



**Joint Submission to the United Nations Independent International Commission of Inquiry
on the Occupied Palestinian Territory, including East Jerusalem, and Israel**

*Zionist Settler Colonialism and Apartheid as the Root Causes of Israel's Ongoing Violations of
the Inalienable Rights of the Palestinian People*

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2. Al Mezan Center for Human Rights
3. Al-Awda, the Palestine Right to Return Coalition
4. Al-Quds Foundation Malaysia
5. American Muslims for Palestine
6. Amnesty International Okanagan
7. Applied Research Institute-Jerusalem (ARIJ)
8. Arab Organization for Human Rights
9. Asian Dignity Initiative (ADI)
10. Asociación Americana de Juristas
11. Associação de Amizade e Solidariedade com a Palestina (ASP)
12. Association Belgo-Palestinienne
13. Association Suisse-Palestine ASP
14. Assopace Palestina
15. Australian Centre for International Justice (ACIJ)
16. Australian Palestinian Professionals Association – APPA
17. BACBI (Belgian Campaign for Academic and Cultural Boycott of Israel)
18. Canadian Voices for Palestinian Rights
19. Canadians for Justice and Peace in the Middle East (CJPME)
20. Civic Coalition for Palestinian Rights in Jerusalem

21. CJPME Okanagan
22. Coalition for Justice and Peace in Palestine (Sydney)
23. Collectif Action Palestine Neuchâtel
24. Collectif Urgence Palestine – Genève
25. Collectif Urgence Palestine - Vaud
26. Community Action Center/ Al-Quds University
27. Coordination Maghrébine des Organisations des Droits Humains -CMODH-
28. Democratic Socialists of America - Palestine Working Group
29. DocP - BDS Netherlands
30. ECCP - European Coordination of Committees and Associations for Palestine
31. European Legal Support Center (ELSC)
32. European Trade Union Network for Justice in Palestine
33. Fagforbundet - Norwegian Union of Municipal and General Employees
34. Filastiniyat
35. FILEF Sydney (Italian Federation of Migrant Workers)
36. Finnish-Arab Friendship Society
37. Friends of Sabeel North America (FOSNA)
38. Friends of the Earth Africa
39. Gaza Action Ireland
40. Gerechtigkeit und Frieden in Palästina GFP
41. Good Shepherd Collective
42. Habitat International Coalition – Housing and Land Rights Network
43. Human Rights & Democratic participation Center “SHAMS”
44. ICAHD (Israeli Committee Against House Demolitions)
45. ICAHD UK
46. ICAHD USA
47. International Association of Democratic Lawyers
48. International Organization for the Elimination of All Forms of Racial Discrimination
49. Intersindical Alternativa de Catalunya (IAC)
50. Ireland-Palestine Solidarity Campaign
51. Jews for Palestinian Right of Return
52. Just Peace Advocates/Mouvement Pour Une Paix Juste
53. Justice for Palestinians, Calgary
54. Makan, UK
55. Malaysian Women Coalition for al Quds and Palestine (MWCQP)
56. Mennonite Church Canada PIN
57. Mennonite Church Eastern Canada PIN
58. Moroccan Association for Human Rights
59. National Lawyers Guild
60. NOVACT-International Institute for Nonviolent Action
61. Palästina-Solidarität Region Basel
62. Palestina Solidariteit (Belgium)
63. Palestine Legal USA
64. Palestine Solidarity Alliance (PSA), South Africa
65. Palestine Solidarity Campaign (South Africa)

66. Palestine Solidarity Campaign UK
67. Palestinian BDS National Committee (BNC) and the entire BDS Movement
68. Palestinian Cultural Organization Malaysia (PCOM)
69. Paz con Dignidad
70. Project South
71. Sabeel-Kairos UK
72. Sadaka- the Ireland Palestine Alliance
73. Samidoun Palestinian Prisoner Solidarity Network
74. Seoul Human Rights Film Festival
75. Sodepaz - Solidaridad para el Desarrollo y la Paz
76. South African BDS Coalition
77. Stop the Wall
78. SUDS, Internacionalisme Solidaritat Feminismes
79. The Canadian BDS Coalition
80. The Palestinian Initiative for the Promotion of Global Dialogue and Democracy – MIFTAH
81. The Palestine Institute for Public Diplomacy
82. U.S. Palestinian Community Network (USPCN)
83. Union of Agricultural Work Committees
84. United Australian Palestinian Workers
85. United Methodists for Kairos Response (UMKR)
86. United Network for Justice and Peace in Palestine and Israel
87. Urgence Palestine Nyon La Côte
88. US Campaign for the Academic and Cultural Boycott of Israel
89. Women's Centre for Legal Aid and Counselling
90. Zimbabwe Palestine Solidarity Council

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1. Glossary

- 1- **Colonised Palestine**: refers to the self-determination unit of the Palestinian people and territory of Mandate Palestine (prior to 1948), and which today constitutes the occupied Palestinian territory (oPt) and the territory recognized as the State of Israel in 1948. It must be noted, that, while this report refers throughout to the entirety of the oPt and Israel, as ‘Colonised Palestine’, this report recognizes that the colonisation of the oPt is active and ongoing. That Israel’s occupation of the Palestinian territory has been condemned as illegal, by the UN Special Rapporteur on the oPt, Professor Michael Lynk, as in breach of peremptory norms of international law, including self-determination and the prohibition against annexation, reinforces the position that the oPt, in addition to the lands colonised and recognized as the State of Israel, together comprise the territory of ‘Colonised Palestine’.
- 2- **Illegal Occupation**: Israel’s administration of the oPt, premised on a series of violations of peremptory norms of international law, including the annexation of territory, and breaching the principle of temporariness, and the obligations of the occupier to act in good faith and in the best interests of the occupied population, has been declared an illegal occupation, by UN Special Rapporteur on the oPt, Professor Michael Lynk.¹
- 3- **Nakba** (*‘catastrophe’*): is the term the Palestinian people use in reference to the 1947 onward ethnic cleansing and Zionist settler colonial conquest of Palestine. For the Palestinian people, the *Nakba* is key to their collective memory and history that “connects all Palestinians to a specific point in time.”² The *Nakba* is a historical moment, but also represents an ongoing process and reality, referred to as the ongoing *Nakba*. The latter, “continues to be perpetuated through Israel’s denial of the Palestinian refugees’ right of return, the right to self-determination, and various other Israeli policies, which give rise to forced displacement, including forcible transfer”.³
- 4- **Occupied Palestinian Territory (oPt)**: refers to the fragments of Palestine occupied by Israel since 1967 and is comprised of two non-contiguous areas: The West Bank, including East Jerusalem, and the Gaza Strip.

¹ Michael Lynk, ‘Prolonged Occupation or Illegal Occupant?’ (EJIL Talk, 16 May 2018), <https://www.ejiltalk.org/prolonged-occupation-or-illegal-occupant/>

² Nur Masalha, ‘60 Years after the Nakba: Historical Truth, Collective Memory and Ethical Obligations’ (2009) 3 *Kyoto Bulletin of Islamic Area Studies* 37, 41.

³ Al-Haq, ‘The Nakba at 68: A catastrophe born of discrimination and impunity’ (12 May 2016) <https://www.alhaq.org/palestinian-human-rights-organizations-council/6414.html>.

- 5- **Settler-colonial Enterprise**: refers to the illegal residential, industrial and agricultural settler colonies, or settlements established in the oPt and, integrally, the activities that help to sustain, promote and expand them, including the permanent related infrastructure (including by-pass roads and checkpoints), the Annexation Wall, the discriminatory Israeli legal regime applied in the oPt, settler violence and economic activities in agriculture, manufacturing, service provision and other commercial endeavours provided by or for settlers. Moreover, policies of population transfer, including the implantation of settlers into the oPt and the forcible displacement and removal of the Palestinian protected population within and outside the oPt are central to the establishment and maintenance of such an enterprise.
- 6- **The 1948 Territory**: refers to the territory of the settler-colonial State of Israel, established by the displacement and dispossession of the vast majority (around 80 percent)⁴ of the indigenous Palestinian people during the *Nakba* and the maintenance of a settler colonial and apartheid regime over the Palestinian people since its creation.
- 7- **The Unity Intifada** (‘the Unity Uprising’): is the latest uprising in the Palestinian struggle in pursuit of their liberation. The Unity *Intifada* was sparked in Jerusalem during April 2021, following violations and provocations by the Israeli authorities and forces and settlers to assert their domination over, and erasure of Palestinians in the city, coinciding with mobilization in the neighbourhood of Sheikh Jarrah in Jerusalem against the dispossession of their property and their imminent threat of forced displacement. By May 2021, the Palestinian people, across colonised Palestine, and Palestinian refugees in exile, mobilized in unity in an outpouring of demonstrations against Israel’s almost century long colonisation and apartheid, and their subjection to an ongoing *Nakba* since 1948. The Unity *Intifada* was met with repression and violence, as Israel used all measures to suppress resistance to its ongoing settler colonisation, including the launch of a military offensive on the Gaza Strip on 10 May 2021, the use of lethal force and excessive force to repress protests, a mass campaign of arbitrary arrests, and the facilitation of settlers’ violent attacks against Palestinians and their properties across colonised Palestine; i.e., on both sides of the Green Line.
- 8- **United Nations Centre against Apartheid**: In 1976, the UN Centre against Apartheid was established under the auspices of the UN Special Committee against Apartheid and continued its work until 30 June 1994. The Centre was created to facilitate the coordination of UN activities on all aspects of apartheid and provide support to the Special Committee in carrying out its mandate. The Centre acted as a “clearing house” for information on the international campaign against apartheid by the UN, States, regional organizations, and NGOs. The Centre also prepared studies on different aspects of apartheid, its impact, and

⁴ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld, 2007) xiii.

its international repercussions. Not only did the Centre report on apartheid policies in southern Africa, but it also reviewed and reported on the role of third states and assessed their compliance with international law and relevant UN resolutions that called for implementing the *erga omnes* duty of countermeasures taken by the UN against South Africa's apartheid regime such as the arms embargo.

- 9- **United Nations Special Committee against Apartheid**: The mandate of the Special Committee against Apartheid was to review and report on the situation in South Africa to the UN General Assembly (UNGA) and the UN Security Council (UNSC). The Special Committee promoted the international campaign against apartheid, pressured for effective sanctions against the South African apartheid regime, arranged for assistance to the victims of apartheid, as well as the liberation movements, and brought needed publicity to the crime of apartheid and the resistance of the South African people. The Special Committee also engaged with other UN agencies and organizations to coordinate their work and study of apartheid. Moreover, the Special Committee underscored the legitimacy of calls for boycotts, divestment, and sanctions and assisted in organizing campaigns for the release of political prisoners in South Africa. In the words of Nelson Mandela, the Special Committee was “a very important instrument in our struggle against the iniquitous and oppressive policies of the South African government.”⁵

⁵ UN, ‘Statement by Nelson Mandela Deputy President of the African National Congress to the 641st meeting of the Special Committee Against Apartheid’ (22 June 1990), https://www.un.org/en/events/mandeladay/statement_SCAA_1990.shtml.

2. Introduction

The submitting organisations welcome the establishment of this Commission of Inquiry as a step toward the acknowledgement of the situation in colonised Palestine as is and to work toward decolonisation, genuine justice and reparations for the Palestinian people. While we understand that the Commission of Inquiry team is subject to time, resource and capacity constraints, we believe that it is important that its first report examines the underlying root causes of Israel's crimes, in line with its unique mandate.⁶

We particularly believe that the intent behind the establishment of this Commission of Inquiry and its mandate to investigate the underlying root causes of systematic discrimination and repression in colonised Palestine, is mainly attributed to the Palestinian people on the ground, who, in April and May 2021 mobilized in a collective struggle of popular resistance, challenging 73 years of geographical, social, economic, political, institutional and legal fragmentation, imposed by Israeli settler colonisation and apartheid. In what came to be known as “the Unity *Intifada*” (‘the Unity Uprising’), the Palestinian people voiced how, although they may be subjected to various forms and levels of Israeli repression and erasure, they face a unitary regime of settler colonialism and apartheid. Palestinians highlighted the ongoing nature of the *Nakba* (‘catastrophe’) since 1948, which they continue to endure collectively, in the denial of their right to return to their homes, lands, and properties, and the ongoing Israeli program of population transfer and appropriation policies and practices across colonised Palestine (on both sides of the Green Line). They articulated their desire for the realisation of their collective right to their land, self-determination, freedom, and justice free from the shackles of Israeli settler colonialism and apartheid, paying a heavy price in the face of Israel's systematic suppression, domination and violence, with 276 Palestinians killed by Israeli forces and settlers in May 2021,⁷ and 2,650 detained between 13 April and 26 May 2021 across colonised Palestine.⁸

The momentum created by the Palestinian people during the Unity *Intifada*, in shifting the international narrative to consider the Palestinian people as a whole, regardless of their geographic location and legal status, and to address Zionist settler colonialism as the root cause of past, current, and ongoing Israeli violations of international humanitarian law (IHL) and international human rights law (IHRL), and associated international crimes, needs to be built on with wider acknowledgement of the situation as it is in colonised Palestine, to genuinely address Israel's widespread and systematic crimes across colonised Palestine, and enable the Palestinian people to

⁶ HRC, ‘Ensuring respect for international humanitarian law and international human rights law’, (26 May 2021) UN Doc. A/HRC/RES/S-30/1, para. 1.

⁷ Of the 276 Palestinians killed in May, 240 were killed during the military offensive on the Gaza Strip, 34 in the West Bank, 16 of whom were killed in protests, and two killed in the 1948 Territory. Al-Haq, ‘Field Report on Human Rights Violations in May 2021’ (14 June 2021), https://www.alhaq.org/cached_uploads/download/2022/02/24/may-2021-report-in-english-1645707069.pdf.

⁸ Addameer Prisoner Support and Human Rights Association (Addameer) collected these numbers with coordination with lawyers and local civil society groups.

exercise their inalienable right to self-determination and permanent sovereignty and their collective right of return.

The ongoing crimes against the Palestinian people that have continued for decades with no accountability and reparations will continue unabated if the characterization of the situation on the ground fails to consider Israel's laws, institutions, policies, and practices, as part of a Zionist settler-colonial, population-transfer, and apartheid regime, targeting the Palestinian people as a whole. Setting this accurate framework will ensure that the Commission's investigation be consistent with its mandate.

3. The Necessity of Recognizing Zionist Settler Colonialism as the Root Cause of Israel's Crimes

Since the institutionalization of the Zionist movement in the late 19th century,⁹ a settler colonial project was envisioned and developed for Palestine. The Zionist Movement and its proto-state organizations instituted a settler-colonial and apartheid regime over the Palestinian people and territory with the establishment of the Israeli state. Through a plethora of charters, laws, policies, and practices since its inception, Israel has intentionally acted to dispossess, segregate, fragment, isolate, and oppress the indigenous Palestinian people as a whole, while denying their right to self-determination as affirmed since the adoption of the Covenant of the League of Nations. Israel and its institutions, including organs of the state, have continued to further entrench this regime of dispossession, appropriation, pillage, destruction of Palestinian property, population transfer, demographic engineering and apartheid, sustaining these human rights violations and crimes against the Palestinian people with impunity. The international community has consistently failed to take effective measures to hold Israel accountable for its grave human rights violations, war crimes, and crimes against humanity, nor has it addressed the root causes of the ongoing dispossession, displacement, domination, and persecution of the Palestinian people.

After a century of ongoing Zionist settler colonialism against the indigenous Palestinian people, the hegemonic narrative around Palestine, including that upheld by the UN to date, still portrays the situation as the "Israeli-Palestinian conflict" which is centred on Israel's occupation since 1967 of the West Bank, including East Jerusalem, and the Gaza Strip (constituting the oPt). Complementing this "conflict" narrative is the IHL framework, which has several inherent limitations to its application in the context of colonised Palestine. Generally, IHL does not outlaw occupation, but merely governs it as a matter of fact.¹⁰ However, several analyses of Israel's occupation of the oPt have concluded that the Israeli occupation is illegal in itself, and not the conduct and administrative practices of the occupying regime alone.¹¹ This includes the analysis

⁹ Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)' (2012) 2 *Settler Colonial Studies*, 206, 208.

¹⁰ Article 43, The Hague Regulations (1907). See Lord Arnold Duncan McNair and Sir Arthur Watts, *The Legal Effects of War* (Cambridge University Press, 1966), 377–78.

¹¹ Orna Ben-Naftali and others, 'Illegal Occupation: Framing the Occupied Palestinian Territory' (2005) 23 *Berkeley Journal of International Law* 551.

by UN Special Rapporteur on the oPt, Professor Michael Lynk, who has compellingly charted how the Israeli occupation has crossed the legal red line into an illegal occupation, due to its violation of its fundamental obligations as an Occupying Power, including by breaching the prohibition on annexation, exceeding the principle of temporariness of occupation, as well as by systematically failing to administer the occupied territory in the “best interests” of Palestinians, and in pursuit of their right to self-determination and sovereignty.¹²

Even when we take into consideration that Israel’s occupation is illegal *per se*, the IHL framework has only been applied to Palestinians in the oPt since 1967, excluding Palestinians in the 1948 territory (Palestinian citizens of Israel), as well as Palestinian refugees and exiles in the diaspora, from the collective right to self-determination of the Palestinian people, and contributing to their legal, political, and geographic fragmentation as a tool of apartheid.¹³ Moreover, the “conflict” narrative suggests confrontation between two parties over opposing interests, neglecting the history and the fundamental root causes that shape the identity and struggle of the Palestinian people against the Zionist settler colonial project. Such paradigm also fails to reflect that power and responsibility are asymmetrical between the Israeli colonisers and the indigenous Palestinian people, who, before their land’s conquest by force had no reason to fight, and whose resistance is inevitable.¹⁴ Further, the “conflict” narrative bounds responsive strategies in the outcomes of settler colonialism, rather than targeting the root causes and the institutionalised structure of oppression, dispossession and transfer itself.¹⁵

As such, the first step to genuinely address Israel’s ongoing crimes is by recognizing the root causes as settler colonialism and its apartheid and population transfer regimes, rather than their symptoms in the form of isolated human rights violations, as well as centralising the unity of the Palestinian people and struggle for self-determination and decolonisation. A recognition of Israeli apartheid and settler colonialism does not preclude the applicability of the occupation framework, as reaffirmed by the 2009 study of the Human Sciences Research Council of South Africa,¹⁶ and the 2007 report by the former UN Special Rapporteur on the oPt, Professor John Dugard.¹⁷

Israeli settler colonialism and apartheid can be understood by examining the ongoing denial of millions of Palestinian refugees their right of return to their homes, lands, and properties, the

¹² UNGA, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,’ (23 October 2017) UN Doc A/72/43106.

¹³ UN Economic and Social Commission for Western Asia (ESCWA), ‘Israeli Practices towards the Palestinian People and the Question of Apartheid’, (2017) UN Doc E/ESCWA/ECRI/2017/1, 37, <https://oldwebsite.palestine-studies.org/sites/default/files/ESCWA%202017%20%28Richard%20Falk%29%2C%20Apartheid.pdf>.

¹⁴ Awad Abdelfattah, ‘A just future demands the decolonization of Palestine – and a democratic state for all’, (+972 Magazine, 10 December 2019) <https://www.972mag.com/decolonization-palestine-one-state/>.

¹⁵ Omar Salamanca, ‘Past is Present: Settler Colonialism in Palestine’ (2012) 2 *Settler Colonial Studies*, 1, 4.

¹⁶ Virginia Tilley (ed), *Occupation, Colonialism, Apartheid? A re-assessment of Israel’s Practices in the Occupied Palestinian Territories Under International Law* (Human Sciences Research Council, Cape Town, May 2009), http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf

¹⁷ HRC, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard’ (29 January 2007) UN Doc. A/HRC/4/17, 3.

strategic and systematic fragmentation of the Palestinian people as a whole, the ongoing forcible transfer of the Palestinian people in colonised Palestine including the oPt,¹⁸ expanding land dispossession and colonisation, and the violent mass suppression of any unified Palestinian resistance, denying the Palestinian people the exercise of their inalienable right to self-determination. As outlined by Fiona Bateman and Lionel Pilkington: “It is misleading to refer to settler colonialism in the past tense... [its] effects are permanent, and the process is still current.”¹⁹

Adopting the settler colonialism and apartheid framework allows for consideration of the plight of the Palestinian people in its entirety and *in integrum*. It opens the door for holding the Israeli settler colonial state responsible and assigning individual criminal responsibility to the perpetrators, both legal and natural persons.²⁰ This shifts the discourse from a focus on so-called political solutions to a struggle for self-determination of the legally recognised indigenous people, aimed at dismantling Israel’s regime of settler colonialism, apartheid, and occupation. This approach also connects the Palestinian struggle with worldwide struggles of indigenous peoples against settler colonialism and structural and institutionalised racism.

As early as the 1960s, Palestinian scholar Fayeze Sayegh, explained that racism was “inherent in the very ideology of Zionism and in the basic motivation for Zionist colonisation and statehood.”²¹ Sayegh went on to explain that Zionist colonisation produced “racial self-segregation, racial exclusiveness, and racial supremacy.”²² Today, there is mounting recognition by UN member states, treaty bodies,²³ UN human rights experts,²⁴ and global civil society that the situation in Palestine is one of apartheid.²⁵

Palestinians and others have emphasised also that the settler-colonialism, population transfer and

¹⁸ This includes plans by Israel to force the transfer of 36,000 Palestinian Bedouin from the Naqab, in southern Israel. See, Adalah, ‘Israel announces massive forced transfer of Bedouin citizens in Negev’ (30 January 2019), <https://www.adalah.org/en/content/view/9677>

¹⁹ Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler Colonialism: Politics, Identity and Culture* (Palgrave Macmillan, 2011) 2.

²⁰ International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entry into force 18 July 1976) 1015 UNTS 243 (Apartheid Convention); Article 7, Rome Statute of the International Criminal Court, U.N. Doc. 2187 U.N.T.S. 90, 17 July 1998, (Rome Statute).

²¹ Fayeze Sayegh, ‘Zionist Colonialism in Palestine (1965)’ (2012) 2 *Settler Colonial Studies*, 206, 214.

²² Fayeze Sayegh, ‘Zionist Colonialism in Palestine (1965)’ (2012) 2 *Settler Colonial Studies*, 206, 214.

²³ See: CERD, ‘Concluding observations of the Committee on the Elimination of Racial Discrimination on the fourteenth to sixteenth periodic reports of Israel’, (3 April 2012), UN Doc. CERD/C/ISR/CO/14-16, para. 24.

²⁴ See: OHCHR, ‘Israel’s 55-year occupation of Palestinian Territory is apartheid – UN human rights expert’ (25 March 2022) <https://www.ohchr.org/en/press-releases/2022/03/israels-55-year-occupation-palestinian-territory-apartheid-un-human-rights>; OHCHR, ‘Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability’, (16 June 2020) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960&LangID=E>.

²⁵ See: Human Rights Watch, ‘A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution’ (2021); Amnesty International, ‘Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime Against Humanity’ (2022).

apartheid frameworks need to be understood together.²⁶ This enables us to understand that the indigenous Palestinian people and Jewish settlers have come to be racialised under Zionist ideology and corresponding Israeli law, and the segregation and fragmentation of the Palestinian people have been executed as part of a broader plan: that of settler colonisation of the entirety of historic Palestine, including ongoing colonisation of the oPt.²⁷ Soheir Asaad and Rania Muhareb writing on the importance of framing apartheid within the broader context of settler colonialism observed that:

“During the Unity Intifada in May 2021, we reclaimed our political will and agency in the streets of Palestine. We eloquently spoke of our lived reality and the forces that shape it. This is the voice that must be centred and emphasized—the voice of Palestinian organizers on the ground. What Palestinians want is not “reforms” to our living conditions under the reign of Zionism, but the dismantlement of its very foundations. We do not want “liberal equality”—we want decolonisation, liberation, justice, and dignity.”²⁸

4. The Zionist Settler-colonial Project

Understanding Israel’s settler colonialism requires delving into the history of the Zionist settler colonial movement and understanding the Israeli settler state as a product of this movement.²⁹ This is demonstrated in Israel’s adoption of Zionist settler colonial ideology upon its establishment in 1948 and ever since, which continues to systematically drive Israeli laws and policies to achieve an exclusive Jewish settler state through the elimination of the indigenous Palestinian people, including in the oPt.³⁰

By the beginnings of World War I, the Palestinian people had been under the Ottoman Empire rule for four centuries, and were clearly articulating their desire for self-determination, amid global nation/state-building endeavours.³¹ Following World War I and the break-up of the Ottoman Empire, the Covenant of the League of Nations sought to establish a system whereby colonial mandatories provided “tutelage” to peoples in territories formerly governed under the empire.³²

²⁶ Birzeit University Institute of Law, 'Advocating for Palestinian Rights in Conformity with International Law Guidelines: An outcome document of the conference - Law and Politics: Options and Strategies in International Law for the Palestinian People' (May 2013).

²⁷ State of Palestine, 'It is Apartheid' (2021) 9, <https://www.nad.ps/sites/default/files/20201230.pdf>

²⁸ Soheir Asaad and Rania Muhareb, 'Dismantle What? Amnesty's Conflicted Messaging on Israeli Apartheid' (Institute for Palestine Studies, 15 February 2022) <https://www.palestine-studies.org/en/node/1652565>

²⁹ Tariq Dana, and Ali Jarbawi, 'A Century of Settler Colonialism in Palestine: Zionism's Entangled Project' (December 2017), xxiv *Brown Journal of World Affairs*, 1, 2.

³⁰ *Ibid.*

³¹ By 1920, the Palestinian people articulated their desire to self-determination as a separate political community from Greater Syria through the Palestine Arab Congress and in 1936 they established the Arab Higher Committee of Palestine, as a representative of various Palestinian political parties. Noura Erakat, *Justice for Some: Law and The Question of Palestine* (Stanford University Press, 2019) 24-31.

³² Article 22, Covenant of the League of Nations (adopted 28 April 1919, entered into force 10 January 1920) ('Covenant of the League of Nations').

The League placed Palestine under British mandate, among the awards to Powers that emerged victorious from the recent war. The League of Nation's mandate system operated a hierarchy of three mandate classes. Palestine was designated as a 'Class A' mandate, which provisionally recognised its independence as a unitary state within the designated self-determination unit.³³ As such, this was a recognition of the right of the Palestinian people to full self-determination. The three other Class A mandate territories (Syria, Lebanon and Iraq), all came to full independence post mandate.

In Europe, by the end of the 19th century, amid growing pressure of total assimilation or persecution of Jewish persons and dominant ideologies of race-based pseudo-science and nationalism, the Zionist Movement emerged. Instead of challenging the unjust persecution of Jews within their respective European states, the Zionist Movement called for the creation of a new ahistorical nation-state, as the "only" solution to escape European anti-Semitism.³⁴ To realize the objective of creating a Zionist nation-state, the Zionist Movement adopted the combined ideologies of racialist self-identification of persons of Jewish faith and settler colonialism, which involves not only the exploitation of indigenous people but, primarily, their elimination and erasure and the annexation of their lands to the benefit of the newly constructed colonising racial group.³⁵ The elimination of the native does not necessarily pertain to only physical elimination, but includes structural elimination, involving ongoing efforts of displacement, and denial of sovereignty.³⁶

As early as 1882, the Zionist Movement dispatched the first wave of Jewish settlers to Palestine.³⁷ The Zionist Movement was officially inaugurated in 1897, at the First Zionist Congress, held at Basel, with the clear objective "to create for the Jewish people a home in Palestine secured by public law."³⁸ To realize the objective of creating a Jewish state, the Zionist Movement needed a defined population, a territory, and institutions of government,³⁹ none of which existed at the time. In order to fulfil all these prerequisites of a state, Zionist leaders called for a program of organisation (a proto-state apparatus to perform colonisation), "diplomatic efforts to produce political conditions that would permit, facilitate, and protect large-scale colonisation"⁴⁰ and

³³ Article 22, Covenant of the League of Nations; Victor Kattan, *From Coexistence to Conquest* (Pluto Press, 2009) 121.

³⁴ Noura Erakat, *Justice for Some: Law and The Question of Palestine* (Stanford University Press, 2019) 27-28; Joseph Massad, 'Zionism, anti-Semitism and colonialism' (AlJazeera, 24 December 2012) <https://www.aljazeera.com/opinions/2012/12/24/zionism-anti-semitism-and-colonialism/>.

³⁵ Rachel Busbridge, 'Israel-Palestine and the Settler Colonial 'Turn': From Interpretation to Decolonization' (2017) 35 *Theory, Culture & Society* 91, 92; Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)' (2012) 2 *Settler Colonial Studies*, 206, 207.

³⁶ Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology* (Cassell, 1999) 1.

³⁷ Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)' (2012) 2 *Settler Colonial Studies*, 206, 208.

³⁸ Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)' (2012) 2 *Settler Colonial Studies*, 206, 208, citing the First Zionist Congress of 1897 at Basel, which explicitly set out to achieve the public status for the Zionist Organization and its constituents.

³⁹ The requisite criteria of a state, as later enshrined in the Montevideo Convention on the Rights and Duties of States (signed 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, article 1.

⁴⁰ Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)' (2012) 2 *Settler Colonial Studies*, 206, 210.

seeking recognition in public international law.⁴¹

The Zionist leadership first established proto-state institutions. These so-called “national” institutions evolved predominantly in the forms of the World Zionist Organization (WZO) in 1897, the Jewish National Fund (JNF) in 1901, and the Jewish Agency (JA), sharing the same structure and directors as the WZO, in 1921. Each was chartered exclusively to benefit persons of “Jewish race or descent.”⁴² The settler-colonial State of Israel, its laws, and organs,⁴³ formally defer to these institutions of material discrimination in all matters of legislation and policy affecting land use, physical planning, environment, development, labour, commerce, agriculture, access to and control over natural resources, and civil matters.⁴⁴

Other similarly chartered institutions include the Histadrut trade-union conglomerate (1920), managing (Jewish) labour resources,⁴⁵ and Mekorot, formed in 1937 by Histadrut, JNF and JA,⁴⁶ to govern water resources with the same discriminatory purpose and effect. Histadrut, in turn, also founded the Haganah, an armed Zionist militia, in 1920, later to become the Israeli armed forces, and Mapai, the anti-socialist Israeli Labour Party, in 1930.⁴⁷

Other than the establishment of proto-state institutions, the founders of the Zionist Movement colluded with imperial powers.⁴⁸ In fact, as Palestinian scholar Fayez Sayegh put it: “Whereas unilateral Zionist colonisation failed, in the thirty years preceding the First World War, to make much headway, the alliance of Zionist colonialism and British imperialism succeeded, during the

⁴¹ *Ibid*; William Thomas Mallison Jr, ‘The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/Jewish Agency: A Study in International and United States Law’ (1968) 9 William and Mary Law Review 556, 558–629, esp. 566–608.

⁴² In its Memorandum of Association, one of the JNF objectives is: Article 3(c): to ‘benefit, whether directly or indirectly, to those of Jewish race or descendency’. BADIL, ‘The Jewish National Fund (JNF): a Parastatal Institution Chartered to Dispossess and Discriminate’ in Karine Mac Allister (ed), 40/60 Call to Action (BADIL Al-Majdal Magazine Issue No. 34, Summer 2007), 51,

⁴³ International Law Commission (ILC), ‘Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries’ (2001), UN Doc. A/56/10, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

⁴⁴ Al-Haq and others, ‘Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports’ (10 November 2019) para 39.

⁴⁵ Formally known as the General Confederation of Hebrew Labor. From its inception, Histadrut excluded Arab labor and, thus, rejected worker solidarity in favor of national exclusivism. See Tony Greenstein, ‘Histadrut - Israel’s racist union’ (Electronic Intifada, 10 March 2009) <https://electronicintifada.net/content/histadrut-israels-racist-trade-union/8121>; William Frankel, *Israel Observed* (London: Thames & Hudson, 1980), 183–86.

⁴⁶ Encyclopedia.com, ‘Mekorot (Heb. "Sources") Water Company,’ <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/mekorot-heb-sources-water-company>; Jewish Virtual Library, ‘Tahal’ <https://www.jewishvirtuallibrary.org/tahal>.

⁴⁷ Zeev Sternhell, *Founding Myths of Israel: Nationalism, Socialism, and the Making of the Jewish State* (Princeton University Press, Princeton NJ, 1998), 180.

⁴⁸ Joseph Massad, ‘Zionism, anti-Semitism and colonialism’ (AlJazeera, 24 December 2012) <https://www.aljazeera.com/opinions/2012/12/24/zionism-anti-semitism-and-colonialism/>

thirty years following the First World War, in accomplishing the objectives of both parties.”⁴⁹

The efforts of the British-Zionist alliance culminated in a British government commitment to the establishment of “a Jewish national home in Palestine” articulated in the Balfour Declaration of 1917.⁵⁰ The Declaration unlawfully negated the rights of the indigenous Palestinian people to self-determination and regarded 90 percent of the Palestinian people in Palestine as a "minority" by referring to them as “non-Jewish communities” entitled only to civil and religious rights.⁵¹

In 1923, the British Mandate of Palestine came into force and the Balfour Declaration was incorporated in its preamble.⁵² Although the Palestinian people had the right to self-determination in Mandatory Palestine, and the Mandatory was required to administer the territory in the interest of the indigenous Palestinian people, these principles were contravened when Great Britain was given the Palestine Mandate. Article 6 of the Mandate, for example, affirmed that the Administration would “facilitate Jewish immigration under suitable conditions and shall encourage...close settlement by Jews on the land, including State lands and waste lands not required for public purposes.”⁵³ Britain, as an Occupying Power and later as a mandatory Power, never enjoyed full sovereign rights over Palestine, which would have permitted it to facilitate colonisation in it.⁵⁴ In fact, by 1923 Palestine was recognised as an independent state, as a successor to the Ottoman Empire as of the Treaty of Lausanne.⁵⁵

The Palestinian people argued that the incorporation of the Balfour Declaration was illegal,⁵⁶ and that Britain was in breach of Article 22 of the League of Nations Covenant, which provides for the provisional recognition of their independence, and their right to self-determination.⁵⁷ They also argued that Article 20 of the League of Nations Covenant required the mandatory Power to repeal any obligations and to not enter any engagements that are inconsistent with its obligations under the Covenant.⁵⁸ These arguments were later confirmed by the International Court of Justice (ICJ) in 1970, when it concluded that South Africa’s mandate of Namibia was illegal because it breached

⁴⁹ Fayeze Sayegh, ‘Zionist Colonialism in Palestine (1965)’ (2012) 2 *Settler Colonial Studies*, 206, 212.

⁵⁰ Britannica, ‘Balfour Declaration: United Kingdom [1917]’, <https://www.britannica.com/event/Balfour-Declaration>.

⁵¹ Noura Erakat, *Justice for Some* (Stanford University Press, 2019), 29.

⁵² The Palestine Mandate, (24 July 1922), http://avalon.law.yale.edu/20th_century/palmanda.asp.

⁵³ Article 6, The Palestine Mandate, (24 July 1922), http://avalon.law.yale.edu/20th_century/palmanda.asp.

⁵⁴ Palestine was placed under British occupation from 1917 till 1923, during which Britain did not enjoy full sovereign rights over Palestine under international humanitarian law. From 1923, Britain, as a mandatory power, was obligated to respect the right of self-determination of the Palestinian people. See: Victor Kattan, *From Coexistence to Conquest* (Pluto Press, 2009) 81-83. John Quigley, ‘Palestine’s Declaration of Independence: Self-determination and the Right of the Palestinians to Statehood’ (1989) 7 *Boston University International Law Journal* 5; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding UNSC Resolution 276 [1970] (Advisory Opinion) ICJ. Rep 16 [45] - [52].

⁵⁵ International Criminal Court, ‘Submissions Pursuant to Rule 103 (John Quigley)’ (3 March 2020), No: ICC-01/18, paras 2-10.

⁵⁶ Noura Erakat, *Justice for Some* (Stanford University Press, 2019) 24-31.

⁵⁷ UN Special Committee on Palestine (UNSCOP), ‘Report to the General Assembly’ (3 September 1947), UN Doc A/364, para 160.

⁵⁸ Noura Erakat, *Justice for Some* (Stanford University Press, 2019), 40.

its fundamental obligation to respect the principle of the well-being and development of people under mandatory rule, who are ultimately entitled to their right to self-determination.⁵⁹

Britain perverted the course of Palestinian self-determination and instead, unlawfully facilitated the country's colonisation.⁶⁰ Zionist settler colonialism flourished under the British Mandate of Palestine.⁶¹ The British mandatory power facilitated and protected massive Zionist immigration, transferred state lands to the Zionist Movement, and permitted the establishment of Zionist institutions and paramilitary groups.⁶²

Tensions between the indigenous Palestinian people and Jewish settlers over the latter's acquisitions of Palestinian land and property under the British Mandate culminated in the Great Revolt in 1936, which began as a six-month general strike, and was met with mass suppression of the Palestinian people under harsh British emergency regulations. These included tracking Palestinian movement, using compulsory identity cards; hindering movement by erecting security walls and imposing curfews and military occupation on entire villages; carrying out punitive measures such as arbitrary detention, house demolitions, deportation and exile, extrajudicial killing; life imprisonment for possession of firearms; and censoring the press.⁶³ In three years, British mandatory forces killed, wounded, detained, and/or exiled an estimated 10 percent of the Palestinian male adult population, including Palestinian leadership.⁶⁴

Because of Britain's involvement in World War II, and the pressure of the Great Revolt (1936–1939) (a Palestinian uprising against Britain's governance and the Zionist colonial project), Britain revisited its policies in a 1939 White Paper, which may be considered the official end of the British-Zionist alliance.⁶⁵ The White Paper acknowledged the mistake in facilitating Zionist immigration

⁵⁹ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 [1970] (Advisory Opinion) ICJ. Rep 16 [45] - [52]

⁶⁰ In describing the inconsistency between Article 22, the Balfour Declaration, and the Palestinian right to self-determination, Professor William Hocking noted 'There can be no provisional independence in a land subject to a protected immigration. The A-mandate considers the welfare of the residents; whereas the Declaration considers also the welfare of a nation of non-residents, making the Jewish people of the world as a whole virtual or potential citizens of the state to be.' UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, 'The Right of Self-Determination of the Palestinian People' (1979) UN Doc ST/SG/SER.F/3, <https://www.un.org/unispal/document/auto-insert-196558/>

⁶¹ Tariq Dana, and Ali Jarbawi, 'A Century of Settler Colonialism in Palestine: Zionism's Entangled Project' (December 2017), xxiv *Brown Journal of World Affairs*, 1, 5.

⁶² Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)' (2012) 2 *Settler Colonial Studies*, 206, 212.

⁶³ Noura Erakat, *Justice for Some* (Stanford University Press, 2019), 26; Laleh Khalili, 'The Location of Palestine in Global Counterinsurgencies' (2010) 42 *International Journal of Middle East Studies* 320-424.

⁶⁴ Rashid Khalidi, *The Iron Cage* (Oneworld Publications, 2007) 33–44; Sarah Graham-Brown, *Palestinians and their society 1880-1946* (Quartet Books, 1980).

⁶⁵ Palestinian Journey's Timeline, 'Great Arab Revolt, 1936-1939', <https://www.paljourneys.org/en/timeline/highlight/158/great-arab-revolt-1936-1939>; Tariq Dana, and Ali Jarbawi, 'A Century of Settler Colonialism in Palestine: Zionism's Entangled Project' (December 2017), xxiv *Brown Journal of World Affairs*, 1, 6; Joel Beinin and Lisa Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict: A Primer' (Middle East Research and Information Project, 2014) 4.

and land acquisition, refused partition, and promised Palestinian independence in ten years.⁶⁶ The policy paper fuelled more tension, as the Zionist Movement considered it a betrayal and began to organise a military wing to fight the British mandatory power and the indigenous Palestinian people.⁶⁷ Meanwhile, Britain referred the “Question of Palestine” to the UN, whereas the UN Special Committee on Palestine (UNSCOP) was entrusted to decide the future of Palestine.⁶⁸ The UNSCOP acknowledged that the right of the Palestinian people to self-determination and independence had been violated during the British mandate, “because of the intention to make possible the creation of the Jewish National Home.”⁶⁹ It is worth noting that by 1945, the principle of self-determination to non-self-governing nations had acquired a more-significant legal standing enshrined in the UN Charter itself.⁷⁰

In November 1947, despite the sacrosanct international law principle of *uti possidetis juris*,⁷¹ the UNGA recommended partitioning Palestine into an “Arab” and a “Jewish” state with economic union. The partition of Palestine, as it stood at that time, violated sacrosanct principles of international law by partitioning a self-determination unit in which Palestinian independence had already been recognised.⁷² While the Jewish population owned less than seven percent of the land in Mandate Palestine,⁷³ the partition plan gave 56 percent of the territory to the future State of Israel. According to Walid Khalidi,

“[t]he area designated for the Jewish state was 15 million dunams⁷⁴... the UN was effectively saying... go seize those additional 13.3 million dunams that you don’t own from those who do.”⁷⁵

He added:

“what the UNGA partition resolution basically did was to give... an alibi to establish the new Jewish state by force of arms under the guise of conforming to the international will.”⁷⁶

This is notwithstanding that the UNGA does not have the power to enforce its recommendations,

⁶⁶ Joel Beinin and Lisa Hajjar, ‘Palestine, Israel and the Arab-Israeli Conflict: A Primer’ (Middle East Research and Information Project, 2014) 4.

⁶⁷ John Quigley, *The Case for Palestine: An International Law Perspective* (Duke University Press, 2005) 27.

⁶⁸ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld, 2007) 31.

⁶⁹ UNSCOP, ‘Report to the General Assembly,’ (3 September 1947) UN Doc A/364, para 176.

⁷⁰ Article 1(2), Charter of the UN (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI. (UN Charter).

⁷¹ Marcelo G. Kohen, ‘The Contribution of Latin America to the Progressive Development of International Law on Territorial Matters,’ (2009) 137 *Rélations Internationales* 13.

⁷² Victor Kattan, ‘Partition’ (Max Planck Encyclopedias of International Law, 2018) paras 39–50.

⁷³ Walid Khalidi, ‘Revisiting the UNGA Partition Resolution’ (1997) 27 *Journal of Palestine Studies*, 13.

⁷⁴ The dunum is an Ottoman unit of land measure, equalling 1,000 square meters.

⁷⁵ Walid Khalidi, ‘The Hebrew *Reconquista* of Palestine: From the 1947 United Nations Partition Resolution to the First Zionist Congress of 1897’ (2009) 39 *Journal of Palestine Studies*.

⁷⁶ *Ibid.*

specifically over a persistent sovereign objector to its proposal.⁷⁷ In disregard of the wishes of the indigenous Palestinian people, the UN partition plan was adopted as a resolution,⁷⁸ and it normalised the erasure of the Palestinian people and the continuation of a settler-colonial project in a so-called *sui generis* paradigm.⁷⁹

One pillar of settler colonialism is the transfer and replacement of the indigenous people.⁸⁰ Between 1937 and 1948, the Zionist movement discussed and later endorsed the transfer of the indigenous Palestinian people as a logical continuation of the movement's establishment. Their main debate revolved around whether transfer should be compulsory or not.⁸¹ David Ben-Gurion, in his capacity as chairman of the Jewish Agency from 1935 and later as the first Israeli Prime Minister, was a committed advocate of forced transfer. He believed that Zionists "must expel Arabs and take their places...and, if we [Zionists] have to use force-not to dispossess the Arabs of the Negev and Transjordan, but to guarantee our own right to settle in those places-then we have force at our disposal...The compulsory transfer of the [Palestinian] Arabs from the valleys of the proposed Jewish state could give us something which we never had ... This is more than a state, government and sovereignty, this is national consolidation in a free homeland."⁸²

Before the establishment of the settler colonial State of Israel, the Zionist movement had developed Plan Dalet, which provided clear operational orders and called for the systematic and total expulsion of the Palestinian people from the areas allocated to the Jewish state in the UN partition plan.⁸³ It is worth noting that the serious crime of population transfer had already been prohibited at this stage as a violation of customary international law.⁸⁴ At the start of the *Nakba*, under Plan Dalet,⁸⁵ Zionist militias destroyed 531 Palestinian villages and 11 urban neighbourhoods and expelled their indigenous population, which rendered 80 percent of the Palestinian people refugees

⁷⁷ The Palestinian people rejected the partition in whole, while the Jewish Agency accepted partition but was not satisfied with the proposed area by Resolution 181. John Quigley, *The Case for Palestine: An International Law Perspective* (Duke University Press, 2005) 37-38. Only the Security Council can enforce decisions and recommendations of the UNGA. Victor Kattan, *From Coexistence to Conquest* (Pluto Press, 2009) 153-155.

⁷⁸ UNGA, 'Resolution adopted on the Report of the Ad Hoc Committee on The Palestinian Question, resolution 181 (III)', (29 November 1947).

⁷⁹ Noura Erakat, *Justice for Some* (Stanford University Press 2019) 15-16, 38.

⁸⁰ Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology* (Cassell, 1999) 1.

⁸¹ IMEU, 'What Leading Israelis Have Said About the Nakba' (09 May 2007) <https://imeu.org/article/4259>

⁸² See Nur Masalha, '60 Years after the Nakba: Historical Truth, Collective Memory and Ethical Obligations' (2009) 3 *Kyoto Bulletin of Islamic Area Studies* 37, 49-54.

⁸³ John Reynolds, 'Anti-Colonial Legalities: Paradigms, Tactics & Strategy' (2015) 18 *Palestine Yearbook of International Law* 8, 15.

⁸⁴ The crime of deportation of civilians had been listed as a war crime and a crime against humanity in the Charter of the International Military Tribunal (IMT). Article 6 (b-c), Charter of the IMT - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement") (8 August 1945). The Nuremberg Trials affirmed that deportations violated the Hague Regulations and the laws and customs of war. The IMT at Nuremberg further recognised the Hague Regulations as constitutive of customary international law. IMT, 'Trial of the Major War Criminals before the International Military Tribunal' (1947), 51, 254.

⁸⁵ Walid Khalidi, 'Plan Dalet: Master Plan for the Conquest of Palestine' (Autumn 1988), 18 *Journal of Palestine Studies* 4.

and internally displaced within their own country.⁸⁶ Plan Dalet also grounded Israeli military doctrine of targeting homes, shelters and shelter seekers, which remains operative to the present.⁸⁷

In advance of the proclamation of the State of Israel, Zionist militias conducted massacres in strategically located villages across Palestine. These were carried out as “warnings” to nearby towns of what to expect in the case of resistance to the expulsion campaign to follow.⁸⁸ Zionist militias killed approximately 15,000 Palestinians in over 70 massacres throughout the *Nakba*, which continued until 1949.⁸⁹ These included the massacre of over 100 Palestinians in Deir Yassin in Jerusalem on 9 April 1948 in an effort to “to break Arab morale” and “create panic throughout Palestine”.⁹⁰ On 15 May 1948, Zionist militias massacred 200 Palestinians in al-Tantura, in the Haifa district.⁹¹ On 29 October 1948, Israeli soldiers entered the village of al-Dawayma, in the Hebron district, killing up to 300 Palestinians.⁹²

The associated Zionist forces’ campaign of village and town destruction resulted to some 154–156,000 demolished Palestinian homes,⁹³ among an untold number of other structures. Israeli forces imposed a closed military zone over those localities to prevent refugee return and extended martial law over the surviving Palestinian communities for the next 20 years. The notorious Jewish National Fund (JNF) subsequently reforested most of those former village sites to cover the ethnic cleansing and population-transfer crimes.⁹⁴

On 14 May 1948, David Ben-Gurion proclaimed the establishment of the State of Israel on 77

⁸⁶ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld, 2007), xiii.

⁸⁷ Housing and Land Rights Network – Habitat International Coalition, ‘Targeting Homes, Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice: submission to the UN Fact-finding Mission on the Gaza Conflict’ (2009).

⁸⁸ Walid Khalidi, *Before Their Diaspora* (Institute for Palestine Studies, 1984), 316; Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947–1949* (Cambridge University Press, 2008), 46.

⁸⁹ Palestinian Central Bureau of Statistics (PCBS), ‘Dr. Ola Awad, reviews the conditions of the Palestinian people via statistical figures and findings, on the 72nd Annual Commemoration of the Palestinian Nakba’ (13 May 2020), <https://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3734>.

⁹⁰ BADIL Al-Majdal Magazine, Massacres and the Nakba’ (2000), <https://www.badil.org/publications/al-majdal/issues/23.html>.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ For housing units destroyed in the Nakba, this estimate is based on the number of expelled refugees divided by 5. Using Janet Abu Lughod’s reliable figures (770–780K expelled), the resulting estimate would be 154–156K housing units, among other buildings. An absolute minimum round number would be 150,000. The Israeli Committee against Home Demolitions (ICAHN) cites 52,000 units destroyed after 1967, in “Categories of Home Demolitions,” 14 March 2020, <https://icahd.org/2020/03/14/categories-of-home-demolitions/>. However, this estimate is approximately one-third of the total. Note that it took the Israelis 15 years to demolish them all between the 1948 to 1967 wars.

⁹⁴ Irus Braverman, ‘Planting the Promised Landscape: Zionism, Nature, and Resistance in Israel/Palestine’ (2009), 49 *Natural Resources Journal*, 317–65; Bill Skidmore, ‘Canadian charity hides history, destruction of Palestinian villages,’ (Ricochet, 6 March 2019), <https://ricochet.media/en/2531/canadian-charity-hides-history-destruction-of-palestinian-villages?fbclid=IwAR1mj9dxN7uqRtIvqX5kRXqTELD9IX7A6me6GHU1QKb7U1CEgW2eqKNK7eU;>

percent of the land of Mandate Palestine, where only 150,000 indigenous Palestinians remained, 25 percent of whom were internally displaced.⁹⁵ While the crime of deportation of civilians was prosecuted at the Nuremberg trials,⁹⁶ Israel was rewarded as a “peace-loving” new member of the UN, disregarding its establishment by force,⁹⁷ and the atrocities it committed in Palestine including the serious crime of population transfer. Further, Israel’s establishment was premised on a breach of the UN’s own condition for its new membership, i.e., the grant of the right of return of the Palestinian people who it had illegally displaced and dispossessed.⁹⁸ As such, the establishment of the State of Israel was the culmination of the Zionist settler colonial movement but not its end. The Israeli settler colonial state adopted the Zionist ideology of transferring and replacing the indigenous Palestinian people, and established an institutionalized regime of Jewish racial domination and oppression over the Palestinian people in order to achieve an exclusive Jewish majority state.⁹⁹

5. Constructing Israel’s Apartheid Regime

Apartheid is defined in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention), and the Rome Statute, supplementing the brief reference found in the International Convention on the Elimination of Racial Discrimination (ICERD),¹⁰⁰ which enshrined in Article 3 that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”¹⁰¹ The Apartheid Convention provides the most detailed definition of the crime of apartheid,¹⁰² to include “inhumane 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.”¹⁰³ The Rome Statute complements the definition contained in the Apartheid Convention, prohibiting it as a crime against humanity, and defining it as “inhumane acts... committed in the context of an institutionalized regime of

Environmental Justice Atlas ‘Greenwashing by the Jewish National Fund, Israel’

<https://ejatlas.org/conflict/greenwashing-by-the-jewish-national-fund-and-trees-as-a-weapon-of-dispossession-israel>;

Jesse Benjamin, and others (eds), *Jewish National Fund – Colonizing Palestine Since 1901*, (International Jewish Anti-Zionist Network, 2011).

⁹⁵ PCBS, ‘Dr. Ola Awad, reviews the conditions of the Palestinian people via statistical figures and findings, on the 72nd Annual Commemoration of the Palestinian Nakba’ (13 May 2020),

<https://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3734>.; Al-Haq, ‘The Nakba at 72: A Legacy of Settler-Colonialism and Apartheid over the Palestinian People’ (5 May 2020)

http://www.alhaq.org/advocacy/16869.html#_edn2.

⁹⁶ John Reynolds, ‘Anti-Colonial Legalities: Paradigms, Tactics & Strategy’ (2015) 18 *Palestine Yearbook of International Law* 8, 15.

⁹⁷ In contravention of the prohibition on the acquisition of territory by force. Article 2(4), UN Charter.

⁹⁸ UNGA, Resolution 273 (III) (11 May 1949) UN Doc A/RES/273 (III).

⁹⁹ Fayeze Sayegh, ‘Zionist Colonialism in Palestine (1965)’ (2012) 2 *Settler Colonial Studies*, 206, 218-219.

¹⁰⁰ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195. (ICERD)

¹⁰¹ Article 3, ICERD.

¹⁰² UN ESCWA, “Israeli Practices towards the Palestinian People and the Question of Apartheid”, (2017) 12.

¹⁰³ Article II, Apartheid Convention.

systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”¹⁰⁴

In a joint submission in 2019 to the UN Committee on the Elimination of Racial Discrimination (CERD),¹⁰⁵ Al-Haq and a group of Palestinian and regional human rights organisations analysed the creation and maintenance of Israel’s institutionalised regime of racial domination and oppression over the Palestinian people as a whole, amounting to the crime of apartheid under Article 3 of ICERD, Article 7(1)(j) of the 1988 Rome Statute, and the Apartheid Convention. This led to the important concluding observations in January 2020 of the Committee in paragraph 23:

“Recalling its previous concluding observations (CERD/C/ISR/CO/14-16, para. 11), the Committee draws the State party’s attention to its general recommendation 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urges the State party to give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory.”¹⁰⁶

As such, the CERD called on Israel to eradicate its discriminatory racial discrimination and apartheid policies and practices against Palestinians on both sides of the Green Line, i.e., across colonised Palestine.

a. Palestinian Displacement, Dispossession, and Domination through Discriminatory Israeli Laws and Policies

In order to legalize and legitimize crimes committed before the *Nakba*, and ensure the continuation of displacement and dispossession, Zionist leadership designed a series of laws particularly in the domains of land and nationality, clearly dividing between the indigenous Palestinian people and Jewish Israelis, laying the foundation for its apartheid regime. Such domains particularly pour into the overarching settler colonial project to erase Palestinian presence, dominate their land, and replace them with a settler society.

3.1.1. Nationality, Citizenship and Residency

In 1948, around 80 percent of the Palestinian people became refugees, dispossessed of their land and property, fleeing to the West Bank, Gaza, and neighbouring countries. At the time of the *Nakba*, Israel was prohibited from expelling and denationalising Palestinians by international

¹⁰⁴ Article 7(2)(h), Rome Statute.

¹⁰⁵ Al-Haq and others, ‘Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports’ (10 November 2019).

¹⁰⁶ CERD, ‘Concluding observations on the combined seventeenth to nineteenth reports of Israel, (27 January 2020), UN Doc. CERD/C/ISR/CO/17-19, para. 23.

law,¹⁰⁷ and continues to hold a legal obligation to fulfil their right of return to their homes and properties.¹⁰⁸ Denying Palestinian refugees and displaced persons their right of return to their homes is a continuing violation of forced transfer, since the state remains not in conformity with its obligation for the entire period that the wrongful act continues.¹⁰⁹

Instead of fulfilling its obligation, Israel adopted policies and laws pertaining to nationality, residency, and immigration to systematically prevent Palestinian refugee return while establishing “Jewish-national”¹¹⁰ domination over the indigenous Palestinian people, and forcing most of the Palestinian people into a situation of prolonged refugeehood, displacement, and statelessness. As per its settler colonial logic, the return of millions of refugees and internally displaced persons is presented as a threat to the “the existence of Israel as a Jewish state, obliterating its basic identity as the homeland of the Jewish people and a refuge for persecuted Jews worldwide.”¹¹¹

In 1950, Palestinians from the village of Iqrit in al-Jalil (the Galilee), who were forcibly displaced from their village during the *Nakba*, which was then declared as a closed area and transferred to Jewish settlers, filed a case at the Israeli Supreme Court to demand their right of return.¹¹² In 1951, the Court ruled in favour of the villagers and ordered the Israeli Minister of “Defence” to give effect to the right of return of the Iqrit villagers to their homes. Contravening the order, the Israeli military demolished the whole village.¹¹³ Commenting on the story of Iqrit, the then Israeli Prime Minister Ben Gurion stated: “we don’t want this to create a precedent for the repatriation of refugees.”¹¹⁴

¹⁰⁷ The 1945 London Charter of the International Military Tribunal at Nuremberg prohibited as war crimes or violations of the laws and customs of war the “deportation to slave labour or for any other purpose of civilian population of or in occupied territory” and “wanton destruction of cities, towns, or villages, or devastation not justified by military necessity,” while it prohibited as crimes against humanity “deportation, and other inhumane acts committed against any civilian population.” Accordingly, the transfer of the Palestinian people was illegal under international law at the time of the *Nakba*, and Israel, following the establishment of the state, was under an obligation to repatriate and compensate those displaced under the laws of war, which had become customary by 1945.

¹⁰⁸ Francesca P Albanese and Lex Takkenberg, *Palestinian Refugees in International Law* (Oxford University Press 2020) 358; Salman Abu-Sitta, ‘The Right of Return: Sacred, Legal and Possible’ in Naseer Aruri (ed) *Palestinian Refugees: The Right of Return* (Pluto Press, London, 2001), 195.

¹⁰⁹ Article 14, ILC, ‘Draft articles on Responsibility of States for Internationally Wrongful Acts’ (2001) UN Doc A/56/1; Leila Hilal, ‘Transitional Justice Responses to Palestinian Dispossession: Focus on Restitution’ (International Center for Transitional Justice and the Brookings-LSE Project on Internal Displacement, 2012) 9; John Reynolds, ‘Where Villages Stood Israel’s Continuing Violations of International Law in Occupied Latroun, 1967-2007’ (Al-Haq, 2007) 58-60.

¹¹⁰ UN ESCWA, ‘Israeli Practices towards the Palestinian People and the Question of Apartheid’ (2017) 33.

¹¹¹ Israel Ministry of Foreign Affairs, ‘Israel, the Conflict and Peace: Answers to frequently asked questions’ (2009) https://mfa.gov.il/MFA/ForeignPolicy/FAQ/Pages/FAQ_Peace_process_with_Palestinians_Dec_2009.aspx#Refuges1.

¹¹² Noura Erakat, *Justice for Some* (Stanford University Press 2019) 6.

¹¹³ *Ibid.*

¹¹⁴ Peter Grose, ‘Villagers Lose Appeal in Israel’ (New York Times, 24 July 1972), <https://www.nytimes.com/1972/07/24/archives/villagers-lose-appeal-in-israel-arabs-ejected-from-homes-in-48-may.html>. Also quoted in: John Quigley, *Palestine and Israel: A Challenge to Justice* (Duke University Press 1990) 106.

Israel's persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their right of return amounts to a core element in the establishment and maintenance of its apartheid regime. Article II(c) of the Apartheid Convention defines the crime of apartheid as involving "inhuman acts" comprising "any legislative measures ... calculated to prevent a racial group... from participation in the political, social, economic and cultural life of the country ... by denying [them] ... the right to leave and to return to their country."¹¹⁵ This is also a core method used by Israel to prevent the Palestinian people from exercising their collective right to self-determination and from collectively challenging Israel's apartheid regime.

Discriminatory laws that have been designed to deny Palestinian refugees their right to return include the 1950 Law of Return, which grants every Jewish person the exclusive right to enter Israel as a Jewish immigrant.¹¹⁶ The Law also establishes a "nationality" right as a superior status distinct from Israeli citizenship. Within this constructed race-based classification, as promoted by the WZO/JA and JNF, it "assigns the right for "Jewish nationality" to every Jewish individual anywhere in the world."¹¹⁷ By contrast, Israel denies Palestinian refugees their rights of return, restitution, rehabilitation, and compensation promised in UNGA resolution 194 of 1948.¹¹⁸

This is supplemented by the Citizenship Law of 1952,¹¹⁹ which is officially mistranslated in English as a "Nationality Law," confounds the actual distinction between the two distinct levels of civil status in Israeli law and policy. The 1952 Citizenship Law confers Israeli citizenship by customary means, i.e., birth, marriage, or residency. It also confers automatic citizenship to any Jew who enters Israel under the category of "return," under the Law of Return, and grants them the right to settle anywhere within Israel's jurisdiction or effective control, including the oPt. Israel's Citizenship Law grants "return" as the pathway to Israeli citizenship unique to Jews, defined as persons born to a Jewish mother or, in rare cases, having converted to Judaism. Like the Law of Return, the Law of Citizenship precludes Palestinians who were residing outside of Palestine between 1948 and 1952 (i.e., as so-called "absentees") from obtaining Israeli citizenship, denying the right of return to millions of Palestinian refugees and exiles in the oPt and

¹¹⁵ Article II(c), Apartheid Convention.

¹¹⁶ Law of Return of 1950, <https://www.adalah.org/en/law/view/537>.

¹¹⁷ BADIL, 'Forced Population Transfer: The Case of Palestine – Denial of Residency Working Paper No. 16' (2014), 10, <http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf>.

¹¹⁸ UNGA, Resolution 194 (III) (11 December 1948) UN Doc A/RES/194, para. 11. The General Assembly has recognized additional entitlements of resettlement, guarantees of non-repetition and satisfaction of the victims. *See* UNGA, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (21 March 2006) UN Doc. A/RES/60/147, <https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf>.

¹¹⁹ Citizenship Law, 5712/1952, http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf

elsewhere.¹²⁰

While Palestinians residing within the 1948 territory were granted Israeli citizenship after the military administration came to an end in 1966, because of the superior status of “Jewish nationality,” citizenship is not a basis of equal rights for all.¹²¹ As such, Palestinians in the 1948 territory receive inferior services, suffer from discriminatory and restrictive zoning laws and limited budget allocations, and face restrictions in access to jobs and professional opportunities.¹²²

In 2018, the Knesset adopted the Basic Law: Nation State of the Jewish People, which codifies the Jewish character of the settler colonial State of Israel and further elevates the privileged status of persons of Jewish faith or birth of a Jewish mother as “Jewish nationals,” whether or not they hold Israeli citizenship. This law “articulates the ethnic-religious identity of the state as exclusively Jewish”¹²³ and weakens the constitutional status of the indigenous Palestinian people. As a Basic Law, the Jewish Nation-State Law modifies Israel's constitutional framework to serve one “ethnic” group and explicitly provides that “[t]he exercise of the right to national self-determination in the State of Israel is unique to the Jewish people.” This further entrenches Israel’s regime of institutionalized racial domination and repression against the Palestinian people by denying them their inalienable right to self-determination, including sovereignty over natural wealth and resources. It further establishes “Jewish settlement as a national value,” giving constitutional force to the expansion of exclusively Jewish settler colonies in colonised Palestine. The Jewish Nation-State Law represents the most-overt legislative act enshrining Israel’s racial domination against the Palestinian people since 1948 and further exposes its apartheid regime.

In Jerusalem, Israel continues to annex the city in its entirety since 1948, in violation of the prohibition on the acquisition of territory through the threat or use of force and the right of the indigenous Palestinian people to self-determination and permanent sovereignty in their capital.¹²⁴ The Entry into Israel Law of 1952 imposes the precarious “permanent resident” status on Palestinians present in occupied East Jerusalem since 1967, effectively rendering Palestinians

¹²⁰ Virginia Tilley (ed), *Occupation, Colonialism, Apartheid? A re-assessment of Israel's Practices in the Occupied Palestinian Territories Under International Law* (Human Sciences Research Council, Cape Town, May 2009), 212–14.

¹²¹ Roselle Tekiner, ‘Race and the Issue of National Identity in Israel’ (February 1991), 23 *International Journal of Middle Eastern Studies*, 39–55.

¹²² Human Rights Watch, ‘Israel: Discriminatory Land Policies Hem in Palestinians’ (2020), <<https://www.hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians>>

¹²³ Adalah, ‘NGO Report to the UN Committee on the Elimination of Racial Discrimination in Advance of its List of Themes for the State of Israel’ (12 September 2019) 1, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_37257_E.docx.

¹²⁴ See Dalia Qumsieh, ‘Annexing A City: Israel’s Illegal Measures to Annex Jerusalem Since 1948’ (Al-Haq, 11 May 2020); Al-Haq, ‘Al-Haq Issues Briefing Paper on Palestinian Sovereignty over East and West Jerusalem’ (23 October 2018), <http://www.alhaq.org/advocacy/6145.html>.

foreign visitors in their own capital and the land of their birth.¹²⁵

Israel has used the policy of residency revocation based on expanding illegal, and vague criteria as the most common and direct tool to transfer protected Palestinians from occupied East Jerusalem,¹²⁶ with the goal of demographic manipulation in the city to replace them with Israeli-Jewish settlers and settlements, in violation of the status of the city under international law,¹²⁷ and the inalienable right of the Palestinian people to self-determination and permanent sovereignty. Since 1967, at least 14,500 Palestinians in East Jerusalem have had their residencies revoked by the Israeli occupying authorities.¹²⁸

Over the years, Israel has gradually expanded the criteria for the revocation of residency rights, including on punitive grounds.¹²⁹ On 7 March 2018, the Israeli Knesset codified this practice with the adoption of an amendment to the Entry into Israel Law (Temporary provision) 5763 – 2003, which gives the Minister of Interior the power to revoke the permanent residency status of Palestinian residents for “breach of allegiance to Israel.”¹³⁰

Other residency laws denying family unification for Palestinians, have been used to manipulate the demographics in Jerusalem and in the 1948 territory, undermining the right to family life of Palestinians, while further fragmenting the Palestinian people.¹³¹ Palestinians from the West Bank and Gaza Strip, as well as Palestinian exiles who are citizens of third states, face significant challenges in receiving family unification permits when they marry a Palestinian resident of Jerusalem or a Palestinian of the 1948 territory.¹³²

The Citizenship and Entry into Israel Law, first enacted in 2003 as a Temporary Order, prohibits the granting of residency or citizenship status to Palestinian spouses from the oPt who are married to Palestinians with Israeli citizenship or residency status, thereby denying them of their right to family unification, right to family life, and right to equality in marriage and choice of spouse. Over

¹²⁵ Entry into Israel Law, 5712/1952, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/40-Entry-into-Israel-Law-1952.pdf>.

¹²⁶ Al-Haq, ‘Residency Revocation: Israel’s Forcible Transfer of Palestinians from Jerusalem’ (03 July 2017) <https://www.alhaq.org/advocacy/6331.html>.

¹²⁷ UN, The Status of Jerusalem (1997), <https://www.un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-English-199708.pdf>; Henry Cattán, ‘The Status of Jerusalem under International Law and United Nations Resolutions’ (1980) 10 *Journal of Palestine Studies* 3; John Quigley, ‘The Legal Status of Jerusalem under International Law’ (1994) XXIV *The Turkish Yearbook*, 11–23.

¹²⁸ Al-Haq, ‘Punitive Residency Revocation’ (17 March 2018), <https://www.alhaq.org/advocacy/6257.html>.

¹²⁹ See Al-Haq, ‘Human Rights Organisations Send Urgent Appeal to UN Special Procedures on the Imminent Threat of Forcible Transfer of Salah Hammouri’ (05 October 2020), <https://www.alhaq.org/advocacy/17385.html>

¹³⁰ Al-Haq, ‘Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for ‘Breach of Allegiance’ (8 March 2018), <https://www.alhaq.org/advocacy/6262.html>.

¹³¹ CERD, ‘Concluding observations of the Committee on the Elimination of Racial Discrimination on the fourteenth to sixteenth periodic reports of Israel’ (3 April 2012) UN Doc. CERD/C/ISR/CO/14-16, para. 18.

¹³² Al-Haq, ‘Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians’ (13 February 2019), 6-7.

a third of family unification applications coming from Palestinian Jerusalem residents were denied between 2000 and 2013.¹³³ In 2019, the Israeli Ministry's Population and Immigration Authority began rejecting family unification requests based on "intolerable workload" rather than the merits of the request itself.¹³⁴ The Temporary Order was renewed on an annual basis until July 2021 when it was voted down by the Knesset as a result of political infighting between the ruling coalition, Likud, and Religious Zionism.¹³⁵

Despite the law's expiration, Israel's Interior Minister and the State Prosecutor's Office applied the discriminatory law to Palestinian applications,¹³⁶ pending the extension of the order or the adoption of an updated law. On 10 March 2022, the Israeli Knesset adopted the Citizenship and Entry into Israel Law, with the explicit provision stating its goal is to ensure a Jewish demographic majority.¹³⁷

In addition, Israel has also imposed severe restrictions to the registration of children born from a parent from Jerusalem and another from another region of the West Bank, in violation of a wide range of fundamental rights, including to being registered immediately after birth, education, and freedom of movement. According to a report by St. Yves from 2013, around 10,000 children were not registered with the Ministry of Interior.¹³⁸

Similarly, Israel continues to control the granting of residency status to Palestinians in the oPt. Immediately following the start of the Israeli occupation in 1967, Israel established a military administration to govern the oPt.¹³⁹ There, Israel extended its laws and practices through transposing military orders to give effect to institutionalized racial domination already adopted inside the 1948 territory. Such discriminatory policies and practices had similarly been evidenced in the Israeli military administration of the 1948 territory between 1948-1966, as well as the occupied Syrian Golan. Israel has extensively adopted legislation in the oPt to impose Israeli Jewish superiority and domination over Palestinians through land appropriation and discriminatory

¹³³ Al-Haq, 'Living Under Israeli Policies of Colonization in Jerusalem' (4 February 2017), <https://www.alhaq.org/advocacy/6359.html>; Official Israeli papers specifically relate to the "demographic balance" in Jerusalem. see: Jerusalem Municipality, 'Jerusalem Local Outline Plan 2000' (August 2004).

¹³⁴ Nir Hasson, 'Israel Seeks to Block All East Jerusalem Family Reunification Hearings Over 'Workload' (Haaretz, 1 May 2019), <https://www.haaretz.com/israel-news/.premium-israel-seeks-to-block-all-e-jerusalem-family-reunification-hearings-over-workload-1.7188984>.

¹³⁵ Michael Tov, 'In Blow to Bennett, Knesset Votes Down Extending Citizenship Law' (Haaretz, 5 July 2021), <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT-deal-on-citizenship-law-may-grant-israel-residency-to-hundreds-of-palestinians-1.9972128>.

¹³⁶ Aaron Boxerman, 'Months after Citizenship Law lapses, ban on Palestinian spouses still in place' (Times of Israel, 7 October 2021), <https://www.timesofisrael.com/months-after-citizenship-law-falls-ban-on-palestinian-spouses-still-in-place/>.

¹³⁷ Adalah, 'Adalah petitions Israeli Supreme Court against New Citizenship Law banning Palestinian Family Unification' (13 March 2022), <https://www.adalah.org/en/content/view/10581>.

¹³⁸ The Society of St. Yves, 'Palestinian families under threat: 10 years of Family unification freeze in Jerusalem' (2013), <http://www.saintyves.org/uploads/d450c02766ff53363d7e583c00c7c5de.pdf>

¹³⁹ The Association for Civil Rights in Israel, 'One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank' (October 2014), 13, <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>.

residency status by resorting to a myriad of civilian laws and military orders while also selectively applying Ottoman, British, and Jordanian legal codes. In this manner, Israel has advanced its colonial objectives, in violation of an Occupying Power's obligation not to alter the laws in force in the occupied territory, beyond military necessity and the humanitarian considerations, as per Article 43 of The Hague Regulations, and the prohibition on alienating private and public immovable property under Articles 46 and 55 of The Hague Regulations of 1907.

The residency system put in place for Palestinians in the West Bank and Gaza Strip under Israeli military law included mechanisms for revoking residency statuses. Palestinians in the oPt were required to acquire exit permits, at the discretion of the Israeli Ministry of Interior, to travel abroad. If a resident failed to return before the expiration of their permit, s/he would be at risk of being deleted from the Population Registry and losing her/his residency status.¹⁴⁰ From 1967 until 1994, Israel revoked the residency status of around 140,000 Palestinians from the West Bank and 108,878 from the Gaza Strip.¹⁴¹ Under the Oslo Accords, authority over the population registry was transferred to the newly established Palestinian Authority (PA) in 1995. The PA was given the authority to grant permanent residency in the Gaza Strip and the West Bank, excluding East Jerusalem, for family unification subject to Israel's approval.¹⁴² For example, the Israeli occupying authorities implement an annual quota system to deal with the family unification requests, and had frozen the handling of applications for family reunification, in order to advance its demographic engineering goals.¹⁴³

In contrast, the settler colonial State of Israel and the military commander "acted to gradually apply Israeli law to settlers and to remove them, in practice, from the jurisdiction of military law," thereby illegally extending Israeli domestic law into the oPt.¹⁴⁴ In that, Israel has used its domestic law to extend the superior benefits and privileges to Israeli-Jewish settlers illegally residing in the oPt.¹⁴⁵ Accordingly, Israeli courts treat Israel's illegal settlements as "Israeli islands" requiring the application of Israeli domestic law.¹⁴⁶ In effect, this has created two distinct and segregated legal regimes in the West Bank whose application is determined based on racial identity, with Israeli citizens and Jewish settlers subject to Israeli law and Palestinians subject to military law. As noted by Professor John Dugard and Dr. John Reynolds: "Through a combination of parliamentary and military legislation, the Israeli authorities have created parallel legal universes whereby distinct

¹⁴⁰ Badil, 'Forced Population Transfer: The Case of Palestine – Denial of Residency Working Paper No. 16' (2014), 18, <http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf>.

¹⁴¹ Hamoked, 'Ceased Residency: Between 1967 and 1994 Israel revoked the residency of some quarter million Palestinians from the West Bank and Gaza Strip' (12 June 2012), <http://www.hamoked.org/Document.aspx?dID=Updates1175>.

¹⁴² Norwegian Refugee Council, 'Fractured Lives' (2015) 21.

¹⁴³ Norwegian Refugee Council, 'Fractured Lives' (2015) 22–23.

¹⁴⁴ The Association for Civil Rights in Israel, 'One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank' (2014), 15.

¹⁴⁵ Adalah, 'NGO Report to the UN Committee on the Elimination of Racial Discrimination in Advance of its List of Themes for the State of Israel' (12 September 2019) 4.

¹⁴⁶ The Association for Civil Rights in Israel, 'One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank' (2014), 22.

regimes, premised on a principle of ‘separate but unequal’, apply to the two groups living in the one territory.”¹⁴⁷

3.1.2. Confiscation and Expropriation

Since 1948, Israel has devised a system to legalize and legitimize its seizure of Palestinian land, homes, and property taken by force, which expanded to include discriminatory zoning and planning policies to further confiscate and appropriate Palestinian land, and restrict and confine the growth of Palestinian villages and cities.

In 1950, Israel adopted the Absentee Property Law,¹⁴⁸ which is the main law regulating the property of Palestinians who were away from their property, abroad, forced to flee, or were displaced at the start of the *Nakba*. The law declared Palestinian refugees’ property to be “absentee property,” thereby stripping Palestinians of their ownership rights and enabling the confiscation of their land and property by the state, to which they continue to have ownerships rights over. The regime has involved transferring control to the Custodian Council for Absentee’s Property. The law also has applied to the property of Palestinians internally displaced inside the 1948 territory by creating the category of “present absentees,” whose property rights were also stripped by the state.¹⁴⁹

The 1953 Land Acquisition Law (Actions and Compensation) provided for the transfer of land, from its Palestinian owners to the state, that had previously been confiscated for military and development purposes or existing and newly established Jewish settlements.¹⁵⁰ As a result, around 1.2 million dunams of land were expropriated from Palestinians.¹⁵¹ In conjunction, the Land Ordinance of 1943 and its amendments, originating from the British Mandate era, has also been used to confiscate Palestinian land for “public purposes” and to transfer it to state ownership.¹⁵²

In the field of Jewish settlement, WZO/JA and JNF operationalize and ensure the outcomes of Israel’s policy of population transfer,¹⁵³ as a central purpose of the state. The 1952 World Zionist

¹⁴⁷ John Dugard and John Reynolds, ‘Apartheid, International Law, and the Occupied Palestinian Territory’ (2013), 24 *European Journal of International Law* 867.

¹⁴⁸ Absentees’ Property Law of 1950, <https://www.adalah.org/en/law/view/538>.

¹⁴⁹ Haneen Naamnih, ‘Palestinian Refugees’ Property in Their Own Land: Politics of Absence and Alienation’ in Nadim Rouhana and Areej Sabbagh-Khoury (eds), *The Palestinians in Israel* (Mada al-Carmel Arab Center for Applied Social Research, 2018), 50; See also W Thomas Mallison and Sally V Mallison, *The Palestine Problem in International Law and World Order* (Longman Group Limited, 1986) 165.

¹⁵⁰ Baptiste Sellier, ‘L’usage du droit foncier par l’Etat d’Israël comme arme d’appropriation de l’espace Palestinien. Quelle comparaison avec l’Algérie Coloniale?’ 4, <http://larhra.ish-lyon.cnrs.fr/sites/default/files/event-files/article%20B%20Sellier.pdf>.

¹⁵¹ Land Acquisition Law (Actions and Compensation) of 1953, <https://www.adalah.org/en/law/view/533>.

¹⁵² Land (Acquisition for Public Purposes) Ordinance – Amendment No. 10, of 2010, <https://www.adalah.org/en/law/view/502>.

¹⁵³ Commission on Human Rights, ‘The human rights dimensions of population transfer, including the implantation of settlers’ (June 1993) UN Doc. E/CN.4/Sub.2/1993/17, https://digitallibrary.un.org/record/171114/files/E_CN.4_Sub.2_1993_17-EN.pdf.

Organization-Jewish Agency (Status) Law¹⁵⁴ authorizes the WZO/JA and affiliates to function in Israel as quasi-governmental entities, carrying out public functions. The law states, for its purposes, that the WZO, operating also as the JA, continues to manage Jewish settlement projects and authorizes it to develop and settle Jews in the country and to coordinate with Jewish institutions and organizations active in those fields.

Israel's parastatal institutions such as the WZO/JA, and the JNF, are chartered to carry out discrimination against non-Jewish persons and have historically prevented the indigenous Palestinian people in colonised Palestine and those displaced as refugees from accessing or exercising control over their natural wealth and resources, including land. Thus, on behalf of the settler colonial State of Israel, these institutions deny Palestinians their means of subsistence by exploiting and diverting Palestinian natural resources for the exclusive benefit of Israeli-Jewish settlers. Therefore, these institutions play a key role in Israel's settler colonial and apartheid regime over the Palestinian people, its demographic manipulation, recruitment, and implantation of settlers, as well as planning, financing, and expanding settlements on Palestinian land across colonised Palestine through Zionist immigration and settlement, as their principal task is "to work actively to build and maintain Israel as a Jewish State, particularly through immigration policy."¹⁵⁵

In 1960, Israel ensured that the ownership of the confiscated and appropriated Palestinian land and property would be non-transferrable beyond the state, the JNF, and the Development Authority through the adoption of The Basic Law: Israel Lands.¹⁵⁶ Built on preceding legislative acts, the Israel Land Law prevents the return of land to Palestinians and restricts its use to Jews only, as guaranteed under JNF management. In parallel, the Israel Lands Administration Law (1960) established the Israel Lands Administration ((later on renamed Israel Land Authority) to administer the newly gained land acquired by conquest, confiscation, and expropriation, as well as establishing the Israel Lands Council, which is empowered to develop the land policy and supervise the activities of the administration.¹⁵⁷

Much of the confiscations of Palestinian land in the 48 Territory took place between 1948 until the end of military rule in 1966 but continues under various pretexts.¹⁵⁸ While the Jewish population owned around seven percent of the land in Mandate Palestine before the establishment of the settler colonial State of Israel,¹⁵⁹ following the institution of this legal regime aimed at mass land

¹⁵⁴ World Zionist Organization-Jewish Agency (Status) Law, 5713-1952, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf>

¹⁵⁵ UN ESCWA, 'Israeli Practices towards the Palestinian People and the Question of Apartheid' (2017), 35.

¹⁵⁶ Basic Law: Israel Lands of 1960, <https://www.adalah.org/en/law/view/528>.

¹⁵⁷ Israel Lands Administration Law, 5720-1960, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/08-Israel-Land-Administration-Law-1960.pdf>.

¹⁵⁸ Human Rights Watch, 'Israel: Discriminatory Land Policies Hem in Palestinians' (12 May 2020), <https://www.hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians>.

¹⁵⁹ Walid Khalidi, 'Revisiting the UNGA Partition Resolution' (1997) 27 *Journal of Palestine Studies*, 13.

appropriation, the Israel Land Authority (ILA), controls 93 percent of land inside the 1948 territory, including annexed Jerusalem, which according to the 1960 Israel Lands Law, is land prohibited from transfer through sale or any other way.¹⁶⁰ This effectively means that the land cannot be transferred from Jewish control to non-Jews, particularly the indigenous Palestinian people.¹⁶¹ In 1998, the Committee on Economic, Social and Cultural Rights CESCR found that “the large-scale systematic confiscation of Palestinian land and property by the State and the transfer of that property to these [Zionist] agencies constitute an institutionalized form of discrimination, because these agencies by definition would deny the use of these properties to non-Jews.”¹⁶²

Israel has also used so-called JNF “forestation projects” to conceal the evidence of its mass appropriation of depopulated Palestinian villages and towns, and to further the displacement and dispossession of the indigenous Palestinian people, by planting any coniferous trees on land used for other purposes to trigger state claim over lands that are “forest reserve[s].”¹⁶³ These plantings and their classification are used as a pretext to prevent Palestinians across colonised Palestine from accessing their land. As noted by Yara Hawari: “Palestinians have long dubbed the JNF’s so-called forestation efforts “greenwashing” – a term that refers to a state or company pretending to be environmentally friendly in order to deflect attention from criminal activity.”¹⁶⁴

According to Zochrot, “86 Palestinian villages lie buried underneath JNF parks.”¹⁶⁵ Such was the fate of three 1967 forcibly depopulated villages; ‘Imwas, Yalo, and Beit Nouba, located in the Latroun area, approximately 20 kilometres north-west of Jerusalem, whose 10,000 Palestinian residents were forcibly transferred. Their villages were entirely destroyed and their lands appropriated by Israel at the start of the occupation in 1967. Subsequently, the JNF of Canada created a recreational park on the ruins of the destroyed occupied Palestinian villages.¹⁶⁶

The latest greenwashing attempt is in the Naqab, where the ILA has allocated the lands of the Al-Atrash Bedouin tribe to the JNF, “for the purpose of ‘preserving’ the land, despite registered claims

¹⁶⁰ Basic Law: Israel Lands (5720 - 1960), Article 1.

¹⁶¹ Alaa Mahajneh, ‘Situating the JNF in Israel’s Land Laws’ in Hazem Jamjoum (ed), *The Jewish National Fund* (BADIL Al-Majdal Magazine Issue No. 43, Winter - Spring 2010), 31, https://www.badil.org/cached_uploads/view/2021/05/06/al-majdal-43-1620308721.pdf.

¹⁶² Committee on Economic, Social and Cultural Rights, ‘Concluding observations of the Committee on Economic, Social and Cultural Rights on Israel’s initial report’ (4 December 1998) UN Doc. E/C.12/1/Add.27, para. 11.

¹⁶³ Irus Braverman, ‘Planting the Promised Landscape: Zionism, Nature, and Resistance in Israel/Palestine’ (spring 2009) 49 *Natural Resources Journal* 317–65; Environmental Justice Atlas, ‘Greenwashing by the Jewish National Fund, Israel’, <https://ejatlas.org/conflict/greenwashing-by-the-jewish-national-fund-and-trees-as-a-weapon-of-dispossession-israel>; Jesse Benjamin and others (eds). *Jewish National Fund – Colonizing Palestine Since 1901*, (International Jewish Anti-Zionist Network, 2011).

¹⁶⁴ Yara Hawari, ‘Resisting greenwashing in the Naqab: Unity Intifada continues’ (AlJazeera, 28 January 2022), <https://www.aljazeera.com/opinions/2022/1/28/resisting-greenwashing-in-the-naqab-unity-intifada-continues>.

¹⁶⁵ Jonathan Cook, ‘Canada Park and Israeli “memoricide” (The Electronic Intifada, 10 March 2009), <https://electronicintifada.net/content/canada-park-and-israeli-memoricide/8126>.

¹⁶⁶ John Reynolds, ‘Where Villages Stood Israel’s Continuing Violations of International Law in Occupied Latroun, 1967-2007’ (Al-Haq, 2007).

of ownership over this land and use for agriculture by Bedouin residents”.¹⁶⁷ According to Adalah “the plan’s sole purpose is political: to stop the recognition and development of Bedouin villages and to displace Bedouin families”.¹⁶⁸

Since 1967, Israeli civil law has been illegally extended to occupied East Jerusalem.¹⁶⁹ To cement Palestinian dispossession and displacement in East Jerusalem, Israel enacted the Legal and Administrative Matters Law in 1970, which transfers Israeli civil law to occupied East Jerusalem, including the 1950 Absentee Property Law.¹⁷⁰ Other provisions in the 1970 Law exclusively allow Israeli Jews to pursue claims to land and property allegedly owned by Jews in East Jerusalem before the establishment of the settler colonial State of Israel in 1948.¹⁷¹ The 1970 Law has been utilized by settler organizations, who managed to acquire land title from the Israeli Custodian General and who then file eviction lawsuits against Palestinians in East Jerusalem.¹⁷²

In the Karm al-Ja’ouni area of Sheikh Jarrah neighbourhood and Batn al-Hawa neighbourhood in Silwan, 15 Jerusalemite families totalling 37 households of around 195 Palestinians, are at imminent risk of forcible transfer, due to the separate cases filed against them before Israeli courts by the settler organizations Nahalat Shimon International and Ataret Cohanim, utilizing the aforementioned law.¹⁷³ Alarmingly, Nahalat Shimon International had previously evicted three Palestinian families of around 67 Palestinians from Karm al-Ja’ouni area in Sheikh Jarrah in 2008 and 2009.¹⁷⁴ Notably, most of the Palestinian residents of these neighbourhoods are refugees, who continue to be denied their right to return and to reclaim their original properties, that are dispossessed under the Absentee Property Law. In this example, we see how Israeli laws work to enforce the institutionalized regime of systematic domination and oppression over the Palestinian people and allow exclusive property ownership to Israeli Jewish settlers and displacement and dispossession of the indigenous Palestinian population.

In the oPt, the Israeli military commander has given effect through military orders to similar laws to dispossess Palestinian immovable property, by manipulating the legislation in force prior to the occupation, and introducing substantial legal changes to laws regulating land. For example, the

¹⁶⁷ Adalah, ‘Israeli police violently dispersed demonstrations by Palestinian Bedouins and human rights activists over the Jewish National Fund’s afforestation work in the Naqab’ (16 January 2022), <https://www.adalah.org/en/content/view/10524>.

¹⁶⁸ Adalah, ‘Israeli police violently dispersed demonstrations by Palestinian Bedouins and human rights activists over the Jewish National Fund’s afforestation work in the Naqab’ (16 January 2022), <https://www.adalah.org/en/content/view/10524>

¹⁶⁹ Al-Haq, ‘The Occupation and Annexation of Jerusalem through Israeli Bills and Laws’ (5 March 2018), <https://www.alhaq.org/advocacy/6263.html>.

¹⁷⁰ Norwegian Refugee Council, ‘Legal Memo: The Absentee Property Law and its Application to East Jerusalem’ (February 2017), 2, https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf.

¹⁷¹ Legal and Administrative Matters Law, 5730-1970, https://www.nevo.co.il/law_html/law01/319_009.htm.

¹⁷² Al-Haq, ‘Joint Urgent Appeal to the United Nations Special Procedures on Forced Evictions in East Jerusalem’ (10 March 2021), <https://www.alhaq.org/advocacy/17999.html>.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

Absentee Property Law, was transposed into the oPt in 1967, in the form of Military Order No. 58. According to the Order, land of Palestinians who left the West Bank on or before 7 June 1967, was declared “abandoned” and consequently administered by the Custodian of Absentee Property, who is obliged to safeguard the property, until the “absentee” Palestinians return.¹⁷⁵ Simultaneously, Palestinian refugees were denied their right to return, including through a process of mass residency revocation between 1967 to 1994.¹⁷⁶ The Custodian has handed over large portions of such appropriated land to illegal settlements.¹⁷⁷

The expropriation of Palestinian land and alteration of the demography by transferring Palestinians to create and expand Jewish localities and settlements across colonised Palestine remains one of the core objectives of the Zionist policy. New discriminatory policies and laws are regularly adopted to achieve these population-transfer objectives.¹⁷⁸

3.1.3. Discriminatory Zoning and Planning

Israel has combined a strategy of adopting laws to legalize and legitimize the dispossession that took place during the periods of aggression while also facilitating future land grabs by creating a comprehensive plan to appropriate Palestinian land. During the second phase of this process, Israel has used aggressive planning and zoning policies across colonised Palestine to contain and concentrate Palestinian populations in Palestinian ‘Bantustan-style’ villages and cities.¹⁷⁹

Palestinian localities within the 1948 territory face significant institutional, juridical, and bureaucratic planning obstacles imposed by Israel that severely limit their natural expansion to accommodate population growth and other needs through unreasonable delays in the approval of building plans and high rejection rates of building permits.¹⁸⁰ Any building plan must fit the national and district Master Plans as outlined by the Israeli government which have “systematically aimed to limit the development of Palestinian localities through various pretexts such as defining surrounding areas as ‘forests and afforesting,’ ‘national parks and natural reserves,’ roads and infrastructure, as well as by excluding their development through designing criteria that the Palestinian villages do not fall within.”¹⁸¹

Elsewhere inside the 1948 territory, the settler colonial State of Israel and parastatal institutions devote considerable resources to establishing and expanding Jewish-only towns and neighbourhoods on “state lands” under Israeli planning law. Planning law and practice embrace

¹⁷⁵ Military Order No. 58 concerning Absentee Property (Private Property) (23 July 1967).

¹⁷⁶ Hamoked, ‘Ceased Residency: Between 1967 and 1994 Israel revoked the residency of some quarter million Palestinians from the West Bank and Gaza Strip’ (12 June 2012), <http://www.hamoked.org/Document.aspx?dID=Updates1175>.

¹⁷⁷ Mercedes Melon, ‘Settling Area C: The Jordan Valley Exposed’ (Al-Haq, 2018), 22.

¹⁷⁸ Adalah, ‘The Discriminatory Laws Database’ (25 September 2017) <https://www.adalah.org/en/content/view/7771>.

¹⁷⁹ Anthony Coon, *Town Planning Under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (Al-Haq, 1992).

¹⁸⁰ BADIL, *Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning* (2014), 21.

¹⁸¹ *Ibid*, 21.

the discriminatory provisions of the parastatals that determine eligibility for residence and access to housing and land. In local and municipal development, Israel's racist criteria have weaponized the concepts of "social and cultural fabric" and "social cohesion" to exclude indigenous Palestinians from development opportunities. The Absentee Property Law (1950) and Negev Individual Settlements Law (2011) have operated to deny Palestinians' rights to their housing and land, including properties that Palestinians in the 1948 territory rightfully own.

The Admissions Committees in Israeli Regional Planning Councils have long operated to provide an additional patina of planning procedure that excludes Palestinians from housing and land.¹⁸² These bodies ensure a tie-breaking Jewish Agency majority vote to discriminate against non-"Jewish nationals" in hundreds of communities in the 1948 territory to reject housing applicants for their "social unsuitability." In 2009, this customary practice was enshrined in the Admissions Committees Law to prevent Palestinians citizens from living with Jews and enforce *de facto* housing segregation between Jewish and Palestinian citizens. Despite 2011 amendments to the law, restricting discrimination, and a Knesset report exposing abuse,¹⁸³ the Israeli Supreme Court dismissed numerous petitions challenging the law and discriminatory practice, ruling that the discriminatory nature of the Admissions Committees did not clearly violate constitutional rights.¹⁸⁴

In the West Bank, the oppressive zoning and planning regime consists of a purposefully complex tapestry of lands laws from Ottoman rule, the British mandate period, and Jordanian control supplemented by numerous Israeli military orders designed to displace Palestinians and unlawfully appropriate their land, through arbitrary declarations of large parts of land as "State land" and closed military zones in order to expand Israeli settlements.¹⁸⁵

In the West Bank, local law had empowered the High Planning Council (HPC), operating under the (Jordanian) Minister of Planning. As of June 1967, however, the Military Government of Israel began administering the occupied territory by military orders, transferring planning authority to "anyone appointed by the commander,"¹⁸⁶ who also appoints other members of the HPC. Until the Oslo Accords, the HPC maintained three subcommittees for: (1) Israeli settlement, (2) (Palestinian) house demolitions and (3) local planning and development. The first of these secretive subcommittees has organized and sanctioned population transfer, wanton destruction, and settler implantation.¹⁸⁷ The third of these, as its name indicates, oversees physical planning

¹⁸² Adalah, 'Adalah demands Israel cancel illegal 'admissions committees' enforcing segregation in dozens of communities across the country' (2019), <https://www.adalah.org/en/content/view/9751>

¹⁸³ Knesset Research and Information Center report, (2 May 2019), https://www.adalah.org/uploads/uploads/Knesset_research_020519.pdf.

¹⁸⁴ Adalah, 'Adalah demands Israel cancel illegal 'admissions committees' enforcing segregation in dozens of communities across the country' (25 June 2019), <https://www.adalah.org/en/content/view/9751>.

¹⁸⁵ BADIL, 'Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning' (December 2014), 27.

¹⁸⁶ Order regarding the Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 1971, para. 8.

¹⁸⁷ For example, as stipulated in the International Military Tribunal (Nuremberg), the International Law Commission's draft Code on Crimes against the Peace and Security of Mankind, Article 22; and article 22, Rome Statute.

and development in Palestinian towns and villages and still operates in 61 percent of the West Bank, designated as Area C during the Oslo II (1995) phase of occupation,¹⁸⁸ where Palestinians are prevented from constructing or renovating any infrastructure, including homes, agricultural roads, water wells and irrigation networks, without first obtaining permits, which are rarely issued.¹⁸⁹ Many Palestinians proceed with building without the required permits, under an ever-preventable risk of demolition under the discriminatory planning and zoning system.

The Israeli government has issued countless military orders declaring Palestinian land in the West Bank as closed military areas, subsequently requisitioning it and allocating it to existing Israeli settlements or to establish new ones.¹⁹⁰ Moreover, Israel continues to build settlements on Palestinian land in the West Bank by declaring the vast majority of land as ‘State Land’.¹⁹¹ Prior to the occupation in 1967, some 530,000 dunams were allocated as ‘State Land’ which Israel increased to 1.4 million dunams. Of these, the Israeli occupying authorities have allocated 99.76 percent (about 674,459 dunams) for the exclusive use of Israeli settlements.¹⁹²

In 1971, the Israeli military commander further institutionalized discrimination by issuing Military Order No. 418. The Order authorizes the Israeli HPC to “amend, cancel, or condition the validity of any plan or permit.”¹⁹³ Formalizing an arbitrary basis of discrimination, Military Order No. 418 authorizes the same HPC to “exempt any person from the obligation to obtain a permit required under the Law,”¹⁹⁴ a privilege which is bestowed on Jewish settlers to facilitate their lawless construction and colonisation on Palestinian territory.

With around 300 illegal settlements in the West Bank, including in occupied East Jerusalem, with more than 680,000 illegally transferred in Israeli-Jewish settlers,¹⁹⁵ Palestinians have been left with dire impacts on their rights. Israel’s settler colonial enterprise not only unlawfully appropriates Palestinian land and hinders the freedom of movement of Palestinians, but also deepens territorial and demographic fragmentation between Palestinian communities, undermining Palestinian territorial and social contiguity and integrity, and denying the Palestinian people from exercising their inalienable right to self-determination, including permanent sovereignty over their natural resources.

One of the direct results of Israel’s settler colonial enterprise is settler violence, which is an ongoing and systematic reality for Palestinians as part of the coercive environment to induce

¹⁸⁸ World Bank, ‘Area C and the future of Palestinian economy’ (2014).

¹⁸⁹ Mercedes Melon, ‘Settling Area C: The Jordan Valley Exposed’ (Al-Haq, 2018), 43.

¹⁹⁰ Mercedes Melon, ‘Settling Area C: The Jordan Valley Exposed’ (Al-Haq, 2018), 24.

¹⁹¹ Government Decision No. 145 (11 November 1979) formalised the Israeli government’s determination to build settlements on land previously declared ‘State land.’

¹⁹² Peace Now, ‘State Land Allocation in the West Bank — For Israelis Only’ (17 July 2018), <https://peacenow.org.il/en/state-land-allocation-west-bank-israelis>

¹⁹³ Order concerning Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 1971,

¹⁹⁴ Order concerning Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 1971, para. 7.

¹⁹⁵ OHCHR, ‘Occupied Palestinian Territory: Israeli settlements should be classified as war crimes, says UN expert’ (9 July 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27291&LangID=E>

Palestinian displacement, but has been increasing in the recent years, due to Israel's systematic failure to enforce the law with regards to settler violence, or conduct effective investigations and prosecutions of offending settlers, thereby creating a climate of impunity.¹⁹⁶ Moreover, there has been increased documentation of incidents of settlers attacks where the Israeli occupying authorities not only stand passively by while Palestinians are attacked by settlers, but also actively attack Palestinians during these settler attacks.¹⁹⁷ During the Unity *Intifada*, settler violence was evident as a state-stationed policy across colonised Palestine. Settlers attacked and killed Palestinians across colonised Palestine,¹⁹⁸ including Mousa Hassouna, a 32-year-old Palestinian citizen of Israel from al-Lydd who was killed on 10 May 2021 by an Israeli settler during a protest.¹⁹⁹ Settlers also organised and carried out lynch mob attacks against Palestinians, their homes and properties across colonised Palestine.²⁰⁰ Meanwhile, attacks and intimidations by settlers continued against Palestinians in the Sheikh Jarrah neighbourhood facing the imminent threat of forcible transfer,²⁰¹ and settler marches that called for "death to Arabs".²⁰²

In addition to isolating Palestinians in the Gaza Strip through an illegal 14-year land, sea, and air blockade and closure, which amounts to illegal collective punishment, the Israeli occupying authorities have also designated land in Gaza as "access restricted areas" and "buffer zones" to restrict Palestinians' access to their land. Israel has established a restricted buffer zone that extends 100 to 300 meters beyond the border fence into Gaza, which is expanded during times of conflict, that is only accessible on foot by farmers. The area within 100 metres of the fence is "a military "no-go zone," in which access²⁰³ and the planting of trees and plants higher than 80 centimetres is strictly prohibited.²⁰⁴ These restrictions affect up to 35 percent of the Gaza Strip's agricultural land, with deleterious effects on Gaza's ability to be food sufficient for its population of approximately two million Palestinians.²⁰⁵

In annexed Jerusalem, Israel has unlawfully nullified the previous provisions of the 1966 Jordanian Planning Law, which had placed competence over planning, zoning, and building permissions in

¹⁹⁶ See Valentina Azarov, 'Institutionalized Impunity: Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory' (Al-Haq, 2013).

¹⁹⁷ See Al-Haq, 'Urgent Appeal to the United Nations Special Procedures on Intensified Yitzhar Settler Violence' (17 February 2021) <https://www.alhaq.org/advocacy/17913.html>.

¹⁹⁸ See Al-Haq, 'Al-Haq Field Report on Human Rights Violations in May 2021' (14 June 2021) <https://www.alhaq.org/monitoring-documentation/19587.html>.

¹⁹⁹ Adalah, 'Adalah demands cancellation of civil emergency declaration in Lydd' (16 May 2021) <https://www.adalah.org/en/content/view/10326>.

²⁰⁰ Oren Ziv, 'How Israeli police are colluding with settlers against Palestinian citizens' (+972 Magazine, 13 May 2021) <https://www.972mag.com/israel-police-settlers-lyd/>.

²⁰¹ Al-Haq, 'Sheikh Jarrah and Silwan: Ongoing Nakba and Israeli Dispossession of Palestinians' (27 May 2021) <https://www.alhaq.org/advocacy/18442.html>.

²⁰² Yumma Patel, 'Israeli Mobs Chant 'Death to Arabs' in Night of Violence in Jerusalem' (Mondoweiss, 23 April 2021) <https://mondoweiss.net/2021/04/israeli-mobs-chant-death-to-arabs-in-night-of-violence-in-jerusalem/>.

²⁰³ Badil, *Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning* (December 2014), 50.

²⁰⁴ *Ibid.*, 38–39.

²⁰⁵ *Ibid.*, 50.

the hands of Palestinian village councils in the occupied East Jerusalem.²⁰⁶ Despite the fact that East Jerusalem is occupied and illegally annexed and the majority of the population in East Jerusalem are Palestinians and that Israeli settlers reside illegally in occupied East Jerusalem, Israeli zoning laws have allocated 35 per cent of the land area for the construction of illegal settlements, and 52 per cent of East Jerusalem has been allocated as “green areas” and “unplanned areas” in which construction is prohibited. As such, only 13 per cent of the land is allocated for Palestinian construction.²⁰⁷

Most of the zoned area for Palestinian construction in Jerusalem was already densely constructed in 1967. Most of the planning schemes submitted by Palestinians are rejected by the Israeli authorities.²⁰⁸ Additionally, the process of acquiring building permits and legal aid to obtain such permits typically surpasses what Palestinian residents of East Jerusalem can afford. As such, Palestinians in East Jerusalem have been left with no alternative but to build without permits. The Israeli discriminatory system has caused an acute housing shortage for Palestinians. By 2015, only seven per cent of building permits were granted for Palestinian residents of East Jerusalem by the Israeli occupation municipality.²⁰⁹ The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimates that around 90,000 Palestinians are at risk of house demolitions in occupied East Jerusalem.²¹⁰

b. Strategic Fragmentation of the Palestinian People

Israel has consolidated its apartheid regime by entrenching fragmentation, through the persistent denial of Palestinian refugee return, the imposition of freedom of movement, residency, and access restrictions, and the denial of family life. Strategic fragmentation of the Palestinian people is the main tool through which Israel imposes and maintains its spatial and administrative apartheid regime over the Palestinian people. By dividing the Palestinian people into, at least, four separate geographic, legal, and political categories,²¹¹ Israel ensures that Palestinian refugees living outside of colonised Palestine, Palestinians in the 1948 territory, Palestinians living in the occupied West Bank and Gaza Strip, and Palestinians living in Jerusalem, cannot meet, group, live together, or exercise any collective rights, in particular, their collective right to self-determination. As a direct result of Israel’s policies, Palestinian familial, political, social, cultural, and economic linkages are ruptured both within colonised Palestine, and abroad.

To date, Israel continues to deny 8.7 million Palestinians refugees and internally displaced persons

²⁰⁶ Antoine Frère ‘House Demolitions and Forced Evictions in Silwan’ (Al-Haq, 2020), 40–44.

²⁰⁷ OCHA, ‘The Planning Crisis in East Jerusalem’ (2009) 8
https://www.ochaopt.org/sites/default/files/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf.

²⁰⁸ Human Rights Watch, ‘Separate but unequal’ (2010) 132.

²⁰⁹ Nir Hasson, ‘Only 7% of Jerusalem Building Permits Go to Palestinian Neighborhoods’ (Haaretz, 7 December 2015), <http://www.haaretz.com/israel-news/.premium-1.690403>.

²¹⁰ OCHA, ‘East Jerusalem: Key Humanitarian Concerns’ (2014),
https://www.ochaopt.org/sites/default/files/ocha_opt_Jerusalem_FactSheet_August2014_english.pdf.

²¹¹ UN ESCWA, ‘Israeli Practices towards the Palestinian People and the Question of Apartheid’ (2017), 53–54.

their right to return,²¹² continues to separate Palestinians in colonised Palestine from each other through the illegal imposition of a 14-year closure and blockade on the Gaza Strip; the construction and expansion of its illegal settler colonial enterprise in the oPt including settlements, the Annexation Wall, checkpoints and bypass roads; controlling the population registry of Palestinians; implementing a tiered and racially discriminatory ID system, and permit regime, and revoking residencies and denying family unification.²¹³

Article II(c) of the Apartheid Convention defines the crime of apartheid as involving “inhuman acts” comprising “measures calculated to prevent a racial group... from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group... by denying to members of a racial group or groups basic human rights and freedoms, including... the right to leave and to return to their country” and “the right to freedom of movement and residence.”²¹⁴

c. Repressing Resistance

Israel has consolidated its apartheid regime by weakening the capacity of the Palestinian people to challenge the myriad human rights violations that maintain the system. The underlying policies of Israel’s apartheid regime seek to dominate and oppress the Palestinian people while also targeting Palestinian’s dignity. A core element of the crime of apartheid is the intention of maintaining the regime.²¹⁵ One method of achieving this is by suppressing opposition through wilful killing, suppression of demonstrations, arbitrary detention, torture and other ill-treatment, and collective punishment, as well as smear and delegitimization campaigns against individuals or groups, including human rights defenders, seeking to challenge its apartheid regime.

In particular, these policies and practices fall under Article II of the Apartheid Convention, which considers the following as inhuman acts committed to maintain an apartheid regime: denying a racial group of the right to life and liberty of person by murder, arbitrary arrest and illegal imprisonment and the “the infliction [...] 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.” Article II also lists “legislative measures and other measures calculated to prevent a racial group... from participation in the political... life... by denying... the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association”

²¹² Of the persons variously displaced by the Israeli colonisation of Palestine, 9,090,000 refugees and internally displaced persons are composed of all Palestinians displaced since the ethnic cleansing carried out by Israel since its proclamation in 1948. These include the cumulative 8.3 million Palestinian refugees. BADIL, ‘73 years of Nakba and 73 years of Resistance’ (10 May 2021), <http://www.badil.org/en/publication/press-releases/93-2021/5143-pr-en-100521-10.html>.

²¹³ Al-Haq, ‘Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians’ (2019) 4, <http://www.alhaq.org/advocacy/6106.html>.

²¹⁴ Article II(c), Apartheid Convention.

²¹⁵ Article 7 (2)(h), Rome Statute; Article II, Apartheid Convention.

as well as the “[p]ersecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”

With mounting recognition of Israeli settler colonialism and apartheid, specifically during the Unity *Intifada*, the Israeli suppressive response has intensified. Israel’s violent suppression, criminalization, and/or terrorization of Palestinian resistance must be understood within the wider context. Palestinians demand that the root causes of their oppression be addressed, and remedied, and ongoing settler colonialism and apartheid be dismantled. People under colonial and foreign domination and alien subjugation, have the right to peruse their right to self-determination and freedom by all available means.²¹⁶ Ironically, the longer a colonial power exists, the more likely it is that colonised people would revolt in the pursuit of their self-determination, and in turn, the colonial power imposes stricter measures to control and dominate them. Failing to understand this consequential relation, as outlined by Noura Erakat:

“risks creating a new body of law intended to protect a power’s colonial holdings as it gives the impression that Israel is using force to defend itself when, in fact, it is using force to squash Palestinian claims and militarily resolve the dispute over its control.”²¹⁷

3.3.1. Military Rule as Means of Repression and Domination

Israel’s military rule, since its establishment, has been a distinctive tool of domination against the Palestinian people.²¹⁸ Besides the effective role of the military rule in denying Palestinian refugees and displaced persons their right of return, expropriating their land and properties, it has been a tool to suppress and dominate Palestinians. Under military law, Israel accommodated many policies that controlled every aspect of Palestinian life in the form of closures, curfews, deportations, movement restrictions and administrative detention, denying Palestinians of their right to self-determination.

In the immediate aftermath of the *Nakba*, Israeli authorities imposed military rule on some 150,000 Palestinians who remained within the 1948 territory, including internally displaced Palestinians. Following the state of emergency declared upon the establishment of the state, from 1950, Israel administered the territory under martial law, to carry out mass Palestinian land appropriation, settlement and domination. It benefited from British martial law in suppressing the Great Revolt of 1936-1939 and inherited much of its punitive measures such as imposing curfews and security

²¹⁶ UNGA Resolution 1514 (XV), (14 December 1960) UN Doc. A/RES/1514(XV); UNGA Resolution A/RES/3070 (XXVIII), (30 November 1973) UN Doc A/RES/3070(XXVIII), para. 2; art 1(4), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Common Article 1 of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

²¹⁷ Noura Erakat, ‘If Israeli Tactics in Gaza Are Legal, No One is Safe’ (Jadaliyya, 18 June 2015) <https://www.jadaliyya.com/Details/32206>.

²¹⁸ Noura Erakat, *Justice for Some* (Stanford University Press 2019) 59; Tariq Dana, and Ali Jarbawi, ‘A Century of Settler Colonialism in Palestine: Zionism’s Entangled Project’ (December 2017), XXIV *Brown Journal of World Affairs*, 1, 9-12.

closures on entire cities, prohibiting political activity, and administrative detention and military trials from the martial law.²¹⁹ In 1966, Israel lifted the martial law, believing that Palestinian citizens, who had been rendered second-class, had been “adequately controlled”,²²⁰ and that hierarchy had been established between Jews and Palestinians.²²¹

In the oPt, Israel has imposed a similar system to dominate and subjugate the protected Palestinian population and their national aspirations under the umbrella of a military administration.²²² The operation of Israeli military courts since 1967, which operate in breach of key principles of IHL and IHRL,²²³ further reinforce this system of oppression over the protected Palestinian population.²²⁴ While Israel, as an Occupying Power, should not change laws unless absolutely necessary and for the best interest of the occupied population,²²⁵ Israeli authorities issued over 1800 military orders that criminalise all forms of political and cultural expression, association, movement, nonviolent protest, and any other acts that might be considered opposing the occupation.²²⁶ Palestinians’ civil and political rights, including the right to self-determination, have been suppressed and criminalised as a supposed threat to the state’s security under Israeli military orders.²²⁷ In that, the military administration has been a tool to punish Palestinians individually and collectively in the form of arbitrary and administrative detention, deportation, house demolitions, curfews, and closures of entire towns and institutions.

3.3.2. Wilful and Extrajudicial Killing

Israel’s resort to excessive use of force, including lethal force against Palestinians, constitutes another pillar of its creation and maintenance of an apartheid regime over the Palestinian people, by creating a coercive environment designed to intimidate Palestinians and feeding a climate of repression designed to undermine the exercise of their inalienable rights. The Apartheid Convention includes, as part of its definition, the “[d]enial to a member or members of a racial group or groups the right to life and liberty of person by murder...and the infliction... of serious

²¹⁹ Tariq Dana, and Ali Jarbawi, ‘A Century of Settler Colonialism in Palestine: Zionism’s Entangled Project’ (December 2017), xxiv *Brown Journal of World Affairs*, 1, 9.

²²⁰ Noura Erakat, *Justice for Some* (Stanford University Press, 2019) 59.

²²¹ Noura Erakat, *Justice for Some* (Stanford University Press, 2019) 59.

²²² Tariq Dana, and Ali Jarbawi, ‘A Century of Settler Colonialism in Palestine: Zionism’s Entangled Project’ (December 2017), xxiv *Brown Journal of World Affairs*, 1, 12.

²²³ Louigi Danielle, ‘Enforcing Illegality: Israel’s Military Justice in the West Bank’ (2017, Questions of International Law), <http://www.qil-qdi.org/enforcing-illegality-israels-military-justice-in-the-west-bank/>

²²⁴ In 2005, the Military courts ceased operating in Gaza after Israel’s withdrawal from the Gaza Strip. Shane Darcy and John Reynolds, ‘An Enduring Occupation: The Status of The Gaza Strip from The Perspective of International Humanitarian Law’ (2010) 15 *Journal of Conflict and Security Law* 211, 237.

²²⁵ UNGA, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (23 October 2017) UN Doc A/72/43106.

²²⁶ Addameer, ‘The Israeli Military Judicial System as a Tool of Oppression and Control: a Review of Military Order No. 1827’ (28 May 2020) <http://www.addameer.org/publications/israeli-military-judicial-system-tool-oppression-and-control-review-military-order-no>.

²²⁷ Addameer, ‘Israeli military orders relevant to the arrest, detention and prosecution of Palestinians’ (July 2017), http://www.addameer.org/israeli_military_judicial_system/military_orders.

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.”²²⁸ Grave breaches of international humanitarian law, which are also listed as war crimes under the Rome Statute include “wilful killing” and “wilfully causing great suffering or serious injury to body or health.”²²⁹

As noted by Fayeze Sayegh: “Prenatally and at birth, the Zionist settler-state resorted to violence as its chosen means of intimidating the Arabs of Palestine and evicting them.”²³⁰ Beyond the massacres committed by Zionist settler colonial militias during the *Nakba*,²³¹ whose perpetrators have never been held accountable and instead integrated into Israeli “defence forces”, Israel has continued to disregard Palestinian life after the *Nakba*, including through the commission of massacres,²³² conducting military offensives on the Gaza Strip,²³³ killing demonstrators,²³⁴ and instituting a policy of assassination,²³⁵ and extrajudicial killings against the Palestinian people as a whole in colonised Palestine and refugees and exiles in the diaspora.

Israel’s policy of excessive use of force against Palestinian demonstrators, as seen with the suppression of the Land Day demonstrations in 1976, and during the first and second *Intifada*, remains in force until this day. The latest example of Israel’s unnecessary, disproportionate and excessive use of lethal force has been evident in the suppression of the Unity *Intifada* in May 2021, whereby Israeli forces and settlers killed 276 Palestinians, during the offensive on the Gaza Strip, and in demonstrations across colonised Palestine.²³⁶

3.3.3. Arbitrary Detention, Torture, and Inhuman Treatment

Israel uses arbitrary detention in a systematic manner to attack the civilian population as a means of subjugation, intimidation, and control. Its use has fluctuated over the years, steadily rising during uprisings. During the first *Intifada* for example, Israel had the highest prison population per

²²⁸ Article II(a), Apartheid Convention.

²²⁹ Article 147, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, (adopted 12 August 1949) 75 UNTS 287 (Fourth Geneva Convention).

²³⁰ Fayeze Sayegh, ‘Zionist Colonialism in Palestine (1965)’ (2012) 2 *Settler Colonial Studies*, 206, 216.

²³¹ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld, 2007) 258. See also BADIL Al-Majdal Magazine, “Massacres and the Nakba,” (2000), <https://www.badil.org/publications/al-majdal/issues/23.html>.

²³² Shira Robinson, ‘Local Struggle, National Struggle: Palestinian Responses to the Kafr Qasim Massacre and Its Aftermath, 1956-66’ (2003) 35 *Int. J. Middle East Stud* 393, 393-395.

²³³ Al-Haq, ‘Operation Cast Lead: A Statistical Analysis’ (August 2009) 3; Al-Haq, ‘Questions & Answers: Al-Haq’s Legal Analysis on the Escalation of Attacks in the Gaza Strip between 8 and 21 November 2012’ (27 November 2012) 2; Susan Power and Nada Kiswanson van Hooydonk, ‘Divide and Conquer’ (Al-Haq, 2015) 7 and 28; Al-Haq, ‘Al-Haq Semi-annual Field Report on Human Rights Violations, 2021’ (August 2021).

²³⁴ See Khalil Nakhleh, ‘Yawm al-Ard (Land Day),’ in Nadim N Rouhana and Areej Sabbagh-Khoury (eds) *The Palestinians in Israel* (Mada al-Carmel 2011) 83, 84; Adalah, ‘The October 2000 Killings’ (11 August 2020), <https://www.adalah.org/en/content/view/8639>.

²³⁵ Al-Haq, ‘Wilful Killing: The Assassination of Palestinians in the Occupied Palestinian Territories by the Israeli Security Forces’ (2001) 7, <https://www.alhaq.org/publications/8156.html>.

²³⁶ Al-Haq, ‘Al-Haq Field Report on Human Rights Violations in May 2021’

https://www.alhaq.org/cached_uploads/download/2022/02/24/may-2021-report-in-english-1645707069.pdf.

capita worldwide.²³⁷

Israel divides detainees in Israeli prisons into three different groups, with each grouping treated according to varying standards. These include Israeli-Jewish criminal prisoners; Palestinian criminal prisoners with Israeli citizenship; and Palestinian political prisoners. Israel makes legal, political, and procedural distinctions when dealing with each of the three groups of prisoners. Palestinian political prisoners with Israel citizenship do not enjoy the same rights as Israeli-Jewish prisoners, including the right to use a telephone, home visits, early releases after serving two-thirds of a sentence, and family visits without being separated by barriers. This discriminatory treatment is consistent with Israel's overall fragmentation of the Palestinian people and its maintenance of an institutionalized regime of racial domination and oppression.

In the latest Israeli crackdown on Palestinians across colonised Palestine during the Unity *Intifada* between April and June 2021, Israel undertook large-scale campaigns of systematic arbitrary arrest and detention. Between 13 April and 26 May 2021, Israel detained some 2650 Palestinians across colonised Palestine.²³⁸ Notably, these campaigns are upheld by Israel's apartheid judicial system, which systematically grants impunity to Israeli occupying forces, police, and settlers, while upholding indictments submitted against Palestinian detainees and ignoring evidence of their physical assault. As of 18 May 2022, Israel held in detention some 4,650 Palestinian political prisoners and detainees, 600 of whom are administratively detained, a procedure of indefinite detention without charge or trial, based on secret information.²³⁹

Israel also consistently resorts to the use of torture and other ill-treatment²⁴⁰ against Palestinian detainees as the main technique to extract statements in violation of their rights to be free from torture and other-ill-treatment, bodily integrity, physical safety, and basic dignity, as a matter of state policy, with legal cover provided by the Israeli courts.²⁴¹ Torture techniques, including physical pressure and methods of psychological torture, have been used since the beginning of Israel's occupation and have become standard operating procedure.²⁴² Examples of such techniques include physical beatings, stress positions, sleep deprivation and solitary confinement during interrogation, subjection to sounds of torture from neighbouring cells, deliberate medical neglect, screaming and cursing, threats of sexual harassment, particularly against women and children detainees, and threats against family members.²⁴³ Israel has not incorporated the

²³⁷ Joel Beinin and Lisa Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict: A Primer' (Middle East Research and Information Project, 2014) 9.

²³⁸ Addameer collected these numbers with coordination with lawyers and local civil society groups.

²³⁹ Addameer, 'Statistics,' <https://www.addameer.org/statistics>.

²⁴⁰ Addameer, 'The Systematic Use of Torture and Ill-Treatment at Israeli Interrogation Centers: Cases of Torture Committed at Al-Mascobiyya Interrogation Center' (23 January 2020).

²⁴¹ OMCT World Organization Against Torture, 'It's now (even more) official: torture is legal in Israel' (21 March 2019), <https://www.omct.org/en/resources/blog/its-now-even-more-official-torture-is-legal-in-israel>.

²⁴² Adalah, 'On Torture' (June 2012) 7–11, [https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/On%20Torture%20\(English\).pdf](https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/On%20Torture%20(English).pdf).

²⁴³ *Ibid.*

prohibition of torture into its domestic legislation and its courts have sanctioned the use of torture in cases of “necessity.”²⁴⁴

3.3.4. Collective Punishment

Collective punishment has been a staple of Israel’s apartheid regime in a continuation and expansion of the colonial tactics to control and dominate used under the British Mandate system.²⁴⁵ Israel utilizes a wide range of policies and practices to collectively punish the Palestinian people, whether families or entire neighbourhoods for the presumed action of an individual or group, to create a climate of fear and intimidation and subjugate Palestinians,²⁴⁶ while maintaining a “security rhetoric”. The 14-year land, sea, and air blockade and comprehensive closure of the Gaza Strip stand as a prime example of Israel’s imposition of collective punishment. The blockade and closure policy, which is unprecedented in its duration and severity, has turned Gaza into an open-air prison completely disconnected from the rest of the oPt and the outside world.²⁴⁷ As a result, Gaza has been rendered uninhabitable due to extreme economic decline, de-development, profound and unparalleled levels of poverty, aid-dependency, and food insecurity.²⁴⁸ Israel’s repeated full-scale military attacks, de-development policies, and fourteen years of blockade and closure “have undermined all social, economic, cultural, civil, and political rights” of Palestinians living in the Gaza Strip.²⁴⁹

Israel’s methods of collective punishment include policies such as punitive house demolitions, punitive residency revocations, as well as the punitive withholding of bodies of deceased Palestinians killed during alleged attacks. In his report UN Special Rapporteur Michael Lynk concludes, “Like torture, there are no permissible exceptions to the use of collective punishment in law. And, like torture, the use of collective punishment flouts law and morality, dignity and justice, and stains all those who practice it.”²⁵⁰

3.3.5. Intimidation, and Smear campaigns against Human Rights Defenders

Israel also persecutes “organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid” as outlined in article II(f) of the Apartheid Convention.

²⁴⁴ Yara Hawari, ‘The Systematic Torture of Palestinians in Israeli Detention’ (Al-Shabaka, 28 November 2019), <https://al-shabaka.org/briefs/the-systematic-torture-of-palestinians-in-israeli-detention/>.

²⁴⁵ Anderson, Charles, ‘The Suppression of the Great Revolt and the Destruction of Everyday Life in Palestine’ (Autumn 2019) *Jerusalem Quarterly*, 10.

²⁴⁶ HRC, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (15 July 2020) UN Doc. A/HRC/44/60, 7-8.

²⁴⁷ Palestinian Center for Human Rights, ‘Gaza Strip: Actual Strangulation and Deceptive Facilitation’ (11 March 2016) <https://pchgaza.org/en/wp-content/uploads/2016/03/Gaza-Strip-Actual-Strangulation.pdf>.

²⁴⁸ UNWRA, ‘Gaza in 2020: A Livable Place?’ (August 2021), <https://www.unwra.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf>.

²⁴⁹ *Ibid*, 21

²⁵⁰ UNHRC, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (15 July 2020) UN Doc. A/HRC/44/60.

In 2016, the Israeli Knesset approved the sweeping Counter-Terrorism Law 5776-2016,²⁵¹ which provides Israeli authorities with new tools to suppress Palestinians and incorporates severe provisions of the Emergency Regulations from the British Mandate into Israeli criminal law.²⁵² This law is designed to criminalize legitimate political and human rights activities by Palestinians in colonised Palestine.²⁵³ It also provides for the extensive use of secret evidence, lowers evidentiary requirements, limits detainees' access to judicial review, and creates new criminal offences for any public expression of support or sympathy for what Israel considers a "terrorist group," and increases maximum sentences for individuals convicted of "security" offenses.

On 19 October 2021, Israel's "Defence" Minister using the prerogative granted by the Counter-Terrorism Law designated six leading Palestinian civil society organizations as "terrorist organizations," including Addameer Prisoner Support and Human Rights Association, Al-Haq Law in the Service of Man, Bisan Center for Research and Development, Defense for Children International-Palestine, the Union of Agricultural Work Committees, and the Union of Palestinian Women's Committees.²⁵⁴

Subsequently on 3 November 2021, Israel's military Commander-in-Chief issued military orders extending the terrorist designations, to the occupied West Bank and effectively outlawing the six Palestinian organizations as "unauthorised associations".²⁵⁵ This unprecedented designation is the latest escalation in Israel's widespread and systematic campaign to silence and discredit Palestinian individuals or organizations seeking accountability for Israel's human rights violations, war crimes, and crimes against humanity and places serious obstacles on their ability to document and monitor human rights violations, and to carry out their legal work and advocacy.

Another tactic Israel has been increasingly exploiting to silence opposition is smearing human rights defenders and organisations opposing its apartheid as anti-Semitic. The latest example is the Israeli Foreign Ministry tarnishing of Amnesty International's 2022 report on Israeli apartheid as anti-Semitism.²⁵⁶ This tactic is nothing new and has been used by the Zionist movement well before the establishment of the settler colonial State of Israel. As noted by Joseph Massad:

²⁵¹ Adalah, 'Unofficial Translation of the Counter-Terrorism Law, 5776-2016'

<https://www.adalah.org/uploads/uploads/TheCounterTerrorismLaw2016.pdf>.

²⁵² Adalah, 'Israel's new Anti-Terror Law violates Arab citizens' human rights' (19 June 2016),

<https://www.adalah.org/en/content/view/8834>.

²⁵³ Adalah, 'Unofficial Translation of the Counter-Terrorism Law, 5776-2016'

<https://www.adalah.org/uploads/uploads/TheCounterTerrorismLaw2016.pdf>.

²⁵⁴ Al-Haq, 'PNGO & PHROC: Israel's Sinister Designation of 6 Leading Palestinian Organizations As "Terror Organizations" is an Attempt to Silence and Control Palestinians' (23 October 2021)

<https://www.alhaq.org/advocacy/19006.html>.

²⁵⁵ Al-Haq, 'Alert: Israel Takes Alarming Steps to Enforce its Persecution of Six Palestinian Organisations in the West Bank, International Community Must Intervene' (07 November 2021),

<https://www.alhaq.org/advocacy/19179.html>.

²⁵⁶ AP, 'Israel calls on Amnesty not to release apartheid report' (31 January 2022)

<https://apnews.com/article/middle-east-israel-race-and-ethnicity-racial-injustice-amnesty-international-b6c9b3d5ec8fbcc0f87344ad90b9056>.

“Whereas state-sponsored anti-Semitism has disappeared, Israel must create it and conjure it up, as this is its major line of defence against any and all international criticisms and censure of its ongoing colonisation of Palestine.”²⁵⁷

Further attempts to “further limit the already shrinking space for civil society around the world and limit the rights to freedom of expression, opinion and association” is the adoption of the International Holocaust Remembrance Alliance (IHRA) definition of Anti-Semitism.²⁵⁸ The definition lists criticism of the State of Israel, and claiming its existence a racist endeavour, as manifestations of anti-Semitism.²⁵⁹ As condemned by more than 40 Jewish groups, the IHRA definition is worded in a way as to “intentionally equate legitimate criticisms of Israel and advocacy for Palestinian rights with antisemitism, as a means to suppress the former.”²⁶⁰

In January 2022, some UN human rights experts alarmingly stated that “Zionism, the self-determination movement of the Jewish people” cannot be regarded as racist, and encouraged the adoption of the IHRA definition of anti-Semitism.²⁶¹ Recognizing “Zionism as self-determination of the Jewish people” conflates between Zionism and Judaism, “in assuming that all Jews are Zionists, and that the state of Israel in its current reality embodies the self-determination of all Jews.”²⁶² Such assumption is opposed by many Jews themselves, besides the fact that lays the foundation for an intrinsically discriminatory apartheid regime intended to maintain domination over the Palestinian people, while colonising their lands. Jewish Voice for Peace states: “Zionism that took hold and stands today is a settler colonial movement, establishing an apartheid state where Jews have more rights than others.”²⁶³ Moreover recognising “Zionism as self-determination of the Jewish people” is not only a dangerous disregard of the movement’s settler colonial and racist ideological foundations and underlying logic, its implementation in practice that displaced the majority of the indigenous Palestinian people, it also overlooks that Israeli violations are an embodiment of the Zionist movement.

Furthermore, Israel uses the revocation of residency status as a policy to silence opposition and persecute individuals seeking justice and the dismantlement of Israeli settler colonialisation. In

²⁵⁷ Joseph Massad, ‘Zionism, anti-Semitism and colonialism’ (AlJazeera, 24 December 2012)

<https://www.aljazeera.com/opinions/2012/12/24/zionism-anti-semitism-and-colonialism/>.

²⁵⁸ Palestinian Human Rights Organisations Council, ‘PHROC Concerns on Special Rapporteur’s Adoption of IHRA Definition of Anti-Semitism’ (13 October 2019),

https://www.ohchr.org/Documents/Issues/Religion/Submissions/PHROC_ResponsetoReport.pdf.

²⁵⁹ International Holocaust Remembrance Alliance, ‘Working Definition of Antisemitism’ (26 May 2016)

<https://www.holocaustremembrance.com/working-definition-antisemitism>.

²⁶⁰ JVP, ‘40+ Jewish Groups Worldwide Oppose Equating Antisemitism with Criticism of Israel’ (17 July 2018)

<https://jewishvoiceforpeace.org/2018/07/first-ever-40-jewish-groups-worldwide-oppose-equating-antisemitism-with-criticism-of-israel/>.

²⁶¹ OHCHR, ‘Combating all forms of antisemitism must remain global priority to challenge rising hatred’ (26 January 2022), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28063&LangID=E>.

²⁶² The Guardian, ‘Palestinian rights and the IHRA definition of antisemitism’ (29 Nov 2020),

<https://www.theguardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism>.

²⁶³ JVP, ‘Our Approach to Zionism,’ <https://jewishvoiceforpeace.org/zionism/>.

September 2020, Salah Hammouri, a Palestinian French human rights defender and lawyer at Addameer Prisoner Support and Human Rights Association, was notified by Israeli authorities of their intention to revoke his permanent residency in Jerusalem, the city where he was born, for so-called “breach of allegiance.”²⁶⁴ Still on 18 October 2021, the Israeli Interior Minister announced the official revocation of the Jerusalem residency status of Hammouri. This action is arbitrary, punitive, and entails profound violations of international law as the protected population in occupied territory does not have a duty of allegiance to the Occupying Power,²⁶⁵ with the resulting forcible transfer, a grave breach of the Fourth Geneva Convention, a war crime, and a crime against humanity.²⁶⁶ On 7 March 2022, Salah was arrested from his home in Kufor Aqab north of Jerusalem, and was placed under administrative detention for three months, by the Israeli military commander on the basis of “secret information”.²⁶⁷ Revoking residencies on punitive grounds puts thousands of Palestinians in Jerusalem at risk of arbitrary and punitive measures leading to their forcible transfer.²⁶⁸

6. Conclusion and General Recommendations for the Mandate

In the 74 years since the start of the *Nakba*, the deliberate international failure to acknowledge the root causes of Israel’s prolonged, widespread, institutionalized, and systematic crimes against the Palestinian people as a whole, the international lack of effective actions, UNSC vetoes, and complicity have enabled and emboldened Israel to sustain and further entrench its institutionalized regime of settler colonialism and apartheid. For decades, the Palestinian people have striven to realize their fundamental rights, including the right to self-determination and permanent sovereignty, which cannot be realized without the restitution of Palestinian lands and properties and implementation of Palestinian refugees’ right of return.

The UN’s political, legal, factual, and development-implementation functions also have not only failed to address the Palestinian people as a whole, but have advanced their fragmentation. Until recently, the only mechanism nominally investigating and reporting on the Palestinian people has been the UNGA Committee on the Exercise of the Inalienable Rights of the Palestinian People, established in 1975,²⁶⁹ but this body has not functioned consistently within its titular scope. One promising alternative to the fragmented and fragmenting treatment by the UN is the mandate of

²⁶⁴ Al-Haq, ‘Human Rights Organisations Send Urgent Appeal to UN Special Procedures on the Imminent Threat of Forcible Transfer of Salah Hammouri’ (5 October 2020), <https://bit.ly/3sKe3OB>.

²⁶⁵ Article 45, 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 October 1907); Article 68(3), Fourth Geneva Convention.

²⁶⁶ Article 49, Fourth Geneva Convention.; Article 7(1)(d), and 7(2)(h), Rome Statute.

²⁶⁷ Al-Haq, ‘Al-Haq Sends Joint Urgent Appeal to UN Special Procedures on the Arbitrary Arrest and Detention of Human Rights Defender and Lawyer, Salah Hammouri’ (28 March 2022) <https://www.alhaq.org/advocacy/19778.html>.

²⁶⁸ Addameer, ‘Palestinian Civil Society Submit Urgent Appeal to UN Special Procedures on Imminent Deportation of Human Rights Defender Salah Hammouri’ (8 November 2021), <http://addameer.org/news/4562>; Al-Haq, ‘Al-Haq Under Attack – Staff Member’s Life Threatened’ (3 March 2016), <http://www.alhaq.org/advocacy/6432.html>.

²⁶⁹ UNGA, ‘Question of Palestine’ (10 November 1975) UN Doc. A/RES/33765, [https://undocs.org/en/A/RES/3376\(XXX\)](https://undocs.org/en/A/RES/3376(XXX)).

the present Independent International Commission of Inquiry on the oPt, including East Jerusalem, and Israel.²⁷⁰

In the last 20 years, the UN has established ten different commissions of inquiry and fact-finding missions to investigate serious human rights violations in the oPt. These mechanisms have played an important role in monitoring, documenting, and shedding light on violations and patterns of human rights abuses. However, while UN Member States have adopted the findings and recommendations of these investigatory outcomes,²⁷¹ “none of these investigations have ever led to genuine accountability for suspected war crimes and crimes against humanity committed against the Palestinian people.”²⁷² Moreover, all these mechanisms were mandated to investigate specific incidents or thematic issues without investigating their root cause or the entirety of the Palestinian people, which as outlined in this submission is problematic in the Palestinian context. For example, the UN Commission of Inquiry on the 2018 protests in the Gaza Strip, which was mandated to investigate international law violations, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018, focused its investigation on the outcomes rather than the root causes of the violations.²⁷³

On 30 March 2018, Palestinians in the Gaza Strip launched the Great March of Return where hundreds of thousands of Palestinians protested weekly for a year along the Israeli fence in the Gaza Strip.²⁷⁴ They erected tents with the names of the villages they were forcibly displaced from during the *Nakba*. With the right of return as the main demand of the protest, they also protested the dire humanitarian conditions as a result of the Israeli blockade and closure since 2007. The Israeli forces responded with lethal and excessive use of force against the peaceful protesters and killed 215 Palestinians, including 47 children, seven persons with disabilities, four paramedics, and two journalists.²⁷⁵

The UN Commission of Inquiry on Great March of Return concluded that some of those violations may constitute war crimes or crimes against humanity.²⁷⁶ The spark of the Great Return March,

²⁷⁰ See HRC ‘Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel’ (27 May 2021) UN Doc. A/HRC/RES/S-30/1, <https://undocs.org/A/HRC/RES/S-30/1>.

²⁷¹ Alessandro Tonutti, ‘International Commissions of Inquiry and Palestine: Overview and Impact’ (Al-Haq, 2016).

²⁷² Al-Haq, ‘Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr. Michael Lynk, on Accountability’ (31 May 2020) http://www.alhaq.org/cached_uploads/download/2020/06/03/joint-submission-to-unsr-michael-lynk-on-accountability-1591163396.pdf.

²⁷³ HRC, ‘Report of the UN Commission of Inquiry on the 2018 protests in the OPT’ (25 February 2018) UN Doc A/HRC/40/74.

²⁷⁴ Al-Haq, ‘Al-Haq Reaffirms Rights-Based Root Causes of Great Return March at its One-Year Commemoration in the Gaza Strip’ (30 March 2019), <https://bit.ly/3NfbT18>

²⁷⁵ Al-Haq, ‘Al-Haq Field Report on Human Rights Violations in 2019’ (4 February 2020), <https://www.alhaq.org/monitoring-documentation/16346.html>.

²⁷⁶ UN, ‘UN Independent Commission of Inquiry on Protests in Gaza Presents its Findings – Press Release’ (28 February 2019), <https://www.un.org/unispal/document/un-independent-commission-of-inquiry-on-protests-in-gaza-presents-its-findings-press-release/>.

which is the call of 75 percent refugee population of the Gaza Strip of their inalienable right to return to their original homes,²⁷⁷ was mentioned in the background section of the Commission's report yet no effective recommendations were made in this regard.²⁷⁸

For the first time, the Human Rights Council (HRC) has established a commission with a more comprehensive mandate covering colonised Palestine as a whole, as well as the root causes rather than simply the symptoms of the violations. In light of the failure of third states to recognise the situation as it is in Palestine, or implement recommendations from previous UN investigative mechanisms, and the resulting impunity in which this has resulted to date, the present Commission has the opportunity to and must consider the entirety of the Palestinian people including Palestinian refugees, Zionist settler colonialism and Israeli apartheid as the root cause of Israel violations, and third state and other third-party responsibility toward bringing the illegal situation to an end.

In line with the mandate entrusted by the HRC, we urge the Commission to adopt the following recommendations:

1. Recognise and acknowledge that the root causes of Israeli laws, policies, and practices implicating systematic violations and crimes against the Palestinian people as a whole, are Zionist settler colonialism and its apartheid regime;
2. Adopt a comprehensive approach in your investigation of alleged violations of IHL and IHRL and into the underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial, or religious identity, in a manner that encompasses the Palestinian people as a whole, including Palestinian refugees in exile;
3. Address the root causes of Israeli violations including by calling on Israel to dismantle its settler colonial and apartheid regime, bring to a complete end its illegal occupation since 1967, end the illegal blockade and closure on Gaza, end the ongoing annexation of the city of Jerusalem in its entirety, and the de facto annexation of vast swathes of the occupied West Bank, as acts of aggression, and enable the exercise of the right of self-determination of the Palestinian people, including the right of return Palestinian refugees;
4. Address the root causes of Israeli violations including by calling on third states to fulfil their *erga omnes* obligations, arising from Israel's illegal denial of the Palestinian people to exercise their right to self-determination and the imposition and maintenance of an apartheid regime, including by not recognizing the illegal situation, not rendering aid or

²⁷⁷ HRC, 'Report of the UN Commission of Inquiry on the 2018 protests in the OPT' (25 February 2018) UN Doc A/HRC/40/74, para 18

²⁷⁸ HRC, 'Report of the UN Commission of Inquiry on the 2018 protests in the OPT' (25 February 2018) UN Doc A/HRC/40/74.

assistance in maintaining the situation and cooperating to bring the illegal situation to an end.²⁷⁹ In so doing, third states must take positive and effective steps to overcome the illegal situation, including through, *inter alia*, the imposition of economic and diplomatic sanctions, severing cultural ties, ending all trade in weapons with Israel through a two-way arms embargo and ending military-security cooperation, banning any economic relations that perpetrate the apartheid regime over the Palestinian people, including by adopting legislation to prohibit trade with illegal Israeli settlements, in line with the example of the Irish Control of Economic Activity (Occupied Territories) Bill 2018, and implementing other effective countermeasures to reverse the illegal situation.

5. Make recommendations for the effective exercise of the ongoing denial of millions of Palestinian refugees their right to return, and the continuing forced displacement and dispossession of the Palestinian people across colonised Palestine, including by calling on Israel to fulfil its obligation to enable the return of Palestinian refugees to their original homes, and ensure restitution of their property and compensation for the damages inflicted upon them, as a result of their displacement, as well as calling for the reactivation of the UN Conciliation Commission for Palestine.
6. Call for the reconstitution of the UN Special Committee against Apartheid and the UN Centre against Apartheid, which played essential roles in the international mobilization against apartheid in South Africa and in challenging third state complicity in the apartheid regime;
7. Apply the UNGA Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA resolution “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”, the UN Charter, and Common Article 1 of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights to address the denial of the collective right of the Palestinian people as a whole to self-determination and liberation from colonial and foreign domination and alien subjugation;
8. Apply the Apartheid Convention, the Rome Statute and ICERD, to address Israel’s discriminatory laws, policies, and practices targeting the Palestinian people as a whole and apply the framework to all relevant issues pertaining to colonised Palestine, and Palestinian

²⁷⁹ ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia [South West Africa] Notwithstanding Security Council Resolution 276 (Advisory Decision) [1970] ICJ Reports 71, para 117-119; ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136; ILC, ‘Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries’ (2001), UN Doc. A/56/10; HRC ‘Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel’ (27 May 2021) UN Doc. A/HRC/RES/S-30/1, <https://undocs.org/A/HRC/RES/S-30/1>.

refugees. In doing so, this would be consistent with the precedent established in the 2019 Concluding Observations of the CERD, in paragraph 23;

9. Urge states that have not already done so to ratify the Apartheid Convention, as well as the Rome Statute;
10. Urge Special Procedure mandates to adopt an approach that addresses the root causes of the situation and frame the violations within the wider context of settler colonialism and apartheid, focusing on the racial domination and oppression Israel imposes over the Palestinian people in order to entrench their colonial subjugation;
11. Recommend the expansion of the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967 to include the Palestinian people as a whole, including Palestinians inside the 1948 territory and Palestinian refugees in exile;
12. Call on Israel to release all political prisoners, to end its widespread and systematic use of arbitrary detention and the use of torture and other ill-treatment, and to end the trial of Palestinian civilians, including children, in Israeli military courts;
13. Call on Israel to repeal all legislation and end all policies and practices enshrining apartheid, including racial discrimination, domination, and oppression over the Palestinian people, including by repealing the Basic Laws and other statutes that directly or indirectly affect the enjoyment of human rights through racial or racialized distinctions. In particular, we urge the Commission to call on Israel to repeal the following laws, as foundational to Israel's creation of an apartheid regime, including but not limited to: (a) The Basic Law: The Law of Return (1950); (b) The Citizenship Law (1952); (c) The Absentee Property Law (1950); (d) The Entry into Israel Law (1952) and its amendments; (e) Legal and Administrative Matters Law (1970); (f) The Basic Law: Israel as the Nation-State of the Jewish People (2018); and (g) Citizenship and Entry into Israel Law (Temporary Order) (2022);
14. Ensure and protect the right to engage in boycotts as a legitimate and effective means of peaceful protest, and to immediately repeal all legislation or measures which aim to criminalise boycotts of the settler colonial State of Israel, in contravention with the right to freedom of expression;
15. Support the critical role of Palestinian local, regional, and international civil society in their human rights work particularly in the face of an ongoing and protracted smear campaign by Israel and its affiliated bodies targeting human rights defenders. In doing so, the Commission should demand that Israel immediately ceases any and all policies and practices of intimidation and silencing of human rights defenders, organisations, and

members of civil society in violation of their right to freedom of expression, including to immediately rescind its designation of six Palestinian civil society organizations as “terrorist organizations” both under Israeli domestic law and under military orders.

16. In relation to individual criminal responsibility, we urge the Commission to:

- i. Call upon the Prosecutor of the International Criminal Court to conduct a full, prompt, thorough, and comprehensive investigation into all suspected crimes committed against the Palestinian people, including the crimes of apartheid, population transfer, and persecution, and other associated crimes that fall within the jurisdiction of the Court with respect to the Situation in Palestine and accordingly prosecute relevant perpetrators.
- ii. Urge states to activate universal jurisdiction mechanisms to hold to account individuals and corporate actors responsible for war crimes and crimes against humanity against the Palestinian people, including the crime of apartheid;
- iii. Not omit from its scope the possibility of identifying crimes of state and the specific responsibility and liability of state organs, institutions and other legal persons;

17. In the area of corporate accountability, we urge that the Commission call on third states, multinational corporations, financial institutions, and non-governmental organizations to commit to undertaking rigorous internal human rights due diligence to ensure that they are in full compliance with their international legal obligations as envisioned in the UN Guiding Principles on Business and Human Rights, including through supporting the annual updating of the UN Database on businesses engaged with Israel’s illegal settler colonial enterprise, and encouraging the expansion of the database mandate to include all of colonised Palestine, as well as banning any economic relations that perpetrate the apartheid regime over the Palestinian people, including by ending trade with, and support for, Israel’s illegal settler colonial enterprise in the occupied territory.

7. Annex: Visual: How Israel Maintains Apartheid and Denies Palestinian Self-determination

