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Promotion and protection of human rights

Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

Note by the Secretary-General**

The Secretary General has the honour to transmit to the General Assembly the report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, submitted in accordance with Human Rights Council resolution [S-30/1](#).

* [A/77/150](#).

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



Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

Summary

The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel hereby submits its first report to the General Assembly. The report addresses the Israeli occupation of Palestinian land, its purported de jure and discernible de facto annexation, the human rights implications for Palestinians and the legal consequences of such actions.

I. Introduction

1. In its resolution [S-30/1](#), the Human Rights Council established an independent international commission of inquiry with a mandate to investigate, in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021.

2. The Commission is made up of three members: Navanethem Pillay (South Africa), Miloon Kothari (India) and Christopher Sidoti (Australia). Secretariat support is provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

3. In its first report to the Human Rights Council, at its fiftieth session ([A/HRC/50/21](#)), the Commission noted the strength of credible evidence that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory, and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers. The present report will be focused on those elements with a view to investigating the human rights and legal consequences of the prolonged occupation, including whether, as part of its occupation regime, Israel has, to all intents and purposes, “annexed” wholly or partly the Occupied Palestinian Territory, and providing concrete recommendations to relevant stakeholders.

II. Methodology and cooperation

4. In its resolution [S-30/1](#), the Human Rights Council called upon all relevant parties to cooperate fully with the Commission and to facilitate its access. The Commission is grateful to the Government of the State of Palestine for its continued cooperation with the Commission. The de facto authorities in Gaza contacted the Commission and indicated their willingness to cooperate. The Government of Egypt continued to indicate its willingness to cooperate with the Commission but has not yet responded to the Commission’s request to be given access the Gaza Strip through the Rafah crossing.

5. The Commission continues to regret the lack of cooperation on the part of Israel, along with its refusal to allow entry into Israel and to permit access to the Occupied Palestinian Territory, despite the desire of the State of Palestine to allow the Commission to visit.

6. The report is based on interviews conducted with primary and secondary sources up to 31 July 2022, as well as on research, in-person and online discussions with stakeholders and submissions received following a call for submissions issued on 22 September 2021.

III. Applicable international law and the occupation regime

7. The Commission laid out the applicable international legal framework in the Occupied Palestinian Territory and in Israel in its previous report to the Human Rights Council¹ and in its terms of reference.² The Occupied Palestinian Territory, including

¹ [A/HRC/50/21](#), paras. 14–25.

² Available at www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent_ICI_Occupied_Palestinian_Territories.pdf.

East Jerusalem and Gaza, and the occupied Syrian Golan are currently under belligerent occupation by Israel, to which international humanitarian law applies concurrently with international human rights law.

8. It is unclear in international law and practice when a situation of belligerent occupation becomes unlawful. While the origins of the situation are different, the International Court of Justice found in an advisory opinion that the continued presence of South Africa in Namibia was illegal. In addition, in examining the continued refusal of South Africa to abide by Security Council resolutions, the Court found that by occupying the territory of Namibia without title, South Africa incurred international responsibilities arising from a continuing violation of an international obligation.³

9. The occupation of territory in wartime is, under international humanitarian law, a temporary situation, which deprives the occupied Power of neither its statehood nor its sovereignty. Occupation as a result of war cannot imply any right whatsoever to dispose of territory.⁴ Protected persons who are in occupied territory must not be deprived of their rights under international humanitarian law and international human rights law as a result of any attempts to annex the whole or part of the occupied territory.

10. A number of legal experts have identified several principles that, when adhered to, may be used to determine the legality of an occupation. These include whether sovereignty and title are not vested in the occupying power, the occupying power is entrusted with the management of public order and civil life in the occupied territory, the people under occupation are the beneficiaries of that trust in view of their right to self-determination, and the occupation is temporary.⁵

11. In the present report, the Commission focuses on two indicators that may be used to determine the illegality of the occupation: the permanence of the Israeli occupation, already noted in its previous report to the Human Rights Council at its fiftieth session,⁶ and actions amounting to annexation, including unilateral actions taken to dispose of parts of the Occupied Palestinian Territory as if Israel held sovereignty over it.

12. With regard to annexation, the Commission finds it important to distinguish between *de jure* and *de facto* annexation. *De jure* annexation is the formal extension of a State's sovereignty into a territory recognized under its domestic law (but not necessarily under international law). *De facto* annexation is a term that was used by the International Court of Justice in its advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory:⁷

³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, paras. 108, 109, 111, 115, 117–127 and 133.

⁴ See International Committee of the Red Cross (ICRC), commentary of 1958 on article 47 of the Convention relative to the Protection of Civilian Persons in Time of War. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A>.

⁵ See Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, "Illegal occupation: framing the Occupied Palestinian Territory", *Berkeley Journal of International Law*, vol. 23, No. 3 (2005), pp. 554 and 555. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has identified the following test of illegality: annexation, permanence of occupation, not acting in the best interests of the occupied people and not administering the territory in good faith (see A/72/556, paras. 28–38).

⁶ See A/HRC/50/21, paras. 69 and 70.

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, paras. 75–78.

The Court considers that the construction of the wall and its associated régime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation.⁸

13. De facto annexation implies a gradual or incremental process in which it is not always clear at what point the threshold has been crossed. The transition involves establishing “facts on the ground” that are intended to be irreversible and permanent while avoiding any formal proclamation in order to evade diplomatic and political repercussions.⁹

IV. Nature of the control exerted by Israel in the territories that it occupies¹⁰ and the situation inside Israel

A. East Jerusalem

14. Israel has applied its domestic law to East Jerusalem since 1967, through several dedicated laws, and it has also transferred ownership of land to the State to facilitate the expansion of its control and the establishment of Israeli settlements¹¹ on Palestinian land.¹² In 1967, Israel unilaterally incorporated 70,000 dunams¹³ of Palestinian land into the municipal area of Jerusalem.¹⁴ By means of a series of laws, Israel has also enabled its Government to transfer property rights from Palestinians in East Jerusalem to the State and allowed Israeli settler organizations to initiate eviction proceedings.¹⁵ The designation of national parks has further served to expand Israeli-controlled areas and strategic contiguity.¹⁶ Over one third of East Jerusalem has been expropriated for the construction of Israeli settlements, and only 13 per cent of the annexed area is currently zoned for Palestinian construction.¹⁷ More recent developments, such as government decision 3790 (2018), have raised concerns that

⁸ Ibid., para. 121.

⁹ See A/73/447, para. 30.

¹⁰ For the purposes of the present report, “the territories that Israel occupies” and equivalent terms are a reference to East Jerusalem, the Syrian Golan, Gaza and the West Bank outside East Jerusalem.

¹¹ In United Nations reports on the Occupied Palestinian Territory, the term “settlements” is used in English versions and “colonies” in French versions. In the present report, the Commission adheres to those usages and will examine the legal terminology in the future.

¹² In accordance with the Land (Acquisition for Public Purposes) Ordinance of 1943, as amended in 1946. See Efrat Cohen-Bar and others, *Trapped by Planning: Israeli Policy, Planning, and Development in the Palestinian neighborhoods of East Jerusalem* (Jerusalem, Bimkom – Planners for Planning Rights, 2014). See also Ir Amim, “Settlements and national parks”, available at www.ir-amim.org.il; and Amnon Ramon and Yael Ronen, *Residents, not Citizens: Israeli Policy towards the Arabs in East Jerusalem 1967–2017* (Jerusalem Institute for Policy Research, 2017), pp. 49, 50 and 56.

¹³ The following conversion rates have been used for the purposes of the present report: 1 acre equals 4.04686 dunams; 1 hectare equals 10 dunams; one km² equals 999.64 dunams.

¹⁴ See A/HRC/22/63, para. 25. See also Cohen-Bar and others, *Trapped by Planning*, p. 8.

¹⁵ See Norwegian Refugee Council, “Legal memo: the absentee property law and its application to East Jerusalem”, February 2017; Amnesty International, *Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (London, 2022), p. 114; and Adalah, “The legal implications of land registration procedures implemented by Israel in East Jerusalem”, 14 July 2022, available at www.adalah.org.

¹⁶ Terrestrial Jerusalem, “The strategic encirclement of Jerusalem’s old city – the emergence of a settler-controlled biblical realm”, 2022, on file, pp. 7 and 8; and Ir Amim, “Settlements and national parks”.

¹⁷ See United Nations, Office for the Coordination of Humanitarian Affairs, “The planning crisis in East Jerusalem: understanding the phenomenon of ‘illegal’ construction”, April 2009.

the Government of Israel is paving the way for the establishment of new settlements and further dispossession of Palestinians.¹⁸

15. To date, 14 settlements have been established in East Jerusalem with a total population of more than 229,000 persons.¹⁹ The restrictive planning and zoning regimes in East Jerusalem, which have obstructed adequate housing, infrastructure and livelihoods for Palestinians, have contributed to shrinking space for Palestinians.²⁰ Israeli policies continue to encroach on Palestinian homes and spaces, with at least 218 Palestinian households in East Jerusalem currently at risk of imminent forced eviction owing to cases brought before Israeli courts, primarily by Israeli settler organizations.²¹ The Commission notes that the choice of location of some new settlements, such as Gi'vat Hamatos, further reduces the likelihood of ending the occupation and violates the right of Palestinians to self-determination.²² An outer layer of settlements, beyond the municipal boundaries of Jerusalem, has also contributed to severing the geographical contiguity between East Jerusalem and the rest of the occupied West Bank. This includes the plan for the E1 area in eastern Jerusalem (outside the municipal boundary), intended to reinforce the settlements in the Ma'ale Adumim area and connect them with Jerusalem, which would divide the West Bank into two separate entities.²³

16. The legislative and administrative measures undertaken by Israel since 1967 have been firmly rejected by the Security Council and the General Assembly. Following the enactment of the Basic Law: Jerusalem, Capital of Israel in 1980, which solidified the purported de jure annexation of East Jerusalem, the Security Council reaffirmed that the acquisition of territory by force is inadmissible. It further decided not to recognize the Law and such other actions by Israel that, as a result of the Law, are intended to alter the character and status of the city.²⁴

B. The Syrian Golan

17. The Syrian Golan, in the south-eastern part of the Syrian Arab Republic, was occupied by Israel in the war of 1967. Part of the area, including the town of Qunaytirah, was returned to the Syrian Arab Republic in the Agreement on Disengagement between Israeli and Syrian Forces of 1974.²⁵ The occupied Syrian Golan was purportedly annexed in 1981 through a dedicated law under which Israel extended its jurisdiction, law and administration to the Golan.²⁶ The Security Council has definitively rejected that act as unlawful.²⁷ Only the United States of America has recognized the purported annexation.

¹⁸ See www.gov.il/he/departments/policies/dec3790_2018 (in Hebrew).

¹⁹ See Peace Now, "Jerusalem". Available at <https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem>.

²⁰ See A/HRC/49/85, para. 11. See also Office for the Coordination of Humanitarian Affairs, "West Bank, East Jerusalem: key humanitarian concerns", 21 December 2017; and Cohen-Bar and others, *Trapped by Planning*, p. 39.

²¹ See A/HRC/49/85, para. 25, A/76/336, para. 35, and S/2021/584, para. 6.

²² See, for example, Peace Now, "Givat Hamatos – a new Israeli neighborhood in East Jerusalem", 13 October 2011.

²³ A/HRC/49/85, para. 6.

²⁴ See Security Council resolution 478 (1980). See also United Nations, Committee on the Exercise of the Inalienable Rights of the Palestinian People, "The status of Jerusalem" (New York, 1997), p. 24. Available at www.un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-English-199708.pdf.

²⁵ S/11302/Add.1.

²⁶ Law on the Golan Heights of 1981. Available in Hebrew at https://fs.knesset.gov.il/10/law/10_lsr_211778.PDF.

²⁷ See Security Council resolution 497 (1981).

18. On 1 June 1967, approximately 90,000 Syrians were living in the Golan. One month later, that number was 6,396. A delegation of the International Committee of the Red Cross noted that most of the refugees from the Golan had been expelled.²⁸ From 1967, settlements were used in the Golan to create facts on the ground that irreversibly established Israeli control over the territory. Today, there are 34 settlements in the Golan. In December 2021, the Government of Israel approved a plan to add 7,300 housing units in the Golan over the following five years to double the number of residents there, as well as to establish two new settlements.²⁹

C. Gaza

19. Israel occupied the Gaza Strip in the war of 1967 and proceeded to expropriate land and establish settlements shortly afterwards. By 1997, it had established 19 settlements on 23,000 dunams of land, housing some 5,000 settlers.³⁰ Although Israel disengaged from Gaza in 2005, the Commission notes that Israel continues to occupy the territory by virtue of the control it exercises over, inter alia, the airspace and territorial waters of Gaza, as well as its land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry.³¹

20. Gaza has also been subjected to blockade imposed by Israel and support by Egypt since the de facto authorities assumed certain governance functions in 2007. This blockade has been tightened and loosened several times since then. It restricts the movement of people and goods into and out of the territory. The blockade has been widely condemned as a policy that may amount to collective punishment.³²

D. Israel

21. The Commission has found several similarities between the treatment of Palestinians by Israel inside Israel in the period since 1948, and its policies in the Occupied Palestinian Territory.

22. Between 1948 and 1966, approximately 85 per cent of the Palestinians in Israel lived in three areas that were subject to a military regime and came under three military governors.³³ Israel maintained that it had instituted the regime for security reasons, since each of the three areas shared a border with “enemy countries”. According to a government investigation into the military regime, Israel had sought to address a perceived risk that Palestinians residing inside Israel would collaborate with neighbouring Arab countries against its security interests; another purpose was to control and reduce the number of Palestinian refugees seeking to return to their homes.³⁴

²⁸ See Akevot Institute, “Displacement in the Heights: how the population of the Golan Heights vanished in 1967”, 19 September 2022, illustration marked as “Annex to Moreillon’s letter”. Available at www.akevot.org.il/en/article/displacement-in-the-golan/#popup/acfb382d6c3e88ba2b9e112e710a627.

²⁹ See www.gov.il/he/departments/news/spoke_golan261221 (in Hebrew).

³⁰ See A/52/172-E/1997/71, para. 26.

³¹ See A/HRC/50/21, para. 16.

³² See A/74/468, para. 22, A/73/420, para. 7, and A/72/565, para. 28.

³³ See <https://storymaps.arcgis.com/stories/81adbee036594229ac65032b8fb80e07?locale=he> (in Hebrew).

³⁴ Akevot Institute, “Security settlements and the question of land: the Ratner Committee report on military rule and its secret annex”, 24 February 1956.

23. Although the military regime ended in 1967, its legacy continues. In 2022, Palestinian citizens of Israel are still subjected to discriminatory policies including the confiscation of land, demolitions and evictions that affect in particular the Bedouin in the Negev and Palestinians residing in other areas of Israel. In addition, several Israeli laws discriminate against Palestinian citizens of Israel. For example, the Nation State Law of 2018 gives only Jews the right to self-determination in Israel and removes the status of Arabic as an official language alongside Hebrew.³⁵ In addition, the Citizenship and Entry into Israel Law (Temporary Order) restricts further family reunification and hinders the right to marry the person of one's choice.³⁶

E. The West Bank outside East Jerusalem

24. Under the Oslo Accords, the West Bank was divided into three areas: A, B and C (excluding East Jerusalem and the Gaza Strip). Over 60 per cent of the West Bank was designated as Area C, where Israel retains near-exclusive control.³⁷ While not replacing obligations under international law, the Accords assigned the Palestinian Authority civil and security jurisdiction over Area A and civil control over Area B. The Accords provided that the Palestinian Authority would gradually assume control over the West Bank in a phased manner, except for issues that would be negotiated in permanent status negotiations.³⁸

The Israeli settlements enterprise

“In light of the current negotiations on the future of Judea and Samaria, it will now become necessary for us to conduct a race against time. During this period, everything will be mainly determined by the facts we establish in these territories and less by any other considerations. This is therefore the best time for launching an extensive and comprehensive settlement momentum (...)”

Source: World Zionist Federation, “Settlement in Judea and Samaria – strategy, policy and plans” (A/36/341-S/14566, annex).

25. From the beginning of the occupation, Israel has established or facilitated the establishment of hundreds of civilian settlements in the Occupied Palestinian Territory in an enterprise that is the most significant driver of its protracted occupation and that is in contravention of international law. Israel has spent billions of dollars on the construction of settlements and of infrastructure to support them, including roads, water and sewerage systems, communications and power systems,

³⁵ See CERD/C/ISR/CO/17-19, paras. 13–15, and CCPR/C/ISR/CO/5, para. 10. See also Adalah, “The discriminatory laws database”, 25 September 2017; Jerusalem Legal Aid and Human Rights Center, “Families divided: Israel passes new citizenship law, fortifies apartheid regime”; and Adalah, “Adalah petitions Israeli Supreme Court against new citizenship law banning Palestinian family unification”.

³⁶ See Knesset, “Knesset plenum passes Citizenship and Entry into Israel Bill into law”, 10 March 2022; Jerusalem Legal Aid and Human Rights Center, “Families divided”; and Adalah, “Adalah petitions Israeli Supreme Court”.

³⁷ See Office for the Coordination of Humanitarian Affairs, “Area C of the West Bank: key humanitarian concerns”, update, August 2014.

³⁸ See Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (A/51/889-S/1997/357, annex), art. XI, para. 2.

security systems, and educational and health care facilities.³⁹ One of the core principles of the laws of belligerent occupation is that the occupying Power must protect the fundamental interests of the population under occupation, including through the prohibition of the transfer of its own civilian population into the territory it occupies.⁴⁰ Article 49 of the Fourth Geneva Convention was intended to prevent the transfer by occupying Powers of portions of their own population to occupied territory for political or racial reasons or to colonize the territories.⁴¹

26. While all Israeli settlements are considered illegal under international law, Israel makes a distinction between “authorized” settlements and unauthorized outposts, which it considers illegal. Nonetheless, Israel has been providing outposts with essential services including electricity and security and has been allocating them farming and grazing land.⁴² In April 2022, the Israeli Attorney General’s Office issued a legal opinion according to which outposts located on “State land” could be connected to the official electricity grid.⁴³ To date the Government of Israel has retroactively authorized 23 outposts by bringing them within the jurisdiction of nearby settlements or granting them independent settlement status. According to Peace Now, two established outposts have been evacuated, but the Government is reportedly in the process of retroactively authorizing at least 12 more.⁴⁴

27. Israel has attempted through legislative action to authorize settlements and outposts built on private Palestinian land. The 2017 Regularization Law applies to settlements built on private Palestinian land or without prior authorization before the Law came into effect.⁴⁵ In 2020, the Supreme Court of Israel annulled the law on the grounds that it infringed rights codified in the Basic Law: Human Dignity and Liberty, as it would result in the expropriation of private Palestinian land and transfer the ownership of the land to settlers.⁴⁶ The Court decided, however, that outposts built on private Palestinian land could be authorized if they had been established in “good faith”. In 2022, the Supreme Court determined that the outpost Mitzpeh Kramim need not be evacuated because the expropriation of private land met the good-faith test and that “market regulations”⁴⁷ applied to outposts.⁴⁸ In the decision, the Court effectively gave carte blanche to the approval of outposts on private Palestinian land in the West Bank.

³⁹ See TD/B/EX(71)/2, paras. 40 and 66. See also Kerem Navot, “The Wild West: grazing, seizing and looting by Israeli settlers in the West Bank”, May 2022. See also Yesh Din, *Plundered Pastures: Israeli Settler Shepherding Outposts in the West Bank and Their Infringement on Palestinians’ Human Rights*, position paper, December 2021.

⁴⁰ Fourth Geneva Convention, arts. 27 and 49.

⁴¹ See ICRC, commentary of 1958 on article 49 of the Convention relative to the Protection of Civilian Persons in Time of War. Available at <https://ihl-databases.icrc.org/ihl/COM/380-600056?OpenDocument>.

⁴² See Kerem Navot, “The Wild West” and Yesh Din, “Plundered pastures”.

⁴³ On file. According to the legal opinion, Palestinian villages in Area C may also be connected to the official electricity grid.

⁴⁴ See Peace Now, “West Bank population”. Available at <https://peacenow.org.il/en/settlements-watch/settlements-data/population>.

⁴⁵ The Judea and Samaria Settlement Regulation Law (2017). Available in Hebrew at www.nevo.co.il/law_html/law01/501_553.htm.

⁴⁶ Supreme Court decision of 9 June 2020 in cases Nos. 1308/17, 2055/17. Available in Hebrew at <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C17%5C080%5C013%5Cv48&fileName=17013080.V48&type=2>.

⁴⁷ The term “market regulations” refers to land purchased from the Commissioner of Government Property and Abandoned Lands in Judea and Samaria that was believed to be State land at the time of the transaction, when in fact it was private property. See <https://lawjournal.huji.ac.il/sites/default/files/2020-11/mishpatim-50-2-307.pdf> (in Hebrew).

⁴⁸ Supreme Court Decision of 27 July 2022 in case No. 6364/20. Available in Hebrew at <https://storage.googleapis.com/haaretz-cms-prod/df/d2/89f3ad634b02a194f7aac204a15b/gada.pdf>.

28. Between June 2021 and June 2022, six new outposts were established.⁴⁹ During that period, several members of the Government explicitly expressed support for the erection of outposts as well as for judicial decisions retroactively authorizing them.⁵⁰ On 20 July 2022, hundreds of settlers gathered in six separate locations to establish new outposts. The Israeli security forces issued a statement declaring such actions illegal⁵¹ and deployed significant military and civilian police forces. However, despite announcing their plans in advance, settlers were allowed access to the locations, erected temporary structures and were only later removed by security forces.⁵²

29. Funding for settlements and outposts reportedly comes from a variety of State and non-State sources, private donors and funds raised through Israeli and non-Israeli non-profit groups,⁵³ including private organizations, such as Nahala and Amana.⁵⁴ The Settlement Division of the World Zionist Organization plays a key role in establishing and supporting settlements and outposts. The Settlement Division was established in 1971 and is funded by the Government of Israel, although it is not a State entity. The Settlement Division actively supports and funds outposts. For example, it supports the regularization of outposts with regard to their connection to the electrical grid and the preparation of building plans.⁵⁵

30. The establishment, maintenance and expansion of Israeli settlements throughout the West Bank, including in East Jerusalem, has fragmented and isolated Palestinians from their lands as well as from other Palestinian communities. The Commission emphasizes that wherever settlements are located, they have a cascading impact on Palestinians throughout the West Bank. By largely failing to enforce the law, continuing to retroactively authorize outposts, ignoring settler violence originating in outposts⁵⁶ and not applying legal sanctions against settlers breaking the law, Israel sends a clear message to settlers that outposts are a viable, quasi-legal option for erecting new settlements and expanding Israeli presence in the West Bank.

⁴⁹ Peace Now reported of four instances between June 2021 and June 2022 in which outposts were founded but settlers evicted immediately after their foundation, and a rise in demolition of small outposts of “hill-top” youth. See Peace Now, “The government of unequivocal annexation: deepening of the settlement project, dispossession and oppression – one year of the Israeli government headed by Yair Lapid and Naftali Bennett”, June 2022.

⁵⁰ See https://twitter.com/Ayelet_Shaked/status/1549851212199202821 (in Hebrew); and <https://twitter.com/gidonsaar/status/155230355646777537> (in Hebrew).

⁵¹ Joint statement by the Israel Defense Forces and Israel police of 20 July 2022. Available in Hebrew at www.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA-%D7%95%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D/2022/%D7%99%D7%95%D7%9C%D7%99/%D7%90%D7%99%D7%95%D7%A9-%D7%9B%D7%95%D7%97%D7%95%D7%AA-%D7%91%D7%99%D7%98%D7%97%D7%95%D7%9F-%D7%A9%D7%98%D7%97%D7%99%D7%9D-%D7%A6%D7%91%D7%90%D7%99%D7%9D-%D7%A1%D7%92%D7%95%D7%A8%D7%99%D7%9D-%D7%97%D7%95%D7%A7-%D7%9E%D7%90%D7%97%D7%96%D7%99%D7%9D-%D7%91%D7%9C%D7%AA%D7%99-%D7%97%D7%95%D7%A7%D7%99%D7%99%D7%9D/.

⁵² See www.inn.co.il/news/571834 (in Hebrew). See also Hagar Shezaf, “Israeli forces evacuate short-lived outposts set up by West Bank settler movement”, *Haaretz*, 21 July 2022; and Hagar Shezaf, “Settlers camp out in six locations across the West Bank, planning to establish new outposts”, *Haaretz*, 20 July 2022.

⁵³ Uri Blau, “From N.Y.C. to the West Bank: following the money trail that supports Israeli settlements”, *Haaretz*, 7 December 2015. See also http://peacenow.org.il/wp-content/uploads/2020/11/TheCombina_Heb1.pdf, pp. 7 and 8 (in Hebrew).

⁵⁴ See A/HRC/49/85, para. 42. See also Hagar Shezaf, “How a Jewish settler group raised millions to set up illegal outposts”, *Haaretz*, 20 July 2022.

⁵⁵ See www.gov.il/BlobFolder/reports/work_plan290622/he/work_plan290622.pdf, art. 7 (in Hebrew).

⁵⁶ See paras. 67 and 68 of the present report.

Expropriation and exploitation of land and other natural resources

31. Since the occupation began, Israel has used military justifications to issue permanent and temporary closure orders for vast areas in the West Bank. In practice, much of the land has been used not for military purposes but for the construction of settlements. Israel has declared approximately 18 per cent of the West Bank closed military zones, including in area C.⁵⁷ Over half of Area C (1.765 million dunams) has been officially designated closed military zones. Israeli settlers have cultivated over 14,000 dunams of land in closed military areas, some of which is private Palestinian land.⁵⁸

32. In a decision issued in 1979, the Supreme Court of Israel determined that the expropriation of land by military orders for the construction of settlements contravened international law.⁵⁹ However, Israel continued to declare military firing zones that were then used for other purposes. In the 1980s, the area of Masafer Yatta in the south Hebron hills was declared a restricted military zone, referred to as firing zone 918, which affected dozens of Palestinian families who had lived in the area since before 1948.⁶⁰ Newly released minutes of meetings between officials of the Government of Israel and the Settlement Division indicate that Israel established military zones for non-military reasons, including for the establishment and expansion of settlements.⁶¹ In 1981, then Minister of Agriculture Ariel Sharon met with the Settlement Division and proposed the establishment of a firing zone in the south Hebron hills with the explicit purpose of countering the spread of the Arab villagers on the mountainside toward the desert.⁶²

33. Israel has declared large areas of land State land, relying on the 1967 Order Regarding Government Property (Judea and Samaria) (No. 59), 5727-1967, which stipulates that the Custodian of Absentee Property Department may take possession of government property and take any measures he or she deems necessary for that purpose.⁶³ Israel has declared over 750,000 dunams in the West Bank State land under the Order.⁶⁴ Israel has also used a process of mapping land (which it has termed the “survey lands” procedure) that is based on the Ottoman Land Code to determine

⁵⁷ See Office for the Coordination of Humanitarian Affairs, “The humanitarian impact of Israeli-declared ‘firing zones’ in the West Bank”, August 2012.

⁵⁸ See Kerem Navot, *A Locked Garden: Declaration of Closed Areas in the West Bank*, March 2015, pp. 10–15.

⁵⁹ Supreme Court decision of 22 October 1979 in case No. 390/79. Available in Hebrew at <https://hamoked.org.il/items/1670.htm>. See also B’Tselem, *Under the Guise of Legality: Israel’s Declarations of State Land the West Bank* (Jerusalem, February 2012), pp. 9 and 12.

⁶⁰ See B’Tselem, “Masafer Yatta communities Israel is trying to drive out”, 1 January 2013. Available at www.btselem.org/south_hebron_hills/masafer_yatta.

⁶¹ See Yuval Abraham, “Classified document reveals IDF ‘firing zones’ built to give land to settlers”, +972 Magazine, 11 July 2022.

⁶² See Akevot, “Document exposed by Akevot: Ariel Sharon instructed IDF to create training zone to displace Palestinians”, 9 August 2020, available at www.akevot.org.il/en/news-item/document-revealed-by-akevot-ariel-sharon-instructed-idf-to-create-training-zone-to-displace-palestinians/. See also minutes of meeting between the Committee for Settlement of the Government and the World Zionist Organization, 12 July 1981, available in Hebrew at www.akevot.org.il/wp-content/uploads/2020/08/1981-07-12-%D7%95%D7%A2%D7%93%D7%AA-%D7%A9%D7%A8%D7%99%D7%9D-%D7%9C%D7%94%D7%AA%D7%99%D7%A9%D7%91%D7%95%D7%AA-%D7%A4%D7%A8%D7%95%D7%98%D7%95%D7%A7%D7%95%D7%9C-%D7%9E%D7%9C%D7%90-%D7%9E%D7%9B%D7%95%D7%9F-%D7%A2%D7%A7%D7%91%D7%95%D7%AA.pdf.

⁶³ See B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank*, (Jerusalem, May 2002), p. 52. See also B’Tselem, *Under the Guise of Legality*, p. 13.

⁶⁴ See Kerem Navot, *Blue and White Make Black: The Work of Blue Line Team in the West Bank*, December 2016, pp. 6 and 42.

whether land is uncultivated or is insufficiently cultivated and so may be classified as State land.⁶⁵

34. Parcels of land in the West Bank have been designated as nature reserves and parks. To date, Israel has declared about 48 nature reserves with a total area of approximately 383,600 dunams, representing around 12 per cent of Area C and around 7 per cent of the entire West Bank.⁶⁶ In January 2020, the Minister of Defence of Israel declared seven new national parks on over 130,000 dunams of land, and the expansion of 12 existing reserves. According to Peace Now, 20,000 dunams of that land is privately owned by Palestinians who will be barred from cultivating it or further building on it.⁶⁷

35. In addition to expropriating land, Israel has taken control of all water resources in the West Bank and has been using much of the water for its own purposes. Through military order No. 92 (1967), Israel asserted its control over the three primary sources of water in the West Bank and prohibited Palestinians from constructing new water installations or maintaining existing installations without a military permit. At the same time, Israel has developed its own water infrastructure for its settlements and has done the same in Israel.⁶⁸

36. Land has also been used for Israeli industrial and economic activity through the establishment of industrial zones throughout the West Bank. Israel has encouraged companies to move their operations to those zones by providing financial incentives, permits and licenses that are rarely granted to companies providing services to Palestinians.⁶⁹ Israel has taken strong measures to discourage States and businesses from distinguishing between Israeli-manufactured products and those coming from settlements.⁷⁰

37. As at 2015, there were 11 Israeli-operated quarries in Area C producing 10 million to 12 million tons of raw materials including rock, gravel and other minerals. Of those, approximately 10 million tons was transferred to Israel. West Bank quarries generate growing revenue for Israel and form an important component

⁶⁵ Ibid., pp. 6, 7 and 39.

⁶⁶ See Peace Now, “The Minister of Defense approved the declaration of the largest nature reserve in 25 years in the West Bank”, 24 May 2022.

⁶⁷ See https://twitter.com/naftalibennett/status/1217372351911866369?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1217372351911866369%7Ctwgr%5Edc7765b546f118b60ef9d4da93dbb32b48287d60%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.zman.co.il%2F88980%2F (in Hebrew). See also Hagar Shezaf, “Israeli defense chief approves new West Bank nature reserves to ‘develop Jewish settlement’”, *Haaretz*, 15 January 2020; and Peace Now, “The Minister of Defense approved the declaration of the largest nature reserve in 25 years in the West Bank”.

⁶⁸ See A/HRC/48/43, para. 18. See also United Nations, “Israel’s policy on the West Bank water resources”, 1980, available at www.un.org/unispal/document/auto-insert-206852/; Jerusalem Media and Communication Centre, *Israeli Military Orders in the Occupied Palestinian West Bank (1967–1992)*, available at www.jmcc.org/Documentsandmaps.aspx?id=622; and Amnesty International, “Israel/Occupied Palestinian Territories: demand dignity: troubled waters – Palestinians denied fair access to water”, 27 October 2009.

⁶⁹ See A/HRC/37/39, paras. 43 and 44.

⁷⁰ See, for example, Middle East Monitor, “Israel threatens Norway with ‘adverse’ impact following change in settlement labels”, 13 June 2022; Barak Ravid, “Israel considers suing EU over decision to label settlement products”, *Haaretz*, 19 November 2015.

of the Israeli raw materials market.⁷¹ In 2015, Israel received 74,102,235 shekels⁷² from royalties and user fees paid by quarries operating in the West Bank.⁷³

38. Quasi-governmental entities have played a role in expropriating land and managing its allocation to settlements.⁷⁴ The Jewish National Fund, for example, was established in 1901 with the aim of purchasing land in the region for Jewish settlement. After 1967, it acquired land from Palestinians in the West Bank to facilitate the establishment of settlements and expanded its other areas of activity to supporting settlements.⁷⁵ In August 2022, Israeli media reported that the Jewish National Fund had voted to allocate 61 million shekels for the purchase of land owned by Palestinians in the Jordan Valley, located on a closed military zone.⁷⁶

39. Land is a key natural resource, integral to the Palestinian identity and economy. Palestinians currently can build on less than 1 per cent of the land in Area C,⁷⁷ owing to Israeli planning policies and the expropriation of more than 2 million dunams of land by Israel since 1967. Israel has expropriated land throughout the West Bank for a variety of purposes, including settlement construction, industrial zones, farming and grazing land for settlers, and roads, in contravention of international law.⁷⁸

40. Under international law, an occupying Power is entitled to a limited use of natural resources of an occupied territory. Article 55 of the Regulations respecting the Laws and Customs of War on Land of 1907 stipulates that an occupying Power may only act as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates. In doing so, it must safeguard the capital of those properties and administer them in accordance with the rules of usufruct. In addition, articles 28 and 47 of the Hague Regulations, along with article 33 of the Fourth Geneva Convention, prohibit the act of pillage. This applies to all types of property, whether belonging to private persons or to the State.⁷⁹ Pillage is also a war crime under the article 8 (2) (b) (xvi) of the Rome Statute of the International Criminal Court.

Restrictive planning, zoning and development

41. Under the Oslo Accords, planning, zoning and development in Area C was to be undertaken temporarily by Israel. However, this responsibility has still not been passed on to the Palestinian Authority, which has severely restricted Palestinian

⁷¹ Ministry of Housing, report by the Committee to Examine Land Policies in the Quarrying Sector, April 2015, pp. 10 and 11. Available in Hebrew at www.gov.il/BlobFolder/policy/balnikov/he/balnikov_final_report_26042015.pdf.

⁷² As at 2 September 2022, the conversion rate was 3.40 shekels for one United States dollar.

⁷³ See <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/%D7%A0%D7%99%D7%99%D7%A8+%D7%A2%D7%9E%D7%93%D7%94+%D7%9E%D7%97%D7%A6%D7%91%D7%95%D7%AA/38443.pdf> (in Hebrew).

⁷⁴ For more on the World Zionist Organization, see para. 31 of the present report.

⁷⁵ See Peace Now, “Involvement of KKL-JNF and the settlement division in the settlements”, p. 2. Available at http://peacenow.org.il/wp-content/uploads/2020/02/KKL_Settlement-Division-Fact-Sheet.pdf.

⁷⁶ See Hagar Shezaf, “Israel recruited the Jewish National Fund to secretly buy Palestinian Land for settlers”, *Haaretz*, 15 July 2021. See also Hagar Shezaf, “JNF approves funds to buy Palestinian-owned Jordan Valley land at Israel’s request”, *Haaretz*, 3 August 2022; and <https://peacenow.org.il/jnf-tender-for-land-registration> (in Hebrew).

⁷⁷ See TD/B/EX(71)/2, para. 33.

⁷⁸ See B’Tselem, *State Business: Israel’s Misappropriation of land in the West Bank through Settler Violence* (Jerusalem, November 2021), p. 7; See also B’Tselem, *Land Grab*, p. 47; and Office for the Coordination of Humanitarian Affairs, “Area C of the West Bank: key humanitarian concerns”, update, August 2014.

⁷⁹ See ICRC, commentary of 1958 on article 33 of the Convention relative to the Protection of Civilian Persons in Time of War. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=36BD41F14E2B3809C12563CD0042BCA9>.

development opportunities.⁸⁰ Israel has used its control of planning and zoning to impose substantial restrictions on building and construction that apply primarily to Palestinians, restrict Palestinians' use of land, and support the development of settlements.

42. Israel prohibits Palestinian construction in 70 per cent of Area C because of its designation as State land, natural reserves or military zones; in addition, Israel imposes substantial zoning restrictions in the remaining 30 per cent.⁸¹ Most Palestinian applications for building permits are rejected by Israel on the grounds that the relevant area has not been zoned for construction, even when the land is owned by the applicant.⁸² Permits are rarely given to Palestinians for building residential structures or structures for economic activities, or to develop infrastructure. Over the 10-year period lasting from 2009 to 2018, only about 2 per cent of applications for construction permits was approved.⁸³ In 2019 and 2020, 32 plans and permits for Palestinians were approved and 310 plans were rejected, while the Civil Administration of Israel approved plans for 16,098 units in Israeli settlements.⁸⁴

43. According to Israeli regulations, construction also needs to be aligned with British Mandate regional outline plans that zone extensive areas for only a few main uses: roads, agriculture, development, and nature and beach reserves.⁸⁵ The Israeli Civil Administration and the Israeli courts continue to rely on these outdated plans when deciding on Palestinian construction permit requests while, at the same time, approving hundreds of new master plans to change the zoning to allow for the construction of Israeli settlements.⁸⁶

44. While the Palestinian Authority is officially responsible for the provision of education and medical and other services in Area C, the Civil Administration controls the issuance of permits for construction and for the expansion of schools and clinics and in doing so significantly impedes the Palestinian ability to provide such services.⁸⁷ Palestinians in Area C consequently suffer from insufficient and inadequate planning, which disproportionately affects marginalized communities such as Bedouin and herding communities.⁸⁸

45. Statements made by Israeli officials indicate that Palestinian construction is seen as an impediment to Israeli settlement of the West Bank, requiring action such as confiscation, demolitions and displacement, as well as a reduction in the number of international aid projects for infrastructure for Palestinians in

⁸⁰ See United Nations Human Settlements Programme (UN-Habitat), *Spatial Planning in Area C of the Israeli Occupied West Bank of the Palestinian Territory, Report of an International Advisory Board*, May 2015, p. 10.

⁸¹ See Office for the Coordination of Humanitarian Affairs, OCHA Special Focus, "Restricting space: the planning regime applied by Israel in Area C of the West Bank", December 2009. See also Office for the Coordination of Humanitarian Affairs, "Area C of the West Bank: key humanitarian concerns", update, August 2014; and TD/B/EX(71)/2, para. 33.

⁸² Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin for the Occupied Palestinian Territory January–May 2021. Available at www.un.org/unispal/document/ocha-humanitarian-bulletin-for-occupied-palestinian-territory-jan-may-2021/.

⁸³ See Peace Now, "(Dis)approvals for Palestinians in Area C – 2009-2020", 31 January 2021.

⁸⁴ Ibid.

⁸⁵ See Office for the Coordination of Humanitarian Affairs, "Restricting space". See also Limor Yehuda and others, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, Association for Civil Rights in Israel, October 2014, p. 100.

⁸⁶ See UN-Habitat, *Spatial Planning in Area C*, p. 23.

⁸⁷ Office for the Coordination of Humanitarian Affairs, "Restricting space".

⁸⁸ See UN-Habitat, *Spatial Planning in Area C*, p. 10.

Area C.⁸⁹ Demolitions are linked to the expansion of settlements, as large-scale demolition orders are issued in locations where Israeli settlements have been allocated land for expansion.⁹⁰ The Commission notes that the planning and zoning regime applied by Israel reflects a clearly discriminatory approach, as it is a highly restrictive one targeted at Palestinian construction, while a much more permissive regime is applied to planning and zoning in settlements.

Extension of Israeli law in the West Bank

46. Since the start of the occupation, Israel has extended its legal domain in the West Bank, which has resulted in far-reaching changes to the applicable law and, in practice, two sets of applicable law: military law and Israeli domestic law, which has been extended extra-territorially to apply only to Israeli settlers. This has been done through military orders,⁹¹ legislation⁹² and Supreme Court decisions⁹³ and includes criminal law, national health insurance law, taxation laws and laws pertaining to elections.⁹⁴ There are also separate legal systems for enforcing traffic laws and an institutional and legislative separation in the planning and building regime.⁹⁵

47. This dual legal system provides greater enjoyment of human rights for Israelis than for Palestinians and is therefore discriminatory. It forms part of the complaint by the State of Palestine against Israel under the International Convention on the Elimination of All Forms of Racial Discrimination.⁹⁶ There are stark differences between the two legal systems, in particular with regard to criminal law, with significant implications for the rights of Palestinians. For example, under military law, holding and waving Palestinian flags during demonstrations and assemblies of Palestinians is regarded as a security threat, so that Palestinians' freedom of expression and freedoms of peaceful assembly and association are severely restricted.⁹⁷

⁸⁹ See B'Tselem, "The annexation that was and still is", no date, p. 4, available at www.btselem.org/sites/default/files/publications/202010_the_annexation_that_was_and_still_is_eng.pdf. See also <https://main.knesset.gov.il/Activity/committees/ForeignAffairs/News/pages/pr290720.aspx> (in Hebrew).

⁹⁰ See UN-Habitat, *Spatial Planning in Area C*, p. 20. See also Office for the Coordination of Humanitarian Affairs, "Demolitions and forced displacement in the occupied West Bank, January 2012", 26 January 2012; and Diakonia International Humanitarian Law Resource Centre, "Rule of law: a veil of compliance in Israel and the oPt 2010–2013", March 2014, p. 9.

⁹¹ Military Order Concerning the Administration of Local Councils (Judea and Samaria) (No. 892), 5741–1981, and Military Order Concerning the Administration of Regional Councils (Judea and Samaria) (No. 783), 5739–1979.

⁹² Law to Extend the Emergency Regulations (Judea and Samaria—Jurisdiction and Legal Aid).

⁹³ For example, Supreme Court decision in case No. 04/10104, sect. 2 (4), p. 95. Available in Hebrew at https://supremedecisions.court.gov.il/Home/Download?path=PediVerdicts/61/2&fileName=SA2_2_10104-04.pdf&type=4.

⁹⁴ See Limor Yehuda and others, *One Rule, Two Legal Systems*, p. 6. See also *Yesh Din, The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, position paper, June 2020, pp. 40–42.

⁹⁵ See Limor Yehuda and others, *One Rule, Two Legal Systems*, pp. 7 and 8.

⁹⁶ See https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_ISC_9325_E.pdf, paras. 146–156.

⁹⁷ See Order Concerning the Prohibition of Acts of Incitement and Hostile Propaganda (Judea and Samaria) (No. 101), 5727–1967.

V. The intent underlying the occupation regime applied by Israel

48. In its official position on the settlements, Israel notes the Jewish presence in the territory for thousands of years and the recognition in the Mandate for Palestine, adopted by the League of Nations in 1922, of the “historical connection of the Jewish people with Palestine”.⁹⁸ Palestinians have vehemently opposed Israeli settlements, noting that they “have no legal validity, constitute flagrant breaches under international law, namely the Fourth Geneva Convention, and constitute a major obstacle to peace”.⁹⁹

49. From the early days of the occupation, Israel has emphasized external security threats as a key factor in its settlements policy. In 1977, the head of the World Zionist Organization Settlement Division, Mattityahu Drobless, prepared what is known as the Drobless settlement plan for the West Bank (issued in 1978), in which he recalled the large “eastern rejectionist front” including the Syrian Arab Republic, Iraq, the Islamic Republic of Iran and Saudi Arabia as a key threat to the eastern border of Israel, which required Israel to ensure that the border was as far as possible from dense urban, industrial and economic centres on the coastal plain. Establishing settlements was seen as a buffer for mobilizing the army and protecting the country.¹⁰⁰ It placed civilians at risk, contrary to international law.¹⁰¹ Israel now has a peace treaty with Jordan, which alone borders the West Bank. The settlements now are directed towards internal control, not external threats.

50. The Commission acknowledges the significant detrimental impact of armed attacks and security incidents on Israeli and Palestinian citizens and residents. For example, during the second intifada, between September 2000 and August 2007, altogether 1,024 Israelis were killed by Palestinian armed groups in the West Bank and in Israel, 69 per cent of them civilians. During the same period, 4,228 Palestinians were killed by Israeli forces, approximately 59 per cent of them civilians.¹⁰² While Israel may take measures within its own territory to ensure the security of its civilian population, many of its actions are undertaken in the Occupied Palestinian Territory and are based on the premise that Palestinians are a security risk, and that it is therefore justifiable to limit their rights.¹⁰³ The Commission notes that, while Israel has a duty to ensure the safety and well-being of its own citizens, its duty in the occupied territory is also to ensure the overall protection, security and welfare of people under occupation.¹⁰⁴ International law cannot be selectively applied; it must be implemented in its entirety.

51. The Commission notes that successive Governments of Israel, regardless of political composition, have promoted the expansion of settlements while officially stating support for the “two-State solution”.¹⁰⁵ Although Israel has occasionally acted to implement some policies for Palestinians – such as allowing them access to work

⁹⁸ See note by the Secretary-General on the question of Palestine: text of Mandate (A/292). See also Israel, Ministry of Foreign Affairs, “Israeli settlements and international law”, 30 November 2015, available at www.gov.il/en/Departments/General/israeli-settlement-and-international-law.

⁹⁹ See S/PV.7853.

¹⁰⁰ See A/36/341-S/14566, annex.

¹⁰¹ See www.molad.org/images/upload/files/National-security-and-settlements.pdf (in Hebrew).

¹⁰² See Office for the Coordination of Humanitarian Affairs, OCHA Special Focus “Israeli-Palestinian fatalities since 2000 – key trends”, August 2007.

¹⁰³ B’Tselem, *Forbidden Roads: Israel’s Discriminatory Road Regime in the West Bank* (Jerusalem, August 2004), p. 3.

¹⁰⁴ ICRC, “West Bank: Israel must abide by international humanitarian law”, 13 September 2018.

¹⁰⁵ For the most recent example, see United States of America, White House, “Remarks by President Biden and Prime Minister Yair Lapid of the State of Israel”, 14 July 2022.

in Israel and approving extremely limited construction,¹⁰⁶ those do little to improve the overall lives of Palestinians or to advance an end to the occupation and a real, just solution. On the contrary, the continuous expansion by Israel of settlements and related infrastructure actively contributes to the entrenchment of the occupation and makes the “two-State solution” an increasingly unviable option. This strategy has allowed successive Governments of Israel to uphold the appearance of agreement with the international community while maintaining its permanent occupation and de facto annexation policies largely undisturbed.¹⁰⁷

52. Israeli officials have publicly expressed their country’s intention to make the settlements irreversible and annex all or part of Area C. On 10 September 2019, then Prime Minister Netanyahu announced his intention to annex the Jordan Valley and northern Dead Sea region, if and when he would be re-elected.¹⁰⁸ Although the plan was later shelved, in August 2020, he asserted, referring to Israeli sovereignty over the West Bank: “The issue of sovereignty is still on the table”.¹⁰⁹

53. In a speech to settlers in Elkana on 17 May 2022, then Prime Minister Bennet emphasized the perpetual nature of the settlements, as already comprising an integral part of the State of Israel:

With the help of God, we will also be here at the celebrations of Elkana’s fiftieth and seventy-fifth, 100th, 200th and 2,000th birthdays, within a united and sovereign Jewish State in the Land of Israel.¹¹⁰

VI. Human rights consequences of the occupation¹¹¹

54. The Commission notes with serious concern that, despite regular reports by numerous United Nations bodies and the international community, the level of violence and Israeli measures to sustain its occupation have increased over time, as well as the number of persons affected.¹¹² The extensive human rights violations and abuses, along with violations of international humanitarian law noted in these reports, are a direct result of the Israeli occupation. This section does not cover the full range of rights that are affected by the occupation and is focused primarily on Area C of the West Bank. The Commission emphasizes that all areas of the Occupied Palestinian Territory are affected by Israeli occupation policies, which include incursions and raids by the Israeli security forces throughout the West Bank and East Jerusalem that often result in civilian casualties that include children.¹¹³

¹⁰⁶ See A/76/433, para. 34.

¹⁰⁷ Akiva Eldar, “Israel’s New politics and the fate of Palestine”, *The National Interest*, vol. 120 (August 2012), p. 6.

¹⁰⁸ See www.kan.org.il/item/?itemid=58577 (in Hebrew).

¹⁰⁹ Prime Minister Netanyahu in a speech on 13 August, 2020. Available in Hebrew at <https://13tv.co.il/item/news/politics/politics/netanyahu-press-uae-1109997/>.

¹¹⁰ Prime Minister Bennett, during a visit to the Elkana local council to mark its forty-fifth anniversary, 17 May 2022. Available in Hebrew at www.youtube.com/watch?v=LeY_IYNC8ik.

¹¹¹ The quotes that follow in boxes have been taken from interviews conducted with victims in the period May–July 2022, unless stated otherwise. The present chapter is based on meetings with interlocutors and interviews with victims and witnesses in the period March–July 2022.

¹¹² See, for example, A/HRC/49/87, para. 5.

¹¹³ Office of the United Nations High Commissioner for Human Rights, Facebook page entitled “UN human rights – Palestine”, post of 1 July 2022. Available at www.facebook.com/UNHumanRightsOPT.

A. Coercive environment

“They come at night when we are asleep, and they throw stones at the doors and windows. We do not go out, but they provoke us until we go out. They provoke us with very harsh insults: We will deprive you of the land and burn and expel you, this place is ours, and we will get it back.”

Palestinian woman, Governorate of Hebron

55. Israel has created and is maintaining a complex environment of coercion,¹¹⁴ which includes the demolition of homes and the destruction of property, excessive use of force by security forces, mass incarceration, settler violence, restricted movement through checkpoints and roads, and limitations on access to livelihoods, basic necessities, services and humanitarian assistance.¹¹⁵

56. The 34,000 Palestinians living in or near the H2 area of Hebron are separated from the rest of the city by 22 checkpoints and experience a coercive environment on a daily basis.¹¹⁶ They struggle to get access to even basic medical care in violation of their right to the highest attainable standard of physical and mental health.¹¹⁷ This especially affects pregnant women, the elderly and those with disabilities in need of emergency treatment and health care.

57. Where this coercion leads people to leave their homes, it can also constitute an element of the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute. In July 2022, 19 Palestinian households, comprising 100 people, left their herding community of Ra’s al-Tin in Area C. Some of the families told the Office for the Coordination of Humanitarian Affairs that they had moved because their living conditions had become intolerable, citing occupation-related coercive measures imposed on them by the Israeli authorities and by Israeli settlers, who are often armed. Some community members said that Israeli officials had explicitly ordered them to move into Area B.¹¹⁸

58. The coercive environment has an especially severe impact on Palestinian children, who experience a constant military presence, frequent clashes and acts of violence, restrictions on movement, and home demolition and destruction of infrastructure and property. Since the beginning of 2022, a total of 20 children have been killed in the West Bank and there are currently 56 outstanding demolition orders against schools in the West Bank including East Jerusalem.¹¹⁹ Since 1967, thousands of children have been displaced and forcibly transferred as a result of the demolition of 28,000 Palestinian homes. Consequently, children’s right to the highest attainable

¹¹⁴ For example [A/HRC/34/39](#), para. 41.

¹¹⁵ See Norwegian Refugee Council, “Impacts of annexation on humanitarian relief and development in the West Bank: frequently asked questions”, June 2020, on file.

¹¹⁶ See B’Tselem, “List of military checkpoints in the West Bank and Gaza Strip”, 11 November 2021. See also Médecins sans frontières, “We are all afraid”: Settler attacks against Palestinians in Hebron on the rise”, 16 August 2021.

¹¹⁷ See Médecins sans frontières, “Providing mental health care to Palestinians living under occupation”, 6 May 2022. See also Idit Avrahami and Noam Sheizaf, *H2: The Occupation Lab*, documentary film, 2022.

¹¹⁸ Office for the Coordination of Humanitarian Affairs, “About 100 Palestinians leave Ras a Tin”, 3 August 2022.

¹¹⁹ United Nations, “Statement of Lynn Hastings, United Nations Resident and Humanitarian Coordinator in the Occupied Palestinian Territory”, 28 August 2022.

standard of mental and physical health is severely compromised.¹²⁰ Reports indicate a high rate of school dropouts, with specific risks of child labour for boys and early marriages for girls. Girls are often taken out of school out of concern for their safety in the coercive environment, while boys drop out largely because of pressure to contribute to the household finances. Boys also face specific human rights violations, including an increased risk of death and injury inflicted by Israeli security forces during clashes, incidents of stone-throwing and protests, as well as incarceration.¹²¹

“My daughter and I were going out one day and when we were crossing the Wadi al-Ghrus checkpoint, the soldiers told me my daughter had metal on her. They said it was in her bra and they wanted to check it. I asked why they wanted to search her in the street when there was no female soldier there to do it. I refused to put her through that, but they did not listen, and in the end they refused to allow us to pass.”

Palestinian woman, Governorate of Hebron

59. The cumulative effects of occupation practices, including restrictions on movement, have affected the equal rights of women and girls and impeded their self-reliance. Women and girls are specifically vulnerable to gender-based violence as they go about their everyday activities.¹²² Searches by male soldiers and harassment, including at checkpoints, have affected the movements of women and girls and have served to deprive them of equal access to family life, education, health care and employment.¹²³ Women and girls have also been subjected to harassment and violent attacks by settlers.¹²⁴ Victims and witnesses have reported the use of racist and sexist language by male and female settlers and soldiers directed towards them or towards female family members, causing them anxiety, fear and feelings of humiliation.¹²⁵

¹²⁰ See Save the Children, “‘Danger is our reality’: the impact of conflict and the occupation on education in the West Bank of the occupied Palestinian territory”, 2020, p. 5. See also Save the Children, “‘Hope under the rubble’: the impact of Israel’s home demolition policy on Palestinian children and their families”, pp. 4–6, 12 and 13; and Occupied Palestinian Territories Education Cluster, *Education Cluster Strategy Palestine 2020–2021*, 2020, p. 9.

¹²¹ See Occupied Palestinian Territories Education Cluster, *Education Cluster Strategy Palestine 2020–2021*, pp. 8–11. See also [E/ESCWA/CL2.GPID/2020/TP.29](#), pp. 30 and 31; [A/HRC/43/67](#), para. 51.

¹²² See [TD/B/67/5](#), para. 33; [A/HRC/46/63](#), para. 21; [A/HRC/50/21](#), para. 61; and [E/ESCWA/CL2.GPID/2020/TP.29](#), p.11. For a definition of gender-based violence, see Committee on the Elimination of Discrimination against Women, general recommendation No.19, para. 6 and general recommendation No. 35 (2017), para. 14.

¹²³ Convention on the Elimination of All Forms of Discrimination against Women, arts. 10–12. Also reported by multiple other sources, for example B’Tselem, “Occupation routine: soldiers detain Palestinian girl, 13, after settlers claim to see her holding knife”, 30 June.

¹²⁴ See [A/HRC/12/48](#), footnote 713; [A/HRC/35/30/Add.1](#), paras. 66 and 67; [A/HRC/46/63](#), para. 11; and [CEDAW/C/ISR/CO/6](#), paras. 30 and 31.

¹²⁵ See B’Tselem, “Sexism, homophobia and harassment by settlers and soldiers: life’s routine in Hebron (video)”, 11 July 2021. See also B’Tselem, “‘You can take your camera and stick it straight up your big ass’”, 29 August 2017; and Idit Avrahami and Noam Sheizaf, *H2: The Occupation Lab*.

B. Demolitions, forced evictions, forced displacement and transfer

“The demolition of houses, as you know, threatens the existence and the safety of us as human beings. Therefore, it has a noticeable direct psychological and emotional impact on us, especially women and children, as the home is the safest place for them.”

Palestinian man, Governorate of Hebron

60. The occupation policies implemented by Israel result in violations of the right of Palestinians to an adequate standard of living.¹²⁶ Palestinian homes are frequently demolished, since Palestinians are largely unable to obtain a building permit and so build without one. Israeli authorities issued almost 20,000 demolition orders in Area C between 1988 and 2020.¹²⁷ To date, more than 8,500 structures have been demolished in the Occupied Palestinian Territory.¹²⁸

61. International humanitarian law provides that private property in occupied territories must be respected and cannot be confiscated.¹²⁹ It also provides that any destruction by the occupying Power of property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.¹³⁰

62. The demolition and confiscation of livelihood structures, such as shops, animal shelters, walls and warehouses, as well as of infrastructure, such as water pipes, cisterns and roads, has had a substantial impact on Palestinians’ access to livelihoods. Since the beginning of 2022, Israel has demolished 500 structures in the Occupied Palestinian Territory, 153 of which were related to agriculture and 136 to livelihoods.¹³¹

63. Bedouin and herder communities are at a particular risk of demolitions, forced evictions and forcible transfer. Israeli authorities have used overt coercion in forcing them to leave their homes and make way for Israeli use of the land. Among those affected are the Palestinian herder communities in Masafer Yatta, which have been subjected to several waves of demolitions and evictions.¹³² On 4 May 2022, the Supreme Court of Israel ruled that the forcible transfer of Palestinians and the demolition of their communities in Masafer Yatta were legal.¹³³ The ruling violates international legal prohibitions on the destruction of property and deportation or forcible transfer of the civilian population of an occupied territory.

¹²⁶ International Covenant on Economic, Social and Cultural Rights, art. 11. See also [E/C.12/ISR/CO/4](#), paras. 48 and 49.

¹²⁷ See B’Tselem, “Planning Policy in the West Bank”, 11 November 2017. See also Office for the Coordination of Humanitarian Affairs, “Demolition orders against Palestinian structures in Area C – Israeli Civil Administration data”.

¹²⁸ Office for the Coordination of Humanitarian Affairs, “Data on demolition and displacement in the West Bank” (follow the link “more breakdowns”). Accessed on 23 August 2022.

¹²⁹ The Hague Regulations, art. 46.

¹³⁰ Fourth Geneva Convention, art. 53.

¹³¹ Office for the Coordination of Humanitarian Affairs, “Data on demolition and displacement in the West Bank” (follow the link “more breakdowns”). Accessed on 23 August 2022.

¹³² [A/HRC/49/85](#), para. 26.

¹³³ Supreme Court decision in case No. 413/13 and case No. 1039/13. Available in Hebrew at <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%2F13%2F130%2F004%2Fn89&fileName=13004130.N89&type=2&fbclid=IwAR03oMksoLjnT2qD1Zk1eEhbmrrFbGhCXm517cdRVh1GQB9B2eR6FmHUkr0>.

C. Settlements and violence

“Even though settlers have repeatedly attacked members of my family, none of my complaints to the police have been taken seriously. I filed complaints both with the Israeli police and the Palestinian liaison office, but nothing has happened and no one has been charged. No one is held accountable, and the violence continues.”

Palestinian man, Governorate of Hebron

64. Settler violence is a key manifestation of the coercive environment, with incidents increasing in number and severity over the years. From January to July 2022, there were 398 settler attacks in the West Bank, with 84 attacks resulting in casualties. By comparison, there were 496 attacks during the whole of 2021 and 358 attacks in 2020.¹³⁴ The severity of the attacks has also increased; recently there have been verified reports of settlers carrying out attacks while Israeli security forces were nearby, and of Israeli security forces attacking Palestinians alongside settlers.¹³⁵ The Defence Minister of Israel reportedly reaffirmed in December 2021 the position that the Israeli military is responsible for intervening in settler attacks. In practice, the military permits settlers to be armed and rarely intervenes to protect Palestinians.¹³⁶ The Commission emphasizes that Israel as the occupying Power bears responsibility for protecting Palestinians against settler attacks. Such attacks violate the right of Palestinians to life, liberty and security of the person. Victims also have a right to an effective and timely remedy, including reparations, which is not ensured in relation to settler violence.¹³⁷

65. The laws of belligerent occupation require that the occupying Power take measures to restore and ensure, as far as possible, public order and safety to the population under occupation. International law specifically requires protected persons to be treated humanely and to be protected at all times, in particular against all acts of violence or threats thereof.¹³⁸

66. Israeli courts have charged few persons suspected of committing violent acts against Palestinians, which contributes to a prevailing climate of impunity.¹³⁹ Accountability measures have been particularly deficient in cases where settlers or the military alongside settlers have killed Palestinians.¹⁴⁰ **On the whole, the civilian and military security forces of Israel rarely protect Palestinians from settler violence. They have been documented standing by and observing violent attacks by settlers and, on occasion, collaborating with such attacks. Judicial authorities rarely hold settlers accountable.**

67. A significant number of settler-related violent incidents in the West Bank is linked to outposts.¹⁴¹ The combination of inadequate Israeli action to prevent the

¹³⁴ Office for the Coordination of Humanitarian Affairs, “Protection of civilians report, 2–15 August 2022”, 19 August 2022.

¹³⁵ A/HRC/49/85, para. 13.

¹³⁶ Yaniv Kubovich and Amos Harel, “Israeli army and police blame each other as settler violence rages on”, *Haaretz*, 7 February 2022.

¹³⁷ International Covenant on Civil and Political Rights, art. 2, para. 3, and arts. 6 and 9.

¹³⁸ Fourth Geneva Convention, art. 27.

¹³⁹ A/HRC/49/85, para. 20.

¹⁴⁰ *Ibid.*, paras. 21 and 22.

¹⁴¹ *Ibid.*, para. 40. See also Peace Now, “Violent settlement: the connection between illegal outposts and settler violence”, November 2021, available at http://peacenow.org.il/wp-content/uploads/2021/12/settlers_report_eng.pdf.

building of outposts or dismantle them, and the absence of significant accountability for settler violence has given settlers a general sense of lawlessness and impunity. The village of Burin near Nablus, for example, has repeatedly been attacked by settlers coming from the direction of the Giv'at Ronin outpost. During some of the attacks, settlers were reportedly escorted by Israeli security forces, who took no action to stop them.¹⁴²

68. In addition to settler violence, the erection of outposts and settlements generates violence, including lethal force, against Palestinians when they engage in protests. One example is the Evyatar outpost, south of Nablus, which was erected by settlers on 3 May 2021. In reaction to its establishment, Palestinians from Bayta town, on whose land the outpost was established, held almost daily demonstrations. Demonstrators threw stones and, on some occasions, Molotov cocktails toward Israeli forces. Israeli forces responded with live ammunition, rubber-coated metal bullets, tear-gas canisters and stun grenades, killing at least 10 Palestinians, including two children, and injuring more than 6,000 Palestinians, according to the Office for the Coordination of Humanitarian Affairs.¹⁴³

D. Deprivation of natural resources, livelihoods and an adequate standard of living

“We are not leaving our land. Our land is our main source of income, it’s our land and our fathers’ and grandfathers’ land. Where else would we go and what else would we live from?”

Palestinian man, Governorate of Hebron

69. Israeli policies outlined in the present report, such as those on the expropriation of natural resources and on building restrictions, have directly affected the economic, social and cultural rights of Palestinians, including their rights to housing, an adequate standard of living, food, water and sanitation, health care and education.

70. The complete control exerted by Israel over water resources is a key factor preventing Palestinians from accessing affordable and adequate water. This control, coupled with prohibitions on the construction of new water installations or carrying out maintenance on existing installations without a military permit, has put Palestinians at a heightened risk of water scarcity. Palestinians purchase water from official or private providers at a high cost, around six times higher than the national price.¹⁴⁴ The price of trucked water in the West Bank is three times more than the national price of piped water.¹⁴⁵

¹⁴² B’Tselem, “Burin, Nablus District: settlers attack Israeli activists with stones and clubs and vandalize cars”, 2 March 2022. See also B’Tselem, “Israeli settlers escorted by soldiers attack homes with stones in Burin, Nablus District”, 18 July 2022.

¹⁴³ Office for the Coordination of Humanitarian Affairs, “Data on casualties”, available at www.ochaopt.org/data/casualties. See also A/HRC/49/85, paras. 42–49.

¹⁴⁴ A/HRC/48/43, paras. 26–35 and 43.

¹⁴⁵ See Office for the Coordination of Humanitarian Affairs, Reliefweb, “Challenges accessing water in the West Bank”, 14 April 2021.

“Women are the cornerstones of our society. We do the cleaning, the cooking, and we produce the dairy products and herd the sheep. The occupation deprives us of electricity, water, roads, education – all of this affects the lives and the role of women in our communities. The men work outside the village and are not always here.”

Palestinian woman, Governorate of Hebron

71. The lack of affordable water affects herders in rural areas, as they require more water to maintain their livestock. In addition, as part of its demolition policies, Israel often confiscates water cisterns belonging to herder communities. For example, in the village of al-Jawaya in the south Hebron hills, three water cisterns were confiscated by the Civil Administration on 19 July 2022.¹⁴⁶ Women and girls are particularly affected by the shortage of water, as they have additional water-related needs for their hygiene and privacy, and are expected to secure water for domestic consumption, cleaning and washing, and for the care for children, the elderly and sick, and livestock.¹⁴⁷

72. Palestinian agriculture has suffered as a result of Israeli water policies, land expropriation and waste dumping.¹⁴⁸ Land available for Palestinian agriculture has been reduced from 2.4 million dunams in 1980 to around 1 million dunams in 2010, while the share of agriculture in the Palestinian gross domestic product has declined from 35 per cent in 1972 to just 4 per cent in recent years.¹⁴⁹

73. Women have suffered disproportionately from the decline of the agricultural sector because alternative employment opportunities have failed to emerge.¹⁵⁰ While approximately 60 per cent of Palestinian women worked in agriculture prior to the occupation, currently only 8 per cent work in the sector, mainly because of the loss of land and water.¹⁵¹ Moreover, other employment opportunities in Israel and Israeli settlements are primarily in the construction sector and/or require passage through Israeli checkpoints, which make them less viable for women.¹⁵² The labour force participation rate of Palestinians in the West Bank is sharply different for women and men. For women, it is estimated at 17 per cent, for men at 74 per cent. The rate for women remains among the 10 lowest in the world.¹⁵³ Women’s right to livelihoods is

¹⁴⁶ B’Tselem, “Israel demolishes home and 2 livestock enclosures and rest tent, and confiscates 3 water containers, al-Jawaya, South Hebron Hills”, 19 July 2022.

¹⁴⁷ See [E/ESCWA/CL2.GPID/2020/TP.29](#), pp. 23 and 35. See also Bimkom, “The effect of forced transfer on Bedouin women”, 2017; and Abdel-Rahman Al-Tamimi, *Environmental Challenges in Palestine “Gender Perspectives”*, Palestinian Working Women Society for Development (October 2021), pp. 16, 26 and 27.

¹⁴⁸ See Women’s Centre for Legal Aid and Counselling, “WCLAC’s shadow report for the Committee on Economic, Social and Cultural Rights, 66th Session – Israel Review, 2019”, p. 11. Available at <http://www.wclac.org/files/library/19/10/yekz3kqu2vf4q0o3xolozc.pdf>.

¹⁴⁹ See United Nations Conference on Trade and Development, *The Besieged Palestinian Agricultural Sector*, pp. 7 and 8. See also [TD/B/67/5](#), para. 31.

¹⁵⁰ See [TD/B/67/5](#), para. 31, and Women’s Centre for Legal Aid and Counselling, “WCLAC’s shadow report”, p. 11.

¹⁵¹ See International Labour Organization (ILO), *The Situation of Workers of the Occupied Arab Territories: Report of the Director-General – Appendix*, 2021 (ILO document ILC.109/DG/APP/2021), p. 18.

¹⁵² See [TD/B/67/5](#), para. 31.

¹⁵³ As at 2019. See [E/ESCWA/CL2.GPID/2020/TP.29](#), p. 32.

further harmed by persistent income gaps and by their limited control over other economic assets such as land and property.¹⁵⁴

74. The Commission finds that the policies that Israel has implemented have had a serious impact on the environment in violation of its obligations as an occupying Power to safeguard public and private properties of occupied territory, unless justified by military necessity.¹⁵⁵ They include construction, such as that of the wall, the destruction of olive, grape and orange orchards to the detriment of both biodiversity and ecosystems, the transfer of Israeli hazardous waste to treatment plants in the West Bank in contravention of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,¹⁵⁶ the transfer of electronic waste,¹⁵⁷ the overexploitation of natural resources including water,¹⁵⁸ the lack of air-pollution control for Israeli industries in the West Bank and the considerable damage caused to agricultural land.¹⁵⁹

VII. Conclusions

A. Legality of the occupation: permanency and de facto annexation

75. **The Commission finds that there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure. Actions by Israel that are intended to create irreversible facts on the ground and expand its control over territory are reflections as well as drivers of its permanent occupation.** The settlement enterprise is the principal means by which those results are achieved. Statements made by Israeli officials provide further evidence that Israel intends the occupation to be permanent, as does the absence of actions intended to end the occupation, including in respect to a “two-State solution” or any other solution. By continuing to occupy the territory by force, Israel incurs international responsibilities arising from a continued violation of an international obligation, and remains accountable for any violations of the rights of the Palestinian people.

76. The Commission concludes that Israel treats the occupation as a permanent fixture and has – for all intents and purposes – annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. **Actions by Israel constituting de facto annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank.** The International Court of Justice anticipated such a scenario in its 2004 advisory opinion, in which it stated that the wall was

¹⁵⁴ See State of Palestine, Palestinian Central Bureau of Statistics, press report on the labour force survey results, 7 August 2019, p. 24, available at http://pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_7-8-2019-lf_3-en.pdf. See also E/ESCWA/CL2.GPID/2020/TP.29, pp. 32 and 33.

¹⁵⁵ Fourth Geneva Convention, art. 53.

¹⁵⁶ See United Nations Environment Programme, *State of Environment and Outlook Report for the occupied Palestinian territory 2020* (Nairobi, 2020), p. 112. See also www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx.

¹⁵⁷ See TD/B/EX(71)/2, para. 48.

¹⁵⁸ See A/HRC/48/43. See also Office of the United Nations High Commissioner for Human Rights, “Israel’s exploitation of Palestinian resources is human rights violation, says UN expert”, 18 March 2019.

¹⁵⁹ See B’Tselem, “Made in Israel: exploiting Palestinian land for treatment of Israeli waste”, December 2017, p. 14.

creating a fait accompli on the ground that could well become permanent and tantamount to de facto annexation. This has now become the reality.

77. **The Commission emphasizes that the occupation and de facto annexation policies of Israel have had a severe impact on Palestinian lives throughout the West Bank and constitute grave violations and abuses of human rights as well as violations of international humanitarian law. The commitment of Israel to supporting this enterprise has resulted in a series of policies that are intended to sustain and extend the enterprise, which have negatively affected all areas of Palestinian life.** They include evictions, deportations and the forcible transfer of Palestinians within the West Bank, the expropriation, looting, plundering and exploitation of land and vital natural resources, movement restrictions and the maintenance of a coercive environment with the aim of fragmenting Palestinian society, encouraging the departure of Palestinians from certain areas and ensuring that they are incapable of fulfilling their right to self-determination. The Commission stresses that business enterprises are contributing to the expropriation and exploitation by Israel of Palestinian land and resources and are supporting the transfer of Israeli settlers into the Occupied Palestinian Territory.

78. The Commission has specifically paid attention to gender-based violations and finds that the policies implemented by Israel in the Occupied Palestinian Territory are having a pervasive discriminatory effect on Palestinian women. Those policies have placed women in a position of substantial economic and social vulnerability in comparison to men. The structural reasons that make women and girls vulnerable to the de facto annexation policies implemented by Israel remain unaddressed by all duty bearers. **Victims of gender-based violence, including of attacks, harassment and threats directed at women and girls by settlers, are not afforded protection from Israel or recourse to justice in areas under its control. All duty bearers, including Israel, have the obligation to take all appropriate measures to eliminate discrimination and violence against women, including by private actors.**¹⁶⁰

79. The Commission considers that the security concerns asserted by Israel as justifications for many of its policies cannot be looked at in isolation. Although Israel has some legitimate security concerns, **the Commission finds that a significant number of the policies and actions implemented by Israel in the West Bank are not intended to address these concerns, but rather that security is often used to justify the territorial expansion of Israel.** In addition, and notwithstanding security concerns, all actions implemented by Israel must remain in conformity with applicable international law. The permanent dispossession of the Palestinian people and the denial of their basic rights will never be a recipe for achieving sustainable security.

80. Moreover, certain “security” policies, including settler-only roads, closures, restrictions on the freedom of movement and punitive home demolitions, are based on discriminatory and otherwise unlawful measures and appear to constitute collective punishment against an entire population. The Commission emphasizes that, as the occupying Power, Israel has the duty to ensure the protection, security and welfare of the people living under its occupation and to guarantee that they can live as normal a life as possible, in accordance with their own laws, culture and traditions.

81. The purported de jure annexation by Israel of East Jerusalem is unequivocally unlawful, null and void, and has been recognized as such by the United Nations. The

¹⁶⁰ Convention on the Elimination of All Forms of Discrimination against Women, art. 2. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017), para. 24.

Commission emphasizes that the situation for Palestinians in East Jerusalem continues to deteriorate as Israel expands its East Jerusalem settlements and applies measures and policies intended to further reduce Palestinian space and coerce them to leave their homes.

82. Israel remains in occupation of Gaza by virtue of the control exercised over, inter alia, its airspace and territorial waters, its land crossings at the borders and its supply of civilian infrastructure, including water and electricity.

83. In relation to the situation in Israel itself, the Commission has reviewed the treatment of Palestinian citizens of Israel and notes that they are still subjected to discriminatory laws and public policies, including in the areas of education, housing and construction, and employment, a matter that the Commission intends to examine in a future report.

84. **In the view of the Commission, the permanent occupation and de facto annexation by Israel, including the actions undertaken by Israel as identified in the present report, cannot remain unaddressed.** The International Court of Justice should be requested to advise on the legal consequences of the continued refusal by Israel to end its occupation and of the steps it has taken to entrench its control and expansion into the occupied area through de facto annexation, and on the obligations of third States and the United Nations to ensure that Israel respects international law.

B. International criminal law

85. The Commission concludes that some of the policies and actions carried out by the Government of Israel that are leading to permanent occupation and therefore to de facto annexation may constitute elements of crimes under international criminal law. Specifically, the Commission draws attention to the establishment of settlements in the Occupied Palestinian Territory in a breach of article 49 of the Fourth Geneva Convention. Consistent with the preliminary examination findings of the Prosecutor of the International Criminal Court,¹⁶¹ the Commission finds on reasonable grounds that war crimes may have been committed under article 8 (2) (b) (viii) of the Rome Statute in relation to the transfer of parts of the occupying Power's own population into the West Bank.

86. The Commission also finds that the policies identified in the present report that have contributed to the forced displacement of the Palestinian population from certain areas, altered the demographic composition of the Occupied Palestinian Territory and resulted in Palestinian communities being almost completely encircled by Israeli settlements, may constitute the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute. Such policies, appear to form part of an intentional, widespread and systematic attack directed at the Palestinian population with the aim of forcibly transferring them from parts of the West Bank to alter the demographic make-up. These acts may also amount to the crime against humanity of persecution under article 7 (1) (h) of the Rome Statute.

87. The Commission also finds that the looting, plundering and exploitation of natural resources by both private persons and commercial entities for private or personal use, as highlighted in paragraph 37 of the present report, may amount to the war crime of pillage under the article 8 (2) (b) (xvi) of the Rome Statute.

¹⁶¹ Office of the Prosecutor of the International Criminal Court, "Situation in Palestine: summary of preliminary examination findings". Available at www.icc-cpi.int/sites/default/files/items/Documents/210303-office-of-the-prosecutor-palestine-summary-findings-eng.pdf.

88. Along with the direct perpetration of such crimes and the responsibility of political leaders, military commanders and other superiors, the Commission intends to explore the criminal responsibility of persons facilitating the commission of crimes through actions that aid, abet or otherwise assist.

C. Third-party responsibility

89. The International Court of Justice has emphasized that, under article 1 of the Fourth Geneva Convention, every State party is under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by such construction. It has further expressed the view that the United Nations, especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime.¹⁶²

90. Articles 146 to 148 of the Fourth Geneva Convention further require States parties to provide penal sanctions for persons committing, or ordering to be committed, grave breaches. Several such grave breaches have been identified in the present report, such as the unlawful deportation or transfer, or unlawful confinement of a protected person, and the extensive destruction and expropriation of property not justified by military necessity and carried out unlawfully and wantonly.

VIII. Recommendations

91. **The Commission recommends that the Government of Israel:**

(a) **Comply fully with international law and end without delay its 55 years of occupation of the Palestinian and Syrian territories;**

(b) **Comply with its obligations under international humanitarian law and international human rights law, including, specifically, with regard to the obligation to respect, protect and fulfil the right of the Palestinian people to self-determination and its right to freely utilize natural resources, under international human rights law, including article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.**

92. **The Commission recommends that the General Assembly:**

(a) **Urgently request an advisory opinion from the International Court of Justice on the legal consequences of the continued refusal on the part of Israel to end its occupation of the Occupied Palestinian Territory, including East Jerusalem, amounting to de facto annexation, of policies employed to achieve this, and of the refusal on the part of Israel to respect the right of the Palestinian people to self-determination, and on the obligations of third States and the United Nations to ensure respect for international law;**

(b) **Transmit the present report to the Security Council and request that it consider further action to bring to an end the illegal situation resulting from the permanent occupation imposed by Israel, and call upon the Security Council to require Israel to immediately bring its permanent occupation to an end.**

¹⁶² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004*, p. 136, paras. 159 and 160.

93. The Commission recommends that the Office of the Prosecutor of the International Criminal Court prioritize the investigation into the situation in the Occupied Palestinian Territory and, in addition to identifying direct perpetrators and those exercising command responsibility, investigate those aiding, abetting or otherwise assisting in the commission of crimes under the Rome Statute, including by providing the means for their commission.

94. The Commission recommends that the Security Council urgently consider measures to ensure that Israel immediately complies with its international legal obligations and with prior Council resolutions, including those in which the Council has called for an end to the occupation, has declared the acquisition of territory by force inadmissible and has found that settlement activity constitutes a flagrant violation of international law.

95. The Commission recommends that States Members of the United Nations uphold their obligations under international law, including their extraterritorial human rights obligations, and obligations under the common article 1 to the four Geneva Conventions and articles 146, 147 and 148 of the Fourth Geneva Convention, including by investigating and prosecuting persons suspected of committing or otherwise aiding and abetting or assisting in the commission or attempted commission of crimes under international law in the Occupied Palestinian Territory.
