of the ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. Article 12(1) thereof recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Because the enjoyment and realization of these rights are closely linked—indeed, they are enumerated together in Article 25 of the Universal Declaration on Human Rights—his section addresses aspects of both rights: the right to water (**Section 1**), the rights to food and to land (**Section 2**), the right to housing (**Section 3**), and the right to health (**Section 4**).

1. *The Right to Water*

3.89 The CESCR has stated that the “human right to water”, which derives from both Articles 11(1) and 12(1) of the ICESCR, “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.⁸⁸⁷ “Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party”.⁸⁸⁸ This includes

⁸⁸⁶ See Human Rights Council, *Report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), paras. 59-61; UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 69.

⁸⁸⁷ CESCR, *General Comment No. 15*, UN Doc. E/C.12/2002/11 (20 Jan. 2003), para. 2.

⁸⁸⁸ *Ibid.*, para. 12(c) (emphasis original).

“ensuring sustainable access to water resources for agriculture ...”.⁸⁸⁹ Israel’s obligation to respect this right also requires it to “refrain from interfering directly or indirectly with the enjoyment of the right to water” by, *inter alia*, “refraining from engaging in any practice or activity that denies or limits equal access to adequate water ... and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law”.⁸⁹⁰

3.90 As explained in paragraphs 2.99 and 2.126-2.129, in **Gaza**, Israel has **attacked water installations** and otherwise taken measures that **impede the delivery of clean water** to households. In so doing, it directly interferes with the enjoyment of the right to water and limits access to water infrastructure, and therefore violates the right.

3.91 In the **West Bank**, Israel’s **measures contributing to water insecurity** in Palestinian communities, while prioritizing delivering water to Jewish Israeli settlements (described in paragraphs 2.48 and 2.223), are discriminatory measures concerning access to water resources and therefore violate the right to water.

3.92 Israel’s restrictions on Palestinians’ access to water have been the subject of concluding observations by various human rights treaty bodies:

- In 2019, the CESCR expressed concern about “restrictions imposed on the access of Palestinians to ... water sources” in the Gaza Strip.⁸⁹¹ It was further troubled by “the impact of [Israel’s] occupation and settlement policy and of its destruction of Palestinian water infrastructure on Palestinians in the Occupied Palestinian Territory in

⁸⁸⁹ *Ibid.*, para. 7.

⁸⁹⁰ *Ibid.*, para. 21.

⁸⁹¹ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 44.

accessing water, which results in them living far below the extreme water scarcity level, which in turn engenders serious health consequences”.⁸⁹²

- In 2022, the CERD Committee stated it was “appalled at the hermetic character of the separation of [the Jewish and Palestinian populations in the OPT], who live on the same territory but do not enjoy ... equal access to ... water resources”.⁸⁹³ In that regard, the committee expressed particular concern about “continuing restrictions on access of Palestinians in the [OPT] ... to ... adequate water supply”.⁸⁹⁴

3.93 Similar concerns have been voiced by the UN Secretary-General, UN HCHR, mandate holders, and commission of inquiry.⁸⁹⁵

2. *The Rights to Food and to Land*

3.94 The **right to food** is expressly established by Article 11(1) of the ICESCR. To comply with its core obligations regarding the right to food, Israel must “ensure the satisfaction of, at the very least, the minimum essential level required to be free

⁸⁹² *Ibid.*, para. 46.

⁸⁹³ 2020 CERD Concluding Observations, para. 22.

⁸⁹⁴ *Ibid.*, para. 42.

⁸⁹⁵ See, e.g., UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 69 (“Israeli policies ... such as those on the expropriation of natural resources and on building restrictions, have directly affected the economic, social and cultural rights of Palestinians, including their right[] to ... water”); Human Rights Council, *Report of the UN High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/48/43 (15 Oct. 2021), para. 42 (“The destruction of water facilities [by Israel] may violate obligations of the occupying Power to ... ensure the right to water under international human rights law”.); Human Rights Council, *Report of the UN High Commissioner for Human Rights on Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009*, UN Doc. A/HRC/35/19 (12 June 2017), para. 44 (“[Israel’s blockade in the Gaza Strip] violates a broad spectrum of human rights, including access ... to water”).

from hunger”⁸⁹⁶ and may not “discriminat[e] in access to food”.⁸⁹⁷ Measures that amount to “the denial of access to food to particular individuals or groups” and “the prevention of access to humanitarian food aid in internal conflicts or other emergency situations” constitute violations of Israel’s obligations to respect and ensure the right to food.⁸⁹⁸

3.95 The **right to land** is, according to the CESCR, “crucial to guarantee the enjoyment of the right to adequate food, as land is used in rural areas for the purpose of food production”.⁸⁹⁹ Israel must ensure “the right to have access to, sustainably use and manage land to achieve an adequate standard of living”.⁹⁰⁰ Israel’s obligation to respect the right to land also “means not doing any of the following: (a) interfering with land users’ legitimate tenure rights, in particular by evicting occupants from land on which they depend for their livelihoods; (b) evicting by force and demolishing property as punitive measures; [and] (c) committing any discriminatory acts in the process of land registration and land administration”.⁹⁰¹

3.96 By **causing a situation of food insecurity** in Gaza and **destroying food production facilities there**, as described in paragraphs 2.88, 2.101, 2.103 and 2.126, Israel violates the right to food. In this regard, in 2019, the CESCR expressed concern that “half the population of Gaza lives in poverty and that about two-thirds of households in Gaza have been suffering from food insecurity, which is largely

⁸⁹⁶ CESCR, *General Comment No. 12*, UN Doc. E/C.12/1999/5 (12 May 1999), para. 17.

⁸⁹⁷ *Ibid.*, para. 18.

⁸⁹⁸ *Ibid.*, para. 19.

⁸⁹⁹ CESCR, *General Comment No. 26*, UN Doc. E/C.12/GC/26 (24 Jan. 2023), para. 6. *See also ibid.*, para. 18 (“For peasants, access to land and other productive resources is so important for the realization of most rights under the Covenant that it implies for them a right to land.”).

⁹⁰⁰ *Ibid.*, para. 18.

⁹⁰¹ *Ibid.*, para. 22.

attributable to [Israel's] closure policy".⁹⁰² According to the CESCR, this policy impacts "the enjoyment of Covenant rights by people living [in Gaza], including the right[] to ... food".⁹⁰³

3.97 Israel's **restrictions on access to Palestinians' farmland and grazing land in the West Bank** and the **so-called "buffer zone" in Gaza** (described in paragraphs 2.72-2.74 and 2.100-2.101, respectively) violate Palestinians' right to food and the right to land by impeding their ability to maintain an agricultural livelihood. For the same reason, the **limitations on access to the fishing waters of Gaza** (described in paragraphs 2.100-2.101) violate the right to food of Palestinian subsistence fishermen. Israel's **impeding of humanitarian deliveries to Gaza** (described in paragraphs 2.94 and 2.131) also violates Palestinians' right to food.

3.98 Israel's measures that unjustifiably impede Palestinians from using or accessing their land in the West Bank also violate the right to land. This includes:

- Israel's **land confiscations and evictions** in the West Bank (described in paragraphs 2.13 and 2.60-2.62);
- **Barriers** Israel has erected to **Palestinians' ability to secure land tenure** (described in paragraph 2.50);
- **Israel's zoning and building permitting policies in the West Bank** (described in paragraphs 2.51-2.59);
- Israel's **restrictions on access to grazing and farmland** in the West Bank (described in paragraphs 2.70-2.74); and

⁹⁰² CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 44.

⁹⁰³ *Ibid.*, para. 10.

- Israel’s **tolerance for the establishment of illegal “outpost” settlements** on Palestinian-owned land (described in paragraphs 2.17-2.18).

3.99 Israel’s violation of Palestinians’ right to land was noted with deep concern by various human rights treaty bodies, including:

- In 2019, the CESCR stated it was concerned about “restrictions imposed on the access of Palestinians to their agricultural land”.⁹⁰⁴
- In 2022, the HRC noted with deep concern that “the continued construction of the wall in the West Bank ... significantly restricts Palestinians’ enjoyment and exercise of rights and freedoms, including freedom of movement and access to land, especially agricultural land, property and natural resources”.⁹⁰⁵

3.100 The OHCHR, mandate holders and commission of inquiry have also expressed concern about the impact of Israel’s policies and practices on Palestinians’ right to food and land.⁹⁰⁶

⁹⁰⁴ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 44.

⁹⁰⁵ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 14.

⁹⁰⁶ See, e.g., UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 69 (“Israeli policies ... such as those on the expropriation of natural resources and on building restrictions, have directly affected the economic, social and cultural rights of Palestinians, including their rights to housing, an adequate standard of living, food, water and sanitation, health care and education”.); Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 51 (“[The Commission of Inquiry] recognizes the concern raised by human rights mechanisms about the patterns of violation of the right to land and housing in the West Bank, including systemic violations resulting from discriminatory planning and zoning laws and policies, confiscation of land and natural resources, systemic demolition of homes, forced eviction, and expansion of settlements coupled with restriction of movement.”).

3. *The Right to Housing*

3.101 The right under Article 11 of the ICESCR to an adequate standard of living includes a right to housing, which the CESCR has concluded “should be seen as the right to live somewhere in security, peace and dignity”.⁹⁰⁷ This right is complemented by the right recognized in Article 17 of the ICCPR, which provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his ... home”.

3.102 The CESCR explains that “forced eviction[s] are prima facie incompatible with the requirements of the [ICESCR] and can only be justified in the most exceptional circumstances”.⁹⁰⁸ A forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.⁹⁰⁹ The CESCR explained that, to respect the right to housing, “[states] must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions”, which is reinforced by Article 17(1) of the ICCPR.⁹¹⁰ Notably, “[f]orced eviction and house demolition as a punitive measure are also inconsistent with the norms of the [ICCPR]”.⁹¹¹ Article 5(e)(iii) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.103 Israel’s **policies constricting new construction** by Palestinians, **demolitions** of Palestinians’ homes in the West Bank, and **forced evictions**

⁹⁰⁷ CESCR, *General Comment No. 4*, UN Doc. E/1992/23 (13 Dec. 1991), para. 7.

⁹⁰⁸ *Ibid.*, para. 18.

⁹⁰⁹ CESCR, *General Comment No. 7* (16 May 1997), para. 3.

⁹¹⁰ *Ibid.*, para. 8.

⁹¹¹ *Ibid.*, para. 12.

therefrom (described in paragraphs 2.51-2.54, 2.55-2.59, and 2.60-2.62, respectively) violate Palestinians' right to housing. They amount to arbitrary and discriminatory interferences with Palestinians' homes. Israel's **attacks on Palestinians' homes in Gaza** (described in paragraph 2.113 and 2.120) also violate the right to housing. Because these measures do not similarly apply to Jewish Israelis, they also violate the CERD.

3.104 Israel's violation of Palestinians' right to housing has been the subject of the concluding observations of several human rights treaty bodies, including:

- In 2020, the CERD Committee stated it was particularly concerned about “[Israel’s] continued demolitions of buildings and structures ..., and as a consequence, further displacement of Palestinians [in the OPT]”.⁹¹² It thus recommended that Israel “review planning laws and policies in the West Bank, including Jerusalem” to ensure “the rights to property, access to land, housing and natural resources of Palestinian[s]”.⁹¹³
- In 2022, the HRC expressed concern about Israel’s “intensified practice of the demolition of Palestinian houses and other infrastructure ... in the West Bank ... amid the COVID-19 pandemic, and the forced evictions and forcible transfer of those whose homes are destroyed”.⁹¹⁴ In this regard, the HRC noted, with regret, that Israel has “systematically” deprived Palestinians of “their land and housing rights for decades”.⁹¹⁵

⁹¹² 2020 CERD Concluding Observations, para. 42(a).

⁹¹³ *Ibid.*, para. 43(a).

⁹¹⁴ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 42.

⁹¹⁵ *Ibid.*, para. 42.

3.105 Similarly, the UN Secretary-General, OHCHR, mandate holders and commissions of inquiry have expressed concern over Israel’s violation of the right to housing of Palestinians.⁹¹⁶

4. *The Right to Health*

3.106 According to the CESCR, the right to health enshrined by Article 12(1) of the ICESCR includes access to “[h]ealth facilities, goods and services ... without discrimination”.⁹¹⁷ Article 5(e)(iv) of the CERD underscores that this right must be guaranteed without distinction as to ethnic origin. Article 24 of the CRC underscores that children have the right “to the enjoyment of the highest attainable standard of health”.

3.107 Israel must respect the right to health by, *inter alia*, “refraining from denying or limiting equal access for all persons ... [to] health services”.⁹¹⁸ Denying

⁹¹⁶ See, e.g., UNGA, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan*, UN Doc. A/77/493 (3 Oct. 2022) (Dossier No. 72), para. 21 (“[Israel’s] demolitions and forced evictions intensify the environment coercing people to leave their homes, raise the risk of forcible transfer and violate a range of human rights, including the right to adequate housing.”); HRC, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para 51 (“[The Commission of Inquiry] recognizes the concern raised by human rights mechanisms about the patterns of violation of the right to land and housing in the West Bank, including systemic violations resulting from discriminatory planning and zoning laws and policies, confiscation of land and natural resources, systemic demolition of homes, forced eviction, and expansion of settlements coupled with restriction of movement.”); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 69 (“Israel’s policies ... such as those on the expropriation of natural resources and on building restrictions, have directly affected the economic, social and cultural rights of Palestinians, including their right[] to housing”); Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/43/67 (30 Jan. 2020), para. 44 (“Demolitions conducted in the context of the discriminatory planning system are unlawful and amount to forced evictions. They may also result in violations of the rights to an adequate standard of living, to adequate housing, and to education.”).

⁹¹⁷ CESCR, *General Comment No. 14*, UN Doc. E/C.12/2000/4 (11 Aug. 2000), para. 12(b).

⁹¹⁸ *Ibid.*, para. 34.

Palestinians “access to health facilities, goods and services ... as a result of de jure or de facto discrimination” amounts to a violation of that obligation.⁹¹⁹

3.108 The former Special Rapporteur on the right to health, Paul Hunt, explains that “the highest attainable standard of health is an inclusive right extending not only to timely and appropriate medical care but also to the underlying determinants of health, such as access to safe water and adequate sanitation, an adequate supply of safe food, [and] nutrition and housing”, among others.⁹²⁰ In particular, “[s]afe water and adequate sanitation are two integral and closely related underlying determinants which are essential for the realization of the right to the highest attainable standard of health”.⁹²¹ Accordingly, Israel must “do all it can to ensure safe water and adequate sanitation is available to everyone in its jurisdiction”.⁹²² It may not “arbitrarily interfer[e] with a person’s access to water and sanitation”.⁹²³

3.109 In addition, and in keeping with the inclusive nature of the right to health, it implies a right to be free from violence, including systemic violence. As the Special Rapporteur on the right to health, Tlaleng Mofokeng, explains, systemic violence “is a major obstacle in the realization” of the right to health.⁹²⁴ Because the “obligation to respect requires that States refrain from directly or indirectly

⁹¹⁹ *Ibid.*, para. 50.

⁹²⁰ UNGA, *Report of Special Rapporteur P. Hunt on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/62/214 (8 Aug. 2007), para. 47.

⁹²¹ *Ibid.*, para. 50.

⁹²² *Ibid.*, para. 73.

⁹²³ *Ibid.*, para. 82.

⁹²⁴ Human Rights Council, *Report of Special Rapporteur T. Mofokeng on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/HRC/50/28 (14 Apr. 2022), para. 11.

interfering with the right to health”,⁹²⁵ any acts of Israel that perpetuate systemic violence constitute violations of its obligation to respect the right to health.

3.110 Israel’s systemic practices of violence and coercion in law enforcement activities in the West Bank (including East Jerusalem) (described in paragraphs 2.139-2.178), the pattern of military attacks on Gaza (described in paragraphs 2.108-2.129), and Israel’s violent enforcement of its blockade of Gaza (described in paragraphs 2.130-2.136), violate the right to health because they subject Palestinians to systemic violence, which causes severe impact on mental health, especially that of children.⁹²⁶

3.111 Israel’s **blockade of, and attacks on infrastructure in, Gaza** (described in paragraphs 2.86-2.106 and 2.124-2.129) violate the right to health of Palestinians who live there. It does so by, *inter alia*, the functioning of health, water and sanitation infrastructure; preventing the import of medical equipment; and taking measures that cause food insecurity. Most strikingly, Israel violates the right to health by instituting travel restrictions on patients in Gaza, preventing them from timely accessing medical care available elsewhere.⁹²⁷ In 2019, the CESCR expressed particular concern about the right to health of Palestinians in Gaza. It noted “the very limited availability of health-care services and the deteriorating quality of such services in the Gaza Strip due to restrictions on dual-use items,

⁹²⁵ *Ibid.*, para. 18.

⁹²⁶ See, e.g., “In Gaza, lingering trauma is worsening a mental health crisis,” *Médecins sans frontières*, (30 June 2021), available at <https://tinyurl.com/3fv8suryr>. See also UNRWA, Department of Health, *Annual Report 2022* (23 May 2023), available at <https://tinyurl.com/ycksnvn3>, p. 31; Save the Children, *Trapped: The Impact of 15 Years of Blockade on the Mental Health of Gaza’s Children* (2022), available at <https://tinyurl.com/4ufnxb7>, pp. 5, 24; World Bank Group, International Security and Development Center, Zentrum Überleben & Palestinian Central Bureau of Statistics, *Mental Health in the West Bank and Gaza* (22 Nov. 2022), available at <https://tinyurl.com/mtmdnxu5>.

⁹²⁷ See *supra* para. CHAPTER 1.I. A.1(a).i.2.106.

including essential medical equipment and supplies, and the escalation of hostilities, which have forced residents to seek medical treatment in the West Bank or in Israel”.⁹²⁸ Furthermore, it stated it was “concerned about the lengthy and complicated exit-permit system, which has impeded the ability of residents of the Gaza Strip to access medically recommended treatment that is not available in Gaza in the West Bank, including East Jerusalem, in Israel and abroad”.⁹²⁹

3.112 Similarly, Israel’s **restrictions on Palestinians’ freedom to travel within the West Bank (including East Jerusalem)**, as described in paragraphs 2.69-2.85, also violate the right to health because they unreasonably impede the ability of Palestinians in the West Bank (including East Jerusalem) to access medical services; **women and especially pregnant women** are particularly affected, as described in paragraphs 2.80-2.81.⁹³⁰ Also in the **West Bank, measures contributing to water insecurity** in Palestinian communities, described in paragraphs 2.123, 2.167, and 2.248-2.251, in Palestinian communities violate the right to health.

3.113 Because Jewish Israelis do not face the same restrictions and impediments, these restrictions and measures constitute the denial of access to health services in a non-discriminatory manner, violating the right to health under both the ICESCR and Article 5(e)(iv) of the CERD. In this regard, in 2020, the CERD Committee stated it was “concerned ... about the disproportionately poor health status of the

⁹²⁸ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 58.

⁹²⁹ *Ibid.*

⁹³⁰ See CEDAW Committee, *Concluding observations on the sixth periodic report of Israel*, UN Doc. CEDAW/C/ISR/CO/6 (17 Nov. 2017), para. 46(b) (CEDAW committee noting concern that “[o]wing to restrictions on freedom of movement at checkpoints, Palestinian women and girls in the Occupied Palestinian Territory experience hardships in reaching health-care facilities such as hospitals and clinics and emergency care and specialized treatment”).

Palestinian ... populations, including shorter life expectancy and higher rates of infant mortality compared with those of the Jewish population”.⁹³¹

3.114 The UN Secretary-General, OHCHR, mandate holders and commission of inquiry have also expressed concern about the impact of Israel’s policies and practices on Palestinians’ right to health.⁹³²

J. ISRAEL VIOLATES THE RIGHT TO WORK

3.115 The obligation to respect the right to work means that states must refrain “from denying or limiting equal access to decent work for all persons”;⁹³³ the

⁹³¹ 2020 CERD Concluding Observations, para. 38(c).

⁹³² See, e.g., Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 13 (“The land, sea and air blockade and the closure of Gaza, which constitute collective punishment, entered its sixteenth year, with extremely detrimental impacts on freedom of movement, and the enjoyment of economic, social and cultural rights, such as the rights to an adequate standard of living, health, education, work and family life. One significant consequence of the blockade is severe restrictions on access to specialized medical care not available in Gaza. Affected patients require an Israeli exit permit to receive critical and sometimes life-saving care. Such permits are often delayed or denied.”); UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 27, (“The right to health, including access to life-saving treatment, was particularly affected by restrictions on the movement of patients, health professionals and goods.”); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 69 (“Israeli policies ... such as those on the expropriation of natural resources and on building restrictions, have directly affected the economic, social and cultural rights of Palestinians, including their rights to housing, an adequate standard of living, food, water and sanitation, health care and education.”); UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/75/532 (22 Oct. 2020), para. 9 (“[F]acts on the ground demonstrate that Israel, the occupying Power, through the imposition of existing measures, has significantly reduced Palestinians’ access to health care and to humanitarian assistance.”); *ibid.*, para. 23 (“Palestinian children’s access to health care continues to be severely affected. The intricate system of movement restrictions in the case of the West Bank, including East Jerusalem, and the 14-year blockade of Gaza by Israel have resulted in serious challenges in access to health-care facilities and specialized medical treatment for children. In Gaza, children continue to face denial of or delay in access to health-care facilities or specialized treatment outside of the Strip.”).

⁹³³ CESCR, *General Comment No. 18*, UN Doc. E/C.12/GC/18 (24 Nov. 2005), para. 23.

CESCR has found that “discrimination in access to the labour market” is a violation thereof.⁹³⁴ As a core obligation under the ICESR, Israel must also “ensure the right of access to employment”.⁹³⁵ Article 5(e)(i) of the CERD requires Israel to guarantee this right without distinction as to ethnic origin.

3.116 Israel’s **restrictions on the freedom of movement** within the OPT violate this right because, as explained in paragraphs 2.74 and 2.80, they unreasonably impede Palestinians’ ability to access their places of work. Jewish Israelis are not similarly affected and the discriminatory nature of the restrictions amount to a violation of Article 5(e)(i) of the CERD.

3.117 In its concluding observations in 2019, the CESCR noted with deep concern that Israel’s “closure policy and the related permit regime regarding the Gaza Strip and the occupation and settlement policy in the West Bank, including East Jerusalem” had a “severe impact” on Palestinians’ ability to enjoy the right to work.⁹³⁶ The UN Secretary-General and other mandate holders have reached the same conclusion.⁹³⁷

⁹³⁴ *Ibid.*, para. 33.

⁹³⁵ *Ibid.*, para. 31(a).

⁹³⁶ CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 10.

⁹³⁷ See, e.g., Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 50(b) (“[Palestinians’] right to work is impeded by a smothered economy, travel restrictions and the fragmentation of their territory.”); UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/76/333 (20 Sept. 2021) (Dossier No. 862), para. 43 (“[Israel’s] restrictions [on the freedom of movement across the Occupied Palestinian Territories] continued to disrupt the daily life of Palestinians, profoundly affecting other rights, including the rights to work, to an adequate standard of living, to education and to health.”).

K. ISRAEL VIOLATES THE RIGHTS TO EQUALITY BEFORE THE LAW
AND TO A FAIR TRIAL

3.118 Article 14(1) of the ICCPR establishes that “[a]ll persons shall be equal before the courts and tribunals”. In criminal and civil judicial proceedings, “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. The HRC has explained that this article “prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds”.⁹³⁸ Articles 2(a) and 5(a) of the CERD prohibit distinctions based on ethnic origin in the enjoyment of this right.

3.119 The very existence of a **dual legal system** in the West Bank violates these principles because it treats Palestinians and Jewish Israelis differently. There can be no justification for maintaining a system which, as the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel has described it, “provides greater enjoyment of human rights for Israelis than for Palestinians and is therefore discriminatory”.⁹³⁹ Indeed, in 2020, the CERD Committee expressed concern “at the maintenance of several laws that discriminate against ... Palestinians in the Occupied Palestinian Territory, and that create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property”.⁹⁴⁰

⁹³⁸ HRC, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (23 Aug. 2007), para. 9.

⁹³⁹ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 47. See also Human Rights Council, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, UN Doc. A/HRC/12/48 (25 Sept. 2009), para. 206 (finding that the system has resulted in the “institutionalized discrimination against Palestinians in the Occupied Palestinian Territory to the benefit of Jewish settlers”).

⁹⁴⁰ 2020 CERD Concluding Observations, para. 15.

3.120 Article 14(3) of the ICCPR provides a host of “minimum guarantees” to which everyone is entitled “[i]n the determination of any criminal charge”. Those rights are complemented by other procedural safeguards established under Articles 9(2)-(4) of the ICCPR. The **procedural safeguards afforded Palestinian defendants** (described in paragraphs 2.191-2.195) in the military criminal justice system fall short of many of these guarantees, including the rights “[t]o be tried without undue delay” and “[t]o have the free assistance of an interpreter if [one] cannot understand or speak the language used in court”.⁹⁴¹

3.121 The UN Secretary-General, OHCHR, mandate holders and commission of inquiry have expressed concerns regarding the lack of due process guarantees for Palestinians in the Israeli justice system.⁹⁴²

⁹⁴¹ ICCPR, arts. 14(3)(c) and (f).

⁹⁴² See, e.g., Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41 (“The military legal system is presided over by Israeli military judges and trials are conducted in Hebrew (which many Palestinian detainees do not speak). The system offers few of the procedural and substantive protections of a purposive criminal legal system, while the prisoners’ lawyers are significantly restricted in their access to evidence and the conviction rate is over 99 per cent. Even more draconian, there are at any one time hundreds of Palestinians imprisoned indefinitely through administrative detention, where they are incarcerated without the façade of a formal proceeding, that is, without charges, evidence, a trial or a conviction, and whose detention can be extended indefinitely.”) and para. 50(a) (“[T]he military courts incarcerate thousands of Palestinians on security charges through a judicial system that offers few of the international protections regarding due process or the prevention of arbitrary arrest and detention.”); Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/42 (21 Feb. 2018), para. 27 (“Through trial monitoring, OHCHR has identified several concerns about violations of fair trial rights in the Israeli justice system concerning Palestinians.”); UNGA, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan*, UN Doc. A/77/493 (3 Oct. 2022) (Dossier No. 72), para. 42 (“90 per cent of investigations of Palestinians (between 2014 and 2018) led to indictments in military courts, with 96 per cent of the cases prosecuted resulting in conviction, most of which were based on plea deals (99.6 per cent from 2018 to April 2021)”).

L. ISRAEL VIOLATES ITS OBLIGATION TO ENSURE EFFECTIVE REMEDIES

3.122 Article 3(a) of the ICCPR requires Israel to ensure that victims of human rights violations “have an effective remedy” and that each individual “have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State”. Article 6 of the CERD likewise establishes the right to an effective remedy;⁹⁴³ the right is implicit in the ICESCR.⁹⁴⁴ The HRC has underscored that, to comply with its obligations in this regard, a state must “establish[] appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law”.⁹⁴⁵ It is obliged to “make reparation to individuals whose ... rights have been violated”.⁹⁴⁶ This “can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations”.⁹⁴⁷

⁹⁴³ International Convention on the Elimination of All Forms of Racial Discrimination (21 Dec. 1965), 660 U.N.T.S. 195 (hereinafter, “**CERD**”), art. 6 (“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms ...”).

⁹⁴⁴ CESCR, *General Comment No. 9*, UN Doc. E/C.12/1998/24 (3 Dec. 1998), para. 3 (“The Covenant contains no direct counterpart to article 2.3 (b) of the International Covenant on Civil and Political Rights which obligates States parties to, inter alia, ‘develop the possibilities of judicial remedy’. Nevertheless, a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not ‘appropriate means’ within the terms of article 2.1 of the Covenant or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other ‘means’ used could be rendered ineffective if they are not reinforced or complemented by judicial remedies.”)

⁹⁴⁵ HRC, *General Comment No. 31*, UN Doc. CCPR/C/21/Rev.1/Add. 13 (29 Mar. 2004), para. 15.

⁹⁴⁶ *Ibid.*, para. 16.

⁹⁴⁷ *Ibid.*

3.123 Israel’s policies impeding the ability of Palestinians to effectively redress human rights violations they suffer, described in paragraphs 2.137-2.138, and 2.178, and its failure to hold accountable the perpetrators of those violations, described in paragraphs 2.148-2.153, 2.177, 2.205 and 2.226, amount to violations of its obligations to provide effective remedies.

3.124 Israel’s violation of the Palestinians’ right to effective remedies was the subject of the HRC’s 2022 concluding observations. The committee noted with deep concern “the lack of accountability” for “the excessive use of lethal force by the Israeli security forces against Palestinian civilians”, “resulting in a general climate of impunity”,⁹⁴⁸ “a very low rate of indictments and convictions of perpetrators [of settler violence against Palestinians]”;⁹⁴⁹ “the lack of updated information on investigation into human rights violations in the Gaza Strip”,⁹⁵⁰ and “a very low rate of criminal investigations, prosecutions and convictions concerning allegations of torture and ill-treatment” by Israel against Palestinians in detention.⁹⁵¹ The HRC thus recommended that Israel provide all Palestinian victims with effective remedies.

3.125 The UN Secretary-General, OHCHR, mandate holders and commission of inquiry have come to the same conclusion.⁹⁵²

⁹⁴⁸ HRC, *Concluding observations on the fifth periodic report of Israel*, UN Doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 26.

⁹⁴⁹ *Ibid.*, para. 24.

⁹⁵⁰ *Ibid.*, para. 22.

⁹⁵¹ *Ibid.*, para. 30.

⁹⁵² See, e.g., Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 59 (“The duty of the State to investigate potential unlawful deaths is an important element of the protection afforded to the right to life ... The systematic Israeli failure to investigate such incidents furthers impunity, leading invariably to increased Palestinian casualties.”) and para. 64 (“Concerns persisted regarding lack of accountability by relevant Israeli

III. The Conduct of the Occupation Violates International Humanitarian Law

3.126 As the occupying power in the OPT, Israel must abide by IHL. The Court held in the *Wall* Advisory Opinion that “the Fourth Geneva Convention ... is applicable in the [occupied] Palestinian territories”.⁹⁵³ The Court also determined that the provisions of the Regulations Respecting the Laws and Customs of War on Land (“**Hague Regulations**”) reflect customary international law⁹⁵⁴ and apply to the conduct of Israel’s occupation of the Palestinian territory.⁹⁵⁵

3.127 Israel’s conduct in the OPT is also governed by relevant norms of customary international law. This includes the peremptory prohibitions of crimes against humanity and war crimes.⁹⁵⁶ Moreover, by virtue of the State of Palestine’s

authorities in investigating allegations of torture or ill-treatment of Palestinians, including sexual violence, in Israeli detention facilities.”); Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 64 (“[The High Commissioner for Human Rights] found a lack of accountability by Israel for violations in the Occupied Palestinian Territory on account of two sets of shortcomings: physical, financial, legal and procedural barriers that restricted the ability of Palestinians, particularly those living in Gaza, to gain access to justice, and the failure to investigate all allegations.”); UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/76/333 (20 Sept. 2021) (Dossier No. 862), para. 5 (“Lack of accountability for international human rights and international humanitarian law violations remained pervasive.”); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 66 (“Israeli courts have charged few persons suspected of committing violent acts against Palestinians, which contributes to a prevailing climate of impunity.”).

⁹⁵³ *Wall* Advisory Opinion, para. 101.

⁹⁵⁴ *Ibid.*, para. 89.

⁹⁵⁵ *See, e.g., ibid.*, para. 135.

⁹⁵⁶ ILC, *Peremptory norms of general international law (jus cogens): Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading*, UN Doc. A/CN.4/L.967 (11 May 2022), Conclusion 23 (Annexes (c)-(e)). *See also* ILC, *Fourth report on peremptory norms of general international law (jus cogens) by Special Rapporteur D. Tladi*, UN Doc. A/CN.4/727 (31 Jan. 2019), paras. 84-101, 116-121; ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

accession to the Rome Statute, any individual, regardless of nationality or official capacity, will incur individual criminal responsibility for the commission of crimes against humanity and war crimes in the OPT.⁹⁵⁷ As the International Criminal Court’s Pre-Trial Chamber ruled, “the Court’s territorial jurisdiction in the *Situation in Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem”.⁹⁵⁸

3.128 Israel’s core obligation as occupying power is to ensure public order and civil life in the OPT.⁹⁵⁹ Yet far from maintaining public order and civil life in the

2019 (Vol. II, Pt. 2), Preamble (“Recalling also that the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*)”); *ibid.*, pp. 24-25.

⁹⁵⁷ The scope of individual criminal responsibility under the Rome Statute is coextensive with the jurisdiction of the ICC. *See* Rome Statute of the International Criminal Court (17 July 1998), 2187 U.N.T.S. 90 (hereinafter, “**Rome Statute**”), art. 25(2) (“A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.”). The ICC’s personal jurisdiction extends to the author of a crime, regardless of nationality, when the conduct in question occurred within the territory of a State Party to the Rome Statute. *See ibid.*, art. 12(2)(a). The State of Palestine is a party to the Rome Statute. International Criminal Court, “State of Palestine: Situation in the State of Palestine” (last accessed: 11 July 2023), available at <https://tinyurl.com/2nrvvfxe>. Official capacity does not preclude international criminal responsibility under the Rome statute. *See* Rome Statute, art. 27 (“This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute”).

⁹⁵⁸ *See* International Criminal Court, *Pre-Trial Chamber I, Decision on the Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine* (5 Feb. 2021), ICC-01/18, para. 118.

⁹⁵⁹ *See* International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land* (18 Oct. 1907) (hereinafter, “**Hague Regulations**”), art. 43. The authentic French text of the Hague Regulations provides that Israel must “prendre[e] toutes les mesures qui dépendent de lui en vue de rétablir et d’assurer, autant qu’il est possible, l’ordre et la vie publics”. *Ibid.* The French original term “l’ordre et la vie publics” is translated in the commonly-accepted English version as “public order and safety”. However, it is widely accepted that a “more comprehensive phrase”, “namely ‘public order and civil life’”, is more faithful to the authentic French text. *See* E. Benvenisti, *THE INTERNATIONAL LAW OF OCCUPATION* (2nd Ed., OUP, 2012), p. 68 (note 1) (emphasis original). Indeed, this view has been accepted by the Supreme Court of Israel, which held in 1988 that in the OPT, Israel is obliged to maintain “public life and order in a modern and civilized State at the end of the twentieth century”. UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People and their Human Right to Development: Legal Dimensions* (2018), available at

OPT, Israel's measures there amount to violations of various specific norms of IHL. In the West Bank, the most egregious violations are the establishment of settlements in the OPT (**Section A(1)**), measures affecting Palestinian public and private property (**Section A(2)**), Israel's failure to protect Palestinians from violence inflicted by State actors and private parties (**Section A(3)**), the forcible transfer of the Palestinian population (**Section A(4)**), and the application of Israeli domestic law in the West Bank (including East Jerusalem) (**Section A(5)**). In Gaza, Israel violates the basic norms governing the use of force in armed conflict (**Section B(1)**), does not comply with its obligations concerning the essential needs of the population (**Section B(2)**), and inflicts prohibited collective punishment on that population (**Section B(3)**). And in all of the OPT, Israel treats the natural resources as its own, violating the rules governing an occupying power's utilization of the occupied territory's natural resources (**Section C**).

A. THE CONDUCT OF THE OCCUPATION IN THE WEST BANK (INCLUDING EAST JERUSALEM) VIOLATES INTERNATIONAL HUMANITARIAN LAW

1. *The Establishment of Israeli Settlements in the West Bank (Including East Jerusalem) Violates Article 49(6) of the Fourth Geneva Convention*

3.129 Article 49(6) of the GC IV provides that “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.⁹⁶⁰ The Court explained in the *Wall* Advisory Opinion that this provision “prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also *any measures* taken by an

<https://tinyurl.com/3ecmx3c5>, p. 10. See also M. Sassòli, “Article 43 of The Hague Regulations and Peace Operations in the Twenty-First Century,” HPCR (June 2004), available at <https://tinyurl.com/2p8b467s>, pp. 3-4.

⁹⁶⁰ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (12 Aug. 1949), 75 U.N.T.S. 287 (hereinafter, “**Fourth Geneva Convention**”), art. 49.

occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory”.⁹⁶¹

3.130 A violation of this rule constitutes a grave breach of the GC IV,⁹⁶² that is, an act for which the parties thereto have “undertake[n] to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed”.⁹⁶³ Article 8(2)(b)(viii) of the Rome Statute recognizes it as a war crime giving rise to individual criminal responsibility.⁹⁶⁴

3.131 As explained in Chapter 2, Section I, shortly after the 1967 war, Israel began to authorize and encourage the establishment of settlements of Jewish Israeli nationals in the West Bank (including East Jerusalem). The practice continues to this day. Israel’s settlement of this territory plainly violates IHL. Indeed, the Court previously determined then that “the Israeli settlements in the Occupied Palestinian

⁹⁶¹ *Wall Advisory Opinion*, para. 120 (emphasis added).

⁹⁶² Fourth Geneva Convention, art. 147.

⁹⁶³ *Ibid.*, art. 146(1).

⁹⁶⁴ The terms “prohibition of grave breaches”, “prohibition of war crimes” and “basic rules of IHL” are largely interchangeable, although the latter term is more frequently employed in the context of State responsibility. See ILC, *Fourth report on peremptory norms of general international law (jus cogens) by Special Rapporteur D. Tladi*, UN Doc. A/CN.4/727 (31 Jan. 2019), para. 116. State responsibility for these acts is engaged when the conduct in question is attributable to a State, whether or not individual criminal responsibility has also been established. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007*, p. 43, para. 173; ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2001 (Vol. II, Pt. 2), Article 58 Commentary, para. 3 (“the question of individual responsibility is in principle distinct from the question of State responsibility”). Moreover, unlike individual criminal responsibility, “it is not necessary for the Court to make findings of fact with regard to each individual incident alleged” for it to find State responsibility. See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 168 (hereinafter, “**Armed Activities Judgment on the Merits**”), para. 205. Rather, the Court has previously found a “coincidence of reports from credible sources sufficient to convince it that ... grave breaches of [IHL] were committed”. *Ibid.*, para. 207.

Territories (including East Jerusalem) have been established in breach of international law”.⁹⁶⁵

3.132 Since the time of the Court’s previous Advisory Opinion, Israel has permitted more than 47,000 additional Israeli settlers to move to East Jerusalem⁹⁶⁶ and 220,000 to move to Area C of the West Bank.⁹⁶⁷ Israel’s ongoing conduct underscores the wilful and continuing nature of its violations of paragraph 6 of Article 49.

2. *Israel Violates the Rules Protecting Property in Occupied Territories*

3.133 Article 46 of the Hague Regulations requires Israel to respect and not to confiscate private property in the OPT. As to public property, Article 55 thereof provides that Israel may act “only as administrator and usufructuary” and must “administer [it] in accordance with the rules of usufruct”. Moreover, Article 53 of the GC IV prohibits the “destruction ... of real or person property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations ... except where such destruction is rendered absolutely necessary by military operations”. These have been recognized as rules of customary international law.⁹⁶⁸

⁹⁶⁵ *Wall* Advisory Opinion, para. 120.

⁹⁶⁶ Peace Now, “Settlements Watch: Jerusalem” (last accessed: 24 Apr. 2023), available at <https://tinyurl.com/59x5jesd>.

⁹⁶⁷ Peace Now, “Settlements Watch: Population” (last accessed: 13 July 2023), available at <https://tinyurl.com/y6pt6bej>. In 2004, the number of settlers in the West Bank was 243,900. In 2021, it has increased to 465,400.

⁹⁶⁸ ICRC, *Rules of Customary International Law*, Rule 51, available at <https://tinyurl.com/5hbbt2b6>.

3.134 The “extensive ... appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”, is a grave breach of the GC IV⁹⁶⁹ and amounts to a war crime under Article 8(2)(a)(iv) of the Rome Statute.

3.135 Israel violates the rules protecting property in the OPT by, *inter alia*, unnecessarily **confiscating land** from Palestinians (described in paragraph 2.13), **demolishing Palestinians’ homes** and **evicting** them from their property (described in paragraphs 2.55-2.62), and **restricting Palestinians’ access to land** (described in paragraphs 2.48-2.54, 2.72-2.74, and 2.100-2.101).

3.136 In 2019 the OHCHR observed that Israel’s measures amounting to the “official or unofficial confiscation of land and limiting access through coordination measures violate the prohibition on confiscation of private property enshrined in international humanitarian law”.⁹⁷⁰ And in 2023, it concluded that Israel’s “[p]unitive home demolitions ... are prohibited by international humanitarian law”.⁹⁷¹

3. *Israel Has Failed to Fulfil its Obligations to Protect Palestinians in the West Bank from Violence*

3.137 Article 27 of the GC IV requires Israel to ensure that the population of the OPT “shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof”. Article 32 thereof prohibits Israel “from taking any measure of such a character as to cause the physical suffering ...

⁹⁶⁹ Fourth Geneva Convention, art. 147.

⁹⁷⁰ Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/40/42 (30 Jan. 2019), para. 41.

⁹⁷¹ Human Rights Council, *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 the Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/52/75 (13 Feb. 2023), para. 15.

of protected persons in their hands” including “murder, torture, corporal punishment, mutilation and ... any other measures of brutality whether applied by civilian or military agents”. To discharge these duties, Israel must “ensure that members of its own armed and police forces refrain from use of force towards the inhabitants of the territory, unless the situation makes such use necessary”.⁹⁷²

3.138 “[W]ilfully causing great suffering or serious injury to body or health” and torture are grave breaches of the GC IV⁹⁷³ and constitute war crimes under Article 8(2)(a)(ii) and (iii) of the Rome Statute.

3.139 Israel’s **excessive use of force** in exercising law enforcement authority, including the commission of **extrajudicial killings**, as described in paragraphs 2.139-2.178, violate its obligations to protect Palestinians from violence. The obligation is also violated by subjecting Palestinians who are **administratively detained to torture and cruel treatment**, as described in paragraph 2.205.

3.140 Israel’s general obligation to ensure public order and safety under Article 43 of the Hague Regulations also requires it to “take all measures to protect the inhabitants of [the OPT] from violence by third parties”, including “private groups or individuals”.⁹⁷⁴ Israel may not “tolerate the activities of such groups, much less support or even use them to promote their own purposes”.⁹⁷⁵ Israel fails to do so by **failing to prevent and punish violence perpetrated by settlers against Palestinians, and tolerating such activities and using them to promote its own**

⁹⁷² D. Fleck, *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* (4th Ed., OUP, 2021), p. 306, para. 9.08(1).

⁹⁷³ Fourth Geneva Convention, art. 147.

⁹⁷⁴ D. Fleck, *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* (4th Ed., OUP, 2021), p. 307, para. 9.08(2).

⁹⁷⁵ *Ibid.*

purposes, as described in paragraphs 2.179-2.185. “[T]he Secretary-General and the High Commissioner [on Human Rights] have stressed that, contrary to the obligations of Israel as the occupying Power to ensure the safety and security of the occupied population, settlers largely enjoy impunity for attacks against Palestinians”.⁹⁷⁶

4. *Israel Violates the Prohibition on Forcible Transfer in Article 49(1) of the Fourth Geneva Convention*

3.141 Article 49(1) of the GC IV prohibits “[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country ...”.⁹⁷⁷ Although the GC IV does not define “forcible transfer,” the Rome Statute defines it as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present”.⁹⁷⁸ According to the Secretary-General,

[F]orcible transfer ... may be triggered by specific circumstances that leave individuals or communities with no choice but to leave. The existence of such circumstances constitutes what is known as a coercive environment. Any transfer that occurs without the genuine and fully informed consent of those affected is considered forcible. However, genuine consent to a transfer cannot be presumed in an environment marked by the use or threat of physical force, coercion, fear of violence or duress.⁹⁷⁹

⁹⁷⁶ Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/43/67 (30 Jan. 2020), para. 59.

⁹⁷⁷ Fourth Geneva Convention, art. 49.

⁹⁷⁸ Rome Statute, art. 7(2)(d).

⁹⁷⁹ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/34/38 (13 Apr. 2017), para. 28.

3.142 Forcible transfer constitutes a grave breach of the GC IV⁹⁸⁰ and is a war crime under Article 8(2)(a)(vii) of the Rome Statute.

3.143 Israel's measures have had the effect of **coercing Palestinian residents of the West Bank (including East Jerusalem) to leave their homes and land**, including land confiscations, home demolitions, forced evictions, systematic violence, restrictions on residency rights.⁹⁸¹ These constitute acts of prohibited forcible transfer.

3.144 Indeed, many UN bodies have recognized that Israel is carrying out the forcible transfer of Palestinians in the West Bank (including East Jerusalem). In particular, just last year:

- In April 2022, the OHCHR observed that “[d]isplacement and relocation to alternative residential areas as a result of such an environment could amount to forms of forcible transfer, contrary to the obligations of Israel under international humanitarian law and international human rights law”.⁹⁸²
- In September 2022, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel concluded that Israel's policies that “have contributed to the forced displacement of the Palestinian population from certain areas, altered the demographic composition of the Occupied Palestinian Territory and resulted in Palestinian communities being almost completely encircled by Israeli settlements, may constitute the crime

⁹⁸⁰ Fourth Geneva Convention, art. 147. *See also* Commentary of 1958 on Fourth Geneva Convention, art. 147, available at <https://tinyurl.com/2bezv7sa>.

⁹⁸¹ *See supra* Chapter 2, §§ I-IV.

⁹⁸² Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, UN Doc. A/HRC/49/85 (28 Apr. 2022), para. 53.

against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute”.⁹⁸³

5. *Israel’s Application of Israeli Domestic Law Violates its Obligation to Respect the Laws in Force*

3.145 Under Article 43 of the Hague Regulations, Israel must respect the legal and judicial system that existed in the West Bank before the occupation.⁹⁸⁴ Likewise, Article 64 of the GC IV provides that the “penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the [Fourth Geneva] Convention”. It is widely understood that Article 64 applies to “the entire legal system of the occupied territories”.⁹⁸⁵ Israel may thus only enact new laws in the OPT “which are essential to enable [it] to fulfil its obligations under the [Fourth Geneva] Convention, to maintain the orderly government of the territory, and to ensure [its own] security ...”. According to Sylvain Vité of the International Committee of the Red Cross, “no other reason may be used to justify changes in the domestic legal order”.⁹⁸⁶

3.146 Instead of taking “all the measures in [its] power” to ensure the respect for the laws in force in West Bank at the time of occupation, it has affirmatively displaced those laws and **applied Israeli law in the West Bank**, as explained in

⁹⁸³ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 86.

⁹⁸⁴ *See* Hague Regulations, art. 43.

⁹⁸⁵ D. Fleck, *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* (4th Ed., OUP, 2021), para. 9.19(2).

⁹⁸⁶ S. Vité, “Occupation,” in B. Saul & D. Akande, *THE OXFORD GUIDE TO INTERNATIONAL HUMANITARIAN LAW* (2020), p. 313.

Chapter 2, Section V. This is not “essential to enable [it] to fulfil its obligations” as an occupying power, and therefore contravenes these IHL norms.

B. THE CONDUCT OF THE OCCUPATION IN GAZA VIOLATES
INTERNATIONAL HUMANITARIAN LAW

1. *Israel Violates Basic Norms Governing the Use of Force
When Carrying Out Military Attacks on Gaza*

3.147 Under IHL, Israel is obliged to abide by the basic norms governing the use of force in carrying out military attacks on Gaza. Those norms require it (i) to apply “elementary considerations of humanity” in the use of force, (ii) to distinguish between military targets and civilians or civilian objects, and not to target civilians; (iii) to use a proportionate amount of force in relation to the anticipated military objective; and (iv) only to use force that is “actually necessary to accomplish a legitimate military purpose”.⁹⁸⁷

3.148 The failure to comply with these obligations rises to the level of “grave breaches” of the GC IV.⁹⁸⁸ In particular, the following acts, when committed wilfully, constitute war crimes under the Rome Statute: killing of civilians;⁹⁸⁹ causing great suffering or serious injury to body or health;⁹⁹⁰ directing attacks against the civilian population, individual civilians, and civilian objects;⁹⁹¹ launching indiscriminate attacks affecting the civilian population or civilian objects

⁹⁸⁷ ICRC, *Fundamental principles of IHL*, available at <https://tinyurl.com/ycks8x94>; ICRC, *Military Necessity*, available at <https://tinyurl.com/mvjxtzfu>.

⁹⁸⁸ Fourth Geneva Convention, art. 147.

⁹⁸⁹ *Ibid.*, art. 147; Rome Statute, art. 8(2)(a)(i).

⁹⁹⁰ Fourth Geneva Convention, art. 147; Rome Statute, art. 8(2)(a)(iii).

⁹⁹¹ Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (8 June 1977) (hereinafter, “**Additional Protocol I**”), art. 85(3)(a); Rome Statute, arts. 8(2)(b)(i)-(ii).

in the knowledge that such attacks will cause excessive loss of life, injury to civilians or damage to civilian objects;⁹⁹² attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;⁹⁹³ and causing extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.⁹⁹⁴

3.149 As described above in Chapter 2, Section IV(A), Israel has **indiscriminately targeted civilians** and implemented the so-called “Dahiya Doctrine”. The defining feature of this doctrine is the **excessive use of force in heavily populated civilian areas**. Its execution in the course of carrying out military attacks on Gaza amount to the grave breaches identified in the preceding paragraph. Moreover, there is evidence, as noted in paragraph 2.123, that such acts were committed wilfully and therefore constitute war crimes.

2. *Israel Has Failed to Fulfil its Obligations to Ensure the Essential Needs of the Population, and Civil Life, in Gaza*

3.150 Under Article 55(1) of the GC IV, Israel, as the occupying power, must “ensur[e] the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate”.⁹⁹⁵ Measures that deprive the population of food and medical supplies *ipso facto* violate this obligation. Likewise, under

⁹⁹² Additional Protocol I, art. 85(3)(b); Rome Statute, art. 8(2)(b)(ii).

⁹⁹³ Rome Statute, art. 8(2)(b)(v). *See also Armed Activities* Judgment on the Merits, para. 208.

⁹⁹⁴ Fourth Geneva Convention, art. 147; Rome Statute, arts. 8(2)(a)(iv), 8(2)(b)(iv).

⁹⁹⁵ This article of the Fourth Geneva Convention, and all others not mentioned in Article 6 thereof, continue to apply in Gaza because Article 6(3) of the Fourth Geneva Convention does not limit the applicable provisions of GCIV in Gaza in the same way it does in the West Bank because “the general close of military operations” has not yet occurred in Gaza. *See Wall Advisory Opinion*, para. 125.

Article 56(1), Israel must “ensur[e] ... the medical and hospital establishments and services, public health and hygiene in the occupied territory”.⁹⁹⁶ At a minimum, that means that “medical infrastructure of an occupied territory must be allowed to continue to serve the local population”.⁹⁹⁷ Moreover, the general obligation to ensure civil life under Article 43 of the Hague Convention requires Israel to refrain from disrupting civil life in Gaza.

3.151 Through its **blockade**, Israel has violated all of these obligations. In particular, it has

- **Deprived Gaza of food and medical supplies**, as described in paragraphs 2.94-2.97, 2.99-2.101, and 2.103;
- **Impeded the functioning** of the medical and public health **infrastructure**, including the sanitation infrastructure, as described in paragraphs 2.98-2.99; and
- **Prevented the normal functioning of civil life** by, *inter alia*, subjecting the population to the spectre of violence (described in paragraphs 2.108-2.136) and maintaining strict controls over imports to, and exports from Gaza (as described in paragraphs 2.94-2.97).

3.152 As the UN Independent International Commission of Inquiry on the Protests in the OPT concluded in 2019,

As the occupying Power, Israel has obligations under international law to ensure the health and welfare of the Palestinian population. The commission found that the ongoing blockade of Gaza and its impact on the health-care system in Gaza, and the ensuing deprivation of essential goods and services necessary for a dignified life, including basic medical supplies, safe drinking water,

⁹⁹⁶ Fourth Geneva Convention, art. 56.

⁹⁹⁷ D. Fleck, THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW (4th Ed., OUP, 2021), para. 9.40(2).

electricity and sanitation, constitute violations of the fundamental rights to life and health⁹⁹⁸

3. *Israel's Measures in Gaza Constitute Prohibited Collective Punishment*

3.153 International law prohibits the imposition of penalties or restrictions of any kind on a collective basis. Article 50 of the Hague Regulations provides: “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.” And Article 33 of the GC IV establishes: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”

3.154 The Handbook of Humanitarian Law in Armed Conflict describes collective punishment this way:

Collective penalties ... and all measures of intimidation and terrorism carried out by the occupying power have usually one purpose: to force the population of the occupied territory to submit to their authority. Such measures may take different forms, such as a curfew ... preventing the inhabitants from fulfilling their daily duties, punishment or detention of several members of a group or family for an alleged offense by one of their members, or the destruction of the house belonging to the family of an alleged offender. Such acts are prohibited, without exception, by Article 33 [of the GC IV].⁹⁹⁹

3.155 As explained, Israel has conducted attacks, destroyed civilian structures and infrastructure, imposed restrictions on the freedom of movement, restricted the

⁹⁹⁸ Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 100.

⁹⁹⁹ D. Fleck, *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* (4th Ed., OUP, 2021), para 9.09(3).

movement of goods, limited the electricity available, and established buffer zones in Gaza.¹⁰⁰⁰

3.156 Over 2.2 million people live in Gaza and the vast majority are civilians. Yet all Gazans suffer the consequences of Israel’s military attacks. According to the UN Secretary-General, they suffer a “significant negative impact on the enjoyment of economic, social and cultural rights” caused by Israel’s blockade.¹⁰⁰¹

3.157 In assessing whether the measures Israel has taken in Gaza amount to collective punishment, Human Rights Watch has suggested that “account must be taken of the timing, duration, and extent of the measures imposed, the reasons invoked by the occupying power for the restrictive measures, the proportionality of those measures to the reasons invoked, and the effect of the measures on the population affected”.¹⁰⁰² The **pattern of military attacks** and the **blockade**, which have dominated and severely impaired every aspect of life in Gaza for over 15 long years, are not proportionate to achieving any legitimate security goals. It unmistakably amounts to a prohibited collective punishment.

¹⁰⁰⁰ See *supra* Chapter 2, §§ III(B) and IV(A)-(B).

¹⁰⁰¹ UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/73/420 (10 Oct. 2018) (Dossier No. 859), para. 9.

¹⁰⁰² Human Rights Watch, *The Obligations of Israel and the Palestinian Authority Under International Law* (2001), available at <https://tinyurl.com/4t53z5du>, p. 23.

3.158 This conclusion is echoed by various UN bodies¹⁰⁰³ and reputable human rights organizations.¹⁰⁰⁴ In the words of the Secretary-General, Israel is “penalizing persons for acts that they did not commit”.¹⁰⁰⁵

C. ISRAEL’S MEASURES CONCERNING THE NATURAL RESOURCES AND ECONOMY OF THE OCCUPIED PALESTINIAN TERRITORY VIOLATE ITS OBLIGATIONS AS AN OCCUPYING POWER

3.159 Under the general principles of the law of occupation, Israel “must only take measures for the benefit of the local economy, and not for its own economic interests, while respecting, as a point of departure, the status quo ante”.¹⁰⁰⁶ It is

¹⁰⁰³ See, e.g., UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/70/421 (14 Oct. 2015) (Dossier No. 856), para. 29; UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/72/565 (1 Nov. 2017) (Dossier No. 858), para. 28; OHCHR, *Press Release: Closure of Gaza commercial crossing: UN expert calls on Israel to reverse decision* (13 July 2018), available at <https://tinyurl.com/mtfrx3y9> (“Israel’s 11-year-old air, sea and land blockade has driven Gaza’s social and economic conditions steadily backwards. This amounts to the collective punishment of the two million residents of Gaza, which is strictly prohibited under the Fourth Geneva Convention.”); UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/73/420 (10 Oct. 2018) (Dossier No. 859), paras. 7, 9; UNGA, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/74/468 (2 Oct. 2019) (Dossier No. 860), para. 22; Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/HRC/50/21 (9 May 2022), para. 42; UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 20.

¹⁰⁰⁴ See, e.g., Euro-Med Human Rights Monitor, *The Gaza Strip: Undocumented Citizens* (Mar. 2021), available at <https://tinyurl.com/56269m5r>, pp. 38-39; Human Rights Council, *Joint NGO Statement on the human rights situation in Palestine*, UN Doc. A/HRC/24/NGO/51 (22 Aug. 2013), p. 2 (“In applying the closure, Israel has declared its intention to wage ‘economic warfare’. This illegal policy constitutes a form of collective punishment of the civilian population, in violation of Article 33 of the Fourth Geneva Convention.”).

¹⁰⁰⁵ UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/72/565 (1 Nov. 2017) (Dossier No. 858), para. 18.

¹⁰⁰⁶ E. Lieblich & E. Benvenisti, *OCCUPATION IN INTERNATIONAL LAW* (2022), p. 203.

“entitled to a limited use of natural resources of an occupied territory”.¹⁰⁰⁷ More specifically, as the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel explained, Israel “must safeguard the capital of those properties [the natural resources of the OPT] and administer them in accordance with the rules of usufruct”.¹⁰⁰⁸

3.160 The obligation to “safeguard the capital” means that, with respect to non-renewable resources already being exploited, the occupying power may permit continued exploitation, but it must “refrain from diminishing the resource beyond what the owner itself would have done, as evidenced by the production levels *ante*”.¹⁰⁰⁹ Moreover, the resources, “or the proceeds from selling them,” can only be used to meet “the needs of the local population and the occupant’s security interests, *not* economic exploitation”.¹⁰¹⁰ New resource extraction is generally considered to be impermissible.¹⁰¹¹

3.161 In addition, Articles 28 and 47 of the Hague Regulations, along with Article 33 of the GC IV, prohibit the act of pillage. This applies to all types of property, whether belonging to private persons or to the State.¹⁰¹² “[T]he core of the wrong of pillage is in the taking of property for private use”, which can include taking it

¹⁰⁰⁷ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 40.

¹⁰⁰⁸ *Ibid.*

¹⁰⁰⁹ E. Lieblich & E. Benvenisti, *OCCUPATION IN INTERNATIONAL LAW* (2022), § 6.3.2.

¹⁰¹⁰ *Ibid.*, § 6.3.3.

¹⁰¹¹ *See ibid.* (“the language of article 55 ... cannot accommodate, as “safeguarding the capital,” resource exploitation beyond the levels of production that the sovereign would have undertaken anyway. ... The principle of “permanent sovereignty” too pushes for the more restrictive understanding of the rule concerning the extraction of new resources”).

¹⁰¹² *Ibid.*, § 6.1.1.

“for the benefit of a third party”.¹⁰¹³ Thus, the “unjustified exploitation of resources by the occupant for the benefit of third parties” and “granting concessions to third parties in a manner inconsistent with the occupant’s trusteeship duties” violate the prohibition on pillage.¹⁰¹⁴

3.162 Israel has violated these prohibitions by **treating the economic resources of the OPT as its own**. In particular, its **appropriation of the OPT’s water, hydrocarbon and mineral resources**, and the utilization of those resources to economically benefit Israel and the settlements (as described in paragraphs 2.23 and 2.247-2.256) violate its obligations as an occupying power to safeguard the OPT’s natural resources. They also amount to the act of pillage because the natural resources of the OPT have been taken for the private use of Israelis.

3.163 Indeed, in 2022, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel determined that Israel’s exploitation of the OPT’s natural resources may violate the IHL prohibitions on pillage,¹⁰¹⁵ and that they “may amount to the war crime of pillage under the article 8 (2) (b) (xvi) of the Rome Statute”.¹⁰¹⁶

¹⁰¹³ *Ibid.*

¹⁰¹⁴ *Ibid.*

¹⁰¹⁵ See UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), paras. 31-40.

¹⁰¹⁶ *Ibid.*, para. 87.

IV. The Conduct of the Occupation Entails Crimes against Humanity

3.164 In addition to committing serious breaches of international human rights law and international humanitarian law during its occupation, Israel has also committed numerous crimes against humanity in the OPT.

3.165 Crimes against humanity “deeply shock the conscience of humanity” and “threaten the peace, security and well-being of the world”.¹⁰¹⁷ The *actus rei* of crimes against humanity include the gravest offences: murder, extermination, enslavement, forcible transfer, arbitrary detention, torture, sexual violence, persecution, enforced disappearance, and apartheid.¹⁰¹⁸ In order to constitute a crime against humanity, these acts must be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.¹⁰¹⁹

3.166 As affirmed by the ILC on multiple occasions,¹⁰²⁰ the prohibition of crimes against humanity is *jus cogens*. As a peremptory norm of general international law, the prohibition is binding on Israel and no circumstances whatsoever can be invoked to derogate from it. Article 7 of the Rome Statute, which applies in the

¹⁰¹⁷ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), Preamble.

¹⁰¹⁸ *Ibid.*, art. 2. See also Rome Statute, art. 7(1).

¹⁰¹⁹ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2. See also Rome Statute, art. 7(1).

¹⁰²⁰ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), Preamble Commentary, para. 5 (noting that the peremptory status of the prohibition of crimes against humanity is “clearly accepted and recognized”); ILC, *Peremptory norms of general international law (jus cogens): Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading*, UN Doc. A/CN.4/L.967 (11 May 2022), Conclusion 23 (Annex (c)).

OPT, also provides for individual criminal responsibility for crimes against humanity.

3.167 That said, as the Court has affirmed, individual criminal responsibility need not be established in order to a State to be found responsible for international crimes.¹⁰²¹ Moreover, in the context of ascertaining State responsibility, “it is not necessary for the Court to make findings of fact with regard to each individual incident alleged”.¹⁰²² Instead, just as in the context of grave breaches of IHL, the Court should find a “coincidence of reports from credible sources sufficient to convince it that” crimes against humanity were committed.¹⁰²³

3.168 In light of all of its conduct described in Chapter 2 above, there can be no doubt that Israel has committed and continues to commit numerous crimes against humanity in the OPT. As a threshold matter, as found by multiple international human rights organizations,¹⁰²⁴ Israel’s conduct of the occupation amounts to an (i) “attack directed against [a] civilian population” that is both (ii) “widespread” and (iii) “systematic”.¹⁰²⁵

3.169 “An “attack directed against [a] civilian population” is defined as “a course of conduct involving the multiple commission” of prohibited acts “against any

¹⁰²¹ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 173. See also ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2001 (Vol. II, Pt. 2), Article 58 Commentary, para. 3 (“the question of individual responsibility is in principle distinct from the question of State responsibility”).

¹⁰²² See *Armed Activities Judgment on the Merits*, para. 205.

¹⁰²³ *Ibid.*, para. 207.

¹⁰²⁴ See, e.g., Amnesty International 2022 Report, p. 30; HRW 2021 Report, pp. 10, 29-30, 186, 204.

¹⁰²⁵ The requirement of “knowledge of the attack” is most relevant in the context of individual criminal responsibility. When the State acts through its agents in furtherance of its own policy of attacking a civilian population, it unavoidably does so with knowledge of the attack.

civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”.¹⁰²⁶ The International Criminal Tribunal for the former Yugoslavia (“ICTY”) explained in *Tadić* that “[t]raditionally this requirement was understood to mean that there must be some form of policy to commit these acts. ... Importantly, however, such a policy need not be formalized and can be deduced from the way in which the acts occur”.¹⁰²⁷ Little deduction is required in the case of the occupation; by definition it is an Israeli State policy that affects all Palestinians in the OPT. Moreover, as discussed throughout Chapter 2, Israel’s means and methods used to enforce the occupation are overwhelmingly directed against civilians.¹⁰²⁸

3.170 The attacks Israel commits in the course of the occupation are also “widespread”. In distilling the jurisprudence of multiple international criminal tribunals, the ILC explained that the adjective “widespread” “refers to a ‘multiplicity of victims’ and excludes isolated acts of violence ... [a] ‘widespread’ attack may be ‘massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims’”.¹⁰²⁹ Millions of

¹⁰²⁶ Rome Statute, art. 7(2)(a). See also ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), Article 2 Commentary, para. 17.

¹⁰²⁷ ICTY, *Prosecutor v. Duško Tadić a/k/a “Dule”*, Case No. IT-94-1-T, Opinion and Judgment (7 May 1997), Trial Chamber, para. 653. See also ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), pp. 34-42.

¹⁰²⁸ As held by a Trial Chamber of the ICC, “[w]here an attack is carried out in an area containing both civilians and non-civilians, factors relevant to determining whether an attack was directed against a civilian population include the means and methods used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the form of resistance to the assailants at the time of the attack, and the extent to which the attacking force complied with the precautionary requirements of the laws of war.” See ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute (21 Mar. 2016), Trial Chamber III, para. 162.

¹⁰²⁹ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), Article 2 Commentary, para. 12.

Palestinians are the collective victims of Israel’s massive military occupation on a daily basis; this is nothing if not serious.

3.171 Israel’s attacks are finally “systematic” in that they proceed from “an organized plan in furtherance of a common policy, which follows a regular pattern and results in a continuous commission of acts”.¹⁰³⁰ They are also systematic because they entail a “‘patterns of crimes’ such that the crimes constitute a ‘non-accidental repetition of similar criminal conduct on a regular basis’”.¹⁰³¹ As demonstrated in Chapter 2 above, the occupation is painstaking in its cruelty, and involves a well-documented pattern of policies and practices that have been repeated and honed over decades.

3.172 In the context of its widespread and systematic attack against the Palestinian civilian population, Israel has committed multiple crimes against humanity. Most prominent among these is the crime of apartheid. As explained in Chapter 4, Section II below, Israel’s entire occupation, viewed as a whole, amounts to a regime of apartheid. Within this regime, Israel has also committed the crimes against humanity of murder (**Section A**), deportation and forcible transfer (**Section B**), arbitrary detention (**Section C**), enforced disappearance (**Section D**), other inhumane acts of a similar character (**Section E**) and persecution (**Section F**).

A. MURDER

3.173 Any killing or deprivation of life by the perpetrators of a widespread or systematic attack on a civilian population, with knowledge of the attack, amounts to the crime against humanity of murder.¹⁰³² As explained above, Israel has killed

¹⁰³⁰ *Ibid.*, Article 2 Commentary, para. 16.

¹⁰³¹ *Ibid.*, Article 2 Commentary, para. 15.

¹⁰³² See, e.g., International Criminal Court, *Elements of Crimes* (2013), art. 7(1)(a) (“Elements 1. The perpetrator killed one or more persons. 2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 3. The perpetrator knew that the conduct

thousands of Palestinians over the past two decades alone, breaching numerous norms of IHRL and IHL.¹⁰³³ Israel has, *inter alia*:

- Targeted and killed unarmed civilians, including women, children, the disabled and the elderly;¹⁰³⁴
- Used wanton and excessive force against civilians in the context of law enforcement activities, routinely resulting in numerous deaths, particularly among children;¹⁰³⁵ and
- Targeted civilians and civilian objects in its armed attacks on Gaza, and used indiscriminate and disproportionate force in areas where civilians were present.¹⁰³⁶

3.174 Among the most obvious examples of Israel’s commission of the crime against humanity of murder is its killing of more than two hundred civilian protestors during the 2018-2019 Great March of Return in Gaza. As detailed in Chapter 2, Section IV(B), the UN Independent International Commission of Inquiry on the Protests in the OPT found that Israel intentionally targeted civilian demonstrators posing no imminent threat to life pursuant to unlawful rules of engagement. In addressing individual criminal responsibility, it expressly stated: “In the course of the investigation, the commission found serious human rights violations that may constitute crimes against humanity” including “[m]urder and ‘other inhumane acts’ that cause great suffering or serious injury”.¹⁰³⁷ While insufficient to establish individual criminal responsibility for specific perpetrators,

was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population”), note 7 (“The term ‘killed’ is interchangeable with the term ‘caused death’.”), available at <https://tinyurl.com/mdvf3hak>.

¹⁰³³ See *supra* Chapter 2, § IV; Chapter 3, §§ II-III.

¹⁰³⁴ See *supra* Chapter 2, §§ IV(C).

¹⁰³⁵ See *supra* Chapter 2, §§ IV(B)-(C).

¹⁰³⁶ See *supra* Chapter 2, §§ IV(A), IV(C).

¹⁰³⁷ Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/74 (6 Mar. 2019), para. 115.

the Commission’s findings of fact are sufficient to establish Israel’s State responsibility in accordance with the evidentiary standard applied by the Court.¹⁰³⁸ The Court thus should so conclude.

B. DEPORTATION AND FORCIBLE TRANSFER

3.175 As explained in Section III(A)(4) above, Israel has committed grave breaches of IHL through its forcible transfer of Palestinian civilians from their homes in the West Bank, including East Jerusalem. This also amounts to the crime against humanity of “deportation or forcible transfer of population”, which is defined as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”.¹⁰³⁹

3.176 In September 2022, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel concluded that Israel’s policies that “have contributed to the forced displacement of the Palestinian population from certain areas, altered the demographic composition of the Occupied Palestinian Territory and resulted in Palestinian communities being almost completely encircled by Israeli settlements, may constitute the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute”.¹⁰⁴⁰

¹⁰³⁸ See *Armed Activities* Judgment on the Merits, para. 207 (finding the existence of a “coincidence of reports from credible sources sufficient to convince it that ... grave breaches of international humanitarian law were committed”).

¹⁰³⁹ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(2)(d). See also Rome Statute, art. 7(1)(d).

¹⁰⁴⁰ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 86.

3.177 In light of the evidence presented above, the Court can and should definitively declare that Israel’s conduct does constitute the crime against humanity of deportation or forcible transfer.

C. ARBITRARY DETENTION

3.178 “[I]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” constitutes a crime against humanity.¹⁰⁴¹ This includes arbitrary detention.¹⁰⁴²

3.179 As explained in Sections II(B) and (L) above, Israel’s draconian system of administrative detention of Palestinians—*i.e.*, without charge or trial and on the basis of secret evidence—violates human rights norms.¹⁰⁴³ In her most recent report, the OPT Special Rapporteur documented “widespread and systematic arbitrary deprivation of liberty in the occupied Palestinian territory”,¹⁰⁴⁴ which may entail individual criminal responsibility for the crime against humanity of deprivation of liberty.¹⁰⁴⁵ She explained the magnitude of the phenomenon, and its centrality to the occupation:

Deprivation of liberty has been a central element of Israel’s occupation since its inception. Between 1967-2006 Israel has incarcerated over 800,000 Palestinians in the occupied territory. Although spiking during Palestinian uprisings, incarceration has

¹⁰⁴¹ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(1)(e). *See also* Rome Statute, art. 7(1)(e).

¹⁰⁴² *See* Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15-19 November 2021: Opinion No. 61/2021 concerning Jamal Afif Suleiman al-Niser (Israel)*, UN Doc. A/HRC/WGAD/2021/61(3 Dec. 2021), para. 57.

¹⁰⁴³ *See supra* Chapter 2, § V; Chapter 3, § II(B).

¹⁰⁴⁴ Human Rights Council, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/53/59 (9 June 2023), para. 1.

¹⁰⁴⁵ *Ibid.*, paras. 9, 22-25.

become a quotidian reality. ... Approximately 7,000 Palestinians, including 882 children, were arrested in 2022. Currently, almost 5,000 Palestinians, including 155 children, are detained by Israel, 1,014 of them without charge or trial.¹⁰⁴⁶

3.180 Similarly, the UN Working Group on Arbitrary Detention has noted a “familiar pattern” of Israel’s arbitrary detention of Palestinians, recalling that such detentions may amount to crimes against humanity.¹⁰⁴⁷ Israel is therefore responsible for the crime against humanity of arbitrary detention.

D. ENFORCED DISAPPEARANCE

3.181 Enforced disappearance as a crime against humanity is defined as

[T]he arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.¹⁰⁴⁸

3.182 As explained in Section II(B) above, Israel has carried out multiple enforced disappearances in carrying out its occupation of the OPT, in breach of its international human rights obligations. This occurs when individuals—and

¹⁰⁴⁶ *Ibid.*, para. 6.

¹⁰⁴⁷ Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15-19 November 2021: Opinion No. 61/2021 concerning Jamal Afif Suleiman al-Niser (Israel)*, UN Doc. A/HRC/WGAD/2021/61, para. 57 (“The Working Group notes that many of the cases involving administrative detention in Israel and the Occupied Palestinian Territory follow a familiar pattern of indefinite detention through consecutive administrative detention orders without charges or trial (often based on secret evidence and often under military jurisdiction), and with limited or no judicial recourse to review the lawfulness of the detention. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.”).

¹⁰⁴⁸ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(2)(i).

particularly children—are arrested and detained without their families being informed.¹⁰⁴⁹ It also occurs when Israeli authorities “conceal[] the detention, whereabouts, and fate of a person or body”.¹⁰⁵⁰ Given their use in the context of Israel’s systematic and widespread attack against the Palestinian people, these enforced disappearances also amount to crimes against humanity. The Court should thus conclude that Israel has committed the crime of enforced disappearance.

E. OTHER INHUMANE ACTS

3.183 Crimes against humanity are not limited to those specifically enumerated and defined by the ILC and the Rome Statute, but also include “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.¹⁰⁵¹ Among other actions, Israel’s collective punishment and blockade of Gaza easily meet these conditions.

3.184 As explained in Chapter 2, Sections III(B), IV(A) and IV(B), Israel’s blockade of and attacks on Gaza cause great suffering, and have had widespread detrimental impacts on the physical and mental health of Palestinians living there. According to the UNRWA: “Food insecurity and rising poverty mean that most residents cannot meet their daily caloric requirements, while over 90 per cent of the water in Gaza has been deemed unfit for human consumption.”¹⁰⁵² Moreover, “[a]cross the Gaza Strip, psychological trauma, poverty and environmental

¹⁰⁴⁹ Human Rights Council, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/53/59 (9 June 2023), para. 67.

¹⁰⁵⁰ *Ibid.*, para. 78.

¹⁰⁵¹ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(1)(k); Rome Statute, art. 7(1)(k).

¹⁰⁵² UNRWA, “Health in the Gaza Strip” (last accessed: 17 July 2023), available at <https://tinyurl.com/4m55nkpx>.

degradation have had a negative impact on residents' physical and mental health".¹⁰⁵³

3.185 The collective punishment inflicted on Gaza is also an inhumane act similar in character to other crimes against humanity described above. The Palestinians of Gaza are effectively confined in the "world's largest open air prison",¹⁰⁵⁴ amounting to a "severe deprivation of physical liberty in violation of fundamental rules of international law".¹⁰⁵⁵ The blockade of Gaza is also akin to a form of persecution in that it discriminatorily deprives Palestinians of their most fundamental human rights. Furthermore, Israel's control and isolation of Gaza is a key tool in its apartheid regime of racial domination and oppression.¹⁰⁵⁶

F. PERSECUTION

3.186 Persecution is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity".¹⁰⁵⁷ In order to amount to a crime against humanity, persecution must also be carried out "in connection with any act" that itself constitutes the *actus reus* of a crime against humanity.¹⁰⁵⁸ The ILC has explained that this "connection" requirement "provides guidance as to the nature of the

¹⁰⁵³ *Ibid.*

¹⁰⁵⁴ R. Høvring, "Gaza: The world's largest open-air prison," *Norwegian Refugee Council* (26 Apr. 2018), available at <https://tinyurl.com/2xnx4kw6>.

¹⁰⁵⁵ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(1)(e).

¹⁰⁵⁶ See *infra* Chapter 4, Section II.

¹⁰⁵⁷ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(2)(g). See also Rome Statute, art. 7(2)(g).

¹⁰⁵⁸ ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(1)(h). See also Rome Statute, art. 7(1)(h).

persecution that constitutes a crime against humanity, specifically persecutory acts of a similar character and severity to” other crimes against humanity.

3.187 Accordingly, murder, detention, and expulsion have all been found to constitute persecutory acts when carried out against civilians by reason of their racial, ethnic or other identity.¹⁰⁵⁹ Other affronts to human dignity—including humiliation, psychological abuse, and incitement¹⁰⁶⁰—may also contribute to a finding of persecution depending on “their cumulative effect”.¹⁰⁶¹ The same is true of the destruction of homes and property,¹⁰⁶² or acts targeting cultural and religious property and symbols.¹⁰⁶³ Overall, “acts of persecution must be evaluated not in isolation but in context, by looking at their cumulative effect” and “overall consequences”.¹⁰⁶⁴

3.188 Human Rights Watch has confirmed that Israel is “committing the crime against humanity of persecution based on the discriminatory intent behind Israel’s

¹⁰⁵⁹ ICTY, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Trial Chamber Judgment (14 Jan. 2000), para. 600.

¹⁰⁶⁰ ICTR, *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52, Appeals Chamber Judgment (28 Nov. 2007), paras. 986-988.

¹⁰⁶¹ ICTY, *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Appeals Chamber Judgment (28 Feb. 2005), para. 325.

¹⁰⁶² ICTY, *Prosecutor v. Blaskić*, Case No. IT-95-14-T, Trial Chamber Judgment (3 Mar. 2000), para. 234; ICTY, *Prosecutor v. Kordić & Cerkez*, Case No. IT-95-14/2, Trial Chamber Judgment (26 Feb. 2001), paras. 203-206.

¹⁰⁶³ ICTY, *Prosecutor v. Blaskić*, Case No. IT-95-14-T, Trial Chamber Judgment (3 Mar. 2000), para. 227 (“Persecution may thus take the form of confiscation or destruction of ... symbolic buildings”); ICTY, *Prosecutor v. Kordić & Cerkez*, Case No. IT-95-14/2, Trial Chamber Judgment (26 Feb. 2001), para. 207; ICTY, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Trial Chamber Judgment (1 Sept. 2004), para. 1050 (“[T]he persecutorial campaign against Bosnian Muslims and Bosnian Croats included ... destruction of properties, religious and cultural buildings ... These acts were discriminatory in fact and were committed by the perpetrators with the requisite discriminatory intent on racial, religious and political grounds”).

¹⁰⁶⁴ ICTY, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Trial Chamber Judgment (14 Jan. 2000), para. 622.

treatment of Palestinians and the grave abuses it has carried out in the OPT”.¹⁰⁶⁵ Similarly, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel found in 2022 that Israel’s practices of altering the demographic character of the OPT “may also amount to the crime against humanity of persecution under article 7 (1) (h) of the Rome Statute”.¹⁰⁶⁶

3.189 Indeed, as demonstrated in Sections II(A)-(L) above, Palestinians face extreme discrimination in the enjoyment of their most basic civil, political, economic, social and cultural rights. As described throughout Chapter 2, not only does Israel impose *de jure* discrimination through its dual legal system, it also enforces policies severely depriving Palestinians of land, water, food, housing, healthcare, economic opportunities and freedom of movement. This is accompanied by routine and extreme acts of violence, incitement and hate speech, and the deliberate targeting and erasure of Palestinian religion and culture. Cumulatively, these measures mean that, by virtue of their identity, Palestinians are either driven from their homes due to dire living conditions, or are forced to face daily indignities in their own homeland. They amount to persecution and the Court should so declare.

¹⁰⁶⁵ HRW 2021 Report, p. 205.

¹⁰⁶⁶ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 86.

CHAPTER 4

ISRAEL'S PROLONGED SETTLER-COLONIAL OCCUPATION OF PALESTINIAN TERRITORY VIOLATES INTERNATIONAL LAW

4.1 As detailed above in Chapter 3, the *conduct* of Israel's occupation of the Palestinian territory violates numerous rules and principles of international law, including IHRL and IHL. Beyond that, the mere *existence* of the occupation—as distinct from the conduct thereof—is itself illegal because it violates the right to self-determination and the prohibition of apartheid, two peremptory norms of international law. Those egregious violations of two of the most basic precepts of international law inhere in the very existence of the occupation, rendering it illegal as a whole or “existentially illegal”.¹⁰⁶⁷ The only remedy in circumstances like these is for the occupation to come to an immediate end.¹⁰⁶⁸

4.2 This chapter shows that Israel's prolonged occupation of the OPT entails the indefinite violation of the right to self-determination (**Section I**) and constitutes a regime of apartheid (**Section II**). For each of these reasons, Israel's occupation is illegal as a whole and must end.

¹⁰⁶⁷ Human Rights Council, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/53/59 (9 June 2023), para. 98. *See also* Y. Ronen, “Illegal Occupation and Its Consequences,” Research Paper No. 17-08 (30 Oct. 2008), p. 210 (“In essence, it defines an illegal occupation as one that rests on the violation of a peremptory norm that operates *erga omnes* and is innate to the existence of the occupation.”); O. Ben-Naftali *et al.*, “Illegal Occupation: Framing the Occupied Palestinian Territory,” 23 *BERKELEY JOURNAL OF INTERNATIONAL LAW* 551 (2005), pp. 554-556; A. Imseis, “Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020,” 31(3) *EUROPEAN JOURNAL OF INTERNATIONAL LAW* 1055 (2020), pp. 1072-73.

¹⁰⁶⁸ *See infra* Chapter V(I).

I. Israel's Prolonged Occupation Is Illegal as a Whole Because It Indefinitely Violates the Right of the Palestinian People to Self-Determination

4.3 Israel's prolonged occupation of the OPT is existentially illegal because it indefinitely violates the right of the Palestinian people to self-determination. The principle of self-determination is a foundational principle of the international legal order, a *jus cogens* norm. As enshrined in the UN Charter, one of the purposes and principles of the United Nations is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".¹⁰⁶⁹ The principle of self-determination was further codified in 1966 with the adoption of the ICCPR and ICESCR.¹⁰⁷⁰

4.4 Specifically, Article 1 common to both Covenants provides:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-

¹⁰⁶⁹ UN Charter, art. 1(2). *See also ibid.*, art. 55 (which refers to "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination"); *ibid.*, art. 56 ("All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."); *ibid.*, art. 73.

¹⁰⁷⁰ *See* ICCPR, art. 1; International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966), 993 U.N.T.S. 3 (hereinafter, "ICESCR"), art. 1.

determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.¹⁰⁷¹

4.5 The right to self-determination acquired particular prominence in the context of decolonization, in which it served as a guiding principle for numerous peoples' emancipation from colonial powers. UN Resolution 1514 (XV) of 14 December 1960 titled "Declaration on the Granting of Independence to Colonial Countries and Peoples" affirmed at the outset that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations".¹⁰⁷² To encourage and achieve decolonization, the General Assembly recognized in that Declaration that "[a]ll peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory"¹⁰⁷³ and that "[a]ll peoples have the right to self-determination".¹⁰⁷⁴

4.6 The Court has described self-determination as "one of the essential principles of contemporary international law".¹⁰⁷⁵ It has explained that the right to self-determination extends to the people's territory as a whole, the integrity of

¹⁰⁷¹ ICCPR, art. 1; ICESCR, art. 1.

¹⁰⁷² Colonial Declaration (14 Dec. 1960), para. 1.

¹⁰⁷³ *Ibid.*, Preamble.

¹⁰⁷⁴ *Ibid.*, para. 2.

¹⁰⁷⁵ *East Timor Judgment*, para. 29. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 (hereinafter, "**Namibia Advisory Opinion**") at p. 31; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 at pp. 31-33; *Wall Advisory Opinion*, pp. 181-83; UNGA Res. 2625 (XXV), Annex, para. 3 (recognizing the right to self-determination as one of the "basic principles of international law").

which must be protected by the occupying power.¹⁰⁷⁶ The ILC has identified the right of self-determination as a peremptory norm of international law.¹⁰⁷⁷

4.7 The Court has also recognized that the right of peoples to self-determination has an *erga omnes* character.¹⁰⁷⁸ As such, the existence and exercise of the right to self-determination by a people must be respected by the entire international community of States.¹⁰⁷⁹ As the UN General Assembly has resolved,

[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.¹⁰⁸⁰

¹⁰⁷⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 (hereinafter, “**Chagos Advisory Opinion**”), para. 160 (“The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.”).

¹⁰⁷⁷ ILC, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, UN Doc. A/77/10 (2022), Conclusion 23 (Annex (h)). See also ILC, *Report of the International Law Commission on the work of its Fifteenth Session* (6 July 1963), Official Records of the General Assembly, Eighteenth Session, Supplement (A/5509), UN Doc. A/CN.4/163 (6 July 1963), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1963 (Vol. II), Article 37 Commentary, para. 3; ILC, *Report of the International Law Commission on the work of its Eighteenth Session* (4 May-19 July 1966), Official Records of the General Assembly, Twenty-first Session, Supplement No. 9 (A/6309/Rev.1), UN Doc. A/CN.4/191 (4 May – 19 July 1966), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1966 (Vol. II), Article 50 Commentary, para. 3.

¹⁰⁷⁸ See *East Timor Judgment*, para. 29 (in which the Court described the statement that self-determination had an *erga omnes* character as being “irreproachable”). See also *Chagos Advisory Opinion*, para. 180 (viewing the right of self-determination as having an *erga omnes* character).

¹⁰⁷⁹ A. Tancredi, “Le droit à l’autodétermination du peuple palestinien,” in *LA PALESTINE : D’UN ETAT NON MEMBRE DE L’ORGANISATION DES NATIONS UNIES A UN ETAT SOUVERAIN* (T. Garcia (ed.), 2016), p. 42.

¹⁰⁸⁰ UNGA Res. 2625 (XXV), pp. 123-124. See also *Wall Advisory Opinion*, para. 156.

4.8 In addition, “[e]very State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination”.¹⁰⁸¹ As a result, respect for a people’s right to self-determination entails an *erga omnes* obligation to refrain from interfering with the exercise of that right, “hence also from occupying a foreign territory in such a manner as to curtail the right of the foreign peoples to self-determination”.¹⁰⁸²

4.9 The right to self-determination is violated “whenever there is a military invasion or belligerent occupation of a foreign territory, except where the occupation—although unlawful—is of a minimal duration or is solely intended as a means of repelling, under Article 51 of the UN Charter, an armed attack by the vanquished Power and consequently is not protracted”.¹⁰⁸³

4.10 Accordingly, where an occupation is not of a minimal duration—*i.e.*, it is indefinite, prolonged, or permanent—that indefinite infringement of the right to self-determination renders the occupation in and of itself illegal.¹⁰⁸⁴

¹⁰⁸¹ UNGA Res. 2625 (XXV), p. 124.

¹⁰⁸² A. Cassese, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* (Hersch Lauterpacht Memorial Lectures, Series Number 12) (CUP, 1999), p. 66; UNGA, *Report of the Human Rights Committee*, UN Doc. A/39/40 (1984), p. 143, para. 6; UNGA Res. 2625 (XXV), p. 124 (“Every State has the duty to refrain from any forcible action which deprives peoples ... in the elaboration of the present principle of their right to self-determination and freedom and independence.”); *Wall Advisory Opinion*, para. 156; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Separate Opinion of Judge Cançado Trindade*, para. 119.

¹⁰⁸³ A. Cassese, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* (Hersch Lauterpacht Memorial Lectures, Series Number 12) (CUP, 1999), p. 99.

¹⁰⁸⁴ See A. Imseis, “Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020,” 31(3) *EUROPEAN JOURNAL OF INTERNATIONAL LAW* 1055 (2020), pp. 1071-72; UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/72/43106 (23 Oct. 2017), paras. 31-32; O. Ben-Naftali *et al.*, “Illegal Occupation: Framing the Occupied Palestinian Territory,” 23 *BERKELEY JOURNAL OF INTERNATIONAL LAW* 551 (2005), pp. 554-556.

4.11 Israel’s occupation of the OPT for more than 55 years indefinitely violates the right of the Palestinian people to self-determination and is therefore illegal as a whole.¹⁰⁸⁵

4.12 As set forth below, the Palestinian people are entitled to exercise their right to self-determination on the entirety of the OPT (**Section A**). Among other effects, Israel’s prolonged occupation has deprived the Palestinian people of a permanent population (**Section B**); of a territory on which to realize their self-determination (**Section C**); of the ability to exercise their collective will and determine their internal political status (**Section D**); and of their right to freely pursue their economic, social and cultural development (**Section E**). As such, the prolonged occupation indefinitely violates the right of the Palestinian people to self-determination and is thus existentially illegal.

A. THE PALESTINIAN PEOPLE ARE ENTITLED TO EXERCISE THEIR RIGHT TO SELF-DETERMINATION ON THE OCCUPIED PALESTINIAN TERRITORY AS A WHOLE

4.13 There can be no dispute that the Palestinian people exist and have an inalienable right to self-determination on the OPT. The Court itself has recognized this, noting that “the existence of a ‘Palestinian people’ is no longer in issue”.¹⁰⁸⁶

¹⁰⁸⁵ Human Rights Council, Resolution 49/28, *Rights of the Palestinian people to self-determination*, UN Doc. A/HRC/RES/49/28 (1 Apr. 2022), Preamble (“Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East”); *ibid.*, para. 7 (“Calls upon all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel’s illegal policies and practices”).

¹⁰⁸⁶ *Wall* Advisory Opinion, para. 118.

The Court further stressed that the “Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 also refers a number of times to the Palestinian people and its ‘legitimate rights’”,¹⁰⁸⁷ among which is the right to self-determination.¹⁰⁸⁸

4.14 The UN General Assembly has similarly recognized the right of the Palestinian people to self-determination.¹⁰⁸⁹ It has also recognized that the Palestinian people are entitled to exercise their self-determination over *their* territory *as a whole*, which Israel has occupied since 1967.¹⁰⁹⁰ This is consistent with the Court’s jurisprudence, which consecrates a people’s right to the territorial integrity of their non-self-governing unit.¹⁰⁹¹

4.15 The Palestinian people’s territory covers Gaza and the West Bank, including East Jerusalem, where Palestinian people have lived for millennia.¹⁰⁹² That is why the West Bank, including East Jerusalem, and the Gaza Strip, have

¹⁰⁸⁷ *Ibid.* (citing Oslo II, Preamble, paras. 4, 7, 8; art. II, para. 2; art. III, paras. 1 and 3; art. XXII, para. 2).

¹⁰⁸⁸ *Ibid.*

¹⁰⁸⁹ See UNGA, Resolution 2672/C (XXV), *United Nations Relief and Works Agency for Palestinian Refugees in the Near East*, UN Doc. A/RES/2672(XXV) (8 Dec. 1970) (Dossier No. 946), Part C, para. 1 (which proclaimed that the People of Palestine were “entitled to equal rights and self-determination, in accordance with the Charter of the UN”); UNGA, Resolution 2535/B (XXIV), *United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN Doc. A/RES/2535(XXIV)[B] (10 Dec. 1969) (Dossier No. 945); UNGA, Resolution 3236 (XXIX), *Question of Palestine*, UN Doc. A/RES/3236(XXIX)[B] (22 Nov. 1974) (Dossier No. 382); UNGA, Resolution 37/43, *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, UN Doc. A/RES/37/43 (3 Dec. 1982) (Dossier No. 298).

¹⁰⁹⁰ UNGA, Resolution 43/177, *Question of Palestine*, UN Doc. A/RES/43/177 (15 Dec. 1988) (Dossier No. 398), art. 2.

¹⁰⁹¹ *Chagos Advisory Opinion*, para. 160.

¹⁰⁹² UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 26.

been consistently referred to by the international community, including the UN General Assembly and the UN Security Council, as the occupied *Palestinian* territory, leaving no doubt over who is entitled to that particular territory. For example, in its resolution 67/19 which accorded observer State status to Palestine, the UN General Assembly reaffirmed “the right of the Palestinian people to self-determination and to independence in their State of Palestine *on the Palestinian territory occupied since 1967*”.¹⁰⁹³

4.16 In its Resolution 2334, the UN Security Council similarly called upon all States “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.¹⁰⁹⁴ The resolution thus made clear that Israel has no claim or right to sovereignty over these territories, only the Palestinian people do.¹⁰⁹⁵

4.17 The right of the Palestinian people to self-determination and sovereignty over their territory as a whole under international law thus could not be any clearer.

¹⁰⁹³ UNGA, Resolution 67/19, *Status of Palestine in the United Nations*, UN Doc. A/RES/67/19 (29 Nov. 2012), para. 1 (emphasis added).

¹⁰⁹⁴ UNSC Res. 2334 (2016), para. 5.

¹⁰⁹⁵ See, e.g., UNSC Res. 242 (1967), para. 1 (“the fulfilment of Charter principles ... should include the application of both the following principles: (i) [w]ithdrawal of Israel armed forces from territories occupied in the recent conflict; [and] (ii) ... respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area”); UNSC, Resolution 446 (1979), *On establishment of a commission to examine the situation relating to settlements in the Arab territories occupied by Israel*, UN Doc. S/RES/446 (1979) (22 Mar. 1979) (Dossier No. 1262), para. 3 (“Calls once more upon Israel ... to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967”).

B. ISRAEL'S OCCUPATION INDEFINITELY DEPRIVES THE PALESTINIAN PEOPLE OF A PERMANENT POPULATION

4.18 Israel's indefinite occupation of the OPT since 1967 is a continuation of a settler-colonial project that long pre-dates the establishment of the State of Israel.¹⁰⁹⁶ That settler-colonial enterprise is intrinsic to the occupation itself. As discussed in Chapter 2, Israel seeks to replace the Palestinian population with a Jewish Israeli population through policies such as illegal settlements, forced deportation, house demolitions, forced evictions, and other measures intended to displace the Palestinian people from their territory and thereby deprive them of a permanent population.

4.19 Arab Palestinians are among the original inhabitants of the OPT; they have been the majority population there “for well over a millennium”.¹⁰⁹⁷ Since 1967, however, Israel has endeavoured to alter the demographic composition and character of the OPT by replacing ethnic Palestinians with Israelis, notwithstanding over 40 UN Security Council Resolutions admonishing Israel against doing so.¹⁰⁹⁸

4.20 Israel has always aimed to permanently secure its effective control over the vast majority of the OPT and settle its population there at the expense of Palestinians, a quintessentially settler-colonial policy.¹⁰⁹⁹ In the words of the OPT Special Rapporteur Francesca Albanese: “From the onset of the occupation,

¹⁰⁹⁶ See Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023). QWS, Vol. II, Annex 1.

¹⁰⁹⁷ R. Khalidi, *THE HUNDRED YEARS' WAR ON PALESTINE: A HISTORY OF SETTLER COLONIALISM AND RESISTANCE, 1917-2017* (2020), pp. 75, 246.

¹⁰⁹⁸ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 44.

¹⁰⁹⁹ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), paras. 12-13. See also Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023). QWS, Vol. II, Annex 1.

successive Governments of Israel have acted as if that territory was ‘captured’ *terra nullius*’.¹¹⁰⁰ But as Professor Khalidi explains in his accompanying report, the *terra nullius* narrative is pure fiction:

Palestine in the early 20th century was not barren, empty, and backward. Nonetheless, there is a vast body of literature filled with historical misrepresentations, claiming that at that time the country was sparsely inhabited by a small population of rootless nomads who had no fixed identity and no attachment to the land they were passing through, essentially as transients.

The corollary to this fiction is that the arrival of Zionist immigrants ‘made the desert bloom,’ turning the country into a lush garden, and that only they had an identification with and love for the land, as well as a (God-given) right to it. This attitude is summed up in the slogan ‘A land without a people for a people without a land,’ used by Christian supporters of a Jewish “return” to Palestine and by early Zionists. To the European Zionists who came to settle it, Palestine was *terra nullius*, with the population living there nameless and amorphous. These falsehoods persist to this day, and obscure the real history of the country in the modern era.¹¹⁰¹

4.21 Indeed, for Israeli politicians, the OPT served to create “a Greater Eretz Yisrael [land of Israel] from a strategic point of view, and establish a Jewish state from a demographic point of view”.¹¹⁰² Israeli policymakers have thus considered

¹¹⁰⁰ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 37.

¹¹⁰¹ See Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), p. 2. QWS, Vol. II, Annex 1.

¹¹⁰² UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 38 (citing R. Friedman, *ZEALOTS FOR ZION: INSIDE ISRAEL’S WEST BANK SETTLEMENT MOVEMENT* (Random House, 1992) (speech of Israeli commander Yigad Allon).

Palestinians to be a demographic threat to the existence of Israel as a Jewish State.¹¹⁰³

4.22 Recent Israeli government statements leave no doubt that the settler-colonialist project on the OPT remains a State priority. The objective of ensuring the Jewish Israeli character and domination across the OPT was explicitly affirmed in the 2018 Basic Law: Israel – The Nation State of the Jewish People Israel. That law describes the “Land of Israel”—understood to include the OPT—as “the historical homeland of the Jewish People, in which the State of Israel was established”, through which they fulfil their “historical right to self-determination”, which is “exclusive to the Jewish People”.¹¹⁰⁴ In 2022, the newly sworn-in government of Israel went even further, publishing “Guiding Principles” which proclaim that the exercise of self-determination in “all areas of the Land of Israel” is “exclusive” to the Jewish people.¹¹⁰⁵ As Professor Shlaim explains in his expert

¹¹⁰³ D. Perry & K. Laub, “In Israel, the ‘demographic issue’ gains resonance,” *Times of Israel* (20 Feb. 2014), available at <https://tinyurl.com/kzzpbv3w> (“Every moment we don’t separate from the Palestinians is a clear threat to the existence of Israel as a Jewish state.”). See also UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 13 (“Colonialism, a phenomenon often disguised as a ‘civilization project’ and historically imposed by ‘Western countries’ on ‘third world’ countries, was achieved through cultural subordination of the natives, economic exploitation of their land and resources and suffocation of their political claims. Colonialism is characterized as ‘settler’ when also driven by the logic of elimination of the indigenous character of the colonized land. This manifests in the establishment and promotion of colonies, namely, settlements of foreign people implanted among the indigenous population with the aim of subjugating and dispossessing the natives and ‘permanently securing hold’ over specific areas. The violation of the peoples’ right to self-determination is inherent to settler-colonialism.”).

¹¹⁰⁴ Israel, *Basic Law: Israel—the Nation-State of the Jewish People* (19 July 2018), available at <https://tinyurl.com/5n9b4nhs>, art. 1; Adalah Legal Center, “Israel’s Jewish Nation-State Law” (20 Dec. 2020), available at <https://tinyurl.com/mrxbp95z>; Harvard Law School International Human Rights Clinic and Addameer, *Apartheid in the Occupied West Bank: A Legal Analysis of Israel’s Actions* (28 Feb. 2022) (hereinafter, “**HLS IHRC and Addameer Report**”), available at <https://tinyurl.com/2bkmfwf7>, p. 21.

¹¹⁰⁵ Adalah, *Adalah’s Analysis of the New Israeli Government’s Guiding Principles and Coalition Agreements and their Implications on Palestinians’ Rights* (10 Jan. 2023), available at <https://tinyurl.com/2twea6zv>, p. 1; C. Keller-Lynn & M. Bachner, “Judicial reform, boosting Jewish

report, “[i]n the worldview of [Israeli Prime Minister Benjamin] Netanyahu ... only Jews have historic rights over ‘Judea and Samaria’”.¹¹⁰⁶

4.23 The principal engine driving this “de-Palestinianization” policy—that is, a policy to “diminish the presence, identity and resilience of Palestinians in the occupied Palestinian territory”¹¹⁰⁷—has been Israel’s settlement activities, as described more fully in Chapter 2, Section I. Since the early years of occupation, Israel has established, encouraged, maintained and expanded settlement activities throughout the West Bank, including in East Jerusalem.

4.24 In 2013, the UN Fact-Finding Mission on Israeli Settlements in the OPT found that

the right to self-determination of the Palestinian people, including the right to determine how to implement self-determination, the right to have a demographic and territorial presence in the Occupied Palestinian Territory and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the existence and ongoing expansion of the settlements.¹¹⁰⁸

The Mission further affirmed that

[t]he establishment of the settlements in the West Bank, including East Jerusalem ... is a mesh of construction and infrastructure

identity: The new coalition's policy guidelines,” *Times of Israel* (28 Dec. 2022), available at <https://tinyurl.com/yvzn42b2>.

¹¹⁰⁶ Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023), p. 43. QWS, Vol. II, Annex 2.

¹¹⁰⁷ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 67.

¹¹⁰⁸ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 38.

leading to a creeping annexation that prevents the establishment of a contiguous and viable Palestinian State and undermines the right of the Palestinian people to self-determination.¹¹⁰⁹

4.25 The Wall has further served its intended purpose of consolidating the majority of these settlements. As the Court observed in the *Wall* Advisory Opinion, the construction of the barrier wall has compelled the departure of Palestinians from certain areas, altering the demographic composition of the OPT and “severely impeded[ing] the exercise by the Palestinian people of its right to self-determination”.¹¹¹⁰

4.26 As discussed in Chapter 2, Section II, even as it promotes the settlement of Jewish Israelis in the OPT, Israel arbitrarily denies building permits and land registration in the OPT; demolishes buildings owned by Palestinians, including schools; and evicts Palestinians from their homes and land. Moreover, Israel prevents Palestinians residing outside of the OPT (many of whom were displaced during the *Nakba* or are descendants of those individuals¹¹¹¹) from returning to, and residing in, the OPT. These practices have resulted in the displacement of hundreds of thousands of Palestinians from and within the OPT over the years.¹¹¹²

4.27 Furthermore, as discussed in Chapter 2, Section IV, Israel has institutionalized a system of oppression over Palestinians, normalizing violence

¹¹⁰⁹ *Ibid.*, para. 101.

¹¹¹⁰ *Wall* Advisory Opinion, para. 122. *See also ibid.*, para. 133.

¹¹¹¹ *See* Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), pp. 31-36. QWS, Vol. II, Annex 1.

¹¹¹² *See supra* paras. CHAPTER 1.I. A.1(a)i.2.52-CHAPTER 1.I. A.1(a)i.2.62, CHAPTER 1.I. A.1(a)i.2.157; UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 86.

and abuses against them.¹¹¹³ Under the false pretext of national security, Israel has conducted countless attacks and raids on the Palestinian population, including in refugee camps and places of worship.¹¹¹⁴

4.28 The result of all these policies has been the forcible displacement of hundreds of thousands of Palestinians.¹¹¹⁵ By intentionally transferring its population to the OPT and causing the displacement of Palestinians within the OPT, Israel indefinitely deprives the Palestinian people of a permanent population.¹¹¹⁶

C. ISRAEL'S OCCUPATION INDEFINITELY DEPRIVES THE PALESTINIAN PEOPLE OF A TERRITORY ON WHICH TO REALIZE THEIR RIGHT TO SELF-DETERMINATION

4.29 The land is an essential component of Palestinian identity¹¹¹⁷ and the preservation of the territorial integrity of Palestine is an integral part of the people's

¹¹¹³ See OHCHR, *Press Release: Israel/Palestine: UN experts condemn renewed violence and Israeli killings of Palestinians in occupied West Bank* (27 Jan. 2023), available at <https://tinyurl.com/52z2b27m>.

¹¹¹⁴ See *supra* Chapter 2, §§ IV, VI(B).

¹¹¹⁵ See *supra* Chapter 2, § II; *supra* Chapter 3, §§ III(A)(4), IV(B); UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 86.

¹¹¹⁶ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 35 (“Altogether, the imposition of settlers, settlements and settlement infrastructure in the topography and space of the Palestinians has served to prevent the realization of the Palestinians’ right to self-determination, violating a number of peremptory norms of international law, absolutely prohibited under international law.”).

¹¹¹⁷ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 39.

right to self-determination.¹¹¹⁸ As the Court recently recognized in a related context, “any detachment ... of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination”.¹¹¹⁹ This principle was also consecrated in paragraph 6 of General Assembly Resolution 1514 (XV), which provides that “[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.¹¹²⁰

4.30 In addition to illegally annexing East Jerusalem and Area C of the West Bank,¹¹²¹ Israel’s policies and practices in the OPT have otherwise deprived the Palestinian people of a significant portion of their Territory over which they may seek to realize their right to self-determination. These include:

- Establishing and facilitating Jewish Israeli settlements in the OPT, including by seizing land used and/or owned by Palestinians in East Jerusalem and Area C of the West Bank, building infrastructure serving those settlements, and constructing the Wall, which effectively

¹¹¹⁸ *Chagos Advisory Opinion*, para. 160 (“The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power.”).

¹¹¹⁹ *Ibid.*

¹¹²⁰ Colonial Declaration (14 Dec. 1960), para. 6. The nature and scope of the right to self-determination of peoples, including respect for “the national unity and territorial integrity of a State or country”, were reiterated in subsequent resolutions, including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 1970. *See* UNGA Res. 2625 (XXV), Preamble. *See also* UNGA, Resolution 2325 (XXII), *Question of South West Africa*, UN Doc. A/RES/2325(XXII) (16 Dec. 1967), paras. 4, 6; UNGA, Resolution 74/139, *The right of the Palestinian people to self-determination*, UN Doc. A/RES/74/139 (18 Dec. 2019) (Dossier No. 378), Preamble (“*Stressing also* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard its resolution 58/292 of 6 May 2004”) (emphasis added).

¹¹²¹ *See supra* Chapter 3, § I.

incorporates territory in the West Bank where settlements are located into Israel's pre-1967 borders, as described in Chapter 2, Section I;

- Physically fragmenting the OPT through the imposition of restrictions of movement within the West Bank (including East Jerusalem), as detailed in Chapter 2, Section III(A);¹¹²²
- Disrupting the free movement of Palestinians between Gaza and the West Bank, despite previously recognizing them as a single territorial unit and undertaking to permit regular "safe passage" between them,¹¹²³ as detailed in Chapter 2, Section III(B); and
- Placing restrictions on whether and where Palestinians may reside in the OPT and causing the internal displacement of Palestinians within the OPT, as detailed in Chapter 2, Section II.

4.31 These measures have also deprived the OPT of any semblance of a contiguous character. As the representative of Palestine told the Security Council in 2011: "All these measures are severing the northern and southern parts of the West Bank, encircling occupied East Jerusalem and separating it from its natural Palestinian environs, and totally undermining the contiguity and viability of our State."¹¹²⁴

4.32 By intentionally engaging in policies that fragment Palestinian territory and dispossess Palestinians thereof, Israel indefinitely deprives the Palestinian people of a territory on which they realize their right to self-determination.

¹¹²² See *supra* Chapter 2, §§ I and III.

¹¹²³ See Oslo II, art. XI(1). Indeed, Israel has made specific undertakings to permit regular "safe passage" between the West Bank and Gaza. Protocol Concerning Safe Passage; Agreed Principles for Rafah Crossing.

¹¹²⁴ UNSC, *Overview of 6636th meeting: The situation in the Middle East, including the Palestinian question*, UN Doc. S/PV.6636 (24 Oct. 2011), p. 7.

D. ISRAEL'S OCCUPATION INDEFINITELY DEPRIVES THE PALESTINIAN PEOPLE OF THE ABILITY TO EXERCISE THEIR COLLECTIVE WILL AND DETERMINE THEIR INTERNAL POLITICAL STATUS

4.33 Israel's prolonged occupation also deprives the Palestinian people of the right to exercise their collective will and determine their internal political status, thereby indefinitely violating the right to self-determination.

4.34 A people's right and capacity to govern themselves is expressly provided for in common Article 1 of the ICCPR and the ICESCR, which enshrine peoples' right to "freely determine their political status".¹¹²⁵

4.35 Because of Israel's military occupation and its associated regime, the Palestinian people have not been allowed to form a government that exercises meaningful control over the OPT. In fact, the Palestine National Council has never been in a position to exercise governmental powers within the OPT, even though it enjoys the support of the overwhelming majority of the Palestinian residents of the OPT.¹¹²⁶ Nor does the PLO function as a government in the OPT, despite exercising general influence over it and serving as the representative of the Palestinian people on the international scene.¹¹²⁷ In this respect, the Court has recognized that while a number of agreements between Israel and the PLO have resulted in transferring to the Palestinian authorities certain powers and responsibilities, such transfers have "remained partial and limited".¹¹²⁸

¹¹²⁵ See ICCPR, art. 1; ICESCR, art. 1.

¹¹²⁶ J. Crawford, *THE CREATION OF STATES IN INTERNATIONAL LAW* (2nd Ed., OUP, 2007), p. 437.

¹¹²⁷ *Ibid.*

¹¹²⁸ *Wall* Advisory Opinion, para. 77.

4.36 Israel actively crushes any aspiration by the Palestinian people to express their political will, determine their internal political status, and form a government that can exercise genuine control over the Palestinian territory. It does so by, *inter alia*:

- Banning or suppressing symbols and manifestations of Palestinian culture, history and identity, as discussed in Chapter 2, Section VI(C);
- Suppressing the Palestinian people’s capacity to exercise their civil and political rights, including by criminalizing peaceful protest against the occupation (as discussed in Chapter 2, Section V(C)), targeting and obstructing the work of journalists seeking to document or publicize the occupation’s brutality (as discussed in Chapter 2, Section VII(A)), and repressing the efforts of Palestinian human rights activists and NGOs (as discussed in Chapter 2, Section VII(B)); and
- Systematically harassing Palestinian political leaders, including elected representatives, ministers and mayors, as discussed in Chapter 2, Section VII.

4.37 Moreover, Israel’s restrictions on the rights to freedom of movement and to choose one’s own residence, detailed in Chapter 2, Sections II and III, isolate Palestinians into enclaves and limit their ability to coalesce into a “cohesive national group”.¹¹²⁹

4.38 Together, all these tools of disenfranchisement have hampered the organic formation and functioning of a cohesive Palestinian political leadership, the formation of Palestinian political thinking, and ultimately, effective political

¹¹²⁹ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 16.

resistance against foreign subjugation, all of which constitute the beating heart of the right to self-determination.¹¹³⁰ Indeed, it has been recognized that the

[E]xercise of the right to self-determination required the democratic process, which, in turn, was inseparable from the full exercise of such human rights as the right of freedom of thought, conscience and religion; the right of freedom of expression; the right of peaceful assembly and association; the right to take part in cultural life; the right to liberty and security of person; and the right to move freely in one's country and to leave any country, including one's own, as well as to return to one's country.¹¹³¹

4.39 In sum, Israel's policies deprive the Palestinian people of the right to exercise their collective will and political rights, which indefinitely violates their right to self-determination.

E. ISRAEL'S OCCUPATION INDEFINITELY DEPRIVES THE PALESTINIAN PEOPLE OF THEIR RIGHT TO PURSUE FREELY THEIR ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT

4.40 Common Article 1 of the ICCPR and the ICESCR provides that by virtue of the right of self-determination, all peoples may "freely dispose of their natural wealth and resources"¹¹³² and that "[i]n no case may a people be deprived of its own means of subsistence".¹¹³³ It also requires that peoples be able to "freely

¹¹³⁰ *Ibid.*, para. 56. Special Rapporteur Albanese observed that "[d]eporting elected leaders, preventing Palestinians from voting and interfering with Palestinian politics, have inhibited the independent formation of a Palestinian leadership and political will that could challenge Israeli colonial interests". *Ibid.*, para. 59.

¹¹³¹ UNGA, *Summary record of the 7th meeting of the 3rd Committee* (13 Oct. 1988), UN Doc. A/C.3/43/SR.7, Statement of German Delegate, paras. 76-77. *See also* G. Marston (ed.), *UNITED KINGDOM MATERIALS ON INTERNATIONAL LAW* (1984), p. 431.

¹¹³² ICCPR, arts. 1(1) and 1(2).

¹¹³³ *Ibid.*, art. 1(2).

pursue their economic, social and cultural development”.¹¹³⁴ Israel’s policies deprive the Palestinian people of their right to pursue freely their economic, social and cultural development. Here too the result is the indefinite violation of the Palestinian people’s right to self-determination, rendering the occupation illegal.

4.41 Israel impedes the Palestinian people from pursuing their economic development in three principal ways.

4.42 *First*, Israel deprives the Palestinian people of access to and enjoyment of the OPT’s resources, the exclusive control over which is integral to the right to self-determination.¹¹³⁵ In particular, it:

- Controls the water, hydrocarbon and mineral resources of the West Bank and uses them for the benefit of Israeli settlers and companies, as described in Chapter 2, Section VIII;
- Exploits the offshore gas reserves of Gaza, as described in Chapter 2, Section VIII;
- Restricts Palestinians’ ability to use the land of the OPT, making much of it unavailable for Palestinians to use, as described in Chapter 2, Section II(C); and
- Restricts Palestinians’ access to agricultural and grazing land throughout the OPT, and to fishing grounds off Gaza, as described in Chapter 2, Section III.

4.43 *Second*, Israel deprives Palestinians of means of subsistence. Most starkly, the restrictions on access to land and fishing grounds have left Palestinian communities that were “historically self-sufficient through agriculture, livestock

¹¹³⁴ *Ibid.*, art. 1(1).

¹¹³⁵ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), paras. 16(b), 47.

and fishing (in Gaza), with income generated from the sale of their products ... trapped in a vicious cycle of dependency on both [the] Israeli economy and international aid”.¹¹³⁶ As former Israeli Arab Member of the Knesset Haneen Zoabi explains, “it is virtually impossible for Palestinians to build a house, rent an agricultural field or set up a business”.¹¹³⁷ In addition, the restrictions of movement within the West Bank, described in Chapter 2, Section III(A), impede Palestinians’ ability to access their places of work, while the blockade of Gaza has made the situation of the Palestinians living there beyond dire.¹¹³⁸

4.44 *Third*, as explained in Chapter 2, Section VIII, Israel takes measures that impede the normal functioning of the Palestinian economy and systematically deprives the Palestinian Authority of the ability to adopt and implement policies to promote economic development in the OPT. In this regard, UNCTAD explains that the Palestinian population is “deprived of resources, deprived of the ability to gain

¹¹³⁶ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 48 (citing B’Tselem, *Expel and exploit: the Israeli practice of taking over rural Palestinian land* (2016), note 89).

¹¹³⁷ Why did MK Haneen Al Zoabi challenge the State of Israel?, *DW* (8 Nov. 2014), available at <https://tinyurl.com/sxaaxwdx> (“بات من غير الممكن تقريبا للفلسطينيين بناء منزل أو استئجار حقل زراعي أو إنشاء مشروع تجاري.”).

¹¹³⁸ *Ibid.*, para. 50 (“In 2021 the unemployment rate in Gaza rose above 50 per cent, and 80 per cent of the population was dependent on aid. Repeated large-scale Israeli military offensives, coupled with Israeli-imposed electricity shortages, have compounded the difficulties faced by the Palestinian people in Gaza, for whom a dignified life is rendered unattainable.”). See also World Bank, *Assistance Strategy for the West Bank and Gaza for the Period FY22-25 (156451-GZ)* (2021), available at <https://tinyurl.com/v28thd4h>, p. 6; World Food Programme, “Where We Work: Palestine,” available at <https://tinyurl.com/3ms647tm> (“The humanitarian conditions in Gaza, and the collapse of all productive sectors, basic social services and infrastructures is alarming. Poverty and food insecurity in the Strip affect 59.4 percent and 63 percent of the population respectively ... The continuous large-scale security, political and economic unrest in the West Bank and the 15-year sea, land and air blockade on the Gaza Strip have resulted in economic stagnation, loss of land and restricted trade and access to resources, along with high unemployment and poverty rates.”).

from domestic economic activity, deprived of trade with outside partners and deprived of the ability to promote future economic development”.¹¹³⁹

4.45 As the OPT Special Rapporteur Francesca Albanese has affirmed, the “de-development” policy that Israel has imposed on the OPT deprives the Palestinian people of the means needed to develop an independent economy and a viable State and “is the antithesis of the self-determination that the United Nations embraced in the rejection of colonialism”.¹¹⁴⁰

4.46 Israel also restricts the ability of Palestinians to pursue their social and cultural development. As explained more fulsomely in Chapter 2, Section VI, Israel has sought to erase and supplant Palestinian cultural and religious identity in the OPT. According to the OPT Special Rapporteur Francesca Albanese, “[a]ttacks on cultural objects of significance to eliminate all traces and expressions of Palestinian existence, and the incorporation of a revisionist view of history to assert (false) claims of sovereignty in the occupied Palestinian territory, demonstrate the occupier’s intention to permanently strip the land of its indigenous identity”.¹¹⁴¹

4.47 Israel’s prolonged occupation thus deprives the Palestinian people of their right to freely pursue their economic, social and cultural development, and indefinitely violates their right to self-determination.

¹¹³⁹ UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: the Unrealized Oil and Natural Gas Potential*, UN Doc. UNCTAD/GDS/APP/2019/1 (2019), p. 3.

¹¹⁴⁰ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 52 (citing S. Roy, “De-development revisited: Palestinian economy and society since Oslo,” 28(3) *JOURNAL OF PALESTINE STUDIES* 64 (1999), pp. 64-82).

¹¹⁴¹ *Ibid.*, para. 55.

4.48 The right to self-determination is a peremptory norm of international law from which no derogation is permitted. Israel's prolonged occupation nevertheless fundamentally and indefinitely violates the right of the Palestinian people to self-determination by depriving them of a permanent population; of a territory; of the ability to exercise their collective will and determine their internal political status; and of their right to freely pursue their economic, social and cultural development. As a result, Israel's occupation is illegal as a whole.

II. Israel's Occupation of the OPT Constitutes a Regime of Apartheid and Is Therefore Illegal as a Whole

4.49 Israel's occupation of the Palestinian Territories amounts to a regime of apartheid. As a *jus cogens* norm, apartheid cannot be justified under any circumstances, including armed conflict or occupation. This Section first establishes that apartheid is prohibited under general international law (**Section A**), and then explains that Israel's occupation—by virtue of its purpose and associated policies and practices—can only be viewed as an institutionalized regime of apartheid (**Section B**). As a consequence, the occupation as a whole is illegal and its ongoing maintenance entails a serious breach of a peremptory norm (**Section C**).

A. APARTHEID IS PROHIBITED UNDER INTERNATIONAL LAW

4.50 The prohibition of apartheid is binding upon Israel and applicable within the OPT (**Section 1**). In addressing this issue, Qatar respectfully submits that the Court should apply the widely accepted definition of apartheid under conventional and customary international law (**Section 2**).

I. The Prohibition of Apartheid Is Binding upon Israel and Applicable Within the OPT

4.51 The prohibition of apartheid is reflected in numerous sources of international law. As early as 1965, the CERD, to which both Israel and Palestine are parties, codified the prohibition of apartheid in its Article 3:

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.¹¹⁴²

4.52 Expressly building on Article 3 of the CERD,¹¹⁴³ as well as the Universal Declaration of Human Rights,¹¹⁴⁴ the International Convention on the Suppression of the Crime of Apartheid (the “**Apartheid Convention**”) was adopted in 1973. It provides “that apartheid is a crime against humanity” that “violat[es] the principles of international law, in particular the purposes and principles of the Charter of the United Nations”.¹¹⁴⁵

4.53 Although Israel is not a party to it, the Apartheid Convention merely codified an already existing customary international law prohibition of apartheid. As stated in its Preamble, at the time the Apartheid Convention was adopted 50

¹¹⁴² CERD, art. 3. In addition, the Preamble to the CERD makes clear that States were “[a]larmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation”.

¹¹⁴³ See International Convention on the Suppression and Punishment of the Crime of Apartheid (18 July 1976), 1015 U.N.T.S. 243 (hereinafter, “**Apartheid Convention**”), Preamble (“Observing that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”).

¹¹⁴⁴ See *ibid.*, Preamble (“Considering the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin”).

¹¹⁴⁵ *Ibid.*, art. I(1).

years ago, “the General Assembly of the United Nations ha[d] adopted a number of resolutions in which the policies and practices of apartheid are condemned as a crime against humanity”, and “the Security Council ha[d] emphasized that apartheid and its continued intensification and expansion seriously disturb and threaten international peace and security”.¹¹⁴⁶

4.54 Indeed, both before and after the adoption of the Apartheid Convention, the Security Council¹¹⁴⁷ and the General Assembly¹¹⁴⁸ have repeatedly and forcefully denounced apartheid as prohibited under international law. That is not surprising, given that the prohibition of apartheid is rooted in the aversion to racial discrimination under international law enshrined in Articles 1(3) and 55 of the UN Charter.¹¹⁴⁹ This Court itself has held that the policy of apartheid—as extended to

¹¹⁴⁶ *Ibid.*, Preamble.

¹¹⁴⁷ See, e.g., UNSC, Resolution 473, *Calling upon South Africa to take measures to eliminate the policy of apartheid and grant to all South African citizens equal rights*, UN Doc. S/RES/473(1980) (13 June 1980); UNSC, Resolution 418, *On establishment of an arms embargo against South Africa*, UN Doc. S/RES/418(1977) (4 Nov. 1977); UNSC, Resolution 554 (1984), *On the “new constitution” of South Africa*, UN Doc. S/RES/554(1984) (17 Aug. 1984); UNSC, *On sanctions against South Africa*, UN Doc. S/RES/569(1985) (26 July 1985).

¹¹⁴⁸ See, e.g., Colonial Declaration (14 Dec. 1960), para. 1; UNGA, Resolution 2202 (XXI), *The policies of apartheid of the Government of the Republic of South Africa*, UN Doc. A/RES/2202(XXI) (16 Dec. 1966), Part A, para. 1; UNGA, Resolution 3411 (XXX), *Policies of apartheid of the Government of South Africa - Special responsibility of the United Nations and the international community towards the oppressed people of South Africa*, UN Doc. A/RES/3411(XXX) (28 Nov. 1975), Part C, para. 1; UNGA, Resolution 32/105, *Policies of apartheid of the Government of South Africa*, UN Doc. A/RES/32/105 (14 Dec. 1977), Part J, paras. 2–4; UNGA, Resolution 31/6, *Policies of apartheid of the Government of South Africa*, UN Doc. A/RES/31/6 (26 Oct. 1976), Part A, para. 1; UNGA, Resolution 34/93, *Declaration on South Africa*, UN Doc. A/RES/34/93 (12 Dec. 1979), Part O, para. 1; UNGA, Resolution 39/72, *Policies of apartheid of the Government of South Africa*, UN Doc. A/RES/39/72 (13 Dec. 1984) (hereinafter, “**UNGA Res. 39/72**”), Part A; *ibid.*, Part G, para. 1. See also UN, *Final act of the International Conference on Human Rights: Teheran*, UN Doc. A/CONF.32/41 (22 Apr. – 13 May 1968), Chapter II: Proclamation of Teheran (hereinafter, “**Proclamation of Teheran (1968)**”), para. 7.

¹¹⁴⁹ UN Charter, art. 1(3), which provides that one of the fundamental purposes of the United Nations is “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. *Ibid.*, art. 55(c), which provides: “With a view to the creation of conditions of stability

Namibia by South Africa—constituted a denial of fundamental human rights and a “flagrant violation of the purposes and principles of the Charter”.¹¹⁵⁰

4.55 Over the past half century, numerous other treaties have been adopted enshrining or otherwise recognizing the prohibition of apartheid, including, *inter alia*,¹¹⁵¹ the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,¹¹⁵² the International Convention against Apartheid in Sport,¹¹⁵³ Additional Protocol I to the Geneva Conventions,¹¹⁵⁴ and the Rome Statute.¹¹⁵⁵ The fact that nearly every State has adhered to at least one of the aforementioned treaties indicates that, even if the prohibition of apartheid did

and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

¹¹⁵⁰ See *Namibia* Advisory Opinion, paras. 129-131 (“It is undisputed ... that the official governmental policy [of apartheid] pursued by South Africa in Namibia is to achieve a complete physical separation of races and ethnic groups in separate areas within the Territory. The application of this policy has required, as has been conceded by South Africa, restrictive measures of control officially adopted and enforced in the Territory by the coercive power of the former Mandatory. These measures establish limitations, exclusions, or restrictions for the members of the indigenous population groups in respect of their participation in certain types of activities, fields of study or of training, labour or employment and also submit them to restrictions or exclusions of residence and movement in large parts of the Territory ... To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter”.)

¹¹⁵¹ See, e.g., Convention on the Elimination of Discrimination against Women (18 Dec. 1979) 1249 U.N.T.S. 13 (hereinafter, “**CEDAW**”), Preamble (“Emphasizing that the eradication of apartheid ... is essential to the full enjoyment of the rights of men and women”).

¹¹⁵² Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (26 Nov. 1968), 754 U.N.T.S. 73, art. 1.

¹¹⁵³ International Convention against Apartheid in Sports (10 Dec. 1985), 1500 U.N.T.S. 161 (hereinafter, “**International Convention against Apartheid in Sports**”), Preamble, arts. 1-2.

¹¹⁵⁴ Additional Protocol I, art. 85(4)(c).

¹¹⁵⁵ Rome Statute, arts. 7(1)(j), 7(2)(h).

not already constitute a norm of customary international law when the Apartheid Convention was adopted (*quod non*), it has since crystalized into one.¹¹⁵⁶

4.56 Not only is the customary status of the prohibition of apartheid beyond doubt, but also there is, in the words of the ILC, “widespread agreement” that the prohibition of apartheid constitutes a peremptory norm of international law (*jus cogens*).¹¹⁵⁷ This peremptory status was already subject to “general agreement” among States at the time of the adoption of the Vienna Convention on the Law of Treaties in 1969.¹¹⁵⁸ Since then it has become one of the “most cited norms of *jus cogens*”.¹¹⁵⁹ This is only logical given that apartheid constitutes one of the most severe manifestations of racial discrimination, the prohibition of which also constitutes a peremptory norm.¹¹⁶⁰

¹¹⁵⁶ See ILC, *Report of the International Law Commission on the work of its Seventieth Session* (30 April–1 June and 2 July–10 August 2018)), UN Doc. A/73/10, p. 143-144 (“The number of parties to a treaty may be an important factor in determining whether particular rules set forth therein reflect customary international law; treaties that have obtained near-universal acceptance may be seen as particularly indicative in this respect.”). There are only eleven States that have not ratified any of these treaties. See, e.g., United Nations Treaty Collection, “Status of Treaties: Chapter IV- Human Rights” (last accessed: 17 July 2023), available at <https://tinyurl.com/yun6j4ca>.

¹¹⁵⁷ ILC, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION (2001) (Vol. II, Pt. 2), Article 40 Commentary, para. 4. See also ILC, *Peremptory norms of general international law (jus cogens): Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading*, UN Doc. A/CN.4/L.967 (11 May 2022), Conclusion 23 (Annex (e)).

¹¹⁵⁸ ILC, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION (2001) (Vol. II, Pt. 2), Article 40 Commentary, para. 4.

¹¹⁵⁹ ILC, *Fourth report on peremptory norms of general international law (jus cogens) by Special Rapporteur D. Tladi*, UN Doc. A/CN.4/727 (31 Jan. 2019), para. 101. In his discussion of the peremptory status of the prohibition of apartheid, the Special Rapporteur elaborates on numerous examples of widespread support among States, courts and tribunals, and scholars. *Ibid.*, paras. 91-101.

¹¹⁶⁰ ILC, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION (2001) (Vol. II, Pt. 2), Article 26 Commentary, para. 5. See also *Barcelona Traction, Light and Power Company, Limited*,

4.57 Israel, like all States, is therefore prohibited from engaging in apartheid. This prohibition, moreover, extends to the OPT for at least four reasons. *First*, the peremptory character of the norm means that no circumstances can be invoked to derogate from the prohibition of apartheid, which applies without territorial limitations. *Second*, under the CERD, Israel is obligated to “prevent, prohibit and eradicate” apartheid “in territories under [its] jurisdiction”,¹¹⁶¹ which include the OPT.¹¹⁶² *Third*, by virtue of the State of Palestine’s accession to the Rome Statute, any individual, regardless of nationality or official capacity, incurs individual criminal responsibility for the crime against humanity of apartheid if carried out in the OPT.¹¹⁶³ *Fourth*, this Court condemned South Africa’s extension of its

Judgment, I.C.J. Reports 1970, p. 3, para. 34 (recognizing the *erga omnes* character of the prohibition of racial discrimination).

¹¹⁶¹ CERD, art. 3.

¹¹⁶² As explained by Patrick Thornberry, the leading commentator on the CERD: “‘territories under their jurisdiction’ is less ostensibly restrictive than the ICCPR’s ‘within its territory and subject to its jurisdiction’. Accordingly, practice under Article 3 merges into the broader CERD archive of applying the Convention extraterritorially, particularly in cases of occupation or control of territory, the ‘spatial’ extension of the Convention. The Committee’s 2012 recommendations to Israel vis-à-vis activities in ‘[t]he Occupied Palestinian Territory, including East Jerusalem, and the Occupied Golan’ furnishes a clear example of the extension of Article 3 to territories under the jurisdiction of a State party but beyond its internationally recognized borders”. P. Thornberry, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY* (OUP, 2016), p. 259. *See also supra* paras. 3.25-3.28.

¹¹⁶³ The scope of individual criminal responsibility under the Rome Statute is coextensive with the jurisdiction of the International Criminal Court (“ICC”). *See* Rome Statute, art. 25(2) (“A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.”). The ICC’s personal jurisdiction extends to the author of a crime, regardless of nationality, when the conduct in question occurred within the territory of a State Party to the Rome Statute. *See* Rome Statute, art. 12(2)(a). The State of Palestine is a party to the Rome Statute and “the Court’s territorial jurisdiction in the *Situation in Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem”. *See* International Criminal Court, *Pre-Trial Chamber I, Decision on the Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine* (5 Feb. 2021), ICC-01/18, para. 118. Official capacity does not preclude international criminal responsibility under the Rome statute. *See* Rome Statute, art. 27 (“This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute”).

apartheid policy into Namibia under the Mandate system as a “flagrant violation of the purposes and principles of the Charter”.¹¹⁶⁴ The same applies *mutatis mutandis* to Israel’s conduct in the OPT.

2. *The Applicable Definition of Apartheid*

4.58 In light of the multiplicity of its sources, the precise contours of the prohibition of apartheid depend on the context of its application. As noted above, apartheid constitutes a crime against humanity in international criminal law,¹¹⁶⁵ a grave breach of international humanitarian law,¹¹⁶⁶ and a prohibited practice under international human rights law.¹¹⁶⁷ While these mutually reinforcing norms leave little doubt as to the comprehensive and unconditional nature of the prohibition of apartheid, they do raise questions as to the precise definition of the norm to be applied by the Court in this context.

4.59 Article 3 of the CERD, which is the oldest conventional source for the prohibition of apartheid, does not define the term.¹¹⁶⁸ A definition is provided, however, in three relevant instruments adopted after the CERD that provide

¹¹⁶⁴ See *Namibia* Advisory Opinion, para. 131.

¹¹⁶⁵ Rome Statute, art. 7(1)(j). See also ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(1)(j).

¹¹⁶⁶ Additional Protocol I, art. 85(4)(c).

¹¹⁶⁷ CERD, art. 3.

¹¹⁶⁸ Nor does Article 85(4)(c) of Additional Protocol I to the Geneva Conventions. See Additional Protocol I, art. 85(4)(c) (“In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol: ... practices of ‘apartheid’ and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination”).

relevant context¹¹⁶⁹ for elucidating the meaning of the term both under the CERD and customary international law:

- The Apartheid Convention, adopted in 1977, defines the “crime of apartheid” to “include similar policies and practices of racial segregation and discrimination as practised in southern Africa” and to apply to various listed “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”;¹¹⁷⁰
- The International Convention against Apartheid in Sports, adopted in 1985, provides that “[t]he expression ‘apartheid’ shall mean a system of institutionalized racial segregation and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them”;¹¹⁷¹
- The Rome Statute, adopted in 1998, provides that “‘the crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1 [*i.e.*, other crimes against humanity], committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”.¹¹⁷²

4.60 In distilling from the above a definition of apartheid to be applied by the Court, at least five considerations are relevant:

¹¹⁶⁹ See, e.g., J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), p. 880.

¹¹⁷⁰ Apartheid Convention, art. II.

¹¹⁷¹ International Convention against Apartheid in Sports, art. 1(a).

¹¹⁷² Rome Statute, art. 7(2)(h). See also ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(2)(h).

4.61 *First*, while the definitions are not identical in their wording, they all underscore the same fundamental features of apartheid. As Professors Dugard and Reynolds explain, understood in the broader context of the history of apartheid, “[t]he essence of the definition of apartheid is thus the systematic, institutionalized, and oppressive character of the discrimination involved, and the purpose of domination that is entailed”.¹¹⁷³ Although apartheid was first carried out in southern Africa before 1994, there is widespread consensus that its legal application is not limited to that context.¹¹⁷⁴ Rather than geography, “[i]t is this institutionalized element, involving a state-sanctioned regime of law, policy, and institutions, that distinguishes the practice of apartheid from other forms of prohibited discrimination”.¹¹⁷⁵

4.62 *Second*, although the three definitions of apartheid vary somewhat in their approach to the underlying acts constituting apartheid, the texts are best read as complementary.

¹¹⁷³ J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), p. 881.

¹¹⁷⁴ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 29 (“When the Rome Statute was drafted and adopted 25 years later, the apartheid era in southern Africa had already ended, and the purpose of the Rome Statute was to provide a forward-looking definition with universal application. In particular, it made no reference to South Africa or southern Africa. Given this approach, there is no reasonable basis to think that the existence of apartheid is limited either in time or in geography.”). The *travaux* of the Apartheid Convention further confirm this. See J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), pp. 884-885 (citing, *inter alia*, the statement of the delegate of Cyprus during the drafting process: “When drafting and adopting such an international convention, it must be remembered that it would become part of the body of international law and might last beyond the time when *apartheid* was being practiced in South Africa.”). Contemporary South African legal scholarship also confirms this. See, e.g., J. Dugard *et al.*, DUGARD’S INTERNATIONAL LAW: A SOUTH AFRICAN PERSPECTIVE (5th Ed., Juta, 2018), pp. 229-230; M. du Plessis, “International Criminal Law: The Crime of Apartheid Revisited Recent Cases,” 24 SOUTH AFRICAN JOURNAL OF CRIMINAL JUSTICE 417 (2011), p. 417.

¹¹⁷⁵ J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), p. 881.

4.63 The Apartheid Convention provides the most comprehensive list of underlying acts, which include:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.¹¹⁷⁶

4.64 For its part, the Rome Statute refers to “inhumane acts of a character similar to those referred to in paragraph 1,” namely:

(a) Murder;

...

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

...

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

...

¹¹⁷⁶ Apartheid Convention, art. II.

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.¹¹⁷⁷

4.65 As noted by the former OPT Special Rapporteur Michael Lynk, among others,¹¹⁷⁸ “a purposive reading of the respective lists indicates that there is considerable overlap, and the broad language used in the Rome Statute—that is, ‘other inhumane acts’—can reasonably be said to include the same prohibited provisions that are found on the list in the [Apartheid] Convention”.¹¹⁷⁹ Indeed, by virtue of their wording, both of these lists can be said to be non-exhaustive.¹¹⁸⁰ It follows that “[t]hese differences between the [Apartheid Convention] and the Rome Statute are secondary and reconcilable”.¹¹⁸¹

4.66 Moreover, as illustrated by the absence of the requirement of specific underlying acts in the definition contained in the Convention against Apartheid in Sports, inhuman or inhumane acts are in many ways inevitable in the maintenance of a “system of institutionalized racial segregation and discrimination”.¹¹⁸² At the same time, the absence of this component in the definition set forth in the Convention against Apartheid in Sports also suggests that the identification and

¹¹⁷⁷ Rome Statute, art. 7(1).

¹¹⁷⁸ G. Mettraux, “Apartheid,” in *INTERNATIONAL CRIMES: LAW AND PRACTICE: VOLUME II: CRIMES AGAINST HUMANITY* (OUP, 2020), p. 741.

¹¹⁷⁹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 30.

¹¹⁸⁰ Article II of the Apartheid Convention makes clear, in a non-limitative fashion, that apartheid “shall *include* similar policies and practices of racial segregation and discrimination as practised in southern Africa” (emphasis added). Moreover, Article 7(2)(h) of the Rome Statute provides that the definition of apartheid extends to “inhumane acts *of a character similar*” (emphasis added).

¹¹⁸¹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 31.

¹¹⁸² International Convention against Apartheid in Sports, art. 1.

qualification of underlying acts of apartheid is a less rigid requirement (if it exists at all) in the context of State responsibility than in the context of individual criminal responsibility. The latter entails the strict application of principles such as *nullum crimen sine lege*.¹¹⁸³

4.67 *Third*, and in this connection, the above definitions serve different purposes depending on the respective instruments containing them, which must be borne in mind when drawing conclusions about the meaning of apartheid under the CERD and customary international law. The Apartheid Convention and the Rome Statute are primarily concerned with individual criminal responsibility for the crime against humanity of apartheid. However, the Court—by its very nature and in light of the Request before it—is not called upon to establish the criminal responsibility of individuals, but rather to ascertain “the legal status of the occupation” and “the legal consequences that arise for all States and the United Nations from this status”.¹¹⁸⁴ It follows that the definition of apartheid to be applied by the Court should take inspiration from the definitions set forth in the Rome Statute and the Apartheid Convention, but must also be adapted to apply, *mutatis mutandis*, in the context of State responsibility.¹¹⁸⁵

4.68 For example, the Court need not ascertain whether apartheid has been committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”, as required by the definition of

¹¹⁸³ See, e.g., Rome Statute, art. 22.

¹¹⁸⁴ Request, para. 18(b).

¹¹⁸⁵ See, e.g., J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), p. 880 (“The present study is concerned with appraising the responsibility of the Israeli state under the norms of public international law, as opposed to the responsibility of its individual agents under international criminal law. Thus, reliance on the formulation of criminal statutes – as among the most elaborate sources of law on the question of apartheid – is for the purposes of informing a comprehensive definition rather than any evaluation of individual criminal guilt.”).

crimes against humanity set forth in the Rome Statute.¹¹⁸⁶ While it is certainly true that States are prohibited from themselves engaging in the crime against humanity of apartheid,¹¹⁸⁷ States are also prohibited from engaging in the practice of apartheid, whether or not it also amounts to a crime against humanity,¹¹⁸⁸ and whether or not individual criminal responsibility has been established.¹¹⁸⁹

4.69 *Fourth*, according to all of the aforementioned definitions, apartheid must be perpetrated by one “racial group” over at least one other “racial group”. As has been widely observed, the notion of “racial group” in the context of apartheid is not limited to narrow concepts of race or colour.¹¹⁹⁰ Rather, in accordance with

¹¹⁸⁶ Rome Statute, art. 7(1). *See also* ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 2(1).

¹¹⁸⁷ *See* ILC, *Draft Articles on Prevention and Punishment of Crimes against Humanity, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2019 (Vol. II, Pt. 2), art. 3 (“Each State has the obligation not to engage in acts that constitute crimes against humanity.”). *See also Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43, paras. 166, 172-173.

¹¹⁸⁸ Although the definitions of apartheid contained in the Rome Statute and the Apartheid Convention are the most prominent and frequently invoked, the definition contained in the Convention against Apartheid in Sports makes clear that apartheid has long been understood as a prohibited practice independent of its status as a crime against humanity. *See* P. Thornberry, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY* (OUP, 2016), p. 242. *See also* ILC, *Fourth report on peremptory norms of general international law (jus cogens) by Special Rapporteur D. Tladi*, UN Doc. A/CN.4/727 (31 Jan. 2019), paras. 91-101.

¹¹⁸⁹ *See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43, para. 173. *See also* ILC, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION (2001) (Vol. II, Pt. 2), Article 58 Commentary, para. 3 (“the question of individual responsibility is in principle distinct from the question of State responsibility”).

¹¹⁹⁰ *See, e.g.*, J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), pp. 885-891.

both the CERD¹¹⁹¹ and customary international law,¹¹⁹² the term “racial” must also be understood to encompass descent and national or ethnic origin.

4.70 In light of and subject to the above considerations, there is now consensus among leading scholars, experts, and human rights organizations that apartheid is defined by three core characteristics: (i) an institutionalized regime of systematic racial oppression and discrimination, (ii) which is established with the intent to maintain the domination of one racial group over another, and (iii) which features inhumane (or inhuman) acts committed as an integral part of the regime.¹¹⁹³ When these three features are present, the practice of apartheid exists within the meaning of the CERD and customary international law. States are not only prohibited from engaging in this practice, but also have positive obligations to “prevent, prohibit and eradicate” it.¹¹⁹⁴

B. ISRAEL’S OCCUPATION CONSTITUTES A REGIME OF APARTHEID

4.71 The application of the foregoing legal standard leads to the unavoidable conclusion that Israel’s occupation of the OPT amounts to a regime of apartheid. What may have once been a temporary military occupation within the meaning of that term under international law is today an institutionalized regime of systematic racial oppression and discrimination, established with the intent to maintain the

¹¹⁹¹ CERD, art. 1 (“the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”).

¹¹⁹² See *Namibia Advisory Opinion*, para. 131.

¹¹⁹³ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 31. See also G. Mettraux, “Apartheid,” in *INTERNATIONAL CRIMES: LAW AND PRACTICE: VOLUME II: CRIMES AGAINST HUMANITY* (OUP, 2020), p. 740.

¹¹⁹⁴ CERD, art. 3.

domination of Jewish Israelis over Palestinians, and which features inhumane acts committed as an integral part of that regime.

4.72 Prominent voices have warned for decades that Israel's occupation has increasingly exhibited characteristics of apartheid and that absent Israel's reversal of its policies and the realization of Palestinians' self-determination, it would actually become a regime of apartheid. Former United States President Jimmy Carter issued this warning, for example, in his 2006 book *Palestine: Peace Not Apartheid*.¹¹⁹⁵ Similarly, in a 2007 report issued in his capacity as OPT Special Rapporteur, Professor John Dugard opined that "Israel's laws and practices in the OPT certainly resemble aspects of apartheid ... and probably fall within the scope of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid".¹¹⁹⁶

4.73 Since these warnings were issued, Israel's discriminatory practices and policies have intensified to such a degree that apartheid is no longer a specter on the horizon, but the bleak reality of the occupation today. In 2013, Professor Dugard revisited the tentative findings he made as Special Rapporteur in 2007 and concluded just six years later that little doubt remained about the existence of apartheid:

On the basis of the systemic and institutionalized nature of the racial domination that exists, there are indeed *strong grounds* to conclude that a system of apartheid has developed in the occupied Palestinian territory. Israeli practices in the occupied territory are not only reminiscent of – and, in some cases, *worse* than – apartheid as it

¹¹⁹⁵ J. Carter, *PALESTINE: PEACE NOT APARTHEID* (Simon & Schuster, 2006), p. 215.

¹¹⁹⁶ Human Rights Council, *Report of Special Rapporteur J. Dugard on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/4/17 (29 Jan. 2007), para. 61.

existed in South Africa, but are in breach of the legal prohibition of apartheid.¹¹⁹⁷

4.74 Ten more years have passed and the situation has only become worse. Following their visit to the OPT in June 2023, former UN Secretary-General Ban Ki-Moon and former High Commissioner for Human Rights Mary Robinson noted that they “heard no detailed rebuttal of the evidence of apartheid. On the contrary, the declarations and policies of the current Israeli Government—whose Coalition Guidelines state that ‘the Jewish people have an exclusive and inalienable right to all parts of the Land of Israel’—clearly show an intent to pursue permanent annexation rather than temporary occupation, based on Jewish supremacy”.¹¹⁹⁸

4.75 Even prominent former Israeli officials have recognized the reality of apartheid. These include two former ambassadors of Israel to South Africa, who opined in June 2021 that “[i]t is time for the world to recognise that what we saw in South Africa decades ago is happening in the occupied Palestinian territories too”.¹¹⁹⁹ And the former Attorney General of Israel, Michael Benyair, stated in February 2022 that:

It is with great sadness that I must also conclude that my country has sunk to such political and moral depths that it is now an apartheid regime. It is time for the international community to recognise this reality as well ... It is impossible to conclude

¹¹⁹⁷ J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) EJIL 867 (2013), p. 912 (emphasis added). *See also* J. Dugard, *CONFRONTING APARTHEID: A PERSONAL HISTORY OF SOUTH AFRICA, NAMIBIA AND PALESTINE* (Jacanda Media, 2018), pp. 206-232.

¹¹⁹⁸ The Elders 2023 Report, p. 1.

¹¹⁹⁹ F. Ebel, “Israel-Palestine: Former Israeli ambassadors to South Africa call occupation ‘apartheid’,” *Middle East Eye* (8 June 2021), available at <https://tinyurl.com/3mzyz9dc>.

otherwise: the occupation is a permanent reality. This is a one state reality, with two different peoples living with unequal rights.¹²⁰⁰

4.76 There is also a growing chorus of human rights experts and Israeli, Palestinian and international human rights organizations that have concluded that Israel has implemented a regime of apartheid. Among others, the following legal opinions and analyses have been published since 2019 alone:

- In November 2019, a coalition of eight Palestinian and international human rights organizations submitted a detailed report to the CERD Committee “substantiat[ing] that Israel has created and maintained an apartheid regime over the Palestinian people as a whole, in violation of its obligations under international law”;¹²⁰¹
- In July 2020, the Israeli human rights organization Yesh Din issued a legal opinion finding that the occupation of the West Bank amounts to an apartheid regime;¹²⁰²
- In January 2021, the Israeli human rights organization B’Tselem published a policy paper detailing its conclusion that the Israeli government is implementing a system of apartheid;¹²⁰³

¹²⁰⁰ M. Benyair, “Former AG of Israel: With great sadness I conclude that my country is now an apartheid regime,” *The Journal* (10 Feb. 2022), available at <https://tinyurl.com/2r6p6wtm>.

¹²⁰¹ Al-Haq, BADIL Resource Center for Palestinian Residency and Refugee Rights, Palestinian Center for Human Rights, Al Mezan Centre for Human Rights, Addameer Prisoner Support and Human Rights Association, Civic Coalition for Palestinian Rights in Jerusalem, Cairo Institute for Human Rights Studies, and Habitat International Coalition, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports* (10 Nov. 2019), available at <https://tinyurl.com/3vbnj42>, para. 3.

¹²⁰² Yesh Din & Adv. M. Sfard, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (June 2020), available at <https://tinyurl.com/52ts3abj>, pp. 6, 57.

¹²⁰³ B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 Jan. 2021), available at <https://tinyurl.com/4yzzwvuv>.

- In April 2021, Human Rights Watch issued a more than 200-page report detailing its finding that Israeli authorities have perpetrated the crime of apartheid in the OPT;¹²⁰⁴
- In February 2022, the Human Rights Clinic of Harvard Law School and the Palestinian human rights organization Addameer published a legal analysis “find[ing] that Israel’s actions in the occupied West Bank are in breach of the prohibition of apartheid”;¹²⁰⁵
- Also in February 2022, Amnesty International issued a nearly 300-page report finding that “Israel’s system of institutionalized segregation and discrimination against Palestinians, as a racial group, in all areas under its control amounts to a system of apartheid”;¹²⁰⁶
- In March 2022, Michael Lynk, then Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, issued a report in which he concluded “that the political system of entrenched rule in the Occupied Palestinian Territory ... satisfies the prevailing evidentiary standard for the existence of apartheid”;¹²⁰⁷ and
- In November 2022, the Palestinian human rights organization Al-Haq published a more than 200-page report—endorsed by seven other Palestinian NGOs—concluding that Israel is practicing apartheid as a part of its ongoing settler colonial project.¹²⁰⁸

4.77 In addition to the reports mentioned above, it is notable that in South Africa itself the South African Human Sciences Research Council (“**HSRC**”) released a

¹²⁰⁴ HRW 2021 Report, p. 10.

¹²⁰⁵ HLS IHRC and Addameer Report, p. 1.

¹²⁰⁶ Amnesty International 2022 Report, p. 267.

¹²⁰⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 52.

¹²⁰⁸ Al-Haq, *Israeli Apartheid: Tool of Zionist Settler Colonialism* (29 Nov. 2022), p. 181. The other endorsing organizations are Addameer, Al Mezan, the Palestinian Centre for Human Rights, the Civic Coalition for Palestinian Rights in Jerusalem, the Jerusalem Legal Aid and Human Rights Center, the Community Action Center of Al-Quds University, and the Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH). *Ibid.*, pp. i-iii.

report confirming—in 2009—that Israel is practising both colonialism and apartheid in the OPT.¹²⁰⁹

4.78 Although some of the aforementioned authorities have limited their conclusions on apartheid to the OPT, Qatar underscores that, as found by Amnesty International, “Israel has imposed a system of oppression and domination over Palestinians *wherever it exercises control* over the enjoyment of their rights – across Israel and the OPT and with regard to Palestinian refugees”.¹²¹⁰ There is irrefutable evidence that Israel is carrying out the crime of apartheid not just in the OPT but in Israel itself. Palestinian citizens of Israel are unequal, facing *de jure* discrimination with regard to nationality and family unification, as well as numerous discriminatory policies impacting their access to services and benefits, ability to live where they choose, participate in political life, and use their own language.¹²¹¹ Since the enactment of the Nation State Law in 2018, they live in a State where the right to self-determination is “exclusive to the Jewish People”.¹²¹²

¹²⁰⁹ See HSRC Democracy and Governance Programme, *Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law* (June 2009), available at <https://tinyurl.com/ywkk7hsj>, pp. 15-22. The 300-page HSRC Report was focused on the definition of Apartheid as contained in the Apartheid Convention. The Report noted that the three pillars of apartheid in South Africa are all practised by Israel in the OPT. In South Africa, the first pillar was to demarcate the population of South Africa into racial groups, and to accord superior rights, privileges and services to the white racial group. The second pillar was to segregate the population into different geographic areas, which were allocated by law to different racial groups, and restrict passage by members of any group into the area allocated to other groups. And the third pillar was a matrix of draconian ‘security’ laws and policies that were employed to suppress any opposition to the regime and to reinforce the system of racial domination, by providing for administrative detention, torture, censorship, banning, and assassination.

¹²¹⁰ Amnesty International 2022 Report, p. 12 (emphasis added).

¹²¹¹ *Ibid.*, pp. 82-84, 114-122, 178-180. See also Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (Mar. 2011), available at <https://tinyurl.com/ynxdd7p6>, pp. 7-12, pp. 16-18, pp. 39-47, pp. 51-58; CESCR, *Concluding observations on the fourth periodic report of Israel*, UN Doc. E/C.12/ISR/CO/4 (12 Nov. 2019), para. 68.

¹²¹² Israel, *Basic Law: Israel—the Nation-State of the Jewish People* (19 July 2018), available at <https://tinyurl.com/5n9b4nhs>, art. 1; Adalah Legal Center, “Israel's Jewish Nation-State Law” (20 Dec. 2020), available at <https://tinyurl.com/5fdbf6an>.

As explained by Ayman Odeh, a Palestinian citizen of Israel and Member of the Knesset:

Today, I will have to tell my children, along with all the children of Palestinian Arab towns ... that the state has declared that it does not want us here ... It has passed a law of Jewish supremacy and told us that we will always be second-class citizens.¹²¹³

4.79 While the questions before the Court do not concern Israel’s practices within its borders, the overarching regime of discrimination against Palestinians—wherever they may be and whatever status they hold—provides important context for the Court’s analysis of Israel’s practices in the OPT.

I. Israel’s Occupation Constitutes an Institutionalized Regime of Racial Oppression and Discrimination

4.80 Israel’s occupation constitutes an “institutionalized regime” in the sense that it “involve[es] a state-sanctioned regime of law, policy, and institutions”.¹²¹⁴ Indeed, the occupation is carried out by a massive military apparatus with the support of a civilian bureaucracy and institutions, which govern all aspects of life through an intricately designed military and civil law framework.¹²¹⁵ It is therefore unsurprising that the occupation—and in particular its manifestation in the West Bank—has been recognized as a “distinct” institutionalized regime.¹²¹⁶

¹²¹³ I. Ben Zion, “Israeli parliament passes contentious Jewish nation Bill,” *Associated Press* (19 July 2018), available at <https://tinyurl.com/2p98afwn>.

¹²¹⁴ J. Dugard & J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” 24 (3) *EJIL* 867 (2013), p. 881.

¹²¹⁵ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41.

¹²¹⁶ Yesh Din & Adv. M. Sfard, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (June 2020), available at <https://tinyurl.com/52ts3abj>, pp. 23-26. That said, “[n]one of this precludes an alternative analysis of this issue that does see Israel and the

4.81 It is also well established that Israel’s regime is one of “racial oppression and discrimination”.¹²¹⁷ The CERD Committee has explained in no uncertain terms that racial discrimination and segregation permeate every aspect of Israel’s conduct in the OPT:

As regards the specific situation in the Occupied Palestinian Territory, the Committee remains concerned at the consequences of policies and practices that amount to segregation, such as the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources. Such separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively.¹²¹⁸

4.82 The oppressive and discriminatory nature of the occupation manifests itself in at least five ways.

4.83 *First*, as noted by the CERD Committee in the passage just quoted, a key feature of the occupation is the dual legal system, which applies in radically different ways to Palestinians and Jewish Israeli settlers. According to the former

territories it controls as a single regime. However, we believe that although the Israeli regime, in the sense of a governing system, is clearly in the process of expansion into the West Bank, at this stage, these are two regimes undergoing a fluctuating process of unification.” *Ibid.*, p. 25.

¹²¹⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 31(a).

¹²¹⁸ 2020 CERD Concluding Observations, para. 22.

OPT Special Rapporteur Michael Lynk, the legal frameworks governing the lives of Palestinians and Jewish Israeli settlers are completely distinct:

The lives of the Palestinians in the West Bank are governed by more than 1,800 military orders issued since 1967 by the Commander of the Israel Defense Forces, covering such issues as security, taxation, transportation, land planning and zoning, natural resources, travel and the administration of justice. In particular, Israel has imposed a military legal system in the West Bank that applies to Palestinians but not the Jewish settlers.¹²¹⁹

4.84 This “application of dual bodies of laws has created a reality where two people live in the same territory, but only one enjoys robust rights protection”.¹²²⁰

As explained in Chapter 2, Section V, this means that, *inter alia*:

- Palestinians (including children) are prosecuted in a military criminal justice system that denies them due process rights and provides them distinct and inferior protections than are provided to Jewish Israeli settlers;
- Palestinians, unlike Jewish Israeli settlers, are detained for security purposes “without charge or trial based on undisclosed evidence for indefinite periods, without an opportunity to meaningfully challenge the detention”;¹²²¹ and
- Palestinians’ exercise of civil and political rights in the OPT is restricted through the application of martial law, while Jewish Israeli settlers face distinct and more permissive restrictions.

¹²¹⁹ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 41.

¹²²⁰ HRW 2021 Report, p. 86.

¹²²¹ Human Rights Council, *Implementation of Human Rights Council resolutions S-9/I and S-12/I*, UN Doc. A/HRC/40/39 (15 Mar. 2019), para. 32.

4.85 *Second*, the occupation has fragmented the Palestinian population through discriminatory restrictions on movement and the creation of strictly separated enclaves. Not only are Gaza, East Jerusalem and the West Bank physically severed from one another, but even the “[t]he West Bank itself is further splintered into 165 disconnected enclaves”.¹²²² As explained in Chapter 2, Section III, this physical fragmentation is achieved through, *inter alia*, the blockade of Gaza,¹²²³ the Wall,¹²²⁴ requirements for travel permits within and among the OPT,¹²²⁵ the maintenance of an intricate web of hundreds of checkpoints and roadblocks,¹²²⁶ and a segregated road system.¹²²⁷

4.86 *Third*, Palestinians face extreme discrimination with regard to land use across the OPT. In addition to frequently being separated from their own private property and agricultural lands by the Wall, Palestinians are prevented from using even the remaining land that they can access. In the West Bank and East Jerusalem, as explained in Chapter 2, Section II(C):

- Israel allocates the majority of the public land in the OPT to Jewish Israeli settlers, allowing the construction of the settlements that are now

¹²²² Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 42.

¹²²³ *See supra* Chapter 2, § III(B).

¹²²⁴ *See supra* paras. CHAPTER 1.I. A.1(a)i.2.70-CHAPTER 1.I. A.1(a)i.2.74.

¹²²⁵ *See supra* paras. CHAPTER 1.I. A.1(a)i.2.72-CHAPTER 1.I. A.1(a)i.2.76.

¹²²⁶ *See supra* paras. CHAPTER 1.I. A.1(a)i.2.77-CHAPTER 1.I. A.1(a)i.2.81.

¹²²⁷ *See supra* paras. CHAPTER 1.I. A.1(a)i.2.82-CHAPTER 1.I. A.1(a)i.2.85.

home to approximately 700,000 Jewish Israeli settlers,¹²²⁸ whereas Palestinians have been allocated only 0.7 percent of that land;¹²²⁹

- Palestinians are effectively prevented from building new structures, including through the widespread denial of building permits; and
- Israel systematically demolishes structures belonging to Palestinians in the OPT, frequently citing building violations.

4.87 And in Gaza, which is among the most densely populated territories in the world, Israel enforces a “buffer zone” that is *inside Gaza* rather than in Israel, thus depriving Palestinians of precious land for housing or agriculture.¹²³⁰

4.88 *Fourth*, as demonstrated in Chapter 3, Sections II(E)-(J), Palestinians face extreme discrimination in the enjoyment of their most basic economic, social and cultural rights. And, as detailed in Chapter 3, Section IV(F), and as confirmed by Human Rights Watch, this intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity amounts to the crime against humanity of persecution.¹²³¹ This finding is unsurprising given that, in addition to imposing discrimination on Palestinians’ enjoyment of basic civil and due process rights,¹²³² the occupation regime enforces enormous social and economic disparities between Palestinians and Jewish Israeli settlers:

Israeli settlers in the West Bank, all of whom live in Jewish-only settlements, have the full panoply of laws and benefits of the

¹²²⁸ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 9.

¹²²⁹ C. Levinson, “Just 0.7% of State Land in the West Bank has been allocated to Palestinians, Israel admits,” *Haaretz* (28 Mar. 2013), available at <https://tinyurl.com/46s6c9w2>.

¹²³⁰ See *supra* Chapter 2, § III(B).

¹²³¹ HRW 2021 Report, p. 205.

¹²³² See *supra* Chapter 3, §§ II(A)-(D), (K).

citizenship of Israel extended to them personally and extraterritorially. Like Israelis in Tel Aviv or Eilat, the West Bank settlers have the same access to health insurance, national insurance, social services, education, regular municipal services and the right of entry into and out of Israel and around much of the West Bank. They also received targeted benefits and incentives from the Government of Israel to live and work in the settlements. The settlers are an integrated part of a wealthy society with a European standard of living. The utilities and services that the settlements enjoy – water, power, housing, access to well-paid jobs, roads and industrial investment – are far superior to those available to the Palestinians.¹²³³

4.89 *Fifth*, the occupation oppresses Palestinians by enforcing their isolation from the outside world. The OPT lack any land, sea or air access to the rest of the world. As explained in Chapter 2, Sections II(A) and III, Israel strictly controls the ability of Palestinians to enter or leave their homeland, depriving them of educational and economic opportunities abroad, family reunification, foreign investment and tourism, and the potential to exist culturally and politically as an undivided society. Indeed, “[n]o other society in the world faces such an array of cumulative challenges that includes belligerent occupation, territorial discontinuity, political and administrative divergence, geographic confinement and economic disconnectedness”.¹²³⁴

2. *Israel’s Occupation Overtly Pursues the Maintenance of Domination by One Racial Group, Jewish Israelis, over Another, Palestinians*

4.90 As detailed in the Expert Report of Professor Rashid Khalidi, Zionism as a doctrine underpinning the establishment of the State of Israel is incompatible with

¹²³³ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 39.

¹²³⁴ UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/71/554 (19 Oct. 2016), para. 41.

the mere presence of a substantial indigenous Palestinian population, let alone their equal participation in society.¹²³⁵ Israel's intention to maintain domination over Palestinians can be traced back to its establishment as a State in 1948, and the expulsion of half of the indigenous population of Palestine from their homes during the *Nakba*. The intent to maintain domination is evidenced in at least three ways.

4.91 *First*, Jewish Israeli racial domination is expressly enshrined in Israeli law and openly endorsed by high-ranking Israeli officials. For example, the 2018 Nation-State Law affirms Jewish supremacy as a national value of constitutional character. The law makes no reference to equality but provides that the “realization of the right to national self-determination in the State of Israel is exclusive to the Jewish people”, and that “[t]he State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation”.¹²³⁶ Prime Minister Netanyahu has been perfectly clear: “Israel is not a State of all its citizens”.¹²³⁷

4.92 The doctrine of supremacy is exacerbated by rampant hate speech and incitement against Palestinians at all levels of Israeli society. This has caused the CERD Committee to note with concern “[t]he tide of racist hate speech in public discourse, in particular by public officials, political and religious leaders, in certain media outlets and in school curricula and textbooks”.¹²³⁸ Among many other examples, Israeli officials at the ministerial level have endorsed pogroms and called

¹²³⁵ See Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023). QWS, Vol. II, Annex 1.

¹²³⁶ Israel, *Basic Law: Israel—the Nation-State of the Jewish People* (19 July 2018), available at <https://tinyurl.com/5n9b4nhs>, arts. 1(c), 7.

¹²³⁷ N. Landau, “Arabs Aren't ‘Second-class Voters,’ President Rivlin Rebukes Netanyahu,” *Haaretz* (11 Mar. 2019), available at <https://tinyurl.com/3tkdtky9>; “Benjamin Netanyahu says Israel is ‘not a state of all its citizens,’” *The Guardian* (10 Mar. 2019), available at <https://tinyurl.com/mrxw9xw8>.

¹²³⁸ 2020 CERD Concluding Observations, para. 26(a).

for the complete destruction of Palestinian towns.¹²³⁹ This led the UN Security Council to issue an unprecedented statement in February 2023, in which it “note[d] with deep concern instances of discrimination, intolerance and hate speech motivated by racism”.¹²⁴⁰

4.93 *Second*, Israel’s intent to maintain domination over Palestinians is evidenced by its policies and practices of demographic engineering and ethnic cleansing of Palestinians from their lands.

4.94 There are numerous official policy documents detailing Israel’s plans to engineer demographically the territory under its control, to restrict Palestinians to the smallest area of land possible, and to build and populate as many settlements as possible.¹²⁴¹ For example, Israel’s official plan for the municipality of Jerusalem (including East Jerusalem) is “maintaining a solid Jewish majority in the city”, meaning keeping the Palestinian population under 40 percent.¹²⁴² At the same time, Israeli officials have openly justified the choice to cease settlement activity in Gaza “because of demography”.¹²⁴³ In August 2005, in the lead up to the withdrawal from Gaza, then Prime Minister Ariel Sharon explained that obtaining a Jewish majority in Gaza was not realistic because “[o]ver one million Palestinians live there, and they double their numbers with every generation”.¹²⁴⁴ It has chosen

¹²³⁹ See, e.g., M. Bachner, “Israel should ‘wipe out’ Palestinian town of Huwara, says senior minister Smotrich,” *Time of Israel* (1 Mar. 2023), available at <https://tinyurl.com/4unj8hhy>.

¹²⁴⁰ UNSC, *Statement by President of the Security Council*, UN Doc. S/PRST/2023/1 (20 Feb. 2023) (Dossier No. 1400), p. 2.

¹²⁴¹ See HRW 2021 Report, pp. 66-72.

¹²⁴² *Ibid.*, p. 63.

¹²⁴³ *Ibid.*, pp. 73-74.

¹²⁴⁴ *Ibid.*

instead to deal with the Palestinian population there by enforcing a blockade and removing them from the “demographic calculus”.¹²⁴⁵

4.95 There is no shortage of explicit statements by Israeli politicians underscoring their intent to maintain a Jewish demographic majority in as much territory as possible. This includes current and former prime ministers such as Yitzhak Rabin, Ehud Barak, Ariel Sharon, Benjamin Netanyahu and Yair Lapid.¹²⁴⁶ The latter, who is today viewed as a “moderate” leader of the political opposition to the Netanyahu government, stated in 2016 that his guiding “principle says maximum Jews on maximum land with maximum security and with minimum Palestinians”.¹²⁴⁷

4.96 As explained by Amnesty International, this demographic and spatial engineering is directly linked to an intent to maintain domination over Palestinians:

[S]tatements by leading Israeli politicians over the years confirm that the intention to maintain a Jewish demographic majority and to oppress and dominate Palestinians has guided Israel’s policies since the state’s creation ... successive Israeli politicians – regardless of their political affiliations – have publicly stated their intention to

¹²⁴⁵ *Ibid.*, p. 127.

¹²⁴⁶ Amnesty International 2022 Report, pp. 67-68 (“in December 2003, when he was minister of finance, Benjamin Netanyahu said: ‘If there is a demographic problem, and there is, it is with the Israeli Arabs who will remain Israeli citizens.’ ... When prime minister between 1992 and 1995, Yitzhak Rabin said: ‘The red line for Arabs is 20 percent of the population; that must not be gone over.’ He added: ‘I want to preserve the Jewish character of the state of Israel.’ Ehud Barak, when he was prime minister between 1999 and 2001, equated a ‘Muslim majority’ with ‘destruction of Israel as a Jewish state’. Ariel Sharon, as prime minister, said in a 2002 Knesset debate that while Palestinian citizens had ‘rights in the land’, ‘all rights over the land of Israel are Jewish rights’. Ehud Olmert said in 2003, while vice prime minister and three years before he became prime minister, that ‘the demographic issue’ would ‘dictate the solution we must adopt’ and that the ‘formula for the parameters of a unilateral solution are: to maximize the number of Jews; to minimize the number of Palestinians.’”).

¹²⁴⁷ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 46.

minimize Palestinians' access to and control of land across all territories under Israel's effective control.¹²⁴⁸

4.97 *Third*, Israel suppresses any forms of dissent and prevents the realization of any form of self-determination or independence for Palestinians. As explained by Amnesty International:

Israeli policies aim to fragment Palestinians into different geographic and legal domains of control not only to treat them differently, or to segregate them, from the Jewish population, but also to treat them differently from each other in order to weaken ties between Palestinian communities, to suppress any form of sustained dissent against the system they have created, and ensure more effective political and security control over land and people across all territories.¹²⁴⁹

4.98 The intent to achieve domination through physical fragmentation is overtly acknowledged in a 1980 master plan for settlement of the West Bank prepared by the quasi-governmental World Zionist Organization. The plan, known as the “Drobes Plan”, proposes “to settle the land between the minority population centers and their surroundings” so as to make it “hard for Palestinians to create territorial contiguity and political unity”.¹²⁵⁰ A comparison of the Drobes Plan map and the map of the West Bank today, reproduced as **Figure 4.1** following this page, reveals that this fragmentation plan has succeeded.

4.99 This has led many, including two former Israeli ambassadors to South Africa, to draw parallels with the Bantustan system of the South African apartheid regime:

¹²⁴⁸ Amnesty International 2022 Report, p. 67.

¹²⁴⁹ *Ibid.*, p. 17.

¹²⁵⁰ HRW 2021 Report, p. 68.



Figure 4.1

The Bantustans of South Africa under the apartheid regime and the map of the occupied Palestinian territories today are predicated on the same idea of concentrating the ‘undesirable’ population in as small an area as possible, in a series of non-contiguous enclaves. By gradually driving these populations from their land and concentrating them into dense and fractured pockets, both South Africa then and Israel today worked to thwart political autonomy and true democracy.¹²⁵¹

4.100 In light of the above, there can be no doubt about the intentional nature of Israel’s regime of domination. As explained by Amnesty International, after half a century of occupation, the situation today is no accident: “[t]he intention to maintain this regime can be inferred from the prolonged nature of the cruel and discriminatory treatment, which indicates the non-accidental nature of the oppression and domination perpetrated against Palestinians”.¹²⁵²

3. *Israel’s Occupation Is Maintained through a Wide Range of Inhumane Acts*

4.101 The numerous and widespread inhumane acts Israel has committed, and continues to commit, to maintain the occupation have been detailed in Chapter 3 above and need not be repeated here. Among other things, Israel’s conduct consists of a wide range of crimes against humanity, which amount to “inhumane acts” within the meaning of the Rome Statute.¹²⁵³ These include murder, deportation and forcible transfer of populations, imprisonment and severe deprivation of physical

¹²⁵¹ F. Ebel, “Israel-Palestine: Former Israeli ambassadors to South Africa call occupation ‘apartheid’,” *Middle East Eye* (8 June 2021), available at <https://tinyurl.com/3mzyz9dc>.

¹²⁵² Amnesty International 2022 Report, p. 218.

¹²⁵³ Rome Statute, art. 7(2)(h).

liberty in violation of fundamental rules of international law, torture, and persecution.¹²⁵⁴

4.102 In addition, as established in detail by the reports referenced in paragraph 4.76 above, Israel has engaged in numerous “inhuman acts” enumerated in the Apartheid Convention, including:

- “[L]egislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups”;
- Denying Palestinians “the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association”;
- “[M]easures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups”;
- “[T]he expropriation of landed property belonging to a racial group or groups or to members thereof”; and
- “Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”¹²⁵⁵

4.103 As detailed in Chapter 2, all of the foregoing inhumane acts are regularly carried out against Palestinians in the context of, and in furtherance of, the occupation.

¹²⁵⁴ See, e.g., Amnesty International 2022 Report, pp. 219-263; Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 55.

¹²⁵⁵ Apartheid Convention, art. II(c, d, f).

4.104 The foregoing section established that the occupation constitutes an institutionalized regime pursuing racial oppression and discrimination against Palestinians, that the regime is intended to secure the domination of Jewish Israelis over Palestinians, and that the regime is carried out and maintained through innumerable inhumane acts. The inescapable conclusion is that the occupation itself constitutes an apartheid regime prohibited by international law.

C. AS A REGIME OF APARTHEID, THE OCCUPATION IS ILLEGAL AND ITS CONTINUED EXISTENCE ENTAILS A SERIOUS BREACH OF A PEREMPTORY NORM

4.105 The Court has recognized on numerous occasions that more than one source of law or legal regime may govern the same acts or omissions by a State.¹²⁵⁶ It is therefore immaterial that Israel's occupation can also be viewed as an (illegal) belligerent occupation within the meaning of the term under international law. That does not preclude finding that the very same state of affairs can also be qualified as a regime of apartheid. Moreover, as demonstrated, the occupation is much more than a military operation: it is an integrated apparatus that has controlled every aspect of the lives of millions of Palestinians for more than two generations. It is an extremely sophisticated civilian and military mechanism designed to be maintained indefinitely and perpetuate Israel's longstanding colonial project.

4.106 After more than half a century, the forest can no longer be missed for the trees. This shift in paradigm was aptly explained by the Israeli human rights organization Yesh Din:

After 15 years of research and legal representation of Palestinians living under occupation, we feel the time has come to ask ourselves

¹²⁵⁶ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 1984*, p. 392, para. 73; *Wall Advisory Opinion*, para. 106.

what the legal phenomenon we see in this area is. Does the *occupation* paradigm fully explain what goes on in this area and what Israel has created in it, or is some other legal construct at play in addition to it?¹²⁵⁷

4.107 Yesh Din ultimately reached the same conclusion as dozens of other reputable human rights organizations: this is apartheid.

4.108 Since the prohibition of apartheid is a *jus cogens* norm, a finding that the occupation amounts to a regime of apartheid entails, *ipso facto*, a finding that the maintenance of the occupation is a breach of a peremptory norm. Moreover, given its sheer scale and prolonged existence, there can be no doubt about Israel’s “gross or systematic failure”¹²⁵⁸ to respect the peremptory prohibition of apartheid. As such, the ongoing maintenance of the occupation amounts to “a serious breach . . . of an obligation arising under a peremptory norm of general international law”¹²⁵⁹ and entails all the corresponding consequences for Israel, third States, and international organizations described in Chapter 5.

4.109 In conclusion, Israel’s occupation of the OPT entails the indefinite violation of the right to self-determination and the prohibition of apartheid—both *jus cogens* norms of international law. These egregious violations of peremptory norms of

¹²⁵⁷ Yesh Din & Adv. M. Sfar, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (June 2020), available at <https://tinyurl.com/52ts3abj>, pp. 5-6 (emphasis in original).

¹²⁵⁸ ILC, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION (2001) (Vol. II, Pt. 2), art. 40(2).

¹²⁵⁹ *Ibid.*, art. 40(1).

international law render the occupation illegal as a whole. Israel's occupation, as discussed further in Chapter 5, must therefore be brought to an end expeditiously.

CHAPTER 5

THE LEGAL CONSEQUENCES ARISING FROM ISRAEL'S ILLEGAL OCCUPATION OF, AND DISCRIMINATORY POLICIES AND PRACTICES IN, THE OCCUPIED PALESTINIAN TERRITORY

5.1 This is the fourth request asking the Court for an advisory opinion on the legal consequences arising from an illegal situation,¹²⁶⁰ and the second relating to Israel's conduct in the OPT.¹²⁶¹ The Court held in its *Namibia* Advisory Opinion that “[a] binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence”.¹²⁶² Here, numerous legal consequences arise from Israel's illegal occupation of, and discriminatory policies and practices in, the OPT. Those legal consequences are the subject of this Chapter.

5.2 General Assembly Resolution 77/247 expressly asks the Court to address the legal consequences arising from Israel's wrongful conduct “for all States and for the United Nations”.¹²⁶³ Therefore, **Section I** focuses on legal consequences for Israel, **Section II** discusses legal consequences that arise for all other States in light of Israel's serious breaches of peremptory norms, and **Section III** addresses legal consequences that arise for the United Nations.

5.3 As these Sections demonstrate, the legal consequences arising from Israel's numerous, egregious, and long-standing violations are far-reaching and flow directly from well-established principles of international law. Because the Court's

¹²⁶⁰ *Namibia* Advisory Opinion; *Wall* Advisory Opinion; *Chagos* Advisory Opinion.

¹²⁶¹ *Wall* Advisory Opinion.

¹²⁶² *Namibia* Advisory Opinion, para. 117.

¹²⁶³ UNGA, Resolution 77/247, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Territory, including East Jerusalem*, UN Doc. A/RES/77/247 (30 Dec. 2022) (Dossier No. 3) (hereinafter, “**UNGA Res. 77/247**”), para. 18(b).

Wall Advisory Opinion regrettably fell on deaf ears, Qatar respectfully submits that the Court should spell out as precisely and as comprehensively as possible all legal consequences arising from Israel’s wrongful conduct for each of the three categories of legal subjects identified in the following three Sections (*i.e.*, Israel, all other States, and the United Nations). All States and the United Nations will thus be guided by the Court’s advisory opinion in order to effectively—and legally—help bring to an end the ongoing grave violations perpetrated by Israel, and help attenuate as much as possible the current suffering of the Palestinian people.

5.4 The Court is also called on by the General Assembly to determine “[h]ow ... the policies and practices of Israel ... affect the legal status of the occupation”.¹²⁶⁴ In this regard, Qatar invites the Court to clearly state that the wrongful policies and practices of Israel do not have any legal effect on the status of the OPT. *Ex injuria jus non oritur*. Moreover, Israel’s policies and practices have not changed the illegal character of its occupation, which, at the same time, proceeds from and constitutes an ongoing breach of the inalienable right of the Palestinian people to self-determination. However, these policies and practices have exacerbated the occupation in the sense that they have added a particularly egregious layer of wrongfulness to Israel’s illegal occupation. Indeed, through those policies and practices, Israel’s illegal occupation has transformed into a regime of institutionalized and entrenched discrimination against the Palestinians. Qatar invites the Court to call out Israel’s illegal occupation for what it has become under international law: apartheid.

¹²⁶⁴ UNGA Res. 77/247, para. 18(b).

I. Legal Consequences for Israel

5.5 The most widely accepted framework for the legal consequences for States responsible for internationally wrongful acts is found in Part II of the ILC's Articles on Responsibility of States for Internationally Wrongful Act ("ARSIWA"). Pursuant thereto, Israel is under the obligations to: cease its occupation and discriminatory policies and practices (**Section A**); offer appropriate assurances and guarantees of non-repetition (**Section B**); and make full reparation for the injury caused (**Section C**).

A. ISRAEL IS UNDER AN OBLIGATION TO CEASE ITS OCCUPATION AND DISCRIMINATORY POLICIES AND PRACTICES

5.6 Article 30(a) of ARSIWA, which reflects customary international law,¹²⁶⁵ provides that "[t]he State responsible for the internationally wrongful act is under an obligation ... to cease that act, if it is continuing".¹²⁶⁶ Chapters III and IV demonstrated that Israel's occupation of, and discriminatory policies and practices in, the OPT are internationally wrongful. They are also continuing. Israel is therefore under an obligation to cease them immediately.

5.7 Most prominently, this entails Israel's immediate withdrawal of its administration from, and effective control of, the OPT. Qatar respectfully submits that the Court should expressly recognize this obligation in the dispositif of its advisory opinion, just as it did in the Namibia advisory opinion, where it held that "the continued presence of South Africa in Namibia being illegal, South Africa is

¹²⁶⁵ *Namibia* Advisory Opinion, para. 118; *Wall* Advisory Opinion, para. 150; *Chagos* Advisory Opinion, para. 178.

¹²⁶⁶ ILC, *Responsibility of States for Internationally Wrongful Acts*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2001 (Vol. II, Pt. 2) (hereinafter, "ARSIWA"), art. 30(a).

under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory”.¹²⁶⁷

5.8 Qatar respectfully submits that the Court should indicate in the dispositive additional specific measures Israel must undertake to cease its occupation. In particular, Israel must, *inter alia*:

- Repeal or render ineffective any laws, statutes, regulations or other measures, through which Israel purports to exercise governmental authority in the OPT;
- Repeal or render ineffective all military orders applicable to the OPT;
- Cease the development of additional Jewish Israeli settlements in the West Bank, including East Jerusalem, and withdraw such settlements that already exist;
- Dismantle the Wall in the West Bank, including East Jerusalem (as the Court already held in the Wall advisory opinion¹²⁶⁸); and
- Lift the blockade of the Gaza Strip.

5.9 It is not just Israel’s occupation *per se* that is internationally wrongful. As described in Chapter 3, Israel’s discriminatory legislation and measures, including those aimed at altering the demographic composition of the Holy City of Jerusalem, are too. As a result, Israel is also under an obligation to repeal or render ineffective all such legislation and measures, as the General Assembly and the Security Council have repeatedly affirmed.¹²⁶⁹

¹²⁶⁷ *Namibia Advisory Opinion*, para. 133(1).

¹²⁶⁸ *Wall Advisory Opinion*, para. 163(3)(B).

¹²⁶⁹ *See, e.g.*, UNGA, Resolution ES-10/19, *Status of Jerusalem*, UN Doc. A/RES/ES-10/19 (21 Dec. 2017) (Dossier No. 1231), para. 1 (“Affirms that any decisions and actions which purport to

5.10 In addition, Israel is under an obligation to release Palestinians whom it has wrongfully detained as a result of their activism in support of Palestinian self-determination. It must also cease economically exploiting the natural resources of the OPT. And it must dismantle the physical obstacles to the exercise of Palestinians' freedom of movement and permit them freely to travel amongst the West Bank, East Jerusalem, and Gaza, and to leave the OPT.

5.11 In Qatar's view, the Court should expressly recognize Israel's obligations to take all the aforementioned actions in the *dispositif* of its advisory opinion.

B. ISRAEL IS UNDER AN OBLIGATION TO OFFER
APPROPRIATE ASSURANCES AND GUARANTEES OF NON-REPETITION

5.12 Article 30(b) of ARSIWA provides: "The State responsible for the internationally wrongful act is under an obligation ... to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."¹²⁷⁰

5.13 The Court has made clear that it "may order ... a State responsible for internationally wrongful conduct to provide the injured State with assurances and guarantees of non-repetition ... if the circumstances so warrant".¹²⁷¹ The Court has further held that assurances and guarantees of non-repetition "will be ordered only

have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem"); UNGA, Resolution 26/82, *The situation in the Middle East*, UN Doc. 46/82 (16 Dec. 1991) (Dossier No. 583), Part A, para. 8; *ibid.*, Part B, para. 1. UNGA, Resolution 76/12, *Jerusalem*, UN Doc. A/RES/76/12 (6 Dec. 2021) (Dossier No. 638), para. 1; UNGA Res. 77/126, para. 2; UNSC Res. 478 (1980), para. 3; UNSC Res. 2334 (2016), Preamble.

¹²⁷⁰ ARSIWA, art. 30(b).

¹²⁷¹ *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 213, para. 150.

‘in special circumstances’” because “there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed”.¹²⁷² In the *LaGrand* case, the Court found that Germany’s request for a general assurance of non-repetition had been satisfied because the United States expressed a “commitment ... to ensure implementation of the specific measures adopted in performance of [the] obligations” that it had breached.¹²⁷³

5.14 In contrast to the United States in that case, Israel here has neither committed to adopt, nor actually adopted, any measures to implement the obligations that it is currently breaching and has been breaching for over 55 years. On the contrary, Israel’s long-standing policy is to maintain its illegal occupation. It has persisted in doing so in flagrant disregard of the Court’s Advisory Opinion in the *Wall* case, and the repeated resolutions of the General Assembly and the Security Council. There is thus every reason to believe that Israel will repeat its grave violations of international law in the future.

5.15 The ILC has expressed the view that, in addition to the risk of repetition, the nature of the obligation(s) breached and the gravity of the breach(es) are also factors that should be considered in determining if the circumstances require assurances and guarantees of non-repetition.¹²⁷⁴ Here, in view of the preemptory norms Israel has breached and the seriousness of those violations, these factors

¹²⁷² *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665 at p. 717, para. 141 (citing *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 213, para. 150).

¹²⁷³ *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466, para. 124.

¹²⁷⁴ ILC, *Report of the International Law Commission on the work of its fifty-second session (2000)*, UN Doc. A/CN.4/513 (15 Feb. 2001), para. 57.

weigh heavily in favour of finding that Israel must provide such assurances and guarantees.

5.16 Consequently, in these circumstances, Israel must be required to offer appropriate assurances and guarantees of non-repetition with respect not only to its occupation of the OPT, but also to all of its discriminatory policies and practices therein, and all other measures taken in the course of its occupation thereof. Qatar respectfully submits that the Court should state this requirement in the *dispositif*.

C. ISRAEL IS UNDER AN OBLIGATION TO MAKE FULL REPARATION FOR THE INJURY CAUSED BY ITS OCCUPATION AND DISCRIMINATORY POLICIES AND PRACTICES

5.17 In its Judgment on the merits in the *Armed Activities* case, the Court held that “it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act”.¹²⁷⁵ This rule is reflected in Article 31 of ARSIWA, which also makes clear that the “[i]njury includes any damage, whether material or moral”.¹²⁷⁶

5.18 Articles 34 to 37 of ARSIWA further specify that: full reparation shall take the form of restitution (**Section 1**); insofar as the damage is not made good by restitution, full reparation shall take the form of compensation (**Section 2**); and insofar as the injury cannot be made good by restitution or compensation, full reparation shall take the form of satisfaction (**Section 3**).

¹²⁷⁵ *Armed Activities* Judgment on the Merits, para. 259.

¹²⁷⁶ ARSIWA, art. 31(2).

1. *Israel Is Under an Obligation to Make Restitution*

5.19 Pursuant to Article 35 of ARSIWA, Israel first and foremost is under an obligation to make restitution, that is, “to re-establish the situation which existed before the wrongful act was committed”.¹²⁷⁷ After more than 55 years, it is not possible to entirely revert to the situation that existed prior to Israel’s unlawful occupation of the OPT. The injury that Israel has inflicted is literally irreversible. There are, however, a number of specific acts that Israel can and must take to re-establish, to the greatest extent possible, the pre-existing situation. Some of these acts may effectively be accomplished through the acts of cessation set forth above in Section I(A).

5.20 In addition to those acts of cessation, Israel is also under an obligation to make restitution by facilitating the return of Palestinians whom Israel forcibly displaced. This facilitation would require that Israel return all lands that it confiscated from Palestinians in the OPT. It is of course not possible for Israel to compel all those whom it forcibly displaced to return to their homes. But it must do everything within its power to facilitate that return should the victims wish to come back.

5.21 The performance of this obligation, on top of those set forth in Section I(A), would be required for Israel to fulfil its obligation to make restitution. The Court should thus expressly specify them in the *dispositif* of its advisory opinion.

¹²⁷⁷ *Ibid.*, art. 35.

2. *Israel Is Under an Obligation to Compensate for the Damage Caused*

5.22 In accordance with Article 36 of ARSIWA, insofar as damage is not made good by restitution, full reparation shall take the form of compensation.¹²⁷⁸ Importantly, this compensation “shall cover any financially assessable damage including loss of profits insofar as it is established”.¹²⁷⁹

5.23 The Court has already expressed itself clearly in this regard in relation to Israel’s conduct. In the *Wall* Advisory Opinion, it held:

Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall’s construction.¹²⁸⁰

5.24 In the present case, Israel is under an obligation to compensate for all damage caused to individual natural or legal persons (in particular, Palestinian persons) as a result of its prolonged occupation of the OPT, and its discriminatory policies and practices carried out therein. This includes but is by no means limited to: killings; detentions; physical injuries; psychological and mental health injuries;

¹²⁷⁸ ARSIWA, art. 36. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment*, p. 34 (hereinafter, “**Armed Activities Judgment on Reparations**”), para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, para. 31; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, para. 273.

¹²⁷⁹ ARSIWA, art. 36(2).

¹²⁸⁰ *Wall* Advisory Opinion, para. 153.

destruction of and damage to homes and other property that cannot be restored; and financially assessable damage to businesses.

5.25 The provision of compensation to individual victims of discriminatory persecution is rooted in State practice.¹²⁸¹ For example, from 1952 to 1999, the Government of the Federal Republic of Germany enacted legislation and concluded agreements with many States as well as the Jewish Claims Conference to provide compensation to individual victims of the Nazi regime.¹²⁸² More than EUR 80 billion has been distributed through these mechanisms up to the present day.¹²⁸³ As another example, the Truth and Reconciliation Commission of South Africa in 1998 recommended the payment of ZAR 21,700 per year for six years to every victim of apartheid in the country.¹²⁸⁴ And while the Government did not fully implement this recommendation, it did approve the one-time payment of ZAR 30,000 in compensation to each victim.¹²⁸⁵ To give an even more recent example, in 2013, the United Kingdom agreed to pay GBP 19.9 million in damages for its

¹²⁸¹ UNGA, *Report of Special Rapporteur T. Achiume on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance*, UN Doc. A/74/321 (21 Aug. 2019), paras. 42-44.

¹²⁸² Federal Republic of Germany, Federal Ministry of Finance, *Wiedergutmachung: Provisions relating to compensation for National Socialist injustice* (May 2023), available at <https://tinyurl.com/mrykek4j>, pp. 6-22.

¹²⁸³ *Ibid.*, p. 24 (Annex 1).

¹²⁸⁴ Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report, Vol. 5* (29 Oct. 1998), available at <https://tinyurl.com/ymsp9tt7>, pp. 184-185.

¹²⁸⁵ Republic of South Africa, *Justice on Truth and Reconciliation Commission recommendations for identified victims* (11 Nov. 2014), available at <https://tinyurl.com/msmu6ece>. This amount was widely criticized because it was much lower than what the Truth and Reconciliation Commission had recommended. See “Apartheid victims struggle on for justice,” *Al Jazeera* (28 May 2003), available at <https://tinyurl.com/4xrxjduh>; “Apartheid victims reject compensation fund,” *Al Jazeera* (10 Dec. 2003), available at <https://tinyurl.com/ycysd2e9>.

discriminatory persecution of individual Kenyans involved in the Mau Mau rebellion of the 1950s.¹²⁸⁶

5.26 In addition to individual compensation, Israel also has the obligation to compensate for all damage caused to Palestinian society as a whole due to its occupation and discriminatory policies and practices. This damage is, of course, not easily quantifiable. There is also no amount of money that could fully restore Palestinian society to what it was prior to the occupation, or what it would be today had Israel not occupied the Palestinian territory and implemented discriminatory policies and practices therein. One way in which Israel could nevertheless perform this obligation is to engage with Palestine with the aim of settling on a reasonable compensatory figure that Israel would commit to paying for these societal harms.

5.27 Compensation for societal-level damage also has precedents. For example, in September 1952, the Federal Republic of Germany concluded an agreement with Israel to pay it DM 3 billion “to help uprooted Jewish refugees without means who had come from Germany and from territories that had previously been under German rule”.¹²⁸⁷ The Truth and Reconciliation Commission of South Africa similarly recommended the implementation of community rehabilitation

¹²⁸⁶ O. Bowcott, “Mau Mau rebellion victims claim parliament was misled over torture,” *The Guardian* (23 May 2016), available at <https://tinyurl.com/8e4hrfxm>.

¹²⁸⁷ Federal Republic of Germany, Federal Ministry of Finance, *Wiedergutmachung: Provisions relating to compensation for National Socialist injustice* (May 2023), available at <https://tinyurl.com/mrykek4j>, p. 6.

programmes for victim communities of apartheid,¹²⁸⁸ and the Government allocated ZAR 30 million to each such programme.¹²⁸⁹

5.28 In addition to the injuries caused to Palestinian individuals and society, Israel has, as explained in Chapter 2, Section VII, also exploited natural resources belonging to the State of Palestine. It is therefore also under an obligation to compensate the State of Palestine for the value of those resources, just as the Court required Uganda to compensate the Democratic Republic of the Congo for the illegal exploitation of the latter's natural resources.¹²⁹⁰

5.29 There are multiple means by which Israel could implement its obligation to pay compensation. For example, it could unilaterally establish a fund to which applications could be made to receive compensation for damage caused by the unlawful occupation—not unlike the model adopted in South Africa. Israel's obligation could also be discharged through its contribution to funds established by bilateral agreements, as was the case for much of the compensation paid by the Federal Republic of Germany.

3. *Israel Is Under an Obligation to Give Satisfaction*

5.30 Pursuant to Article 37(1) of ARSIWA, insofar as injury cannot be made good by restitution or compensation, full reparation shall take the form of satisfaction.¹²⁹¹ The Court confirmed this in its 2022 Judgment in the *Armed*

¹²⁸⁸ Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report, Vol. 5* (29 Oct. 1998), available at <https://tinyurl.com/ymsp9tt7>, pp. 190-194.

¹²⁸⁹ See “South Africa: Nearly R2 Billion for Apartheid Reparations Is Unspent,” *National African-American Reparations Commission* (13 Dec. 2022), available at <https://tinyurl.com/2md5hncn>.

¹²⁹⁰ *Armed Activities* Judgment on Reparations, para. 409(1)(c).

¹²⁹¹ ARSIWA, art. 37(1).

Activities case.¹²⁹² Further, according to Article 37(2) of ARSIWA, “[s]atisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality”.¹²⁹³

5.31 The full extent of the injury caused by Israel during its illegal occupation plainly cannot be made good by restitution or compensation or both. Satisfaction too is therefore required.

5.32 Given the grave, persistent, and flagrant nature of its wrongful conduct, Israel is under an obligation to expressly acknowledge its breaches and make a formal, public apology. It must apologize not only for its illegal occupation of the OPT, but also for its violation of the Palestinian people’s right to self-determination, as well as for its discriminatory policies and practices in the OPT. While satisfaction usually takes the form of a binding declaration of breach by the Court in contentious proceedings, the advisory character of these proceedings prevents the Court’s *dispositif* from granting this particular remedy. Therefore, the Court should clearly state that Israel is under an obligation to acknowledge its violations and to apologize publicly for them.

5.33 Satisfaction in the present context should also be given by requiring Israel to prosecute individuals within its jurisdiction, including government officials, who have committed serious international crimes against Palestinians with impunity throughout the occupation.¹²⁹⁴ Such prosecutions would contribute to making full reparation for all the injury caused by Israel’s wrongful conduct, as the Truth and

¹²⁹² *Armed Activities* Judgment on Reparations, para. 387.

¹²⁹³ ARSIWA, art. 37(2).

¹²⁹⁴ For a discussion of prosecution as a form of satisfaction, see C. Hoss, “Satisfaction,” *Max Planck Encyclopedia of Public International Law* (Apr. 2011), paras. 18-19.

Reconciliation Commission of South Africa recognized with respect to apartheid in South Africa.¹²⁹⁵

5.34 In addition, relying on the South Africa precedent as well as other precedents in various Latin American countries like Uruguay, Peru, Chile, and Ecuador, satisfaction should further be given by requiring Israel to cooperate in the establishment and operation of a truth and reconciliation commission. The Truth and Reconciliation Commission of South Africa, for one, was created to investigate gross human rights violations that were perpetrated during the period of the apartheid regime from 1960 to 1994, including abductions, killings and torture.¹²⁹⁶ Its mandate covered violations by both the State and the liberation movements and it held special hearings focused on specific sectors, institutions, and individuals.¹²⁹⁷ As mentioned above, the Truth and Reconciliation Commission at the end of its mandate made detailed recommendations for a reparations programme that included financial, symbolic, and community reparations.¹²⁹⁸ Qatar considers that a similar approach in Palestine would contribute materially to advancing international justice.

5.35 Qatar respectfully submits that the Court should, in the *dispositif*, require Israel to undertake all these various forms of satisfaction.

¹²⁹⁵ Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report, Vol. 5* (29 Oct. 1998), available at <https://tinyurl.com/ymsp9tt7>, p. 309.

¹²⁹⁶ Republic of South Africa, *Promotion of National Unity and Reconciliation Act 34* (1995), available at <https://tinyurl.com/4jj6wsyf>, art. 3.

¹²⁹⁷ *Ibid.*, arts. 3(1)(a), 5(d); United States Institute of Peace, *Truth Commission: South Africa* (1 Dec. 1995), available at <https://tinyurl.com/y8ywn3fz>. See also International Center for Transitional Justice, *South Africa* (last accessed: 13 July 2023), available at <https://tinyurl.com/yc4c8jd5>.

¹²⁹⁸ Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report, Vol. 5* (29 Oct. 1998), available at <https://tinyurl.com/ymsp9tt7>.

II. Legal Consequences for All Other States

5.36 As explained in Chapters 3 and 4, Israel’s occupation of, and discriminatory policies and practices in, the OPT breach multiple peremptory norms of international law. In accordance with Article 41 of ARSIWA, certain legal consequences therefore arise for all States.

5.37 These legal consequences include the obligations: not to recognize as lawful the situation created by Israel’s occupation and related conduct (**Section A**); not to render aid or assistance in maintaining that situation (**Section B**); and to cooperate to bring to an end Israel’s occupation and related conduct (**Section C**). Moreover, all States are under an obligation to help protect the Palestinian people from war crimes, ethnic cleansing, and crimes against humanity (**Section D**). Finally, all States are under an obligation to ensure accountability under international law for international crimes committed in the context of Israel’s occupation (**Section E**).

A. ALL STATES MUST NOT RECOGNIZE AS LAWFUL THE SITUATION CREATED BY ISRAEL’S OCCUPATION AND RELATED CONDUCT

5.38 Article 41(2) of ARSIWA, which reflects customary international law,¹²⁹⁹ provides that “[n]o State shall recognize as lawful a situation created by a serious breach” of a peremptory norm of general international law.¹³⁰⁰

¹²⁹⁹ Already in 2001, the International Law Commission had recognized that the duties of non-recognition and non-assistance were part of customary international law. *See* ILC, *Draft Conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, UN Doc. A/77/10 (2022), p.76 (note 258).

¹³⁰⁰ ARSIWA, art. 41(2).

5.39 Consistent with this rule, the Court in its *Wall* Advisory Opinion stated in its *dispositif*: “All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall ...”.¹³⁰¹ In its *Namibia* Advisory Opinion, the Court had similarly held: “States Members of the United Nations are under [the] obligation to recognize the illegality of South Africa’s presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia ...”.¹³⁰²

5.40 The Court should come to the same conclusion with respect to the situation created by Israel’s occupation and related conduct. In particular, it should hold in the *dispositif* that all States have the obligation not to recognize as lawful the situation created by Israel’s occupation of, and discriminatory policies and practices in, the OPT.

5.41 It is important to add that all States are prohibited from recognizing the lawfulness of the situation not only expressly, but also impliedly.¹³⁰³ The Court itself made this clear in the *Namibia* Advisory Opinion, in the *dispositif* of which it stated that “States Members of the United Nations are under [the] obligation ... to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of ... such presence and administration”.¹³⁰⁴

5.42 Accordingly, States are required in their dealings with Israel to distinguish between the territory it legally controls and the OPT. Indeed, in 2016 the Security

¹³⁰¹ *Wall* Advisory Opinion, para. 163(3)(D). See also *ibid.*, para. 159.

¹³⁰² *Namibia* Advisory Opinion, para. 133(2).

¹³⁰³ See UNGA, Resolution 181 (II), *Future government of Palestine*, UN Doc. A/RES/181(II) (29 Nov. 1947).

¹³⁰⁴ *Namibia* Advisory Opinion, para. 133(2).

Council specifically resolved to “[call] upon all States ... to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”,¹³⁰⁵ a distinction the Court recognized in the *Wall* Advisory Opinion.¹³⁰⁶ It further resolved that “it *will not recognize* any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations”.¹³⁰⁷ All States are under an obligation to do the same.

5.43 Qatar respectfully submits that the Court should do the same here and specifically state, in the *dispositif*, that all States are obliged to refrain from any dealings with Israel that even imply recognition of the lawfulness of the situation created by Israel’s occupation and discriminatory policies and practices.

B. ALL STATES MUST NOT AID OR ASSIST IN MAINTAINING THE SITUATION
CREATED BY ISRAEL’S OCCUPATION AND RELATED CONDUCT

5.44 Article 41(2) of ARSIWA, which reflects customary international law,¹³⁰⁸ provides that “[n]o State shall ... render aid or assistance in maintaining [the] situation” created by a serious breach of a peremptory norm of general international law.¹³⁰⁹

¹³⁰⁵ UNSC, Resolution 2334 (2016), *On cessation of Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. S/RES/2334 (23 Dec. 2016) (Dossier No. 1372) (hereinafter, “UNSC Res. 2334”), para. 5.

¹³⁰⁶ See *Wall* Advisory Opinion, para. 67.

¹³⁰⁷ UNSC Res. 2334, para. 3 (emphasis added).

¹³⁰⁸ *Wall* Advisory Opinion, para. 159. See also S. Olleson, THE IMPACT OF THE ILC’S ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS (Preliminary Draft, BIICL, 2007), pp. 237-241, available at <https://tinyurl.com/ua9fv9mw>; A. Gattini, “A Return Ticket To ‘Communitarisme’, Please,” 13 EUROPEAN JOURNAL OF INTERNATIONAL LAW 1181 (2002), pp. 1185-1195.

¹³⁰⁹ ARSIWA, art. 41(2).

5.45 The Court recognized this obligation in its *Wall* Advisory Opinion, holding that “[a]ll States are under an obligation ... not to render aid or assistance in maintaining the situation created by [the] construction [of the wall]”.¹³¹⁰ Similarly, the Court in its *Namibia* Advisory Opinion had held that “States Members of the United Nations are under obligation ... to refrain from any acts and in particular any dealings with the Government of South Africa ... lending support or assistance to [the] presence and administration” of South Africa in Namibia.¹³¹¹

5.46 The Court should take the same position in this case and hold that all States are thus under an obligation not to render aid or assistance in maintaining the situation created by Israel’s occupation of, and discriminatory practices and policies in, the OPT.

5.47 As a result, States are prohibited from engaging in any military, economic, or other forms of cooperation with the Government of Israel that directly aids or assists it in maintaining its occupation and continuing its related conduct. This includes, for example, preventing their goods from being exported to the illegal Jewish Israeli settlements in the OPT and banning the import of goods from such settlements, regardless of whether those exports and imports are military or merely economic in nature. This also includes, as a further example, prohibiting and preventing companies operating, domiciled, or headquartered within their jurisdiction from operating in and engaging in any economic activity with Jewish Israeli settlements.

5.48 States are also prohibited from engaging in any form of cooperation with the Government of Israel that *indirectly* renders such aid or assistance. Put another

¹³¹⁰ *Wall* Advisory Opinion, para. 159.

¹³¹¹ *Namibia* Advisory Opinion, para. 133(2).

way, States that engage in any form of cooperation with the State of Israel must ensure that cooperation does not aid or assist in maintaining Israel's occupation of the OPT or its discriminatory practices and policies carried out therein. At a minimum, this requires States to subject all of their dealings with Israel to enhanced due diligence screening.¹³¹²

5.49 With respect to military cooperation with Israel in particular, Qatar notes that the UN General Assembly has already called upon all Member States to refrain from supplying Israel with and acquiring from Israel military equipment, and to suspend any military assistance agreements with Israel.¹³¹³ In light of the heavily militarized nature of the occupation, any form of military cooperation with Israel necessarily renders aid or assistance in maintaining the situation created by Israel's illegal conduct. The Court should therefore hold in the *dispositif* that States must refrain from selling or delivering to Israel weapons, ammunition, military vehicles, military equipment, security equipment, paramilitary equipment, or any spare parts for the aforementioned items. In the alternative, States are at the very least prohibited from selling or delivering to Israel any form of military or security equipment without a clear end-use undertaking that such equipment will neither be used in the OPT nor deployed to facilitate Israel's continued occupation.

¹³¹² See, e.g., Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 117 ("The mission calls upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations.").

¹³¹³ See UNGA, Resolution ES-9/1, *The situation in the occupied Arab territories*, UN Doc. A/RES/ES-9/1 (5 Feb. 1982) (Dossier No. 1213), paras. 12(a)-(b).

5.50 As for economic cooperation with Israel, all States are under an obligation to distinguish, in their economic dealings, between Israel and the OPT.¹³¹⁴ This is consistent with the responsibility of all States to protect against human rights abuses by third parties,¹³¹⁵ including businesses that “have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements”.¹³¹⁶

5.51 In that regard, the Human Rights Council in 2013 requested that the OHCHR produce a database for business enterprises involved in activities which “directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements” and “raise particular human rights violations concerns”.¹³¹⁷ The Council also requested that the database be updated annually.¹³¹⁸ While this database is not public, the OHCHR is known to have reached out to the States where the companies are domiciled to inform them about the database and the activities the companies were allegedly engaged in and

¹³¹⁴ See UNSC Res. 2334, para. 5.

¹³¹⁵ See Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc. A/HRC/17/31 (21 Mar. 2011), Annex, Guiding Principle 1.

¹³¹⁶ Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/22/63 (7 Feb. 2013), para. 96.

¹³¹⁷ *Ibid.* The Database was mandated by Human Rights Council Resolution 31/36 (24 Mar. 2016) and paragraph 96 of the report of the Independent International Fact-Finding defined the parameters of the business activities to be included in the database.

¹³¹⁸ See Human Rights Council, *Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/39 (1 Feb. 2018), para. 1.

inviting their comments and observations.¹³¹⁹ Those States must therefore avoid engaging in any dealings with the listed companies.¹³²⁰

C. ALL STATES MUST COOPERATE TO BRING TO AN END
ISRAEL'S OCCUPATION AND RELATED CONDUCT

5.52 Article 41(1) of ARSIWA provides that “States shall cooperate to bring to an end through lawful means any serious breach” by a State of a peremptory norm of general international law.¹³²¹ As detailed above, Israel’s conduct in the OPT breaches multiple peremptory norms. All States must therefore cooperate to bring that conduct to an end.

5.53 In the *Wall* Advisory Opinion, the Court recognized a similar obligation with respect to the Wall, holding: “It is also for all States ... 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”.¹³²² Along the same lines, the Court in its *Chagos* Advisory Opinion made clear in the *dispositif* that “all Member States are under an obligation to co-operate with the

¹³¹⁹ *Ibid.*, para. 15.

¹³²⁰ It is important to note that the list is not comprehensive and that “[t]he database does not cover all corporate activity related to settlements, nor does it extend to all corporate activity in the Occupied Palestinian Territory that may raise human rights concerns. In addition, while there may be other types of entities engaged in significant corporate activity related to the settlements, only those entities established as business enterprises are considered; non- governmental organizations, charities, sports associations or federations, and other entities are therefore excluded from consideration”. See Human Rights Council, *Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc. A/HRC/37/39 (1 Feb. 2018), para. 6.

¹³²¹ ARSIWA, art. 41.

¹³²² *Wall* Advisory Opinion, para. 159.

United Nations in order to complete the decolonization of Mauritius”.¹³²³ Qatar respectfully submits that, in the present case, the Court should also affirm the obligation of all States to cooperate to bring Israel’s occupation and related conduct to an end in the *dispositif* of its advisory opinion.

5.54 According to the commentary to Article 41(1) of ARSIWA, the obligation to cooperate entails “a joint and coordinated effort by all States to counteract the effects of these breaches”.¹³²⁴ With regards to the Palestine situation in particular, the Human Rights Council has “[c]all[ed] upon all States ... to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel’s illegal policies and practices”.¹³²⁵

5.55 The ILC has further noted that such joint and coordinated action is particularly appropriate in response to a breach of the right to “self-determination” and “basic principles of humanitarian law”.¹³²⁶ It also observed that such cooperative action is appropriate in response to conduct that violates the peremptory norm against racial discrimination, citing the Apartheid Convention.¹³²⁷

¹³²³ *Chagos Advisory Opinion*, para. 183(5).

¹³²⁴ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2001 (Vol. II, Pt. 2), Article 41 Commentary, para. 3.

¹³²⁵ Human Rights Council, Resolution 49/28, *Right of the Palestinian people to self-determination*, UN Doc. A/HRC/RES/49/28 (11 Apr. 2022), para. 7.

¹³²⁶ See ILC, *Draft Conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, UN Doc. A/77/10 (2022), pp. 72-73.

¹³²⁷ See *ibid.*, p. 72 (note 246) (citing International Convention on the Suppression and Punishment of the Crime of Apartheid (30 Nov. 1973), 1015 U.N.T.S. 243, art. VIII (“Any State Party to the present Convention may call upon any competent organ of the United Nations to take such action under the Charter of the United Nations as it considers appropriate for the prevention and suppression of the crime of apartheid.”)).

5.56 In addition, the ILC has explained that it is not only measures under institutionalized cooperation mechanisms that may be adopted. The obligation to cooperate to bring to an end serious breaches of peremptory norms may also be implemented through non-institutionalized cooperation, including through ad hoc arrangements by a group of States acting together.¹³²⁸

5.57 Given the gravity of the situation, the repetitive and ongoing breach by Israel of multiple peremptory norms, and Israel's recalcitrance, Qatar submits that it would be helpful for the Court to further specify in its advisory opinion what concrete actions such a joint and coordinated effort might entail. Such actions may include, for example: expressly condemning Israel's occupation and discriminatory policies and practices, either unilaterally¹³²⁹ or through international organizations,¹³³⁰ declaring Israeli ambassadors or diplomats *personae non gratae*; cutting off scientific and cultural ties (as was recently called for by the African Union in response to what it called "the Israeli colonialist and discriminatory

¹³²⁸ See ILC, *Draft Conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, Adopted by the ILC at its seventy-third session, in 2022*, UN Doc. A/77/10 (2022), p. 75.

¹³²⁹ See, e.g., Foreign, Commonwealth & Development Office, *Press release: Israeli settlements: statement by France, Germany, Italy, Spain and the UK* (6 May 2021), available at <https://tinyurl.com/4xfcjw83>.

¹³³⁰ Aside from the United Nations Security Council and General Assembly Resolutions already referred to in these submissions, attention is drawn to resolutions of other International Organizations, such as the European Union, which have recognized that Israeli settlements are illegal under international law. See The Diplomatic Service of the European Union, *EU Positions on the Middle East Peace Process* (3 Aug. 2021), available at <https://tinyurl.com/ywch4j8w> ("The EU considers that settlement building anywhere in the occupied Palestinian Territory, including East Jerusalem, is illegal under international law, constitutes an obstacle to peace and threatens to make a two-state solution impossible."). The International Committee of the Red Cross also reaffirmed the illegality of the settlements. See International Committee of the Red Cross, *Implementation of the Fourth Geneva Convention in the occupied Palestinian territories: history of a multilateral process (1997-2001)* (30 Sept. 2002), available at <https://tinyurl.com/4j3z8mub>, Annex 1, para. 12 ("The participating High Contracting Parties call upon the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention. They reaffirm the illegality of the settlements in the said territories and of the extension thereof.").

practices in the Occupied Palestinian Territories”¹³³¹); implementing boycotts of Israeli goods;¹³³² implementing targeted sanctions against Israel, Israeli entities, and Israeli government officials; and supporting resolutions in the United Nations seeking to bring Israel’s occupation and related conduct to an end.

5.58 Directed measures flowing from Israel’s violation of the peremptory norm against racial discrimination and apartheid should also be identified.

5.59 Notably, the obligation of all States to cooperate to end Israel’s violations necessarily also entails the obligation to refrain from exercising their veto rights in the decision-making of international organizations to prevent the adoption of resolutions and decisions aimed at bringing Israel’s occupation and discriminatory policies and practices to an end.¹³³³ The ILC has explained:

The obligation of States to act collectively to bring to an end serious breaches of peremptory norms of general international law (*jus cogens*) has particular consequences for cooperation within the organs of the United Nations and other international organizations.

¹³³¹ See W. Sawahel, “AU declaration on Israel’s observer status draws support,” *University World News* (28 Feb. 2023), available at <https://tinyurl.com/5bjxrbzj>.

¹³³² Some countries that boycott trade with Israel are Lebanon (regarding the establishment of the Israel Boycott Office, see Lebanon, *Israel Boycott* (23 June 1955); Lebanon, *Decree n° 12562* (19 Apr. 1963)) and Iran (see Iran, *Act on Unified Islamic Law on Israeli Boycotts* (1992)). Other countries like Ireland (see Ireland, *Control of Economic Activity (Occupied Territories) Bill 2018*, (24 Jan. 2018), available at <https://tinyurl.com/y4b8zst9>) prohibits the importation of products from the Israeli settlements in Palestine. Moreover, non-State actors, such as the Boycott and Divestment Movement, a Palestinian-led movement, have also “urge[d] action to pressure Israel to comply with international law”. See BDS, *What is BDS?* (last accessed: 12 July 2023), available at <https://tinyurl.com/ycxpmcsd>. The movement uses boycotts, divestments, and sanctions as means to achieve its goals in “solidarity with the Palestinian struggle for freedom, justice and equality”. *Ibid.*

¹³³³ See R. M. Essawy, “The Responsibility Not to Veto Revisited under the Theory of ‘Consequential *Jus Cogens*’,” 12 *GLOBAL RESPONSIBILITY TO PROTECT* 299 (2020), pp. 302-303. The U.S. for instance has used its veto right to block several UNSC resolutions condemning Israel, including Resolution S/2018/516 condemning Israeli violence against protestors during the “Great March of Return” and Resolution S/2011/24 condemning Israeli settlements established since 1967 as illegal.

It means that, in the face of serious breaches of peremptory norms of general international law (*jus cogens*), international organizations should act, within their respective mandates and when permitted to do so under international law, to bring to an end such breaches. Thus, where an international organization has the discretion to act, the obligation to cooperate imposes a duty on the members of that international organization to act with a view to the organization exercising that discretion in a manner to bring to an end the breach of a peremptory norm of general international law (*jus cogens*).¹³³⁴

5.60 Qatar respectfully submits that it would be appropriate for the Court to confirm the collective responsibility of States in this regard, including the duty not to act in any manner that shields Israel from its breaches of fundamental norms. The universal applicability of peremptory norms means that there is no scope for a State to escape its obligations by use of a veto; that would undermine the very notion of the norm's non-derogability.¹³³⁵

D. ALL STATES MUST HELP PROTECT THE PALESTINIAN PEOPLE FROM WAR CRIMES, ETHNIC CLEANSING, AND CRIMES AGAINST HUMANITY

5.61 All States also have the obligation to help protect the Palestinian people from war crimes, ethnic cleansing, and crimes against humanity. This obligation derives from the Responsibility to Protect, the parameters of which are set forth in paragraphs 138 and 139 of the General Assembly's 2005 World Summit Outcome

¹³³⁴ See ILC, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, UN Doc. A/77/10 (2022), pp. 75-76.

¹³³⁵ As the International Law Commission has further explained: "The idea that peremptory norms of general international law (*jus cogens*) are universally applicable, like that of their hierarchical superiority, flows from nonderogability. The fact that a norm is non-derogable, by extension, means that it is applicable to all, since States cannot derogate from it by creating their own special rules that conflict with it. The universal application of peremptory norms of general international law (*jus cogens*) is both a characteristic and a consequence of peremptory norms of general international law (*jus cogens*)." *Ibid.*, p. 23.

Document,¹³³⁶ which reflect customary international law. Pursuant to this responsibility, all States must take the necessary and appropriate measures to help protect the Palestinian people from the perpetration of the aforementioned crimes in the OPT. Such measures, as stated in the World Summit Outcome Document, may include diplomatic, humanitarian, and other peaceful measures in accordance with Chapters VI and VIII of the UN Charter, as well as coercive measures under Chapter VII if necessary.¹³³⁷

5.62 Qatar respectfully submits that the Court should expressly declare, in the *dispositif* of its advisory opinion, that all States have this obligation to help protect the Palestinian people from war crimes, ethnic cleansing, and crimes against humanity.

5.63 The customary nature of this obligation is irrefutable. The General Assembly affirmed it by adopting the 2005 World Summit Outcome Document by consensus.¹³³⁸ As the Secretary-General of the League of Arab States, Mr. Amr Moussa, proclaimed following its adoption:

This is a commitment on the part of us all, States and regional and international organizations alike. That is why the commitment of the League of Arab States within this framework is a *legal* and moral commitment.¹³³⁹

¹³³⁶ UNGA, Resolution 60/1, *2005 World Summit Outcome*, UN Doc. A/RES/60/1 (24 Oct. 2005), paras. 138-139. See also UNGA, *Implementing the responsibility to protect*, UN Doc. A/63/677 (12 Jan. 2009).

¹³³⁷ See UNGA, Resolution 60/1, *2005 World Summit Outcome*, UN Doc. A/RES/60/1 (24 Oct. 2005), para. 139.

¹³³⁸ UNGA, *Official Records of the 8th Plenary Meeting*, UN Doc. A/60/PV.8 (16 Sept. 2005), p. 46.

¹³³⁹ *Ibid.*, p. 50 (emphasis added).

5.64 The Security Council reaffirmed the obligation in its Resolution 1674 on the protection of civilians in armed conflict.¹³⁴⁰ And the UN Secretary-General, in his 2009 report *Implementing the Responsibility to Protect*, stated:

It should be underscored that the provisions of paragraphs 138 and 139 of the Summit Outcome *are firmly anchored in well-established principles of international law*. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity. Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may constitute one of the other three crimes.¹³⁴¹

5.65 The obligation of all States to help protect populations from war crimes, ethnic cleansing, and crimes against humanity was applied in practice in the context of the 2011 Libyan Civil War. Soon after armed conflict broke out, the Human Rights Council adopted Resolution S-15/1, which reaffirmed that “all States have an obligation to protect the rights to life, liberty and security of the person”.¹³⁴² Shortly thereafter, the Security Council adopted Resolution 1973, which authorized “Member States that have notified the Secretary-General ... to take all necessary measures ... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya”.¹³⁴³ As a result, under “Operation Unified

¹³⁴⁰ UNSC, Resolution 1674 (2006), *On protection of civilians in armed conflict*, UN Doc. S/RES/1674 (28 Apr. 2006), para. 4 (“Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”).

¹³⁴¹ UNGA, *Implementing the responsibility to protect*, UN Doc. A/63/677 (12 Jan. 2009), para. 3 (emphasis added).

¹³⁴² Human Rights Council, Resolution S-15/1, *Situation of human rights in the Libyan Arab Jamahiriya*, UN Doc. A/HRC/RES/S-15/1 (3 Mar. 2011), Preamble.

¹³⁴³ UNSC, Resolution 1973 (2011), *On establishment of a ban on flights in the Libyan Arab Jamahiriya airspace*, UN Doc. S/RES/1973 (17 Mar. 2011), para. 4.

Protector”, a NATO-led alliance conducted air strikes against military targets that threatened the civilian population.¹³⁴⁴

5.66 The Court is thus respectfully requested to state in the *dispositif* of its advisory opinion that all States have the obligation to help protect the Palestinian population from war crimes, ethnic cleansing, and crimes against humanity. Such a pronouncement would go a long way in providing the necessary guidance to States, as well as the General Assembly, regarding their obligations with respect to the protection of the Palestinian people.

E. ALL STATES MUST ENSURE ACCOUNTABILITY UNDER
INTERNATIONAL LAW FOR INTERNATIONAL CRIMES COMMITTED IN
THE CONTEXT OF ISRAEL’S OCCUPATION

5.67 All States have the obligation to ensure accountability under international law for international crimes committed in the context of Israel’s occupation. As the OPT Special Rapporteur recommended in her most recent report, all States should

[a]ct to ensure a thorough, independent and transparent investigation of all violations of international human rights law and international humanitarian law, including those amounting to potential war crimes, crimes against humanity and the crime of aggression, committed in the occupied Palestinian territory.¹³⁴⁵

5.68 Many of the specific obligations on States to ensure criminal accountability derive from conventional law.¹³⁴⁶ Most prominently, pursuant to Article 146 of GC

¹³⁴⁴ See NATO, “NATO and Libya (Archived)” (last updated: 9 Nov. 2015), available at <https://tinyurl.com/26x8pdzt>.

¹³⁴⁵ UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 78(c).

¹³⁴⁶ See, e.g., Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949), 75 U.N.T.S. 31, art. 49; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed

IV—which the Court in its *Wall* Advisory Opinion affirmed “is applicable in the Palestinian territories”¹³⁴⁷—all States have the obligation to prosecute or extradite any person who has committed a “grave breach” of that Convention.¹³⁴⁸ Article 147 defines a “grave breach” of the Convention as a breach involving any of the following acts, among others: wilful killing; torture or inhuman treatment; wilfully causing great suffering or serious injury to body or health; unlawful deportation or transfer or unlawful confinement of a protected person; or wilfully depriving a protected person of the rights of fair and regular trial.¹³⁴⁹

5.69 Consistent with this obligation, the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel recommended in its 2022 report that

States Members of the United Nations uphold their obligations under international law, including their extraterritorial human rights obligations, and obligations under the common article 1 to the four Geneva Conventions and articles 146, 147 and 148 of the Fourth Geneva Convention, including by investigating and prosecuting persons suspected of committing or otherwise aiding and abetting or assisting in the commission or attempted commission of crimes under international law in the Occupied Palestinian Territory.¹³⁵⁰

Forces at Sea (12 August 1949), 75 U.N.T.S. 85, art. 50; Geneva Convention (III) Relative to the Treatment of Prisoners of War (12 August 1949), 75 U.N.T.S. 135, art. 129; Fourth Geneva Convention, art. 146; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 Dec. 1984), 1465 U.N.T.S. 85 (hereinafter, “CAT”), art. 7; Convention on the Prevention and Punishment of the Crime of Genocide (9 Dec. 1948), 78 U.N.T.S. 277 arts. VI, VII; Apartheid Convention, arts. IV, XI.

¹³⁴⁷ *Wall* Advisory Opinion, para. 101.

¹³⁴⁸ Fourth Geneva Convention, art. 146.

¹³⁴⁹ *Ibid.*, art. 147.

¹³⁵⁰ UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/77/328 (14 Sept. 2022), para. 95.

5.70 Importantly, should a State wish not to prosecute a perpetrator of a “grave breach” of the GC IV, it may choose instead to extradite them to another State that is able and willing to prosecute them. By the same token, States should exercise caution in agreeing to extradition requests made by Israel with respect to crimes committed in the OPT, and such requests should generally be refused when they relate to individuals facing criminal charges in Israel for activities related to opposing the occupation. Indeed, Israel has a long history of harassing and mistreating activists who oppose its policies.¹³⁵¹

5.71 Specific obligations on States to ensure criminal accountability can be found in other conventional sources as well. For example, State Parties to the CAT¹³⁵² have an obligation to enact legislation prohibiting all acts of torture and providing appropriate punishment.¹³⁵³ The Convention requires State Parties to provide for territorial, active personality jurisdiction over torture, and passive personality jurisdiction “if that State considers it appropriate”.¹³⁵⁴ The CAT further

¹³⁵¹ For example, in 2016, two Palestinian human rights activists were arrested and faced charges before an Israeli military tribunal related to their involvement in protests against restrictions on movement placed by the Israeli military on Palestinians in Hebron, in the West Bank. The charges were heavily condemned by Amnesty International, which “believe[d] that both Amro and al-Atrash have been arrested solely for their peaceful exercise of their rights to freedom of expression and assembly”. Amnesty International, *Press Release: Israeli government must cease intimidation of human rights defenders, protect them from attacks* (12 Apr. 2016), available at <https://tinyurl.com/mr38pudx>.

¹³⁵² As of 17 July 2023, 173 States are parties to the CAT. See UN Treaty Collection, “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (last accessed: 17 July 2023), available at <https://tinyurl.com/4m8fxakc>.

¹³⁵³ CAT, art. 4 (“1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”).

¹³⁵⁴ *Ibid.*, art. 5(1) (Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;

requires State Parties to take measures to establish universal jurisdiction over persons suspected of torture, unless they decide to extradite the suspects.¹³⁵⁵

5.72 Similarly, State Parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid¹³⁵⁶ are under an obligation to adopt legislation to “suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime”.¹³⁵⁷ The Convention also requires State Parties to adopt legislation to prosecute persons responsible for apartheid “whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons”.¹³⁵⁸ The Convention finally requires State Parties to further undertake “to grant extradition in accordance with their legislation and with the treaties in force”.¹³⁵⁹

5.73 In the same vein, State Parties to the International Convention for the Protection of All Persons from Enforced Disappearance have an obligation to criminalize, investigate, and bring those responsible for acts defined in article 2 of

(c) When the victim is a national of that State if that State considers it appropriate.)

¹³⁵⁵ See *ibid.*, art. 5(2) (“Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.”).

¹³⁵⁶ As of 12 July 2023, 109 States are parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid. See UN Treaty Collection, “International Convention on the Suppression and Punishment of the Crime of Apartheid” (last accessed: 12 July 2023), available at <https://tinyurl.com/74kbxxfh>.

¹³⁵⁷ Apartheid Convention, art. IV(a).

¹³⁵⁸ *Ibid.*, art. IV(b). See also Convention on the Suppression and Punishment of the Crime of Apartheid, Introductory Note by Prof. J. Dugard, available at <https://tinyurl.com/mu26mvae>, p. 2 (“Instead it was left to States to enact legislation to enable them to prosecute apartheid criminals on the basis of a form of universal jurisdiction. The Apartheid Convention allows State parties to prosecute non-nationals for a crime committed in the territory of a non-State party where the accused is physically within the jurisdiction of a State party”).

¹³⁵⁹ Apartheid Convention, art. XI.

the convention, to justice.¹³⁶⁰ State Parties must also take the “necessary measures to establish [their] competence to exercise jurisdiction over the offence of enforced disappearance”.¹³⁶¹ States on whose territory a person alleged to have committed an offence of enforced disappearance is found are under an obligation to “submit the case to [their] competent authorities for the purpose of prosecution”¹³⁶² unless they decide to “extradite that person or surrender him or her to another State in accordance with [their] international obligations or surrender him or her to an international criminal tribunal whose jurisdiction [they] ha[ve] recognized”.¹³⁶³

5.74 In addition to conventional *obligations* to prosecute or extradite perpetrators of international crimes, all States have a permissive right under customary international law to establish and exercise universal jurisdiction with respect to international crimes.

5.75 As Jean-Marie Henckaerts, head of the ICRC’s project on customary international humanitarian law, explains, the principle of universal jurisdiction “has gradually been expanded to apply to all serious violations of humanitarian law as a permissive rule”.¹³⁶⁴

¹³⁶⁰ International Convention for the Protection of All Persons from Enforced Disappearance (20 Dec. 2006), 2716 U.N.T.S. 3, arts. 3, 4, 6.

¹³⁶¹ *Ibid.*, art. 9(1).

¹³⁶² *Ibid.*, art. 11(1).

¹³⁶³ *Ibid.*

¹³⁶⁴ See also J. Henckaerts, “Customary International Humanitarian Law: A Response to US Comments,” 89 INT’L. REV. RED CROSS 473 (2007), p. 476 (“But this does not mean that the practice is not dense enough, as suggested, to demonstrate the existence of a customary rule, in particular as we are dealing with a permissive rule. The principle of universal jurisdiction means that war crimes are crimes under international law, like piracy, slavery and apartheid, and hence that all states have an interest that they be prosecuted. This principle was first established in the Geneva Convention as an obligation with respect to the serious violations (‘grave breaches’) enumerated therein and was later confirmed in Additional Protocol I. *It has gradually been*

5.76 It is also the case with crimes against humanity.¹³⁶⁵ In their joint separate opinion to the *Arrest Warrant* Judgment, Judges Higgins, Kooijmans, and Buergenthal explained that

The series of multilateral treaties with their special jurisdictional provisions reflect a determination by the international community that those engaged in war crimes, hijacking, hostage taking, torture should not go unpunished. *Although crimes against humanity are not yet the object of a distinct convention, a comparable international indignation at such acts is not to be doubted.*

...

Great care has been taken when formulating ... relevant treaty provisions not to exclude other grounds of jurisdiction that may be exercised on a voluntary basis.¹³⁶⁶

expanded to apply to all serious violations of humanitarian law as a permissive rule.”) (emphasis added).

¹³⁶⁵ See, e.g., UNGA, Resolution 177 (II), *Formulation of the principles recognized in the Charter of the Nürnberg Tribunal and the judgment of the Tribunal*, UN Doc. A/RES/177(II) (21 Nov. 1947); ILC, *Report of the International Law Commission covering its Second Session* (5 June – 29 July 1950), Official Records of the General Assembly, Fifth Session, Supplement No. 12 (A/1316), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1950 (Vol. II, Pt. 3), p. 376, principle VI of the Nürnberg Principles (The Commission in 1950 produced the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, which stated that crimes against humanity were “punishable as crimes under international law”); ILC, *Draft Code of Offences against the Peace and Security of Mankind*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1954 (Vol. II), art. 1; Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 5; Statute of the International Criminal Tribunal for Rwanda, art. 3; ICTY, *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1, Judgment (10 Dec. 1998), para. 156 (“Furthermore, at the individual level, that is, that of criminal liability, it would seem that one of the consequences of the *jus cogens* character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction. ... It has been held that international crimes being universally condemned wherever they occur, every State has the right to prosecute and punish the authors of such crimes.”); ILC, *Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries*, UN Doc. A/74/10 (2019), Article 3 Commentary, para 19.

¹³⁶⁶ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal (14 Feb. 2002), para. 51 (emphasis added). See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*,

5.77 The ILC Draft Articles on Prevention and Punishment of Crimes Against Humanity seek to provide the blueprint “for what would become a Convention on the Prevention and Punishment of Crimes against Humanity”.¹³⁶⁷ However, the ILC made clear that the Draft Articles “are without prejudice to existing customary international law”.¹³⁶⁸ Nor do the Draft Articles “address the consequences of the prohibition [against the commission of crimes against humanity] having [a *jus cogens*] status”.¹³⁶⁹ Thus, while the Draft Articles envisage a conventional obligation for State Parties to prosecute or extradite an alleged offender present on their territory,¹³⁷⁰ the Commentary explains that they “do[] not foreclose a State from adopting, at any time, a national law relating to crimes against humanity, so long as it is consistent with the State’s obligations under international law”.¹³⁷¹ States are thus strongly encouraged to exercise that right to fulfil their obligation to ensure accountability for the perpetrators of these crimes.

5.78 It is finally worth noting that, in light of the ICC’s ongoing investigation into the Situation in the State of Palestine, a perpetrator could potentially be extradited to that Court. State Parties to the Rome Statute in fact have the obligation to “cooperate fully with the Court in its investigation and prosecution of crimes

(Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, *I.C.J. Reports 2007*, p. 43, para. 442.

¹³⁶⁷ See ILC, *Report of the International Law Commission on the work of its Sixty-fifth Session* (2013), Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10 (A/68/10), in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2013 (Vol. II, Pt. 2), Annex B, para. 3.

¹³⁶⁸ ILC, *Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries*, UN Doc. A/74/10 (2019), General Commentary, para. 3. See also *ibid.*, art. 2(3) (“This draft article is without prejudice to any broader definition provided for in any international instrument, in customary international law or in national law.”).

¹³⁶⁹ *Ibid.*, Preamble Commentary, para. 5.

¹³⁷⁰ *Ibid.*, art. 10.

¹³⁷¹ ILC, *Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries*, UN Doc. A/74/10 (2019), Article 1 Commentary, para. 3.

within the jurisdiction of the Court”,¹³⁷² which includes the obligation to comply with requests for arrest and surrender.¹³⁷³

5.79 Indeed, the current OPT Special Rapporteur Ms. Albanese specifically recommended in her latest report that the international community “pursue accountability for perpetrators through both ICC in its ongoing investigation into the situation in Palestine, and universal jurisdiction mechanisms”.¹³⁷⁴ Ms. Albanese’s predecessor, Mr. Michael Lynk, similarly recommended in his final report that the international community “[s]upport any references or applications to the International Criminal Court and/or the International Court of Justice with respect to the legal consequences of the practice of apartheid in the Occupied Palestinian Territory”.¹³⁷⁵

5.80 Qatar respectfully requests that the Court state in the *dispositif* of its advisory opinion that all State Parties to international conventions with an obligation to prosecute or extradite must comply with this obligation when the crimes in question have been committed in the context of Israel’s occupation and related conduct. Qatar further requests that the Court state that all States that have conventional obligations to exercise universal jurisdiction over international crimes comply with their obligations, and that States that do not have such obligations may still establish and exercise universal jurisdiction over such crimes to ensure accountability.

¹³⁷² Rome Statute, art. 86.

¹³⁷³ *Ibid.*, art. 89.

¹³⁷⁴ UNGA, *Report of Special Rapporteur Francesca Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 78(c).

¹³⁷⁵ Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 58 (b).

III. Legal Consequences for the United Nations

5.81 Israel’s occupation of, and discriminatory practices and policies in, the OPT have legal consequences not only for States, but also for the United Nations. Indeed, the General Assembly’s Request in this case, unlike the request in the *Wall* case, specifically asks the Court to opine on the “legal consequences that arise for ... the United Nations”.¹³⁷⁶

5.82 In Qatar’s view, the law on the legal consequences for international organizations arising from serious breaches by States of peremptory norms of general international law may be deduced by analogy from the ILC’s Articles on Responsibility of International Organizations (“ARIO”) and ARSIWA. As explained above in Section II, Article 41 of ARSIWA provides that if a State commits a serious breach of a peremptory norm, then all States are under the obligations to cooperate to bring the breach to an end,¹³⁷⁷ not to recognize as lawful the situation created by the breach,¹³⁷⁸ and not to render aid or assistance in maintaining that situation.¹³⁷⁹ Article 42 of ARIO similarly provides that if an international organization commits a serious breach of a peremptory norm, then all States and international organizations are under the same three obligations.¹³⁸⁰ A necessary corollary of these rules is that if a State commits a serious breach of a peremptory norm, then all international organizations—most especially the United Nations—are also under the same three obligations.

¹³⁷⁶ UNGA Res. 77/247, para. 18(b).

¹³⁷⁷ ARSIWA, art. 41(1).

¹³⁷⁸ *Ibid.*, art. 41(2).

¹³⁷⁹ *Ibid.*

¹³⁸⁰ ILC, *Draft articles on the responsibility of international organizations*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 2011 (Vol. II, Pt. 2), art. 42.

5.83 That being the case, Israel’s occupation and related conduct give rise to legal obligations on the United Nations not to recognize as lawful the situation created by Israel’s occupation and related conduct (**Section A**); not to render aid or assistance in maintaining that situation (**Section B**); and to cooperate to bring to an end Israel’s occupation and related conduct (**Section C**).

A. THE UNITED NATIONS MUST NOT RECOGNIZE AS LAWFUL THE SITUATION
CREATED BY ISRAEL’S OCCUPATION AND RELATED CONDUCT

5.84 Like all States, the United Nations is under an obligation not to recognize as lawful the situation created by Israel’s illegal occupation of the OPT and its discriminatory practices and policies carried out therein.

5.85 This means, among other things, that all UN bodies are under an obligation to “distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.¹³⁸¹ Accordingly, any references to Israel in UN documents should encompass only the “territory of Israel itself”,¹³⁸² as reflected in the 4 June 1967 lines. No UN body may expressly or impliedly recognize the OPT as part of Israel.

B. THE UNITED NATIONS MUST NOT AID OR ASSIST IN MAINTAINING THE
SITUATION CREATED BY ISRAEL’S OCCUPATION AND RELATED CONDUCT

5.86 The United Nations is further under an obligation not to render aid or assistance in maintaining the situation created by Israel’s occupation, settlement and annexation of, and discriminatory practices and policies in, the OPT.

¹³⁸¹ UNSC Res. 2334, para. 5.

¹³⁸² *Wall* Advisory Opinion, para. 67.

5.87 In concrete terms, this means that no UN body may provide any funds to maintaining the illegal situation in the OPT. Any funds going to Israel must be subjected to appropriate due diligence to ensure that they do not have the direct or indirect effect of rendering aid or assistance in maintaining the illegal situation in the OPT.

C. THE UNITED NATIONS MUST COOPERATE TO BRING TO AN
END ISRAEL'S OCCUPATION AND RELATED CONDUCT

5.88 The United Nations, like all States, is also under an obligation to cooperate to bring to an end Israel's occupation of, and discriminatory practices and policies in, the OPT. Qatar respectfully submits that in its advisory opinion the Court should make clear that this is an *obligation*, not simply a *recommendation*.

5.89 In this respect, Qatar observes that in the *Wall* Advisory Opinion, the Court held that “[t]he United Nations ... *should* consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime”.¹³⁸³ This case, however, calls for a firmer stance, and not just because the Court's prior opinion fell on deaf ears. As stated above, in that case, the request for the advisory opinion did not specifically ask about legal consequences for the United Nations. The Court was therefore stepping beyond the strict confines of the question asked of it. Here, by contrast, the Request specifically asks the Court to identify the “legal consequences that arise for ... the United Nations”.¹³⁸⁴ Consequently, in its advisory opinion, the Court can and should clearly state that the United Nations is under an *obligation* to cooperate to bring Israel's occupation and discriminatory policies and practices to an end.

¹³⁸³ *Wall* Advisory Opinion, para. 163(3)(E) (emphasis added).

¹³⁸⁴ UNGA Res. 77/247, para. 18(b).

5.90 The United Nations has, of course, already adopted many measures to this end, including a number of Security Council resolutions¹³⁸⁵ and General Assembly resolutions.¹³⁸⁶ There is, however, more that it can do. Because Israel has not complied with the Security Council resolutions calling on it to end the occupation, the Council may, pursuant to Article 41 of the Charter, take other measures against

¹³⁸⁵ See, e.g., UNSC Res. 2334 (2016), para. 4 (“Stresses that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution.”); UNSC, Resolution 1397 (2002), *On political settlement of the situation in the Middle East, including the Palestinian question*, UN Doc. S/RES/1397 (12 Mar. 2002), Preamble (“Affirming a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders ... Calls upon the Israeli and Palestinian sides and their leaders to cooperate in the implementation of the Tenet work plan and Mitchell Report recommendations with the aim of resuming negotiations on a political settlement.”); UNSC, Resolution 1435 (2002), *On cessation of all acts of violence and withdrawal of Israeli forces from Palestinian cities*, UN Doc. S/RES/1435 (24 Sept. 2002), Preamble and para. 3 (“Alarmed at the reoccupation of Palestinian cities as well as the severe restrictions imposed on the freedom of movement of persons and goods, and gravely concerned at the humanitarian crisis being faced by the Palestinian people ... Demands also the expeditious withdrawal of the Israeli occupying forces from Palestinian cities towards the return to the positions held prior to September 2000.”).

¹³⁸⁶ See, e.g., UNGA, Resolution 67/19, *Status of Palestine in the United Nations*, UN Doc. A/RES/67/19 (29 Nov. 2012), paras. 2, 4, 6 (According Palestine non-member observer State status in the United Nations, affirming its “determination to contribute to the achievement of the inalienable rights of the Palestinian people and the attainment of a peaceful settlement in the Middle East that ends the occupation that began in 1967” and urging “all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination, independence and freedom”.); UNGA Res. 77/247, para. 6 (Demanding, *inter alia*, “that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which, *inter alia*, gravely and detrimentally impact the human rights of the Palestinian people, including their right to self-determination, and the prospects for achieving without delay an end to the Israeli occupation that began in 1967 and a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides”.); UNGA, Resolution 77/208, *The right of the Palestinian people to self-determination*, UN Doc. A/RES/77/208 (15 Dec. 2022) (Dossier No. 381), para. 2 (Urging, *inter alia*, “all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination”.); UNGA, Resolution 77/187, *Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources*, UN Doc. A/RES/77/187 (14 Dec. 2022) (Dossier No. 272), para. 5 (“Calls upon Israel, the occupying Power, to comply strictly with its obligations under international law, including international humanitarian law, and to cease immediately and completely all policies and measures aimed at the alteration of the character and status of the Occupied Palestinian Territory, including East Jerusalem.”).

Israel to “give effect to its decisions”, including “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.¹³⁸⁷ Further, pursuant to Article 42, the Council may take action “by air, sea, or land forces”, including “demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”.¹³⁸⁸ And pursuant to Article 5, the General Assembly could, upon the recommendation of the Security Council, suspend Israel from the exercise of the rights and privileges of membership in the United Nations.¹³⁸⁹

5.91 Of course, just because the United Nations *can* do certain things does not mean that it *should* do them in fulfilment of its obligation to cooperate with States in bringing an end to Israel’s occupation. But considering the fact that the Israeli regime in the OPT constitutes apartheid, the United Nations should seriously consider at least taking measures similar to those that it took with respect to apartheid in South Africa and South West Africa (Namibia). In particular, the Security Council should seriously consider imposing a mandatory arms embargo on Israel.¹³⁹⁰ And the General Assembly should seriously consider requesting Member States to refrain from supplying petroleum to Israel,¹³⁹¹ to break off diplomatic relations with Israel, to close their ports to all vessels flying the Israeli flag, to prohibit their vessels from entering Israeli ports, to boycott Israeli goods, to boycott Israeli sports teams, to refrain from exporting goods to Israel, and to

¹³⁸⁷ UN Charter, art. 41.

¹³⁸⁸ *Ibid.*

¹³⁸⁹ *Ibid.*, art. 5.

¹³⁹⁰ See UNSC, Resolution 181 (1963), *On the situation of South Africa*, UN Doc. S/RES/181(1963) (7 Aug. 1963); UNSC, Resolution 418 (1977), *On establishment of an arms embargo against South Africa*, UN Doc. S/RES/418 (4 Nov. 1977).

¹³⁹¹ See UNGA, Resolution 1899 (XVIII), *Question of South West Africa*, UN Doc. A/RES/1899 (XVIII) (13 Nov. 1963), para. 7(b).

establish a special committee to keep the discriminatory policies and practices of Israel under review when the Assembly is not in session.¹³⁹² All of these measures were taken against South Africa, and there is no reason why they should not also be taken against Israel.

5.92 Furthermore, the United Nations should also consider taking measures to support the exercise of criminal jurisdiction over serious international crimes committed in the context of Israel's occupation of the OPT, and its discriminatory practices and policies carried out therein. This support could be directed towards States that exercise jurisdiction over such crimes within their national jurisdictions but could also take the form of direct action by the United Nations itself.

5.93 For example, the United Nations could establish an investigatory mechanism to collect evidence against suspected perpetrators of the aforementioned crimes for possible use in future criminal proceedings. This would not be without precedent. In 2016, the General Assembly established the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.¹³⁹³ Similarly, in 2017, the Security Council established the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL.¹³⁹⁴ And in 2018, the Human Rights Council established the Independent Investigative Mechanism

¹³⁹² See UNGA, Resolution 1761 (XVII), *The policies of apartheid of the Government of the Republic of South Africa*, UN Doc. A/RES/1761(XVII) (6 Nov. 1962), paras. 4-5.

¹³⁹³ UNGA, Resolution 71/248, *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, UN Doc. A/RES/71/248 (21 Dec. 2016).

¹³⁹⁴ UNSC, Resolution 2379 (2017), *On establishment of an Investigative Team to Support Domestic Efforts to Hold the Islamic State in Iraq and the Levant Accountable for Its Actions in Iraq*, UN Doc. S/RES/2379 (21 Sept. 2017).

for Myanmar.¹³⁹⁵ The United Nations should establish a similar mechanism for the OPT. Such mechanism could operate either in support of or independent from the ICC investigation noted above.

5.94 In addition, the United Nations should consider re-establishing the Special Committee against Apartheid, as recommended by Special Rapporteur Michael Lynk, “to investigate any and all practices of systematic discrimination and oppression purportedly amounting to apartheid anywhere in the world, including the Occupied Palestinian Territory”.¹³⁹⁶ Alternatively, acting under Article IX of the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Chairman of the Commission on Human Rights can appoint a committee of State Parties to consider the periodic reports submitted by other States Parties on the legislative, judicial, administrative, or other measures that they have adopted and that give effect to the provisions of the Convention insofar as Israel’s treatment of Palestinians is concerned.

5.95 In addition, the United Nations could also act to establish an international criminal tribunal to prosecute the relevant crimes, following the examples of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Or it could instead work with the Government of Israel to establish a hybrid court or tribunal, like the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon. Again, any such mechanism could operate either in support of or independent from the ICC investigation.

¹³⁹⁵ Human Rights Council, Resolution 39/2, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/HRC/RES/39/2 (27 Sept. 2018).

¹³⁹⁶ See Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 59.

5.96 Finally, given the mounting violence and daily death toll which have reached unprecedented levels,¹³⁹⁷ the Security Council should consider establishing a peacekeeping mission for Palestine. This too would not be unprecedented in the region. After Israel’s invasion of Lebanon in 1978, the Security Council established a UN interim force “for the purpose of confirming the withdrawal of Israeli forces, restoring international peace and security and assisting the Government of Lebanon in ensuring the return of its effective authority in the area”.¹³⁹⁸ A similar mission should be deployed in the present context in order to ensure, among other things, that Israel’s withdrawal occurs in an orderly fashion without generating hostilities with Palestinians, and that peace be maintained between the Palestinian people and Israel. This would be in line with the recommendation by Special Rapporteur Albanese that states “[d]eploy an international protective presence to constrain the violence routinely used in the occupied Palestinian territory and protect the Palestinian population”.¹³⁹⁹

5.97 Although this discussion was limited to the legal consequences incumbent particularly on the United Nations, Qatar respectfully submits that the Court should make clear that these obligations are not only applicable to the United Nations but also to all other international organizations, within their respective spheres of influence and institutional authority.

¹³⁹⁷ See *supra* Chapter 2, § IV.

¹³⁹⁸ UNSC, Resolution 425 (1978), *On establishment of a UN interim force for Southern Lebanon*, UN Doc. S/RES/425 (19 Mar. 1978), para. 3.

¹³⁹⁹ See UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 78(b).

CHAPTER 6 JURISDICTION AND DISCRETION

6.98 The Court has jurisdiction to give the requested advisory opinion pursuant to Article 65(1) of its Statute, which provides: “The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”¹⁴⁰⁰ Article 96(1) of the Charter expressly authorizes the General Assembly to request advisory opinions “on any legal question”.¹⁴⁰¹ The questions asked are plainly legal because they request the assessment of Israel’s policies and practices in the OPT by reference to international law.¹⁴⁰²

6.99 While the Court has discretion whether or not to respond to a request for an advisory opinion, it has consistently held that its answer to such a request, “in principle, should not be refused”.¹⁴⁰³ The Court has further repeatedly affirmed that “only ‘compelling reasons’ may lead the Court to refuse its opinion in response to a request falling within its jurisdiction”.¹⁴⁰⁴ Indeed, the present Court has *never* exercised its discretionary power to decline to respond to a request for an advisory opinion.¹⁴⁰⁵

¹⁴⁰⁰ Statute of the International Court of Justice, art. 65(1).

¹⁴⁰¹ UN Charter, art. 96(1).

¹⁴⁰² See *Chagos Advisory Opinion*, para. 58; *Wall Advisory Opinion*, para. 37.

¹⁴⁰³ *Chagos Advisory Opinion*, para. 65; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403 (hereinafter, “**Kosovo Advisory Opinion**”), para. 30; *Wall Advisory Opinion*, para. 44.

¹⁴⁰⁴ *Chagos Advisory Opinion*, para. 65. See also *Kosovo Advisory Opinion*, para. 30; *Wall Advisory Opinion*, para. 44.

¹⁴⁰⁵ The Permanent Court of International Justice has done so on only one occasion. See *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5*.

6.100 There are no compelling reasons in this case for the Court to decline to respond to the General Assembly's request. To the contrary, the opinion would be of great assistance to the General Assembly and the United Nations more broadly in the exercise of their functions. The General Assembly has repeatedly recognized that the United Nations has "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy".¹⁴⁰⁶ The questions posed by the General Assembly's request are thus of particularly acute concern to the United Nations.

6.101 The Court recognized the point in the *Wall* Advisory Opinion:

Given the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court's view that the construction of the wall must be deemed to be directly of concern to the United Nations. The responsibility of the United Nations in this matter also has its origin in the Mandate and the Partition Resolution concerning Palestine This responsibility has been described by the General Assembly as "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy" (General Assembly resolution 57/107 of 3 December 2002). Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies

¹⁴⁰⁶ UNGA, Resolution 57/107, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN Doc. A/RES/57/107 (3 Dec. 2002) (Dossier No. 417), Preamble; UNGA, Resolution 58/18, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN Doc. A/RES/58/18 (3 Dec. 2003) (Dossier No. 418), Preamble; UNGA, Resolution 74/10, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN Doc. A/RES/74/10 (3 Dec. 2019) (Dossier No. 434), Preamble; UNGA, Resolution 75/20, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN Doc. A/RES/75/20 (2 Dec. 2020) (Dossier No. 435) (hereinafter, "**UNGA Res. 75/20**"), Preamble; UNGA, Resolution 77/22, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN Doc. A/RES/77/22 (30 Nov. 2022) (Dossier No. 436) (hereinafter, "**UNGA Res. 77/22**"), Preamble.

specifically established to assist in the realization of the inalienable rights of the Palestinian people.¹⁴⁰⁷

6.102 The same analysis applies with even greater force to these proceedings. Israel’s occupation, settlement and annexation of the OPT as well as its discriminatory policies and practices—of which the construction of the Wall is only one facet—pose a grave threat to the United Nations’ fulfilment of its “permanent responsibility towards the question of Palestine”.¹⁴⁰⁸ Indeed, following the Court’s *Wall* Advisory Opinion, the General Assembly, Security Council and other UN bodies have continued to take action with respect to Israel’s occupation of and discriminatory policies and practices in the OPT.¹⁴⁰⁹

6.103 The Court should not be dissuaded from responding to the General Assembly’s request by any nominal concerns that rendering the advisory opinion might impede a negotiated political solution to Israel’s occupation of OPT. Indeed, the Court previously rejected that argument in the *Wall* Advisory Opinion.¹⁴¹⁰ The Court explained: “It is not clear ... what influence the Court’s opinion might have on those negotiations ...”.¹⁴¹¹ If anything, the Court’s opinion would likely

¹⁴⁰⁷ *Wall* Advisory Opinion, para. 49. For the link between the current situation and the League of Nations Mandate for Palestine and UNGA Partition Resolution, see Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), pp. 45-46. QWS, Vol. II, Annex 1; Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023). QWS, Vol. II, Annex 2.

¹⁴⁰⁸ The General Assembly has repeatedly reaffirmed this responsibility. See, e.g., UNGA Res. 77/22; UNGA Res. 75/20; UNGA Res. 74/10.

¹⁴⁰⁹ See, e.g., UNGA Res. 77/247; UNSC Res. 2334 (2016); ECOSOC, Resolution 2021/4, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and the Arab population in the occupied Syrian Golan*, UN Doc. E/RES/2021/4 (14 Sept. 2020) (Dossier No. 121).

¹⁴¹⁰ *Wall* Advisory Opinion, paras. 51-53.

¹⁴¹¹ *Ibid.*, para. 53.

contribute to, rather than impede, the resolution of the matter at hand. As the Court stated then:

The Court is aware that, no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter.¹⁴¹²

6.104 For these reasons, the Court concluded in that case that it “cannot regard this factor as a compelling reason to decline to exercise its jurisdiction”.¹⁴¹³

6.105 There is no reason to reach a different conclusion here. Given the wholesale lack of progress in the negotiations, as thoroughly described in the annexed report by Professor Avi Shlaim,¹⁴¹⁴ it is especially important that the Court fulfil the responsibility the General Assembly has most recently entrusted to it. As the Court has elsewhere held: “[I]n situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate”¹⁴¹⁵ Clear and definitive answers to the questions asked will provide critical guidance to the United Nations and to the international community as a whole about the legal principles that must guide the future resolution of these issues.

¹⁴¹² *Ibid.*, para. 51 (citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 (hereinafter, “**Nuclear Weapons Advisory Opinion**”), para. 17).

¹⁴¹³ *Ibid.*, para. 53.

¹⁴¹⁴ See Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023). QWS, Vol. II, Annex 2.

¹⁴¹⁵ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 73, para. 33; *Nuclear Weapons Advisory Opinion*, para. 13.

6.106 For the foregoing reasons, the Court has the jurisdiction to give the requested advisory opinion and there is no reason it should decline to do so.

CHAPTER 7 CONCLUSIONS

7.1 For the reasons set out in this Written Statement, the State of Qatar respectfully submits the following conclusions to the Court:

- I. The Court has jurisdiction to give the Advisory Opinion requested by the General Assembly in its Resolution 77/247 of 30 December 2022, and there are no grounds for declining to exercise such jurisdiction.
- II. The Court should declare that:
 - A. Israel has no territorial title over the Palestinian territory occupied since 1967, including East Jerusalem and the Gaza strip, and it has no legal justification to remain an Occupying Power of that territory;
 - B. Israel's prolonged occupation, including its ongoing blockade on the Gaza strip, constitutes a continued violation of the right of the Palestinian people to self-determination;
 - C. Israel's *de jure* annexation of East Jerusalem violates international law, is null, void and of no legal effect;
 - D. Israel's *de facto* annexation of Area C of the West Bank violates international law, is null, void and of no legal effect;
 - E. The establishment and facilitation by Israel of Israeli settlements in the West Bank and East Jerusalem violate international law and are of no legal effect on the status of the areas concerned;
 - F. Israeli's practice of exclusion and displacement of Palestinians from the Occupied Palestinian Territory, with the aim or result of altering its demographic composition, violates international law;
 - G. Israel's fragmentation of, and restriction on movement in, the West Bank, including East Jerusalem, violate international law;
 - H. Israel's practice of systematic violence and excessive use of force against Palestinians in the Occupied Palestinian Territory, including its tolerance for settlers' violence, violate international law;

- I. Israel's illegal occupation entails numerous violations of civil, political, cultural, economic and social rights of Palestinians, and of international humanitarian law; and
 - J. Israel's discriminatory policies and practices affecting Palestinians in the Occupied Palestinian Territories constitute, as a whole, an illegal regime of apartheid.
- III. The Court should declare that certain legal consequences arise out of the above numerous and egregious violations of international law, as follows:
- A. For Israel:
 - 1. Israel is under an obligation to cease immediately its occupation and discriminatory policies and practices and all its ongoing violations of human rights law and international humanitarian law;
 - 2. Israel is under an obligation to offer appropriate assurances and guarantees of non-repetition; and
 - 3. Israel is under an obligation to make full reparation for the injury caused by its occupation and discriminatory policies and practices.
 - B. For all other States:
 - 1. All States must not recognize as lawful the situation created by Israel's occupation and related conduct;
 - 2. All States must not aid or assist, directly or indirectly, in maintaining the situation created by Israel's occupation and related conduct;
 - 3. All States must cooperate to bring to an end Israel's occupation and related conduct;
 - 4. All States must help protect the Palestinian people from war crimes, ethnic cleansing, and crimes against humanity; and
 - 5. All States must ensure accountability under international law for international crimes committed in the Occupied Palestinian Territory, including by investigating, prosecuting or extraditing any person who has committed or is suspected of committing international crimes therein, consistent with their treaty obligations

and their permissive right to establish and exercise universal jurisdiction over international crimes.

C. For the United Nations:

1. The United Nations must not recognize as lawful the situation created by Israel's occupation and related conduct;
2. The United Nations must not aid or assist, directly or indirectly, in maintaining the situation created by Israel's occupation and related conduct; and
3. The United Nations must cooperate to bring to an end Israel's occupation and related conduct.

Respectfully submitted,

A handwritten signature in blue ink, consisting of several overlapping, fluid strokes that form a cursive name.

H.E. Ambassador Nasser bin Ibrahim Allenqawi

AGENT OF THE STATE OF QATAR

25 JULY 2023

CERTIFICATION

I certify that the Annexes are true copies of the documents referred to.

A handwritten signature in blue ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract shape. The signature is positioned above a thin horizontal line.

H.E. Ambassador Nasser bin Ibrahim Allenqawi

AGENT OF THE STATE OF QATAR

25 JULY 2023

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