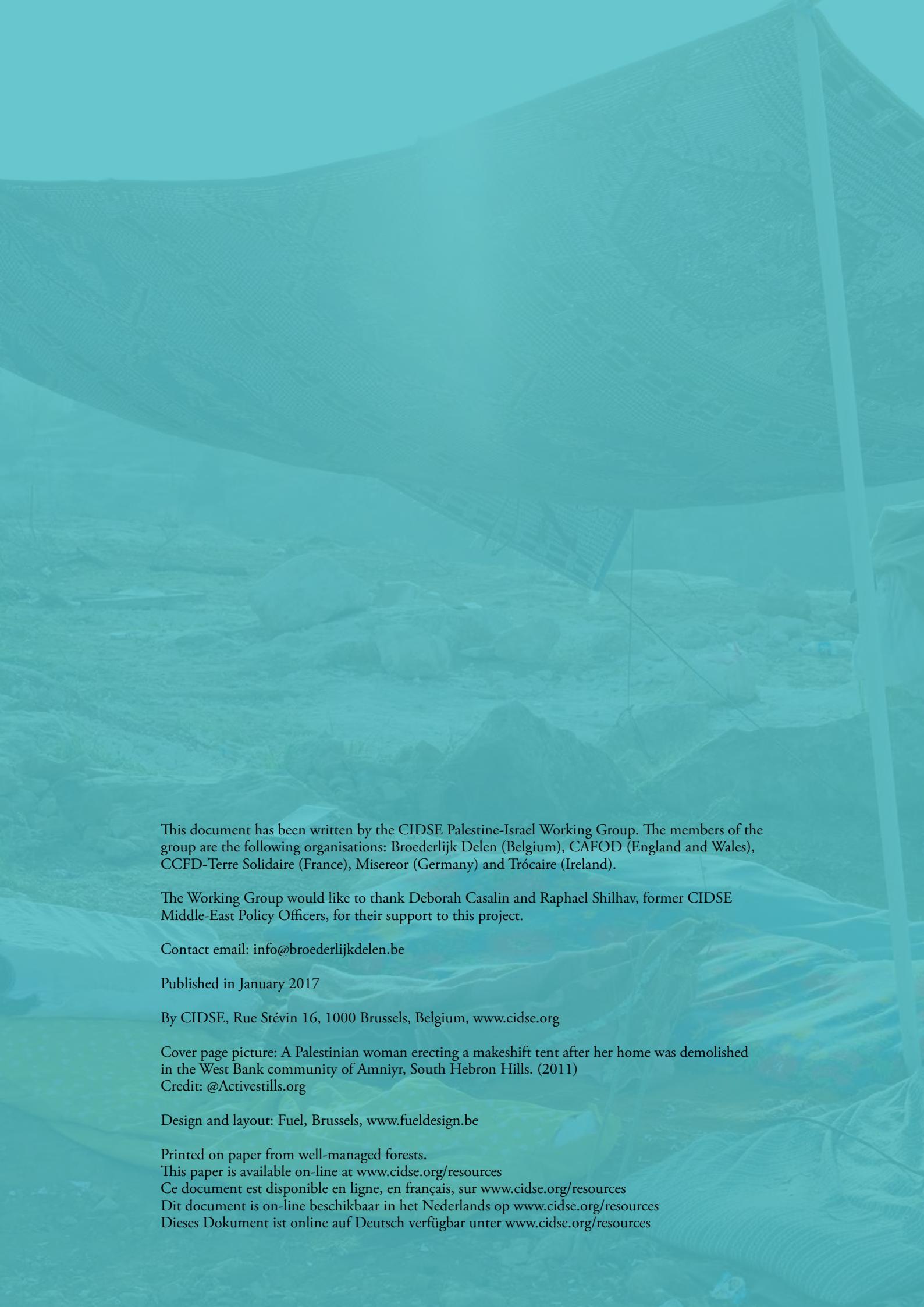




NO PLACE LIKE HOME:

A READER ON THE FORCED INTERNAL
DISPLACEMENT OF PALESTINIANS IN THE OCCUPIED
PALESTINIAN TERRITORY AND ISRAEL



This document has been written by the CIDSE Palestine-Israel Working Group. The members of the group are the following organisations: Broederlijk Delen (Belgium), CAFOD (England and Wales), CCFD-Terre Solidaire (France), Misereor (Germany) and Trócaire (Ireland).

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Cover page picture: A Palestinian woman erecting a makeshift tent after her home was demolished in the West Bank community of Amniyir, South Hebron Hills. (2011)
Credit: [@Activestills.org](https://www.activestills.org)

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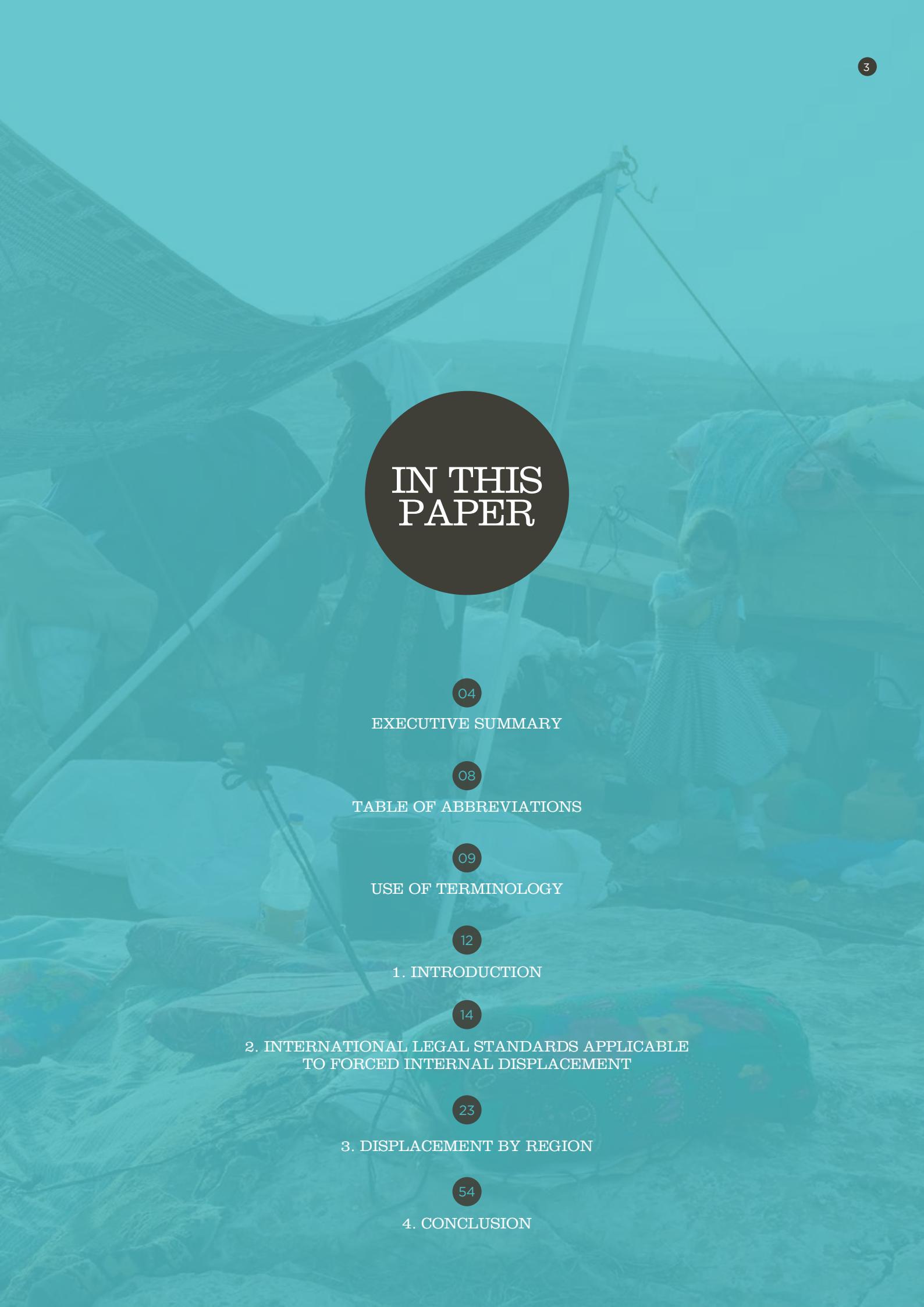
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EXECUTIVE SUMMARY

DISPLACEMENT AND INTERNATIONAL LAW

While displacement can be caused by many factors, in the context of conflicts, violations of international law are often one of the leading triggers for it. In the Israeli-Palestinian context, forced displacement affects Palestinian communities both in Israel and in the occupied Palestinian territory (oPt) and requires an urgent response.

Different bodies of international law govern displacement in Israel's sovereign territory, within its internationally recognised borders, and in the oPt, international humanitarian law (IHL) protects the rights of civilians during armed conflicts and occupation. Thus, it applies to the actions of Israel in the oPt but not within its own borders. International human rights law (IHRL) obliges states to respect the rights of all individuals living under their control; it applies both in Israel and in the oPt.

IHL prohibits Israel, as the occupying power in the oPt, to carry out individual or mass forcible transfer of civilians, regardless of their motive, and prohibits the destruction or seizure of real or personal property, unless required by imperative military necessity.

IHRL imposes on Israel the duty to respect and protect the rights of individuals to adequate housing, as a component of the right to an adequate standard of living. It provides protection against forced evictions of individuals and families from homes or land which they occupy without appropriate protection, and it imposes on Israel the duty to respect the right of everyone lawfully within the territory of a state to liberty of movement and freedom to choose his or her residence.

International law imposes additional duties on Third States, whose interests are not necessarily affected by the Israel-Palestinian conflict. These states have the responsibility to promote compliance with international law, the duty not to recognise as lawful an unlawful situation created by serious breaches of international norms and, in some cases, they must cooperate to bring to an end such violations through lawful means.

FACTORS CONTRIBUTING TO DISPLACEMENT

While Israel and the oPt are governed by different bodies of international law, parallels can be drawn between the processes of displacement which occur in the different geographical and administrative areas.

In the West Bank, including East Jerusalem, the on-going creation and expansion of illegal settlements results in Palestinian displacement. Large tracts of Palestinian land have been appropriated for settlement construction and settler groups have taken over numerous localities in rural areas and city centres, forcing Palestinian residents away. The Israeli-imposed planning system creates additional risks of forcible transfer, as it is virtually impossible for Palestinians to obtain Israeli-issued permits for building new homes. Structures that are built without permits risk being demolished by Israeli authorities. 99 percent of Palestinian-owned structures in Area C and at least one third of all Palestinian homes in East Jerusalem lack an Israeli-issued building permit, potentially placing their residents at risk of displacement.

Movement restrictions also contribute to the displacement of Palestinians. In the West Bank, closed military zones cover almost 20 percent of the land area and access to them is restricted to permit holders. Permits are also required for passing through gates in the West Bank Barrier (also known as the Wall), that was constructed by Israel. The Barrier's route through the West Bank, which is illegal under international law, cuts off communities in Area C and in East Jerusalem from sources of livelihood, centres of life, and from each other.

Similar processes are affecting Palestinians living inside Israel. Discrimination in land allocation, planning and housing allocation is prevalent. Palestinians, who account for almost 20 percent of the population, have been allocated only 3.5 percent of land. Moreover, master plans that fail to recognise Palestinian Bedouin communities result in the demolition of countless homes. Land expropriation by the Israeli government and financial incentives are being used to support residents in rural areas of Israel, but exclude Palestinian citizens. Ideologically motivated takeover of houses, as well as demand for real-estate in city centres, result in Palestinians being pushed out of urban communities, after having lost ownership rights over properties.

In the Gaza Strip, displacement occurs on a large scale during Israeli military operations and the Israeli-imposed closure of Gaza has been a major obstacle to remedying the situation. Restrictions on the free entry of construction materials and on the movement of people and goods prevent rapid response to large scale displacement crises and deepen dependency on foreign aid. The creation of Access Restricted Areas around the perimeter of the Gaza Strip also led to large scale demolitions.

IMPACTS OF DISPLACEMENT

Parallels can also be drawn with the impacts of displacement. Across the oPt and Israel, displacement leads to significant restrictions on economic development, is a central driver of poverty, increases dependency on international aid, and has a profound impact on the ability of Palestinians to enjoy their rights under IHL and IHRL.

In the West Bank and in Israel, discriminatory planning has a direct effect on the most vulnerable communities, with many Palestinians being forced to live in overcrowded conditions or displaced to other locations. The rights of Bedouin communities continue to be undermined as their communities are not recognised by the Israeli authorities and governmental plans envision their transfer to inadequate and overcrowded localities. Overcrowding and living in substandard conditions caused by demolitions, restrictions on development, or destruction of homes in military operations, have significant negative effects on individuals' physical and mental health, on achievements of children in schools, and on interaction with community members.

THE EUROPEAN UNION'S RESPONSE

Aspects of displacement have become prominent on the EU agenda: evictions, demolitions, and mass transfer plans have been recognised as contrary to international law.

In the West Bank, demolitions have gained greater visibility from EU statements, with a special focus on the risk of the forcible transfer of Bedouin communities in Area C. In the Gaza Strip, the EU is interested in reconstruction as a key element to strengthen the Palestinian economy and ensure stability in the region. It also recognised the need to end the closure in order to improve the living conditions of Palestinians. In 2014 the EU decided to engage the Israeli government in regular and structured dialogue on the provision of assistance to Palestinians in the oPt but, at the time of writing, the dialogue has not resulted in any tangible change in Israeli policy.

In Israel, the EU has supported Israeli civil society work on equitable planning initiatives and protection of vulnerable communities, although the underlying policies which cause displacement have not been high on the European political agenda. Exceptionally, the European Parliament called for the withdrawal of the Israeli plan to displace Bedouin citizens of Israel in the Negev, and the issue was raised bilaterally and in European Neighbourhood reports.

However, despite these positions, there have been few signals from the EU regarding concrete consequences for the persistence of unlawful practices on the ground, and the EU remains far from reaching a consensus among its institutions and Member States on the measures necessary to ensure Israel's respect for international law. Despite setting a temporary freeze on Israel's request to upgrade the EU-Israel bilateral relationship, there is little evidence of concrete consequences for continued lack of compliance with IHL. Similarly, while calling on the Palestinian Authority to fully resume its governmental functions in the Gaza Strip, the EU does not offer assistance in developing a path towards the reconciliation of Palestinian factions.

CONCLUSION

Forced displacement and its effects are a central challenge to protecting the rights of Palestinians and promoting the development of their communities in both the oPt and Israel. Fundamentally, displacement erodes prospects for a just peace and urgent action is needed by the international community, including the EU and its Member States, in order to address this situation. Israel must uphold its duties under international law – IHL in the areas it occupied in 1967, and IHRL both within its pre-1967 borders and the oPt.

Currently, the prevalent approach taken by the EU towards the displacement of Palestinians fails to protect their rights. Root causes for displacement within Israeli policies need to be addressed to ensure the sustainability of the humanitarian and development assistance provided by the EU and its Member States to Palestinians at risk of displacement or those already displaced. Thus, it is more important than ever that the EU and its Member States engage with Israel on a rights-based approach. Israel is the primary duty bearer for the welfare of Palestinians living under its control, and it must meet its obligations towards the civilian population. The EU and its Member States should not only advocate strongly and consistently for respect of IHL and IHRL, but also end any acquiescence to violations, take measures to protect communities at risk, and promote accountability.

OCCUPIED PALESTINIAN TERRITORY

The West Bank including East Jerusalem, and the Gaza Strip
DECEMBER 2014

OCHA

Palestinian Registered Refugees*

| | |
|-----------|----------------------|
| West Bank | ~ 925,191 refugees |
| Gaza | ~ 1,328,351 refugees |
| Lebanon | ~ 488,213 refugees |
| Syria | ~ 564,074 refugees |
| Jordan | ~ 2,187,286 refugees |

Source: UNRWA



Mediterranean Sea



INTRODUCTION

The context in the oPt is a protracted protection crisis with humanitarian consequences, driven by insufficient respect for international law by all sides. Palestinians in the oPt face a range of serious protection threats in the context of Israel's prolonged occupation and periodic escalation of armed conflict, including threats to life, liberty and security, destruction or damage to homes and other property, forced displacement, restrictions on freedom of movement and on access to livelihoods, and lack of accountability and effective remedy. These threats are exacerbated by the inability of the sides to reach a political agreement. The seasonal winter flooding further exacerbates pre-existing humanitarian needs. In 2014, there was a sharp increase in the severity of humanitarian needs in the Gaza Strip as a result of the July-August conflict.

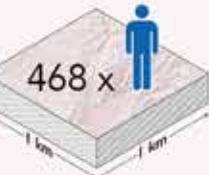
ISSUES OF KEY CONCERN

- Threats to life, liberty and security.
- Forced displacement.
- Erosion of livelihoods and lack of economic opportunities and access to food.
- Restricted access to basic services.

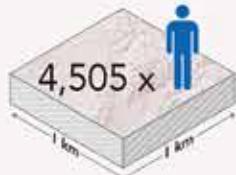
POPULATION DENSITY

CAPITA/KM²

West Bank
Area 5,655 km²



Gaza Strip
Area 365 km²



POPULATION



UNEMPLOYMENT



PALESTINIAN REFUGEES



WATER CONSUMPTION



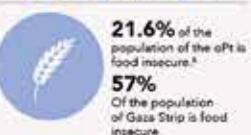
POVERTY



HOUSEHOLD SIZE



FOOD INSECURITY



ISRAELI SETTLEMENTS



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1. Source: PCBS 2014

2. Source: MEFoM 2013

3. Source: ICBS 2014

4. Source: CMWU

5. Source: World Bank

6. Source: World Bank Estimate

TABLE OF ABBREVIATIONS

| | |
|---------------|--|
| » ARA | Access Restricted Area |
| » CERD | The United Nations Committee on the Elimination of Racial Discrimination |
| » EU | The European Union |
| » GC IV | Geneva Convention IV relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 |
| » GRM | The Gaza Reconstruction Mechanism |
| » ICC | The International Criminal Court |
| » ICCPR | The International Covenant on Civil and Political Rights |
| » ICJ | The International Court of Justice |
| » ICRC | The International Committee of the Red Cross |
| » IDP(s) | Internally Displaced Person(s) |
| » IHL | International Humanitarian Law |
| » IHRL | International Human Rights Law |
| » MEPP | The Middle East Peace Process |
| » NGO | Non-Governmental Organisation |
| » oPt | The occupied Palestinian territory |
| » PLO | The Palestinian Liberation Organisation |
| » UN | The United Nations |
| » UN CESCR | The United Nations Committee on Economic, Social and Cultural Rights |
| » UN OCHA oPt | The United Nations Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory |
| » UN OHCHR | The Office of the United Nations High Commissioner for Human Rights |
| » UNHCR | The (Office of the) United Nations High Commissioner for Refugees |

USE OF TERMINOLOGY

» Areas A, B and C

The Oslo Accords, signed between Israel and the Palestinian Liberation Organisation (PLO) in 1993 and 1995, devised an administrative separation of the occupied Palestinian territory into areas of responsibility, as an interim solution for increasing Palestinian control. In the West Bank, the Palestinian Authority was given full control over internal security and public order in Areas marked 'A'. In Areas marked 'B', the Palestinian Authority has full control over public order, while responsibility for internal security is shared between the Palestinian Authority and Israel. Areas marked 'C' remained under full Israeli control. Despite the sharing of responsibilities between Israelis and Palestinians, the entire oPt continues to be occupied by Israel.

» E1 area

E1 denotes an Israeli planning zone and refers to an area of 12 square kilometres adjacent to the Ma'aleh Adumim settlement that has been designated by Israel for the construction of a settlement that would link Ma'aleh Adumim with settlements in East Jerusalem. The plan generated harsh criticism from the United States administration and the European Union. If completed, it will form a significant obstacle in connecting the northern and southern parts of the West Bank. There are 46 Bedouin communities in the E1 and nearby areas of the West Bank at risk of forcible transfer due to Israeli plans.

» H2 area

The Protocol Concerning the Redeployment in Hebron, signed by Israel and the PLO in 1997, formed two administrative areas in Hebron. The Palestinian Police Forces exercises full control over the 'H1' area, while in the remaining part of the city, 'H2', Israel maintains military presence, as well as control over various aspects of Palestinian daily life.

» Israeli outposts

Israeli settlements that are built without the consent and authorisation of the Government of Israel and the Israeli Military Commander. Although all Israeli settlements within the oPt are illegal under international law, outposts are considered illegal even according to Israeli administrative law because they lack the required building permits.

» Israeli settlements

Israeli civilian communities built on land occupied in 1967, including supporting infrastructure such as roads, security fences, and industrial zones. Settlements are illegal under international law.

» Mixed cities

Cities inside Israel in which both Palestinian and Jewish Israeli populations live. According to the Israeli Central Bureau of Statistics, there are eight mixed cities in Israel: Jaffa, Haifa, Acre, Ramlah, Lod, Jerusalem, Ma'ilot-Tarshiha and Nazareth Illit. However, the term is often used to refer only to the first five cities of this list, for various political and historical reasons. This paper will only refer to the five cities when using the term.

» Operation Cast Lead

The Israeli codename for the 22 days of the military operation and conduct of hostilities between the Israeli military and Palestinian armed groups in the Gaza Strip, between 27 December 2008 and 18 January 2009. The Report of the United Nations Fact-Finding Mission on the 2008-2009 Gaza Conflict refers to several detailed lists of casualties collected by human rights organisations, ranging between 1,387 and 1,444 Palestinians killed, of which between 773 and 1,172 did not take part in hostilities. 13 Israelis were killed, of which three were civilians.

» Operation Pillar of Defence

The Israeli codename for the military operation and conduct of hostilities between the Israeli military and Palestinian armed groups in the Gaza Strip, which lasted from 14 to 21 November 2012. According to the UN High Commissioner for Human Rights report to the Human Rights Council, 174 Palestinians were killed during the crisis, of whom 101 are believed to be civilians, including six killed by Hamas rocket fire. Four Israeli civilians and two Israeli soldiers were killed.

» Operation Protective Edge

The Israeli codename for the military operation and conduct of hostilities between the Israeli military and Palestinian armed groups in the Gaza Strip, between 7 July and 26 August 2014. According to the UN Independent Commission of Inquiry on the 2014 Gaza Conflict, 2,251 Palestinians, including 1,462 civilians, were killed. 73 Israelis were killed, six of which were civilians (including one Thai national).

» Special Rapporteur on adequate housing

Special Rapporteur is one of the titles used for the special procedures of the United Nations Human Rights Council. The special procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The Special Rapporteur on adequate housing was established in 2000, with the mandate to report on adequate housing as a component of the right to an adequate standard of living and on the right to non discrimination in this context.

THE OCCUPIED PALESTINIAN TERRITORY

The parts of the historic British Mandate for Palestine to which Israel did not apply its sovereignty in 1948; namely the West Bank including East Jerusalem, and the Gaza Strip. Between 1948 and 1967, the West Bank was administered by Jordan while the Gaza Strip was administered by Egypt. In 1967, the territory was occupied by Israel. Despite the geographical separation between the Gaza Strip and the West Bank, they constitute one territorial unit. In this paper we sometimes refer to the geographic areas separately to facilitate analysis of displacement.

» Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 was established in 1993.

» The “Green Line”; The 1949 Armistice Line

The demarcation lines set out in the 1949 Armistice Agreements between Israel and the neighbouring countries after the 1948 War. The “Green Line” remains the demarcation line between Israel and the occupied Palestinian territory until the parties to the conflict agree on an internationally-recognised border.

» The West Bank Barrier; The Wall

In 2002, the Government of Israel approved construction of a barrier in and around the West Bank with the stated purpose of preventing violent attacks by Palestinians in Israel. Approximately 85 percent of the 710-kilometre long structure runs inside the West Bank. On 9 July 2004, the International Court of Justice (ICJ) issued an Advisory Opinion which stated that its construction on Palestinian territory, together with the associated gate and permit regime, violates Israel's obligations under international law and should be dismantled. ‘The West Bank Barrier’ is the term used by UN OCHA and the ‘Wall’ is the term used by the ICJ.

» The Israeli Military Commander

The Commander of the Israeli military forces in Judea and Samaria (the Israeli name for the West Bank); under Israel's designation holds both executive and legislative powers in the occupied territory. Under international law, the legislation which applies to an occupied area is the same as that implemented before the occupying power's entry. However, the Military Commander has the legal power to change existing legislation when absolutely necessary.

» The occupied Palestinian territory

The parts of the historic British Mandate for Palestine to which Israel did not apply its sovereignty in 1948; namely the West Bank including East Jerusalem, and the Gaza Strip. Between 1948 and 1967, the West Bank was administered by Jordan while the Gaza Strip was administered by Egypt. In 1967, the territory was occupied by Israel. Despite the geographical separation between the Gaza Strip and the West Bank, they constitute one territorial unit. In this paper we sometimes refer to the geographic areas separately to facilitate analysis of displacement.

» Third States

A legal term in international law; refers to states which are not directly involved in violating rights under international law nor are they directly harmed by these violations. The term is often used to refer to states which are not party to a conflict. In certain situations, Third States may have legal obligations, under international law, to act or to refrain from actions in order to remedy a violation.

1. INTRODUCTION

Since 1967, the Israeli occupation in the West Bank and the Gaza Strip has provoked a long-lasting protection crisis, exacerbated by failure to uphold international law. However, lack of respect for international standards ripple through Israeli and Palestinian societies, on both sides of the 1949 Armistice Line (known as the “Green Line”).

As an international family of Catholic development and social justice organisations, we have been working together with others to promote justice, harness the power of global solidarity, and create change to end poverty and inequalities. We are working in many countries around the world, including in the Middle East, where we see the dramatic impact of wars on the displacement of populations. We have been working with a broad range of local partner organisations in both Israel and the occupied Palestinian territory (oPt), to promote respect for human rights and support local communities. In our work, we amplify the voices of local human rights defenders, social activists and development workers, in a message of support and solidarity, and with the goal of promoting a just and durable peace for Palestinians and Israelis alike. We have collectively borne witness over decades to the devastating impact of displacement on local Palestinian communities. We have been able to observe first-hand the parallels between displacement processes across the oPt and Israel, and to view them as a unified and coherent picture.



Recognising that the conflict in Israel and the oPt is multifaceted and protracted, this paper focuses on one of its aspects – forced internal displacement. We aim to highlight the causes and impacts of displacement, explain the basic international legal principles relating to displacement and place this within the context of the European Union's response. We do not attempt to make specific policy recommendations, rather our aim is to stimulate discussion and encourage dialogue. We encourage policy makers or those who seek to influence them to make use of the material to develop recommendations for action.

The paper examines the phenomenon of displacement across different geographic regions, which remain predominantly under the power and responsibility of one duty-bearer, Israel. It traces how displacement has come to represent a consistent and central challenge to the rights of the most vulnerable communities, and is increasingly restricting development in all of these regions. It highlights a failure to uphold international law that undermines development and perpetuates inequality. We believe that respect for international law and promotion of equality are necessary to achieving a just and durable peace.

This paper outlines the relevant aspects of international humanitarian law (IHL) and international human rights law (IHRL) applicable to displacement in the context of the Israeli-Palestinian conflict. The overview of the relevant legal rights is followed by analysis of three geographically delineated sections focusing on the areas of the West Bank under direct and full Israeli control (Area C and East Jerusalem),¹ Gaza, and Israel. Each section identifies the patterns and impact of displacement in the respective region and gives an overview of the EU's response.



“In our work, we amplify the voices of local human rights defenders, social activists and development workers, in a message of support and solidarity, and with the goal of promoting a just and durable peace for Palestinians and Israelis alike.”

¹ Areas A and B of the West Bank remain occupied, despite the sharing of responsibilities between the Palestinian Authority and the Israeli Military. However, due to the sharing of responsibility, forced internal displacement is not of the same extent of concern as it is in Area C and East Jerusalem.

2. INTERNATIONAL LEGAL STANDARDS APPLICABLE TO FORCED INTERNAL DISPLACEMENT

The forced displacement of Palestinians has been and continues to be a central international humanitarian law (IHL) and international human rights law (IHRL) issue in the Israeli-Palestinian conflict. The following chapter summarises the international law applicable to internal displacement in this context.

While parallel processes of displacement are occurring in the different geographical areas, it is important to recognise that they are governed by different bodies of international law. IHRL is a body of law which obliges states to respect the civil, political, economic, social, and cultural rights of individuals. Although many IHRL treaties are aimed primarily at setting obligations on states within their borders, they also apply to some state actions beyond their borders. Thus, Israel has the duty to respect and protect the human rights of individuals who live within its recognised borders, as well as the rights of people living under its effective control in the occupied territory.²

In contrast, IHL regulates the actions of states during and in the aftermath of armed conflicts, including in situations of occupation. Many of its rules protect the rights of persons who find themselves in the hands of a party to the conflict or under the control of an occupying power, of which they are not nationals.

This chapter lists the rights of individuals and the duties of states relating to protection from forced displacement. It is not an exhaustive list of all rights under IHL and IHRL, but a review of the most significant legal standards by which policies and actions relating to the enjoyment of housing and land rights should be judged. Upholding these rights is key to preventing displacement.

² See the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion), International Court of Justice, 9 July 2004 ('the ICJ Wall Opinion') at para. 106-109.

2.1 INTERNATIONAL HUMANITARIAN LAW (OCCUPIED PALESTINIAN TERRITORY)

IHL sets limits on the actions of states and some non-state actors during international and non-international armed conflicts. The basic principles of IHL are the distinction between persons who participate in fighting and those who do not, as well as the distinction between objects that are used for military purposes and objects of civilian nature.³ During times of armed conflict, the rules of IHL prohibit the targeting of civilians or civilian objects and minimise the impact of combat actions on those who are not participating directly in hostilities. Targeting combatants and military objects is permitted under IHL, but such attacks may not be indiscriminate and they should not be carried out if they are expected to cause excessive incidental loss of civilian life, injury to civilians, or damage to civilian objects.⁴ IHL also awards specific protections against harm to persons and objects providing essential services to the civilian population such as medical assistance, humanitarian relief, and journalism. The people providing such services and the objects used for these purposes should be especially protected during fighting.⁵

In addition to the rules that regulate military activities, IHL addresses the relations between the parties to the conflict and groups of people who find themselves under the control of a party of which they are not nationals. This includes the sick and wounded, prisoners of war, and civilians living in an occupied territory. IHL demands that states respect, in all circumstances, their person, honour, family rights, religious convictions and practices, manners and customs, since these people, known as “protected persons,” are particularly vulnerable to violence by parties to the conflict.⁶ In the context of occupation, IHL provides many prohibitions and duties on the occupying power that are designed to ensure the respect of these rights. The following list details some of these protections.

³ See the International Committee of the Red Cross (ICRC), Customary IHL Study, Rules 1-10. Customary international law consists of rules that come from a general practice of states that is accepted as law. It is binding on all states, independent of international treaties, in which states willingly assume responsibilities. The ICRC Customary IHL Study identifies customary law in the area of armed conflicts and clarifies the legal protection offered to victims of war.

⁴ See ICRC, *supra* note 3, Customary IHL Study Rules 11-12, 14.

⁵ See ICRC, *supra* note 3, Customary IHL Study Rules 25-45 for all Specifically Protected Persons and Objects.

⁶ Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (GC IV), Art 27. GCIV, Art 27.

» THE PROHIBITION OF FORCIBLE TRANSFER

Individual or mass forcible transfers of the civilian population of an occupied territory are prohibited, regardless of their motive.⁷

Parties to an armed conflict may not transfer civilians by use of physical force, by threat of force, or by means of coercion (e.g. through fear of violence, detention, psychological pressure or abuse of power often referred to as a coercive environment).⁸ It is the “absence of genuine choice”⁹ that renders a transfer unlawful.

An occupying power may only evacuate an area if required by imperative military reasons or if the security of the civilian population is in question.¹⁰ In the case of evacuation, the occupier must:

- Ensure access to proper accommodation, hygiene, health, safety and nutrition;
- Ensure family members are not separated;
- Inform the protecting power;
- Return evacuated persons to their homes as soon as military operations in the area cease.¹¹

The unlawful transfer of protected persons is a grave breach of the Geneva Conventions (see box).

Box 1. Grave breaches of the Fourth Geneva Convention

The Fourth Geneva Convention defines a list of acts which are grave breaches of IHL, and obliges all states to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, such grave breaches.

The list includes acts such as wilful killing, torture, unlawful deportation or transfer, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.¹² Each state is under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.¹³

All grave breaches of the Conventions are considered to be war crimes under international criminal law.¹⁴ All states have the obligation to enact legislation against grave breaches, to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before their own courts.¹⁵

⁷ Fourth Geneva Convention (GC IV *supra* note 6,), Art. 49; ICRC *supra* note 3 Rule 129 of the International Committee of the Red Cross, Customary International Humanitarian Law Study.

⁸ *Prosecutor v. Milomir Stakić*, International Criminal Tribunal for former Yugoslavia, IT-97-24-A (2006), para. 281; Rome Statute, Elements of Crimes, Article 6(e).

⁹ *Prosecutor v. Milorad Krnojelac* International Criminal Tribunal for former Yugoslavia, IT-97-25-A (2003), para. 229.

¹⁰ GC IV, *supra* note 6, Art. 49; International Committee of the Red Cross (ICRC, *supra* note 3,), Customary International Humanitarian Law Study, Rule 129A.

¹¹ GC IV, *supra* note 6, Art. 49.

¹² For the full list, see GC IV, *supra* note 6, GCIV, Art. 147.

¹³ GC IV, *supra* note 6, GCIV, Art. 146.

¹⁴ Cf. Rome Statute of the International Criminal Court (ICC), Article 8(a), esp. (vii); ICRC, *supra* note 3, Rule 156.

¹⁵ GC IV, *supra* note 6, Fourth Geneva Convention, Art. 146.



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Demolition of EU funded structures. (2016)

Over and above the prohibition of forcible transfer, state practice indicates a duty on parties to a conflict to prevent displacement caused by their own acts, particularly prohibited acts.¹⁶ This is particularly relevant in the conduct of hostilities. Persons displaced in conflict have the right to return safely and voluntarily to their homes as soon as the reasons for their displacement cease to exist. Their property rights must be respected.¹⁷

» THE PROHIBITION OF DESTRUCTION AND SEIZURE OF PROPERTY

The destruction or seizure of real or personal property is prohibited, unless required by imperative military necessity.¹⁸

The prohibition of destruction and seizure of property should be understood in a wide sense, to cover the destruction of all property, whether it is owned privately by individuals, by a state, by public authorities, or by organisations. The occupying forces may therefore undertake the total or partial destruction of certain private or public property in the occupied territory only when imperative military requirements so demand. The occupying power must interpret the clause in a reasonable manner: whenever destruction of property is essential, the damage done must be proportional to the military advantages gained.¹⁹

The extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly is a grave breach of the Geneva Conventions.

¹⁶ ICRC, *supra* note 3, CIHL Study, Commentary to Rule 129.

¹⁷ Id., Rules 132 and 133.

¹⁸ GCIV, *supra* note 6, Art. 53; ICRC, *supra* note 3, Rule 50.

¹⁹ ICRC Commentary of the GC IV, Art. 53.

» THE DUTY TO PROVIDE FOR THE NEEDS OF THE CIVILIAN POPULATION AND FACILITATE RELIEF

The occupying power has the duty of ensuring that the needs of the civilian population under its control are adequately supplied. It must also allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.²⁰

During times of war and occupation, lack of access to basic services is one of the main drivers for displacement. The occupying power must take all the measures in its power to restore, and ensure, as far as possible, public order and civil life in the occupied territory, while respecting, unless absolutely prevented, the laws in force in the country.²¹ The occupying power must ensure, to the fullest extent of the means available to it, that the civilian population has access to food and medical supplies,²² hygiene and public health services,²³ spiritual assistance,²⁴ clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.²⁵

If the whole or part of the population of an occupied territory is inadequately supplied, the occupying power shall agree to relief schemes and shall facilitate them by all the means at its disposal. Such schemes may be undertaken either by states or by impartial humanitarian organisations.²⁶ Objects used for humanitarian relief operations and the humanitarian personnel who form part of such assistance must be respected and protected.²⁷

Box 2. Application of IHL and IHRL under occupation

In situations of occupation, the frameworks of IHL and IHRL are both applicable.²⁸ Where a particular rule of IHL is more specific, detailed or protective, it may prevail over the corresponding IHRL rule as *lex specialis*.²⁹ The IHL prohibition of forcible transfer under occupation has a more precise scope of application than IHRL, is far more restrictive, and is more protective of civilians (while taking genuine military necessity into account), in line with the systemic aim of IHL. It also takes into account the particularities of occupation, which is in principle a temporary situation, and where the occupier is thus precluded from making any permanent changes to the legal order.³⁰

²⁰ CG IV, *supra* note 6, Art. 53, 59 and 60; ICRC, *supra* note 3, Customary IHL Study Rules 55 and 56.

²¹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1907 ('the Hague Regulations') Article 43. The English translation of the Regulations uses the terms "public order and safety" but this has widely been regarded as an inadequate translation of the authentic French original: "l'ordre et la vie publics". The term is usually understood to mean "civil life" and, more widely, the general obligation of good governance and the guarantee of normal life. See Marco Sassoli, Article 43 of the Hague Regulations and Peace Operations in the Twenty-First Century, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004, p. 3.

²² GC VI, *supra* note 6, Art. 55.

²³ GC VI, *supra* note 6, Art. 56.

²⁴ GC VI, *supra* note 6, Art. 58.

²⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 69.

²⁶ GC VI, *supra* note 6, Art. 59.

²⁷ Protocol I, *supra* note 25, Art. 71; ICRC, *supra* note 3, Customary IHL Study, Rules 31, 32, 55 and 56.

²⁸ The ICJ Wall Opinion, *supra* note 2, para. 106-113; Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), ICJ Reports (19 December 2005), at para. 216; UN Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13 (26 May 2004), at para. 11.

²⁹ See the ICJ, *supra* note 2, para. 105-106; Marco Sassòli and Laura Olson, "The legal relationship between international humanitarian law and human rights law where it matters: admissible killing and internment of fighters in non-international armed conflict", International Review of the Red Cross, Vol. 870, September 2008, p. 603 - 605.

³⁰ The Hague Regulations, Article 43.

2.2 INTERNATIONAL HUMAN RIGHTS LAW (ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORY)

In addition to the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 there are numerous IHRL treaties. This paper makes reference to two of them: The International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).³¹

Under IHRL, states have an obligation to *respect*, to protect, and to fulfil human rights. The obligation to *respect* means states are required to refrain from interfering with the enjoyment of human rights. The obligation to protect means to take steps to ensure that third parties do not interfere with the enjoyment of human rights. The obligation to *fulfil* means to take positive action to progressively realise human rights through proactive engagement or direct provision. The obligations on states to respect, protect, and fulfil human rights must be exercised equally and without discrimination.

The right of every person to an adequate standard of living is key in the protection of individuals and families in their homes. It was first recognised in the Universal Declaration of Human Rights (1948), which states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”³² This right has been further developed in subsequent IHRL treaties, in which the various components which constitute an adequate standard of living were defined.

» THE RIGHT TO ADEQUATE HOUSING

Everyone has the right to adequate housing, as a component of the right to an adequate standard of living.³³

The right to adequate housing applies to everyone, individuals and families alike, and enjoyment of this right must not be subject to any form of discrimination. It should be interpreted in a broad sense, to include not just the right to physical shelter, but the right to live in security, peace and dignity.³⁴ While adequacy is subject in part to social, economic, cultural, climatic, ecological and other factors, international experts identified certain aspects of the right that must be taken into account in any particular context:³⁵ (a) Legal security of tenure; (b) availability of services and facilities such as safe drinking water, energy, sanitation and facilities and emergency services; (c) affordability – ensuring that financial costs associated with housing are at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised; (d) habitability – adequate space and protection from threats to health, such as cold, damp, heat and rain; (e) accessibility to disadvantaged groups such as elderly, children and physically disabled; (f) location which allows access to employment options, health-care services, schools, childcare centres and other social facilities; and (g) cultural adequacy in construction, use of building materials, and implementation of policies.

³¹ For more information, see the website of the UN Office of the High Commissioner for Human Rights on international human rights law: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>. Israel is a Party to most international human rights treaties but has not incorporated all of them into its own legislation. For a full list of the treaties to which Israel is a State Party see: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN.

³² The Universal Declaration of Human Rights (1948), Art. 25.1.

³³ The International Covenant on Economic, Social, and Cultural Rights, Art. 11(1).

³⁴ See, the Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The right to adequate housing (art. 11(1) of the Covenant), Sixth session, 1991, para. 6-7.

³⁵ Id., para. 8.

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רצוים
בדוד צ'רנוב



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A joint demonstration of Palestinian and Jewish Israeli citizens calling for the construction of public housing.

» PROTECTION AGAINST FORCED EVICTIONS

The removal against their will of individuals, families and communities from the homes or land which they occupy, without the provision of, and access to, appropriate protection is prohibited.³⁶

Under IHRL, everyone has the right to the protection of the law against arbitrary or unlawful interference with their privacy or family.³⁷ In order to protect this right, the state must refrain from permanent or temporary forced evictions of individuals, families or communities and ensure that the law is enforced against anyone who carries out such evictions. Those who risk being forcibly evicted should have access to legal and other forms of protection.

Some types of evictions could be lawful under national laws, for example, in the case of the persistent non-payment of rent or of damage to rented property without any reasonable cause. In those cases, governments must ensure that all the legal recourses and remedies are available to those affected, and that appropriate measures are taken to ensure that no form of discrimination is involved. If an eviction is considered to be justified, it should be carried out in a manner warranted by law, in strict compliance with IHRL, and in accordance with general principles of reasonableness and proportionality.³⁸

Appropriate procedural protection against forced evictions include: (a) an opportunity for genuine consultation with those affected by the evictions; (b) adequate and reasonable notice; (c) information on the proposed evictions; (d) the presence of government officials or their representatives during the eviction, especially where groups of people are involved; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. Finally, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.³⁹

³⁶ UN CESCR, General Comment 7: The right to adequate housing (Art. 11(1) of the Covenant): Forced evictions, para. 3.

³⁷ International Covenant on Civil and Political Rights (ICCPR), Art. 17.

³⁸ UN CESCR, General Comment 7, *supra* note 36, para. 14.

³⁹ *Id.*, para. 15-16.

» THE RIGHT TO CHOICE OF RESIDENCE

Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence.⁴⁰

The right to reside in a place of one's choice applies to the entire territory and precludes preventing individuals from entering or staying in a defined area of that territory. In this respect, provisions requiring individuals to apply for permission to change their residence or to seek the approval of authorities are of great concern, because they may cause forced internal displacement or result in a de-facto restriction of the right.⁴¹ The right should not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other civil and political rights.⁴² Restrictions must be proportional and appropriate; and they must be the least intrusive instrument amongst those which might achieve the desired result.⁴³

States must also ensure that the right to freedom of movement and choice of residence are protected from private interference, including preventing a situation in which the rights of women are subjected to the decision of another person.⁴⁴

Box 3. The Guiding Principles on Internal Displacement: a minimum standard

The Guiding Principles on Internal Displacement were developed at the request of the United Nations Commission on Human Rights and the General Assembly and presented in 1998. The purpose of the Guiding Principles is to address the specific needs of internally displaced persons (IDPs) worldwide by identifying rights and guarantees relevant to the protection of persons from, during, and after forced displacement. They are intended to provide guidance to international bodies, states, and other authorities and groups when faced with displacement and addressing it.

The Guiding Principles address persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.

The Guiding Principles are based on existing IHL and IHRL, and do not affect the protection given by those bodies of law.⁴⁵ They reaffirm that:⁴⁶

- Every human being has the right to be protected against being arbitrarily displaced from their home or place of habitual residence.
- All authorities and international actors must respect and ensure respect for IHL and IHRL in all circumstances, so as to prevent and avoid conditions that might lead to displacement.
- States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with special dependency on and attachment to their lands.
- Competent authorities have the primary duty and responsibility to establish conditions and provide the means which allow IDPs to return voluntarily, in safety and with dignity, to their homes, or to resettle voluntarily in another part of the country, and endeavour to facilitate their reintegration.
- Competent authorities have the duty and responsibility to assist returned and resettled IDPs to recover their property and possessions or, when this is not possible, provide or assist IDPs in obtaining appropriate compensation or another form of just reparation.

⁴⁰ ICCPR, Art. 12.

⁴¹ Human Rights Committee General Comment 27: Freedom of movement (Art. 12), para. 7 and 17.

⁴² ICCPR, Art. 12(3).

⁴³ Human Rights Committee, *supra* note 41, para. 12.

⁴⁴ Human Rights Committee, *supra* note 41, para. 4-5.

⁴⁵ UNHCR, Guiding Principles on Internal Displacement (1998), Principle 2(2).

⁴⁶ *Id.*, Principles 5, 6, 9, 28(1) and 29(2) respectively.

2.3 THE DUTIES OF THIRD STATES

IHL confers specific duties on Third States, that is, states that are not directly involved in the conflict. According to all four Geneva Conventions of 1949, the “High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.⁴⁷ States have a responsibility to promote the compliance of others with international law, and ensure that they do not support violations of international law by other states themselves. States must not encourage persons or groups engaged in the conflict to violate IHL and they must ensure respect for IHL by parties to the conflict, predominantly through diplomatic protest and collective measures.⁴⁸

In contrast, IHRL is often perceived as an issue regulated mostly domestically. However, if one state violates international law then, in certain cases, other states must cooperate to bring an end to this violation through lawful means. They may not recognise as lawful a situation created by such breaches, and they may not render aid or assistance in maintaining that situation.⁴⁹ The situations to which these duties apply are those created by a serious breach of an obligation arising under a *peremptory norm* of international law. A *serious breach* is a gross or systematic failure by the responsible state to fulfil its international law obligations.⁵⁰ A *peremptory norm* is a norm accepted and recognised by the international community as a whole, as a norm from which no derogation is permitted and which can be changed only by a subsequent norm of the same character.⁵¹

Although there is no list of peremptory norms, there is a general agreement that the term refers at least to certain prohibitions: the prohibition of aggression between states, the prohibitions against slavery and the slave trade, genocide, racial discrimination and apartheid, and torture.⁵² The basic rules of IHL are also considered peremptory norms from which no state is allowed to derogate, as is the obligation of all states to respect the right of self-determination.⁵³

⁴⁷ The Geneva Conventions, Common Article 1.

⁴⁸ ICRC, *supra* note 3, Rule 144.

⁴⁹ ILC Articles on State Responsibility for Internationally Wrongful Acts, Articles 40-41.

⁵⁰ Id., Articles 40(2).

⁵¹ Vienna Convention on the Law of Treaties (1969), Article 53.

⁵² See commentary no. 3, 4 and 5 on Art. 40 of the ILS Articles on State Responsibility for Internationally Wrongful Acts.

⁵³ See the ICJ, *supra* note 2, para. 154-157.

3. DISPLACEMENT BY REGION

Despite clear obligations in international law, many Palestinians are displaced or are at risk of displacement as a result of Israeli practices and policies, as detailed in the following sections. Further, although the following chapter considers the displacement of Palestinians by region, it is evident that similar practices are employed across regions.

3.1 THE WEST BANK, OCCUPIED PALESTINIAN TERRITORY

Following the 1948 War, known by Palestinians as the Nakba (Arabic for catastrophe) and by Israelis as the War of Independence, the West Bank fell under Jordanian control. At least 467,000 Palestinian refugees were registered in the West Bank and in Jordan, after being forced to flee their homes in areas that fell under Israeli control.⁵⁴ In 1950, the West Bank was formally annexed by Jordan, resulting in the application of Jordanian law over the territory and the recognition of all Palestinians living in the West Bank as Jordanian citizens. However, the annexation was officially recognised only by the United Kingdom, as the international community at large hoped to see an agreed upon solution to the Israeli-Palestinian conflict.⁵⁵

In 1967, following the war between Israel, Jordan, Syria and Egypt, the Israeli military occupied the West Bank, along with the Gaza Strip, the Golan Heights and the Sinai Peninsula. Since then, displacement has been a recurrent process in the West Bank, through unlawful practices such as land confiscation, house demolitions and evictions, and the construction of Israeli settlements.⁵⁶

Despite the West Bank being one geographical unit, it is governed by several sets of laws and regulations. Following the occupation of the West Bank in 1967, Israel illegally annexed East Jerusalem and a wide territory around it, and extended West Jerusalem's municipal boundaries to apply to the entire annexed area. In 1980, the Knesset completed this process by passing a Basic Law stating that "Jerusalem, complete and united, is the capital of Israel".⁵⁷ In response, the UN Security Council determined that all measures taken by Israel which alter the character and status of Jerusalem and, in particular, this basic law "are null and void and must be rescinded forthwith".⁵⁸

In 1993, Israel and the Palestinian Liberation Organisation (PLO) signed the Declaration of Principles on Interim Self Government Arrangements (the "Oslo I Agreement") which established a Palestinian interim self-governance authority. In 1995, the parties agreed, in the Interim Agreement on the West Bank and the Gaza Strip (the "Oslo II Agreement"), that the remaining area of the West Bank, excluding East Jerusalem, will be divided into three administrative areas – A, B, and C.

⁵⁴ The assessments of the number of refugees vary by source. According to UN sources, between 711,000 and 878,000 Palestinians became refugees in neighbouring countries following the 1948 War. See "U.N. General Assembly Official Records, 6th Session, Supplement No. 16, Document A/1905" (28 September 1951) and Special report of the Director and Advisory Commission of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN General Assembly Sixth Session, Supplement No. 16 A (A/1905/Add. 1, 1951).

⁵⁵ The United States did not officially recognise the annexation but approved of it "in the sense that it represents a logical development of the situation which took place as a result of a free expression of the will of the people." See Policy Statement Prepared in the Department of State, Washington April 17, 1950 (United States Department of State, Foreign relations of the United States, 1950. The Near East, South Asia, and Africa Volume V, 811.85/4-1750).

⁵⁶ UN OCHA oPt, "Demolitions and Forced Displacement in the Occupied West Bank", (January 2012, www.ochaopt.org/documents/ocha_opt_demolitions_factSheet_january_2012_english.pdf).

⁵⁷ Article 1, Israeli Basic Law: Jerusalem, Capital of Israel.

⁵⁸ UN Security Council Resolution 478 of 20 August 1980, UN Doc. S/RES/478 (1980), para. 33.

In Area A, comprising approximately 18 percent of the West Bank, the Palestinian Authority was given full control over internal security and public order. In Area B, comprising approximately 22 percent of the West Bank, the Palestinian Authority has full control over public order, while responsibility for internal security is shared between the Palestinian Authority and Israel. It is estimated that roughly 2.7 million Palestinians live in these areas combined.⁵⁹ The remaining 60 percent of the West Bank is Area C, which is under Israeli security and civilian control, with the exception of certain civilian issues, such as education and veterinary services, which were transferred to Palestinian responsibility. An estimated 297,000 Palestinians live in Area C.⁶⁰ In 2015, it is estimated that nearly 547,000 Israeli settlers live in the West Bank: roughly 350,000 settlers in Area C and 196,900 in East Jerusalem.⁶¹

In 2009, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 identified nine triggers which lead to the forcible transfer of Palestinians: evictions and land appropriation; military incursions; the expansion of settlements and related infrastructure; the construction of the West Bank Barrier; violence and harassment by settlers; the revocation of residency rights in East Jerusalem; discriminatory denial of building permits and house demolitions and a system of closures and restrictions on the right of freedom of movement.⁶² The following sections expand on these factors and detail their impact on the Palestinian population in Area C and in East Jerusalem.

3.1.1 AREA C

Background

It is estimated that, during the 1967 War, 189,000 refugees were displaced outside of the West Bank and 10,000 Palestinians were internally displaced within it.⁶³ Subsequently, the Israeli Central Bureau of Statistics conducted a census in which the residents of the West Bank were registered. Palestinians who were not present during the time of the registration were assumed to have left the occupied territory and their right of residence was denied. They were declared ‘Absentees’ and their land and property was transferred to the hands of the Custodian for Government and Abandoned Property – the Israeli military body responsible for the management of all lands in the West Bank that are declared state lands or for which no legal owner is recognised. These lands were later used for settlement construction.⁶⁴

The growth of Palestinian population centres was concurrently limited by Israeli-imposed administrative measures. Military-run planning bodies were established, to regulate every aspect of construction in Area C. Houses which lack a building permit, that are issued solely by the military, would be demolished.⁶⁵ At the same time, large swathes of land were appropriated from their Palestinians owners for the benefit of settlement construction.

⁵⁹ The Palestinian Central Bureau of Statistics estimates that, as of 2016, 2,935,368 Palestinians live in the West Bank. See PCBS, Estimated Population in the Palestinian Territory Mid-Year by Governorate, 1997-2016 (http://www.pcbs.gov.ps//Portals/_Rainbow/Documents/gover_e.htm).

⁶⁰ UN OCHA oPt, Humanitarian Needs Overview 2015, p. 2.

⁶¹ See B’Tselem, Statistics on Settlements and Settler Population, 11 May 2015 (<http://www.btselem.org/settlements/statistics>). Based on data provided by Israel’s Central Bureau of Statistics and the Jerusalem Institute for Israel Studies.

⁶² The Human Rights Council, Human Rights Situation in Palestine and Other Occupied Arab Territories (20 March 2009, A/HRC/10/22), p. 27.

⁶³ See Wael R. Ennab, “Population and Demographic Developments in the West Bank and Gaza Strip until 1990”, UN Conference on Trade and Development, (UNCTAD/ECDC/SEU/1, 28 June 1994) p. 50; BADIL Resource Center for Palestinian Residency and Refugee Rights, “The Growing Problem of Palestinian Internal Displacement” in: Roadmap or Roadblock (Issue No.18, Summer 2003).

⁶⁴ B’Tselem, “Under the Guise of Legality: Israel’s declarations of State Land in the West Bank” (February 2012), p.13.

⁶⁵ See Diakonia, “Planning to Fail”, September 2013, at 14.

At first, this was mainly achieved through military orders. Following a 1979 Israeli Supreme Court ruling against seizure of private Palestinian land for settlements, the declaration of “State land” (a classification broadly applied to all land not privately registered before 1967) became the primary means of appropriation.⁶⁶

By 1979, a UN Security Council Commission report noted that Palestinians living in the West Bank were under constant pressure to move to make way for settlements and that the settlement policy had brought drastic and adverse changes to the economic and social pattern of the daily life of the remaining population.⁶⁷

Factors contributing to displacement

At the beginning of 2014, amid growing international concern at the scale of displacement in the West Bank, the Humanitarian Country Team⁶⁸ identified the four groups most at risk of displacement:

- Palestinians living in areas surrounded by or isolated by the West Bank Barrier.
- Herders and Bedouin communities living in areas under Israeli control – in particular in the Jerusalem periphery/E1 area.
- Residents of the Israeli-controlled area of Hebron known as H2.
- Palestinian communities living in or near areas illegally designated by Israel as “closed military zones” – including those in the northern Jordan Valley or in Masafer Yatta firing zone 918 in the south of the West Bank.

Box 4. **Forcible transfer**

Concerns over forcible transfer in the West Bank including East Jerusalem have been expressed in a report by the UN Secretary-General: “*Israeli policies resulting in the forcible transfer of civilians within and from the occupied Palestinian territory, including the revocation of residency rights of Palestinians from East Jerusalem, evictions, home demolitions and the planned transfer of Bedouin communities, should be terminated immediately. Israeli planning and zoning policies and practices should be immediately modified to ensure adequate housing for all Palestinian residents of Area C and East Jerusalem.*”⁶⁹ Forcible transfer of protected persons within an occupied territory constitutes a grave breach of the Fourth Geneva Convention (see Arts 49, 146 and 147, and the legal frameworks section above).

Restrictive planning processes leading to demolitions and evictions

The Israeli-imposed planning system continues to create risks of forcible transfer of Palestinians living in Area C (see box above). In 1971, the Israeli Military Commander operating in the West Bank issued Military Order No. 418⁷⁰ that transferred the administrative powers to approve master plans and issue building permits for villages and towns from the hands of the Palestinian communities themselves to a central military-controlled committee, the Planning and Licensing Subcommittee of the Higher Planning Council.

⁶⁶ Dweikat v. Government of Israel, Israel Supreme Court sitting as the High Court of Justice, HCJ 390/79, October 22, 1979 (see at: www.hamoked.org/Document.aspx?dID=1670). Case commentary by Adv. Yossi Wolfson, “Seizure of Private Land for the Purpose of Building Settlements”, Hamoked (1 January 2013, www.hamoked.org/Document.aspx?dID=Documents1240).

⁶⁷ Report of the UN Security Council Commission Established under Resolution 446 (1979), S/13450 12 July 1979, §§ 2–29, 234.

⁶⁸ The Humanitarian Country Team includes actors involved at the country level in the provision of humanitarian assistance and protection, and was established in the oPt in 2008. UN OCHA oPt, Strategic Response Plan for the occupied Palestinian territory 2014, https://docs.unocha.org/sites/dms/CAP/SRP_2014_oPt.pdf.

⁶⁹ See <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B2FB1B5B6E9F663285257A9C004B5271>

UNSG, Report by the Secretary General to the GA, “*Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*”, (UN Doc. A/67/372, 14 September 2012), para. 55.

⁷⁰ Israeli Military Order concerning Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 1971, as amended by the Israeli Military Commander in subsequent years.

In contrast, and despite the fact that settlements are illegal under IHL, Israeli settlers were afforded substantial control over planning through local representation in regional planning committees that were established specifically for this reason.⁷¹

As a result, the Israeli military controls all aspects of planning for Palestinians in Area C. Only one percent of Area C has been planned for Palestinian development, while 70 percent has been planned for the use of the Israeli military or settlements, and a range of restrictions apply to the remaining areas.⁷² 94 percent of Palestinian building permit applications have been rejected by the Israeli military's planning authorities in recent years.⁷³ Subsequently, Palestinians in Area C have little choice other than to build houses and other vital infrastructure without permits, leaving them at risk of demolition.⁷⁴ Between January 2011 and June 2016, over 4,800 Palestinians have been displaced by demolitions in Area C.⁷⁵



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A Palestinian baby sits in his crib outside his family's demolished house in Khirbet Tana, a community in the occupied Palestinian territory. According to the residents, their facilities have been demolished for the fourth time in less than two months because they were not built with an Israeli-military issued building permit. (2016)

⁷¹ Id., Section 2A.

⁷² UN OCHA oPt, "Area C Humanitarian Response Plan Fact Sheet", August 2010, p. 2; UN OCHA oPt, "Restricting Space: The planning regime applied by Israel in Area C of the West Bank", December 2009, pp. 5-6.

⁷³ AIDA, Failing to Make the Grade: How the EU can pass its own test and work to improve the lives of Palestinians in Area C, p. 3.

⁷⁴ UN OCHA oPt, "Demolitions and Forced Displacement in the Occupied West Bank", www.ochaopt.org/documents/ocha_opt_demolitions_factSheet_january_2012_english.pdf p.1.

⁷⁵ UN OCHA oPt, West Bank Demolitions Database.

Box 5. IHL and land use in an occupied territory

In 2011, the village council of Ad-Dirat Al-Rfai'ya and a number of partner organisations of CIDSE members⁷⁶ petitioned the Israeli High Court of Justice with a request to re-institute the Palestinian planning bodies.

Under IHL, the occupying power is obliged to respect, “unless absolutely prevented, the laws in force in the [occupied] country” (Hague Regulations, Art. 43). According to a legal expert opinion, the removal of Palestinian participation in the West Bank planning system by the Israeli Military Commander constituted an unjustified and unlawful change in existing legislation, which must be remedied by a transfer of planning authority to a formal representation of the Palestinian population.⁷⁷

In June 2015, the Israeli Court rejected the petition, granting its approval to the existence of one planning system for Israeli settlers and another for Palestinian communities. The ruling was based on an offer by the Israeli military to allow consultations with Palestinian communities on certain planning issues. Rabbis for Human Rights, one of the petitioning organisations, warned this amendment is a ‘fig leaf’ that “may only bring about the appearance of participation, with no actual impact.”⁷⁸

Over and above this ongoing pressure on the population, mass demolitions and mass transfer plans are a growing concern. The Israeli Civil Administration – the branch of the Israeli military responsible for coordinating the administrative matters relating to the Palestinian population in Area C – has been promoting a plan since 2012 that foresees the removal of 46 Palestinian Bedouin communities from their current locations, which are earmarked for settlements. These communities would then be contained within a limited number of sites adjacent to Area A.⁷⁹ In these areas, obstruction of aid is also used as a means to pressure the population.⁸⁰ The plan as a whole has been recognised by UN bodies and legal experts as a plan for forcible transfer.⁸¹

Closed military zones

Closed military zones cover almost 20 percent of the West Bank, surrounding 38 Palestinian communities which mostly pre-date the occupation and house around 5,000 people. Presence in these zones is prohibited without a rarely-granted permit – Palestinian residents therefore risk eviction and demolition, and face numerous other pressures (e.g. settler violence, army harassment) which, according to UN OCHA, create a coercive environment which pressures them to leave.⁸²

⁷⁶ The organisations are Rabbis for Human Rights, The Jerusalem Legal Aid and Human Rights Center (JLAC), Society of St. Yves - The Catholic Center for Human Rights, and the Israeli Committee Against House Demolitions.

⁷⁷ See Théo Boutruche and Marco Sassòli, “Expert Opinion on International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank”, 2011 (<http://rhr.org.il/heb/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf>) at 22-27, 34.

⁷⁸ Rabbis for Human Rights, “Supreme Court Orders Participation of Palestinians in Planning and Zoning Processes in Area C”, (28 April 2014, <http://rhr.org.il/eng/2014/04/israeli-supreme-court-orders-participation-of-palestinians-in-planning-and-zoning-processes-in-area-c-of-west-bank/>).

⁷⁹ UN OCHA oPt, “Communities in the Jerusalem Periphery at Risk of Forced Displacement”, (June 2013); UN OCHA oPt, “Humanitarian Bulletin: – Monthly Report”, (April 2014), p., at 5.

⁸⁰ Nineteenth Knesset, Second Session, “Minutes of the meeting of the Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee” (27 April 2014, <http://jahalin.org/wp-content/uploads/2012/01/2014.04.27-Minutes-Judea-and-Samaria-Region-Subcommittee-of-the-Foreign-Affairs-and-Defense-Committee.pdf>, unofficial translation), statements of Major Yoav Mordechai (Coordinator of Government Activities in the Territories, Ministry of Defence), pp. 15 and 18.

⁸¹ <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B2FB1B5B6E9F663285257A9C004B5271>; Report by the UN Secretary General to the UN General Assembly (A/67/372, 14 September 2012), para. 37; Expert Opinion by M. Sassòli and T. Boutruche, *supra* note 77.

⁸² UN OCHA oPt, “The Humanitarian Impact of Israeli-Declared Firing Zones in the West Bank”, (August 2012).

Although the army justifies the zones on grounds of military necessity, predominately for training purposes, the legality of this justification for closing areas to Palestinian access has been refuted by legal experts. This owes to the absolute prohibition of forcible transfer in IHL, and the permissibility of temporary evacuation only to protect civilians or remove them from ongoing hostilities.⁸³ Furthermore, a military official has revealed that firing zones are being increasingly used in the Jordan Valley to reduce the number of Palestinians nearby and prevent Palestinian construction.⁸⁴

Settler violence

Approximately 110 Palestinian communities, with a combined population of nearly 315,000 people, have been identified as vulnerable to settler violence (over half of those are at high risk).⁸⁵ According to the UN OCHA, a large number of incidents clearly reinforce settler control over land in Area C by driving the Palestinian population away in order to allow settlements to expand.⁸⁶ In 2011, it was recorded that 139 Palestinians were displaced by settler attacks, with some affected families moving to densely-populated Areas A and B.⁸⁷ In 2015, 227 settler violence incidents were recorded by the UN, 97 of which led to casualties.⁸⁸

As the occupying power, Israel has the duty to protect the Palestinians in the West Bank. However, according to the Israeli NGO Yesh Din, 85 percent of investigations into ideologically motivated offenses against Palestinians are closed without any results due to circumstances reflecting the police's failure to investigate properly and effectively.⁸⁹ Understaffed police stations, lack of will to investigate crimes, and complicated procedures all lead to crimes against Palestinians and their property going unpunished. Perpetrators are rarely tried, and many cases are not investigated at all or are closed with no operative conclusions.⁹⁰ The near impunity of settlers committing violent acts against Palestinians creates a situation of serious insecurity for the inhabitants of Palestinian villages near settlements. The lack of effective law enforcement against perpetrators allows criminals to violently dispossess Palestinians and sends the message that, as far as Israel is concerned, they may continue to do so with impunity. Moreover, the Israeli government aims to legalise illegal outposts that are in many cases the source for settler violence and therefore reward criminal acts.⁹¹

The West Bank Barrier / The Wall

In 2002, Israel began the construction of a barrier with a declared aim of preventing the unregulated entry of Palestinians from the West Bank to Israel and terrorist attacks on its citizens. However, some 85 percent of the route on which the Israeli Ministry of Defence decided to build the West Bank Barrier passes through occupied territory, rather than on the Green Line. In its advisory opinion from 2004, the International Court of Justice determined that the West Bank Barrier, which it referred to as the Wall, was "contributing [...] to the departure of Palestinian populations from certain areas", creating a risk of further altering the demographics of the oPt. Therefore, it has found that its construction severely impeded the Palestinian people's right to self-determination and violated the Fourth Geneva Convention.⁹²

⁸³ See Eyal Benvenisti, David Kretzmer and Yuval Shany, Expert legal opinion in relation with the Petition filed by Residents of Villages in Firing Zone 918 against the Intention to Transfer them from their Homes (16 January 2013, www.acri.org.il/en/wp-content/uploads/2013/02/918-legal-opinion-SKB.pdf).

⁸⁴ See Amira Hass, "IDF uses live-fire zones to expel Palestinians from areas of West Bank, officer admits", Ha'aretz, 21 May 2014.

⁸⁵ UN OCHA oPt, "Humanitarian Monitor: Monthly Report" (May 2013), p. 14. Some Palestinian communities at risk due to settler violence are located, or partly located, in Areas B and A.

⁸⁶ UN OCHA oPt, *supra* note 72.

⁸⁷ UN OCHA oPt, "Israeli Settler Violence in the West Bank Fact Sheet" (November 2011).

⁸⁸ UN OCHA oPt, "Fragmented Lives: Humanitarian overview 2015" p. 5.

⁸⁹ Yesh Din, Data Sheet October 2015: law enforcement on Israeli citizens who harm Palestinians and their property in the West Bank (www.yesh-din.org/en/data-sheet-october-2015-law-enforcement-on-israeli-citizens-who-harm-palestinians-and-their-property-in-the-west-bank/)

⁹⁰ See Yesh Din – Volunteers for Human Rights, Mock Enforcement: The failure to enforce the law on Israeli civilians in the West Bank (May 2015, available at: www.yesh-din.org/en/mock-enforcement-law-enforcement-on-israeli-civilians-in-the-west-bank/).

⁹¹ See Yesh Din, Under the Radar: Israel's silent policy of transforming unauthorized outposts into official settlements (March 2015), pp. 28-33.

⁹² The ICJ, Wall Opinion, *supra* note 2 par. 122 and 134.



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Palestinian farmers clash with Israeli settlers after they set fire to Palestinian agricultural fields in Burin, a village near Nablus. (2015)

Today, Palestinians living in “Seam Zones” between the West Bank Barrier and the Green Line and communities surrounded by the Barrier on all sides are subject to a permit regime which severely restricts their access to their land, isolating them socially and destroying the local economy. Similarly, farmers who live on one side of the West Bank Barrier and own land on the other experience severe difficulties in accessing and cultivating their lands and risk losing their source of livelihood. The use of gates is often restricted to pre-approved permit holders, which prevents guests, daily workers, or service deliverers from accessing people living in “Seam Zones.”⁹³ According to Palestinian human rights organisations, this creates unbearable conditions which could be viewed as coercing forcible transfer of Palestinians from the area.⁹⁴ If the Barrier is completed as planned, over 33,000 Palestinians will reside in “Seam Zones.”⁹⁵



“The Israelis confiscated a lot of land from our house to build the Wall and for a road for military vehicles that is in between the Wall and our house. In most of the sections near us the Wall is a metal wire fence but just in front of our house, they have built a nine foot-high concrete Wall [...] It felt like a punishment for refusing to leave, to cut us off completely from the village so we couldn’t even see our neighbours or the village anymore and force us to leave.”

Mounira Amir, resident of a Seam Zone village in the central West Bank⁹⁶

⁹³ For more information see B’Tselem, Arrested Development: The Long Term Impact of Israel’s Separation Barrier in the West Bank (October 2012) and HaMoked, The Permit Regime: Human Rights Violations in West Bank Areas Known as the “Seam Zone” (March 2013).

⁹⁴ Non-Governmental Organisations, Joint Written Statement on Seam Zones, submitted to the Human Rights Council, (A/HRC/21/NGO/58, 4 September 2012).

⁹⁵ UN OCHA oPt, West Bank Movement and Access Update (www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf, September 2012).

⁹⁶ WCLAC, Life Behind the Wall: Voices of Women from the Seam Zone (2010), p. 27.

The Population Registry

The Israeli military's control over the Palestinian Population Registry is an additional factor contributing to the displacement of Palestinians. Although Israel recognised in the Oslo II Agreement that the West Bank and the Gaza Strip are a single territorial unit, the Israeli military stopped updating the registered addresses of Palestinians who moved from the Gaza Strip to the West Bank and, since 2007, has been treating them as illegal aliens.⁹⁷ In 2011, the UN OCHA estimated that 35,000 Palestinians registered as Gaza residents but living in the West Bank have been prohibited from updating their residency status and therefore remain without valid permits.⁹⁸ In a submission to the Israeli High Court of Justice, the Israeli Ministry of Defence committed not to forcibly transfer unregistered West Bank residents back to Gaza, if they moved to the West Bank prior to 12 September 2005. However, complicated procedures make the majority of those undocumented residents unable to secure their rights, and they are subject to arrests, harassment, and the risk of being transferred to the Gaza Strip against their will.⁹⁹



⁹⁷ HaMoked, "Israel continues to pursue its policy of separation between the West Bank and the Gaza Strip", (November 2013).

⁹⁸ UN OCHA oPt, "Fragmented Lives: Humanitarian overview 2011", p. 19.

⁹⁹ Hamoked, "Israel continues to pursue its policy of separation between the West Bank and the Gaza Strip" (1 September 2011, www.hamoked.org/Document.aspx?dID=Updates1257).

3.1.2 EAST JERUSALEM

Forced displacement in East Jerusalem has occurred along similar lines to that of Area C of the West Bank, with comparable drivers such as the confiscation and allocation of land for Israeli settlements, the introduction of restrictive planning policies, and the impact of the West Bank Barrier. There have also been specific factors particular to the East Jerusalem context that have contributed to forced displacement, predominately the unlawful annexation of East Jerusalem to Israel, and the impact it had on the city's Palestinian community.

Background

Immediately after the 1967 War, Israel illegally annexed approximately 70,500 dunams (70.5 square kilometres) of occupied land, including the entirety of East Jerusalem and 28 neighbouring communities. Subsequently, Israel conducted a census in the annexed area and granted permanent residency status to its residents. Persons who were not present at the time of the census lost their right to reside in the annexed area. Permanent residents may apply for Israeli citizenship, if they meet certain criteria, but the majority of Palestinian residents refuse to recognise the annexation and do not wish to become Israeli citizens.¹⁰⁰ The UN Security Council deplored the Israeli annexation, reaffirmed that acquisition of territory by military conquest is inadmissible, and reiterated that all Israeli measures which have altered the geographic, demographic and historical character and status of Jerusalem are null and void and must be rescinded.¹⁰¹

In 1973, the Israeli government established an inter-ministerial committee to address the issue of development in Jerusalem, which determined that a "demographic balance of Jews and Arabs must be maintained as it was at the end of 1972."¹⁰² This balance, roughly 30 percent Christian and Muslim Palestinians and 70 percent Jewish Israelis, became a target rate for Israeli governments over the years, as well as the Jerusalem Municipality. In order to achieve this balance, policies and practices which put pressure on Palestinian communities were implemented, in order to restrict their development and coerce them to move.¹⁰³



"[The Committee] calls upon the State Party to eliminate any policy of 'demographic balance' from the Jerusalem Master Plan and planning and zoning policies in the rest of the West Bank."

UN Committee on Elimination of Racial Discrimination, 2011¹⁰⁴

¹⁰⁰ For more information see BTselem, Legal Status of East Jerusalem and its Residents, www.btselem.org/jerusalem/legal_status.

¹⁰¹ UN Security Council Resolutions 252 (1968), 476 (1980), and 478 (1980).

¹⁰² Inter-ministerial Committee to Examine the Rate of Development for Jerusalem, "Recommendation for a Coordinated and Consolidated Rate of Development" (August, 1973), p.3. Quoted in B'Tselem, A Policy of Discrimination: Land expropriation, planning and building in East Jerusalem (May 1995), p. 31.

¹⁰³ For detailed information, see United Nations Human Settlements Programme (UN-Habitat), Right to Develop: Planning Palestinian Communities in East Jerusalem (2015).

¹⁰⁴ CEDR, Consideration of reports submitted by States parties under article 9 of the Convention: Concluding Observations (CERD/C/ISR/CO/14-16, 3 April 2012), para. 25.

Factors contributing to displacement

Obstacles to Palestinian planning

With the illegal annexation of East Jerusalem, the power to issue master plans and building permits was transferred from the Palestinian communities to the Israeli planning authorities, which, in most cases, do not adjust existing master plans to the needs of Palestinians.¹⁰⁵ Moreover, between 1969 and 1991, Israeli authorities expropriated land from Palestinian owners, for the purpose of constructing illegal settlements in the areas surrounding Palestinian communities.¹⁰⁶ The settlements' location hinders the ability of Palestinian communities to expand in response to natural growth. Of the 70.5 square kilometres which were annexed by Israel and constitute the area included today in the boundaries of East Jerusalem, 30 percent remains unplanned; 35 percent has been expropriated for the construction of illegal Israeli settlements; 22 percent is designated for infrastructure and open space, and only 13 percent is available for Palestinian communities to build on.¹⁰⁷

Since the majority of the area designated for Palestinian construction is already built up, building permits are near-impossible for Palestinian residents to obtain and many families have no choice but to build without the required Israeli authorisation.¹⁰⁸ According to the UN OCHA, at least 33 percent of Palestinian homes in East Jerusalem have been built without a permit – this potentially leaves about 93,100 people at risk of displacement.¹⁰⁹ Between January 2011 and June 2016, more than 440 structures were demolished, resulting in the displacement of 800 Palestinians.¹¹⁰

New settlements in the city centre

In addition to the construction of major settlements, individual settler groups – with State assistance and support¹¹¹ – have taken over buildings in the heart of several Palestinian communities such as Silwan, Sheikh Jarrah, and the Old City. This has frequently entailed eviction of Palestinian residents through targeted legal challenges. These have been based on the application of the Absentee Property Law, which transfers control of Palestinian refugees' property to the Israeli Custodian for Absentee Properties,¹¹² as well as on claims of pre-1948 Jewish ownership of the land (though Palestinian ownership from this period is not recognised in the same way). In Sheikh Jarrah alone, such challenges place 500 families at risk of eviction.¹¹³

Archaeological excavations have also been used to displace Palestinians from their homes in the centre of East Jerusalem. In Silwan, a Palestinian community located just outside the walls of the Old City, the Israeli NGO Elad acquired houses and property, as well as the management rights of the archaeological park, the City of David, in the community's centre. According to reports, since 1994 Elad has underwritten several excavations which introduce a powerful narrative of Jewish ownership, while excluding almost every other viewpoint.¹¹⁴

¹⁰⁵ UN OCHA oPt, "The Planning Crisis in East Jerusalem: Understanding the phenomenon of illegal construction", April 2009, p. 7.

¹⁰⁶ See B'Tselem, Statistics on Land Expropriation in East Jerusalem (1 January 2011, www.btselem.org/jerusalem/land_expropriation_statistics).

¹⁰⁷ Bimkom and Ir Shalem – Jerusalem, The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem, 2004, p. 8.

¹⁰⁸ Society of Saint Yves, "Housing Issues in East Jerusalem" (18 December 2014, www.saintyves.org/?MenulId=8&Lang=1&TemplateId=projects&catId=7&full=1&id=35).

¹⁰⁹ UN OCHA oPt, "East Jerusalem: Key Humanitarian Concerns", December 2012.

¹¹⁰ UN OCHA oPt West Bank Demolitions Database.

¹¹¹ "How Israel Helps Settler Group Move Jews Into East Jerusalem's Silwan" (Haaretz, 6 January 2016).

¹¹² See Ir Amim, Absentees against Their Will – Property Expropriation in East Jerusalem under the Absentee Property Law (1 July 2010); Nir Hasson, "Supreme Court Rules: Israel Can Confiscate Palestinian Property in Jerusalem" (Ha'aretz, 16 April 2015).

¹¹³ UN OCHA oPt, "Settlements in Palestinian Residential Areas in East Jerusalem", April 2012; UN OCHA oPt, "East Jerusalem: Key Humanitarian Concerns", Special Focus, March 2011, at 54 – 56; B'tselem, "Settler Enclaves in East Jerusalem", (1 January 2011, www.btselem.org/jerusalem/settler_enclaves).

¹¹⁴ See, e.g., Raphael Greenberg, "Towards an Inclusive Archaeology in Jerusalem: The Case of Silwan/The City of David", Public Archaeology Vol. 8 No. 1, February 2009 35-50.



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Settlers use the roof of a Palestinian family's home as an observation point, after the upper part of the structure was transferred to the management of Elad. (East Jerusalem, 2014)

The establishment of settler presence and the development of Israeli tourism to archaeological sites in East Jerusalem push local Palestinian residents out of their community and their homes are put under risk of demolition.¹¹⁵

The West Bank Barrier / The Wall

The West Bank Barrier, which Israel began constructing in 2002, passes through East Jerusalem, separating the inner-city from its outer Palestinian communities. It isolates 90,000 Palestinian Jerusalemites from Jerusalem's urban centre, leaving them on the "West Bank side".¹¹⁶ As crossing the Barrier into the "Israeli side" must be through regulated checkpoints and with an adequate permit, it creates a significant impediment to the freedom of movement of the Palestinians living in and around Jerusalem. According to a 2006 survey, the Barrier and its associated regime were the biggest cause of involuntary changes of residence among Palestinian Jerusalemites.¹¹⁷

The legal status of Palestinians

The illegal annexation of Jerusalem resulted in 69,000 Palestinians becoming residents of Israel. Unlike citizens, this is a temporary classification which may be revoked if the state determines that the person's "centre of life" is no longer Jerusalem.¹¹⁸ Palestinian Jerusalemites' residency is also not passed on automatically to their children, whose registration as a resident of Jerusalem is subject to certain conditions (i.e. place of birth, residency status of parents).

¹¹⁵ See B'Tselem, "Al-Bustan Neighborhood – Garden of the King" (16 September 2014, http://www.btselem.org/jerusalem/national_parks_al_bustan_garden_of_the_king).

¹¹⁶ ACRI, "Neglect and suppression in East Jerusalem: The policies behind widespread poverty and unemployment" (2012) p. 3; Al Haq, "The Jerusalem Trap: The looming threat posed by Israel's annexationist policies in Occupied East Jerusalem" (2010), p. 32.

¹¹⁷ BADIL and IDMC, Displaced by the Wall: Forced displacement as a result of the West Bank Wall and its associated regime (2006), p. 30.

¹¹⁸ Al Haq, *supra* note 116, p. 14.



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Palestinian women cross through the Israeli military checkpoint of Qalandiya, a main crossing point between East Jerusalem and Ramallah, on the third Friday of Ramadan 2016 (East Jerusalem, occupied Palestinian territory).

In 2010, according to official Israeli figures, 10,000 Palestinian children in East Jerusalem were unregistered – severely limiting their access to education and other basic services, and making their presence in the city precarious.¹¹⁹ Since 1967, Israeli authorities have revoked the permanent residency status of over 14,000 Palestinian East Jerusalemites. There were more than 4,500 revocations in 2008 alone, in what the OCHA has referred to as “quiet deportation”.¹²⁰

3.1.3 IMPACTS

Displacement within the West Bank today largely has a direct effect on the most vulnerable farming and herding communities in Area C. The Israeli policies and practices in the West Bank, including East Jerusalem, restrict Palestinian communities’ ability to develop and put thousands at risk of forcible transfer. This is done in order to ensure settlement expansion in Area C and East Jerusalem, while containing 2.7 million Palestinians in 165 isolated enclaves in Areas A and B.¹²¹ The settlement policy also has a negative impact on Palestinians in Areas A and B, who have almost no remaining land resources to expand their communities.¹²²

¹¹⁹ JLAC, Palestinian Self-Determination: the Case of East Jerusalem (www.jlac.ps/data_site_files/file/Legal%20Papers/Paper_on_Jerusalem.pdf), p. 6; UN CESCR, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding Observations (E/C.12/ISR/CO/3, 16 December 2011) para. 35; UN OCHA oPt, “East Jerusalem: Key Humanitarian Concerns”, Special Focus, (March 2011) p. 22.

¹²⁰ UN OCHA oPt, East Jerusalem: Key humanitarian concerns (May 2011), p. 15. For the annual figures up to 2014, see B’Tselem, “Statistics on Revocation of Residency in East Jerusalem” (Updated 27 May 2015, www.btselem.org/jerusalem/revocation_statistics).

¹²¹ UN OCHA oPt, *supra* note 72; B’Tselem, Acting the Landlord: Israel’s policy in Area C, the West Bank (June 2013), p. 12.

¹²² B’Tselem, “Planning & building in Area C: Impact of construction and planning policy on communities in Areas A and B”, 23 October 2013.

Displacement and demolitions in the West Bank have a profound impact on the ability of Palestinians to enjoy their rights under IHL and IHRL. A 2013 statistical survey and research estimates that the average damage inflicted on each household impacted by displacement is ILS 680,648 (the equivalent of EUR 147,196).¹²³

Further reports indicate that once displaced, many families have no choice but to remain in close proximity to their original place of habitation, which puts them at risk of being displaced for the second and third time, because of the same reasons.¹²⁴ Indeed, internally displaced persons in the oPt are often displaced a number of times and they are subject to multiple demolitions and other threats. When they do leave their localities, it is considered to be as a last resort.¹²⁵

Box 6. Jabal al-Baba: A Bedouin community at risk of forcible transfer

Jabal al-Baba is one of the small Bedouin communities located within the Israeli denoted E1 area, in which several hundreds of Bedouin Jahalin Tribe members live, after being displaced from the Negev in 1948. They live in shacks and caravans together with their flocks. In the past, the Jabal al-Baba community used to graze their flocks and cultivate agricultural land in nearby areas. However, restrictions on their movement and development due to Israeli planning policies prevent them from accessing these sources of livelihood.¹²⁶

Israel plans to relocate 12,000 Bedouin in the West Bank without their consent, including the E1 area, which is earmarked for a settlement of 20,000 Israelis.¹²⁷ As a result, building new structures and renovating existing ones is prohibited by the Israeli military and demolition orders are issued against structures that are built without a permit. The destruction of homes and of livelihoods creates pressures on households to move, exacerbating the risk of forcible transfer which would be considered a grave breach of the Fourth Geneva Convention.¹²⁸

Between March 2014 and May 2016, Israeli authorities demolished 34 structures in Jabal al-Baba, displacing nearly 140 people, including over 60 children. Of the structures demolished, at least 21 were funded by international donors, including the European Union.¹²⁹

In East Jerusalem, displacement creates significant and prolonged financial difficulties for Palestinian families – of whom 67 to 77 percent live in poverty – and results in psychological distress, debt, interruption in access to basic services, as well as increased dependency on humanitarian aid.¹³⁰ Thousands living under demolition orders are faced with constant insecurity and fear, as orders could be carried out at any time.

¹²³ The amount is compounded from the cost of new residence, costs of readjustments, indirect damages, legal fees, loss of property, and productivity losses. Damages vary significantly between Area C and East Jerusalem, as the cost of living in the latter is significantly higher. See Shir Hever, The Economic Impact of Displacement: Analysis of the Economic Damage Caused to Palestinian Households as a Result of Displacement by Israeli Authorities (Published by NRC, April 2015).

¹²⁴ See IDMC, Identifying IDPs in Palestine: New thinking on monitoring internal displacement in the West Bank (September 2015), p. 15.

¹²⁵ An unpublished Save the Children report, quoted in IDMC, Occupied Palestine: A policy of displacement and dispossession amid renewed conflict (October 2014), p.10.

¹²⁶ Bimkom, The Bedouin Communities East of Jerusalem – A Planning Survey, Jabal al-Baba (<http://bimkom.org/eng/wp-content/uploads/jahalin/jabal%20al-baba.htm>).

¹²⁷ “EU Seeks Talks With Israel Over Red Lines’ in West Bank”, Haaretz (22 October 2014).

¹²⁸ UN OCHA oPt, Humanitarian Coordinator calls on Israeli authorities to stop destruction of humanitarian aid and respect international law (18 May 2016).

¹²⁹ UN OCHA oPt, West Bank Demolitions Database.

¹³⁰ UN OCHA oPt, “East Jerusalem: Key Humanitarian Concerns”, Special Focus, March 2011, at 38 – 39; UN OCHA oPt 2012, *supra* note 113; WAC-MAAN, East Jerusalem – A Socioeconomic Disaster: The National Insurance Institute and the Employment Bureau serve a government policy to push Palestinians beyond the wall and “enhance Israeli sovereignty”, October 2014, p. 1.

A UN-commissioned survey revealed that around 70,000 Palestinians living in East Jerusalem had changed their place of residence between 2000 and June 2012. The majority of them said they had had to move due to concerns over losing residency status (67.6 percent of responders) and issues related to Israeli checkpoints and the Barrier (23.3 percent). The remaining 9.1 percent were displaced due to house demolitions and lack of building permits, evictions, and settler takeovers.¹³¹

A 2014 report by the independent representative workers' organisation WAC-Maan confirmed that the majority of Palestinians displaced in East Jerusalem move to the neighbourhoods located on the "West Bank" side of the Barrier.¹³² These are residential areas within the municipal boundaries of Jerusalem, where residents can maintain their legal status with the Israeli authorities. However, the Jerusalem municipality does not provide any services to these areas (including emergency services, sanitation and garbage collection, welfare visits, and maintenance of the water- and electricity-infrastructure). There is also no supervision over construction, which allows private developers to exploit the housing shortage in East Jerusalem, and build high-rise buildings without safety regulation or necessary infrastructure.¹³³ As a result, Palestinians are forced to live in inadequate conditions and their access to basic services becomes restricted. Some 100,000 East Jerusalem residents live in these areas, such as Ras Hamis, Dahiyat al-Salaam, the Shuafat Refugee Camp, and Kafr Aqab, separated from the city centre.¹³⁴

3.1.4 THE EUROPEAN UNION'S RESPONSE

Aspects of displacement in the West Bank, including East Jerusalem, have become prominent on the EU agenda: evictions, demolitions, and mass transfer plans have been recognised as contrary to international law, and are viewed as part and parcel of the illegal settlement policy.¹³⁵ The "forced transfer" of Bedouin communities has also been identified (albeit privately) as potentially amounting to a serious breach of international humanitarian law, and a "red-line" trigger for further EU action.¹³⁶

Demolitions in the West Bank have gained greater visibility from increased EU statements and diplomatic interventions, and the issue has been addressed in bilateral dialogues with Israel. In particular, attention has been focused on structures that international donors provided to Palestinian communities as humanitarian and development aid. In 2014, Israeli forces demolished 118 such structures in Area C.¹³⁷ In 2015, at least 110 donor-funded structures were demolished, constituting some 20 percent of the total 539 structures demolished.¹³⁸ In the first quarter of 2016 alone, Israeli forces demolished over 500 structures, of which 140 were internationally financed.¹³⁹

In 2014, the EU and its Member States agreed a common response to demolitions and the seizure of humanitarian donor-funded structures in Area C. In the same year, Haaretz newspaper revealed that an internal EU document defined five "red lines" regarding Israeli actions in the West Bank. One of the "red lines" was the implementation of the "E1 plan" to forcibly transfer Bedouins from their homes in the West Bank and build settlements on the land.¹⁴⁰

¹³¹ Unpublished UN OCHA oPt survey, quoted in IDMC *supra* note 125, p. 13.

¹³² WAC-MAAN, *supra* note 130.

¹³³ *Id.*

¹³⁴ See UN Habitat, UN-Habitat's new project targets Palestinian Communities in East Jerusalem (16 December 2015, <http://unhabitat.org/un-habitats-new-project-targets-palestinian-communities-in-east-jerusalem/>). Exact figures are unavailable.

¹³⁵ Council of the EU, Foreign Affairs and International Relations; Council Conclusions on the Middle East Peace Process: On 20 July 2015, para. 6; on 17 November 2014, para. 2; On 10 December 2012, para. 3; on 14 May 2012, para. 5 – 6; and on 8 December 2009, para. 6.

¹³⁶ See *supra* note 127.

¹³⁷ UN OCHA oPt, Fragmented Lives: Humanitarian Overview 2014, p. 19.

¹³⁸ UN OCHA oPt, Humanitarian Bulletin, December 2015.

¹³⁹ Brigitte Herremans, The EU's Self-Defeating Aid Policy towards Palestine, CEPS Policy Brief No. 343, May 2016.

¹⁴⁰ See *supra* note 127.



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The rubble of a Palestinian family's house, donated by the European Union, after its demolition by Israeli authorities, in the village of Umm al-Kheir, south of the West Bank city of Hebron. (2016)

Reiterating the necessity of continued EU engagement, it was decided to continue to address the area as a matter of priority in order to preserve the viability of the two-state solution and support Palestinian socio-economic development. The EU and its Member States agreed to continue to monitor and document developments in the situation on the ground in collaboration with the OCHA, ensure immediate assistance to beneficiaries and replace demolished structures, where possible. It was also agreed to engage the Israeli government in regular and structured dialogue, with the intention to reach a tangible freeze of demolitions.¹⁴¹

However, despite these positions, there have been few signals from the EU regarding concrete consequences for the persistence of unlawful practices on the ground, and there has been significant disagreement between Member States about the way to enforce its positions. Potential claims for compensation or restitution appear to have been made dependent on the outcomes of the 'structured dialogue',¹⁴² despite such claims having been made in the past,¹⁴³ and the policies underlying aid destruction and obstruction remaining unchanged. Some Member States – Belgium, Germany, Ireland, Italy, Spain, and Sweden (in addition to Norway and Switzerland) – take a stronger line with Israel, demanding the seized humanitarian items are returned to the communities for which they were intended.¹⁴⁴ However, the EU remains far from reaching a consensus on the measures necessary to ensure Israel's respect for international law.

¹⁴¹ See Answer given by Vice-President Mogherini on behalf of the Commission to Written Question E-005605/2015, 10 June 2015; "Israel Ready for EU Dialogue - but Don't Mention the Settlements" (Haaretz, 18 July 2015).

¹⁴² See Answer given by Mr Hahn on behalf of the Commission to Written Question E-010544/2014, 10 February 2015.

¹⁴³ See Answer given by High Representative/Vice-President Ashton on behalf of the Commission to Written Question E-012519/2011, 17 April 2012.

¹⁴⁴ See "Ambassadors protest at Israel's confiscation of West Bank shelters" (The Guardian, 18 July 2016).

3.2 THE GAZA STRIP, OCCUPIED PALESTINIAN TERRITORY

The population of the Gaza Strip is predominately made up of displaced persons. Over 70 percent of its population is made up of refugees and their descendants that were displaced in the wars of 1948 and 1967.¹⁴⁵ Further forced displacement in the Gaza Strip has occurred on a large scale during specific Israeli military operations, and as a result of the dispersal of refugee camps, the creation of access restricted areas, the effects of military incursions and due to punitive house demolitions.

Despite the hopes for improvement in the situation of the Gaza Strip following the disengagement of Israeli settlements in 2005, the hostilities between the Israeli military and Palestinian armed groups continued and even intensified. Three military operations, “Cast Lead” in 2008-9, “Pillar of Defence” in 2012, and “Protective Edge” in 2014, have resulted in intense destruction of civilian infrastructure and increase in the number of internally displaced people.

3.2.1 BACKGROUND



“Finally, we could stop running. There were many thousands of us. We slept in mosques, on the streets, in the dirt. There were so many people everywhere. Some people stayed with families from Gaza. Others had nowhere to go.”

Ghatheyya Mifleh al-Khawalda (80), 1948 refugee living in Gaza, March 2013¹⁴⁶

As a consequence of the 1948 war, the Gaza Strip fell under Egyptian control. During and shortly after the war, roughly 200,000 Palestinians were displaced from Israel to the Egyptian-controlled area, absorbed by a host population of 80,000.¹⁴⁷ The 1949 Armistice Agreement between Egypt and Israel demarcated the borders of the Gaza Strip and isolated it from its trade links and cultivable land, resulting in economic disaster.¹⁴⁸ These fundamental economic and demographic changes created an underlying basis of extraordinary pressure on the Gaza Strip’s population.

Subsequent to the 1967 War, the Gaza Strip was occupied by Israel alongside the West Bank, East Jerusalem, the Golan Heights and the Sinai Peninsula. According to different estimates, between 25,000 and 87,000 Palestinians were displaced from the Gaza Strip to Egypt during and in the aftermath of the war.¹⁴⁹

In the 1970s, Israel began to build illegal settlements in the Gaza Strip. According to reports by a UN Security Council-mandated fact-finding mission, settlements “created insufferable difficulties which led many Palestinians to despair and to leave”.¹⁵⁰ By 2004, 21 settlements had been established, housing almost 8,000 settlers. In August 2005, Israel carried out its plan of “unilateral disengagement” from the Gaza Strip, removing all military bases and settlements from the Gaza Strip territory, and withdrawing any permanent presence on the ground to the 1949 Armistice Line. The withdrawal was not part of a negotiated agreement with the Palestinian Authority.

¹⁴⁵ The Gaza Strip is home to a population of more than 1.76 million people, including 1.26 million Palestine refugees. UNRWA, Where We Work: Gaza Strip (www.unrwa.org/where-we-work/gaza-strip).

¹⁴⁶ Testimony taken by Palestinian Centre for Human Rights (PCHR), “If you wanted to live, you left”, 15 May 2013.

¹⁴⁷ Beryl Cheal, “Refugees in the Gaza Strip: December 1948 - May 1950”, Journal of Palestine Studies, Vol. 18, No. 1, Autumn 1988, at 138 - 139. These figures were based on the 1949 census and so did not include Palestinians who were later expelled to Gaza from Israel.

¹⁴⁸ Ilana Feldman, “Home as a Refrain: Remembering and Living Displacement in Gaza.” History & Memory 18.2 (2006), p. 13.

¹⁴⁹ See Ennab, *supra* note 63, para. 145.

¹⁵⁰ Report of the UN Security Council Mission established under Resolution 446 (1979), S/14268, 25 November 1980 [UNSC Mission Report 1980], Annex, para. 37.

In January 2006, Hamas won the majority of seats in the general elections for the Palestinian Legislative Council, and formed the new government. In response, Israel and international donors, including the European Union and the United Nations, suspended political dialogue and financial support to the Palestinian government. In February 2007, Hamas and Fatah reached an agreement on the formation of a Palestinian national unity government, in hope of reducing internal conflict and renewing international support. However, in June 2007, the unity government collapsed, as Hamas ousted Fatah and took over the Gaza Strip by force. In response, President Abbas was sworn in as leader of a new emergency government in Ramallah, solidifying the split between the Hamas-controlled Gaza Strip and the Fatah-controlled West Bank.

Box 7. The legal status of the Gaza Strip

Despite Israel's unilateral disengagement, the Gaza Strip is still occupied according to, amongst others, the ICRC, ICC Prosecutor, and the UN Independent Fact-Finding Commission on the 2014 Gaza conflict. In defining the responsibilities of Israel towards the civilian population in the Gaza Strip, the international community adopts a "functional approach": Despite the lack of physical presence, the retained authority of the occupying power over key governmental functions may amount to effective control and entail the continued application of duties under international law.¹⁵¹ Israel continues to control Gaza's border crossings, airspace, territorial sea and population registry, amongst others, as well as continuing incursions into the access-restricted areas within the Gaza Strip. Therefore, it is considered to continue to be occupying the area and its responsibilities extend to those areas in which it continues to exert control.¹⁵²

3.2.2 FACTORS CONTRIBUTING TO DISPLACEMENT

Major military operations and reconstruction efforts

2014 saw the biggest wave of displacement in the Gaza Strip since 1967, caused by the Israeli military operation "Protective Edge" in July and August. Escalation of tensions started in early June with the kidnapping and killing of three Israeli teenagers in the West Bank and search operations led to a crack down on Palestinian communities. An intensification of Israeli airstrikes and rockets launched from Gaza at southern Israel led Israel to launch its military action with the objective of stopping Palestinian rockets and destroying tunnels used by armed groups.¹⁵³ During the operation, nearly 500,000 people in the Gaza Strip – 28 percent of the population – fled their homes.¹⁵⁴ UN bodies, as well as an International Commission of Inquiry, found that, at the very least, residential buildings may have been targeted in some cases, or else hit by attacks which were indiscriminate or undertaken without sufficient precautionary measures.¹⁵⁵ An estimated 29 percent of the Gaza Strip's housing was damaged or destroyed during this operation.¹⁵⁶ This compounded an already dire situation, where around 17,000 people had already been living in a situation of displacement as a result of previous escalations.¹⁵⁷

¹⁵¹ ICRC, Report for the 32nd International Conference on the International Humanitarian Law and the Challenges of Contemporary Armed Conflicts (2015) pp. 11-12.

¹⁵² See, International Criminal Court, Office of the Prosecutor, Situation on Registered Vessels of the Comoros, Greece and Cambodia, 6 November 2014, Article 53 (1) Report, para. 27 - 29. Report of the detailed findings of the Commission of Inquiry on the 2014 Gaza Conflict (A/HRC/29/CRP.4, 24 June 2015).

¹⁵³ "Analysis: How Israel Missed and Underestimated Threat of Hamas' Terror Tunnels" (Haaretz, 13 May 2016).

¹⁵⁴ UN OCHA oPt, "The Gaza Strip: Internal Displacement in the Context of the 2014 Hostilities" (July 2015), p.1.

¹⁵⁵ Commission of Inquiry, *supra* note 152, esp. para. 312 and para. 337. UN OHCHR, "Statement by Navi Pillay, UN High Commissioner for Human Rights at the Human Rights Council 21st Special Session: Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem" (23, July 2014); UN OCHA oPt, "Humanitarian Bulletin Monthly Report", July – August 2014, p. 16.

¹⁵⁶ UN OCHA oPt, "Humanitarian Bulletin Monthly Report", September 2014, p. 8.

¹⁵⁷ Shelter Sector/USSD Gaza, "Shelter Advocacy Fact Sheet", No. 9, May 2014, p. 1.

Following the ceasefire agreement, reached on 26 August 2014, the United Nations brokered an agreement between the Palestinian and Israeli governments, establishing the Gaza Reconstruction Mechanism (GRM). The GRM is a temporary agreement with the overall objective of enabling construction and reconstruction work on a large scale in the Gaza Strip by international donors and by private individuals.¹⁵⁸ The mechanism was designed to allow supervision over the entry of dual-use items (which can be used for both military and civilian purposes) into the Gaza Strip. However, it was heavily criticised for the slow pace of approvals of imports and the failure to end all undue restrictions on reconstruction.¹⁵⁹ As a result, it is estimated that, as of April 2016, 75,000 people are still in need of housing in the Gaza Strip.¹⁶⁰



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A temporary shelter standing amidst the rubble of a residential building that was destroyed during “Operation Protective Edge.” (The Gaza Strip, the oPt, 2014)

¹⁵⁸ See: UN Office of the Special Coordinator for the Middle East Peace Process, *Gaza Reconstruction Mechanism Fact Sheet* (October 2014).

¹⁵⁹ See “Gaza reconstruction plan ‘risks putting UN in charge of Israeli blockade’” (*The Guardian*, 3 October 2014); “Why is Gaza reconstruction so slow?” (*BBC News*, 8 July 2015).

¹⁶⁰ UN OCHA oPt, “UN releases findings of major survey on internally displaced persons in the Gaza Strip: 75,000 still in need of homes” (11 April 2016).

The closure and separation from the West Bank

A major obstacle to remedying displacement in the Gaza Strip is its separation from the West Bank, and restrictions on the movement of people and goods to and from the Gaza Strip. Despite the fact that the two areas were recognised in the Oslo Accords as “a single territorial unit”,¹⁶¹ Israel implemented restrictions on movement between the areas as early as the 1980s. In 2007, in response to the Hamas takeover and to escalation in mortar fire towards Israeli localities, Israel intensified the separation by imposing a closure on the Gaza Strip, allowing only “goods essential to the survival of the civilian population” to be imported. The number of people allowed to move between both parts of the oPt has also dropped dramatically.¹⁶²

Although Israel eased some of the restrictions on access of goods into the Gaza Strip following the 2010 flotilla incident,¹⁶³ the closure and separation policy is maintained until this day. Construction materials are among the items that Israel bans from entering the Gaza Strip unsupervised, due to fear that they would be used for military purposes. The list of “dual use” items is compounded by the Israeli security forces, and it is much longer and broader than recognised international standards.¹⁶⁴ The restrictions on the Gazan economy also remain in place, including severe restrictions on fishing areas, crossing of merchants, and exit of commercial goods.¹⁶⁵

Despite international criticism, Israel still controls the passage of goods necessary both for reconstruction and for sustaining Gaza’s economy. Since the ousting from control of the Muslim Brotherhood movement in Egypt in June 2013, the crossing of people and goods between the Gaza Strip and Egypt has also been severely limited.

 “We had been promised the new house in the year after the demolition. We have been waiting for the past eight years. They started the project last year. It wasn’t possible before that because of the closure... For nearly a decade we stayed in rental apartments, waiting for a new home...”

Ahmad Abdallah Youssef al Afifi (32), an UNRWA-registered refugee whose house in Rafah was demolished in 2003¹⁶⁶

The Access Restricted Areas

In response to the Second Intifada (2000-2005), the Israeli army systematically demolished houses and levelled agricultural land throughout the Strip in order to create areas it refers to as “buffer zones” around Israeli military installations, purportedly on grounds of military necessity.¹⁶⁷ However, the overall impact on civilians and inconsistency with other responsibilities of an occupying power generally indicated that this was insufficient as a justification.¹⁶⁸ For example, between 2000 and 2004, 16,000 people in Rafah lost their homes through demolitions and military actions, as a “buffer zone” adjacent to the Egyptian border was expanded.¹⁶⁹

¹⁶¹ Article XI (1) of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed in Washington, D.C., September 28, 1995.

¹⁶² See Gisha, Legal Framework: Merchants and the Economy Rights and Obligations under International and Israeli Law (May 2010), translating and analysing the Israeli Cabinet decision and policy.

¹⁶³ See: Report of the UN Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident (September 2011).

¹⁶⁴ Gisha, Dark-Gray Lists: Fact sheet (January 2016) http://gisha.org/UserFiles/File/publications/Dark_Gray_Lists/Dark_Gray_Lists-en.pdf.

¹⁶⁵ UN OCHA oPt, The Gaza Strip: The humanitarian impact of the blockade (July 2015) https://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2015_english.pdf.

¹⁶⁶ PCHR, “People Died While Waiting for a New Home” (7 October 2012, <http://pchrgaza.org/en/?p=5220>).

¹⁶⁷ B’tselem, Policy of Destruction: House demolitions and destruction of agricultural land in the Gaza Strip (February 2002), pp. 3 - 6.

¹⁶⁸ Id. pp. 24 - 36.

¹⁶⁹ Human Rights Watch, Razing Rafah: Mass home demolitions in the Gaza Strip (October 2004), p. 2 (citing UNRWA figures).

In the past, human rights organisations reported that destruction mostly appeared unconnected to military necessity, given the broad pattern of destruction which emptied large areas, regardless of whether specific threats were present.¹⁷⁰ In this context, the Security Council expressed concern and called on Israel to respect international law.¹⁷¹

The Israeli military also unilaterally implemented an undefined “no-go” zone near the fence separating the Gaza Strip from Israel. This zone, known as the Access Restricted Area, or ARA, is a stretch of levelled ground, in which structures are demolished and cultivation is severely restricted. In January 2009, the Israeli air force dropped leaflets over the Gaza Strip, informing its residents to avoid areas within 300 meters from the fence. However, in practice live ammunition has been used against people who were as far as 1,000 and 1,500 meters from the fence.¹⁷² From January 2009 to June 2012 – a period in which no major military escalation took place – 153 people were displaced from the ARA through aerial bombing or bulldozing operations.¹⁷³

3.2.3 IMPACTS

Obstacles to rebuilding posed by the closure, as well as ongoing restrictions, are barring the return of internally displaced people to their former homes in the Gaza Strip.¹⁷⁴ UN agencies have warned repeatedly that the restrictions that Israel imposes on the entry of goods into the Gaza Strip are too far-reaching to be acceptable. For example, restrictions on wooden planks that Israel claims are used for military purposes prevent the construction of temporary housing and schools as well as the manufacture of furniture.¹⁷⁵

Restrictions on the movement of people between the Gaza Strip and the West Bank also have a dire impact on the life of Palestinians. Only a handful of merchants, a small group of athletes, and “exceptional humanitarian cases” (mostly medical patients and the people accompanying them) are allowed to leave the Gaza Strip.¹⁷⁶ The result is a shrinking market, and an increase in unemployment rates - 38.4 percent in the last quarter of 2015, more than 50 percent among young people.¹⁷⁷ With insufficient access to funds as well as construction materials, the Gaza Strip’s population remains dependent on international aid to meet its housing needs.

In 2010, following the wave of displacement caused by “Operation Cast Lead” a year earlier, the Palestinian Central Bureau of Statistics found that 12.2 percent of households in the Gaza Strip were living in overcrowded conditions.¹⁷⁸ It is likely that the number of overcrowded households increased significantly as a result of repeated destruction of homes during the 2012 and 2014 military operations and as a result of the Israeli restrictions on the entry of building materials into the Gaza Strip.

¹⁷⁰ *Id.* pp. 2 - 14; 55 - 64.

¹⁷¹ UN Security Council, Resolution 1544, 19 May 2004. Amongst others, the UN Secretary-General and UNRWA also opposed the demolitions as violations of international law. see UN Secretary-General, “Secretary-General Reiterates Condemnation of Israel’s Widespread Destruction of Palestinian Homes in the Gaza Strip”, Press Release, 17 May 2004; UNRWA, “House Demolitions in Rafah Resume”, Press Release, 20 May 2004.

¹⁷² For more information, see: PCHR and IDMC, “Under Fire: Israel’s Enforcement of Access-Restricted Areas in the Gaza Strip”, February 2014.

¹⁷³ *Id.*, p. 31; Palestinian Centre for Human Rights (PCHR), “The Internal Displacement of Palestinians in the Gaza Strip”, Memorandum presented to the UN Special Rapporteur on the Rights of the Internally Displaced (24 September 2012) para. 6 – 13.

¹⁷⁴ UN OCHA oPt, supra note 154; PCHR, supra note 172, p. 20.

¹⁷⁵ See UNRWA, Gaza Situation Report 118 (13 November 2015); UN OCHA oPt, Gaza One Year On: Humanitarian Concerns in the Aftermath of the 2014 Hostilities (September 2015).

¹⁷⁶ For more information see Gisha, A Costly Divide: Economic repercussions of separating Gaza and the West Bank (February 2015).

¹⁷⁷ Gisha, “Gaza 2015: A few steps forward, several steps back” (<http://gisha.org/publication/5115>).

¹⁷⁸ Palestinian Central Bureau of Statistics, Housing Conditions Survey 2010, Main Results, p. 27. Overcrowding is defined as three persons or more per room.

According to a 2014 survey that was conducted before the escalation later that year, the average number of family members in overcrowded households was 8.56 members and the average ratio of family members per bedroom in such families is 4.71.¹⁷⁹ Overcrowding and living in substandard conditions have significant effects on individuals' physical and mental health, on achievements in schools, and on interaction with community members.

Practices of the de facto Hamas authorities in the Gaza Strip - e.g. reported discrimination in rehousing, as well as demolitions on and displacement from authority controlled land, have also served to aggravate the situation.¹⁸⁰ Significant numbers of displaced families remain in rental accommodation, leading to high levels of debt, or are hosted by family members in overcrowded conditions. The latter has a negative impact on mental health, children's basic needs, and levels of family violence. A 2015 study revealed that 40 percent of women experienced at least one type of violence since the end of the 2014 military operation. Study participants identified a clear link between political violence, the economic situation, and violence against women.¹⁸¹



"There is no place like home. Life was much better before. My hope and dream is to return home before 3 January. Even if they built us a palace somewhere else, I would feel nothing... We are in 2009, but we have returned to 1948."

Wafa Awaja (33), displaced in Gaza during Operation Cast Lead¹⁸²

3.2.4 THE EUROPEAN UNION'S RESPONSE

In the aftermath of "Operation Protective Edge" in the summer of 2014, donor countries pledged more than EUR 2.7 billion to support the Gaza Strip. However, in March 2016, the World Bank reported that only 40 percent of the total amount pledged was disbursed. The European pledge reached EUR 450 million, including contributions by the European Union and its Member States, but the level of disbursement varies greatly between the contributors.¹⁸³

The international community is interested in the reconstruction of the Gaza Strip as a key element to strengthening the Palestinian economy and ensuring stability in the region. However, in addition to the major constraints of the closure already outlined, reconstruction efforts have been negatively impacted due to the Palestinian political split, as many donors do not provide assistance directly to Hamas authorities.¹⁸⁴ Delays in reconciliation between the two leading Palestinian factions, Hamas and Fatah, lack of unity, and insufficient coordination between the governmental offices controlled by the two parties is considered by some to be an additional impediment to increasing the delivery of aid.¹⁸⁵

¹⁷⁹ Palestinian Central Bureau of Statistics, Final Results Housing Report, Gaza Strip (2012), also appears in The Norwegian Refugee Council and United Nations Development Program (UNDP), Research and Analysis of Housing Sector in the Gaza Strip: Solutions for substandard and overcrowded houses (August 2014), p.15.

¹⁸⁰ Haysom and El-Sarraj, Sanctuary in the City? Urban displacement and vulnerability in the Gaza Strip (ODI, 2012) p. 22; see e.g. PCHR *supra* note 172, at p. 31; "Gaza Family Homeless Following Slum Demolition" (Al-Monitor, 5 April 2013).

¹⁸¹ Catherine Müller and Laila Barhoum, Violence against Women in the Gaza Strip after the Israeli Military Operation Protective Edge 2014, Commissioned by Alianza por la Solidaridad (ApS) and ActionAid (AA) (October 2015, <https://www.ids.ac.uk/files/dmfile/StudyVAWGazaafterIsraeliMilitaryOperationProtectionEdge2014ApSActionAid.pdf>).

¹⁸² Testimony in PCHR, Through Women's Eyes: A PCHR report on the gender-specific impact and consequences of Operation Cast Lead (2009), pp. 42 - 46.

¹⁸³ For updated figures see The World Bank; Reconstructing Gaza – Donor Pledges (www.worldbank.org/en/programs/rebuilding-gaza-donor-pledges).

¹⁸⁴ See, Office of the United Nations Special Coordinator for the Middle East Peace Process, Report to the Ad Hoc Liaison Committee (New York, 30 September 2015) p. 7.

¹⁸⁵ See, Report of the Middle East Quartet (1 July 2016) p. 6.



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Transitional wooden shelters, built by international organisations in the Gaza Strip, following “Operation Protective Edge”. The import of wooden planks to the Gaza Strip has since been restricted by Israel. (Khan Younis Governorate The Gaza Strip, oPt, 2015)

As for the underlying policies and practices leading to displacement, the EU has addressed them by calling for the lifting of the closure of the Gaza Strip, expressing support for the accountability of IHL violations, and expressing support for Palestinian reconciliation. In its conclusions on the Middle East Peace Process of January 2016, the European Foreign Affairs Council called “for all parties to take swift steps to produce a fundamental change to the political, security and economic situation in the Gaza Strip, including the end of the closure and a full opening of the crossing points, while addressing Israel’s legitimate security concerns.”¹⁸⁶

In 2009, following “Operation Cast Lead” and the stalemate in the Middle East Peace Process (MEPP), the EU set a temporary freeze on Israel’s request to upgrade the EU-Israel bilateral relationship. At the ninth Association Council, held in June 2009, the EU reiterated the link between upgrading relations and progress in the MEPP, and introduced an explicit reference to shared values – democracy, respect for human rights, the rule of law and fundamental freedoms, good governance and IHL.¹⁸⁷ However, there is little evidence of concrete consequences for continued lack of compliance with IHL, including in the EU’s bilateral relations. While no official upgrade in EU-Israel relations has occurred since 2009, many bilateral agreements were signed and progress has been made within the framework of the existing agreements.¹⁸⁸ Similarly, while calling on the Palestinian Authority to fully resume its governmental functions in the Gaza Strip, the EU does not provide any clear incentives for Palestinian reconciliation, nor does it offer assistance in developing a path towards such reconciliation.¹⁸⁹

¹⁸⁶ Council of the EU, Foreign Affairs and International Relations; Council Conclusions on the Middle East Peace Process 18 January 2016.

¹⁸⁷ See Euro-Mediterranean Human Rights Network and APRODEV, “EU-Israel Relations: Promoting and Ensuring Respect for International Law” (February 2012), pp. 29-31.

¹⁸⁸ *Id.* p. 31.; Council of the European Union, “Adoption of the European Union’s position for the Association Council’s eleventh meeting”, 18 July 2012, p. 3.

¹⁸⁹ See Council of the EU, *supra* note 187.

3.3 ISRAEL

Palestinian citizens of Israel (sometimes referred to as “Arab citizens of Israel”) constitute roughly 20 percent of Israel’s population. Since the foundation of the State of Israel in 1948, housing, land, and property laws and policies have continuously failed to protect or assist them, adding to the daily cost of living challenges that affect middle and low income households.¹⁹⁰ Concerns about the exclusionary and discriminatory nature of these laws and practices have been expressed by many international human rights mechanisms.¹⁹¹

Since 1948, Israel has established more than 700 new Jewish cities, towns, and villages but not a single new minority community except towns established for promoting the forced displacement of Bedouins.¹⁹² A significant number of existing Palestinian communities in Israel remain unplanned or have outdated master plans, which curtail their natural growth and put citizens at risk of displacement as a result of demolitions.

3.3.1 BACKGROUND

Following the flight and the expulsion of about 700,000 to 750,000¹⁹³ refugees during the 1948 War, it is estimated that approximately 150,000 Palestinians remained in the territory of Israel, of which 30,000 to 48,000 had been displaced internally.¹⁹⁴ After the Israeli declaration of independence, the Palestinians who remained in its territory were granted Israeli citizenship, but were placed under a military government, which lasted until 1966. Citing security reasons, the military government imposed restrictions on the Palestinian citizens’ freedom of movement, including nightly curfews, the confinement of civilians into closed areas, and the implementation of a permit regime to regulate their movement outside those defined areas.¹⁹⁵

During this period of military rule, a further 35,000 – 45,000 Palestinian citizens of Israel were displaced, mostly internally, through military operations, expulsion orders and ‘internal transfer operations’.¹⁹⁶ In the Negev, around 11,000 Bedouins were forced into a circumscribed area known as the *Siyag*.¹⁹⁷ Their former dwelling sites were declared closed military zones, and they were prevented from returning to their traditional lands of habitation. In the 1970s, Israel established seven townships for the displaced Bedouins but the forced nature of their urbanisation resulted in inadequate habitation environments.¹⁹⁸

¹⁹⁰ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Israel and to the occupied Palestinian territory (30 January–12 February 2012), (A/HRC/22/46/Add.1, 24 December 2012).

¹⁹¹ See, for example, Id.; CERD, *supra* note 104; and CESCR, *supra* note 119.

¹⁹² Oren Yiftachel, “Ghetto Citizenship: Palestinian Arabs in Israell”, in N. Rouhana and A. Sabagh, eds., Israel and the Palestinians – Key Terms (Mada Center for Applied Research, 2009), p. 59.

¹⁹³ See Flüchtlingskinder im Libanon e.V. (ed.), “Die Nakba. Flucht und Vertreibung der Palästinenser 1948”, 2007, p. 16, with further references in note 2 on page 17. The estimates range from 500 000 to 940 000 and 960 021 in June 1950.

¹⁹⁴ Areej Sabbagh-Khoury, “The Internally Displaced Palestinians in Israel”, in Nadim N. Rouhana and Areej Sabbagh-Khoury (eds), The Palestinians in Israel: Readings in History, Politics and Society (Mada Al-Carmel, 2011),at 31; Nihad Bo’qai, “Palestinian Internally Displaced Persons inside Israel: Challenging the Solid Structures”, Palestine-Israel Journal, Vol. 15, No. 4 - Vol. 16, No. 1, 2008 - 2009; Norwegian Refugee Council/Global IDP Project, Profile of Internal Displacement: Israel (14 January 2002, www.internal-displacement.org/assets/library/Middle-East/Israel/pdf/Israel+-January+2002.pdf) p. 14-15.

¹⁹⁵ See Sabbagh-Khoury, id, at 28 - 29; Yair Bauml, “The Military Government”, in Rouhana and Sabbagh-Khoury, id, at 48 – 51, Sarah Ozachy-Lazar, The Arab Citizens in Israel: The first decade (2006), pp. 47-50.

¹⁹⁶ Gerry Liston, “The Historical Context of the Israeli Land and Planning Regime”, Al Majdal, No. 51 (Winter 2012), at 33; Sabbagh-Khoury, *supra* note 195, pp. 28 - 29.

¹⁹⁷ After the 1948 war, approximately 90 percent of the Bedouin population were expelled from Israel. The *Siyag* – meaning fence in Arabic – was created by Israel in 1950 as a restricted area into which Bedouins from the Negev were forcibly moved throughout the 1950s. It was surrounded by a closed military zone to prevent them from returning to their lands. See Adalah, Nomads Against Their Will (September 2011); Human Rights Watch, Off the Map: Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages. (March 2008).

¹⁹⁸ Arye Bar, Bedouins and Falahs in Rahat: Social Processes in Permanent Settlement (Ben Gurion University, 1985 in Hebrew).

Many Bedouin families refused to settle in the new townships; some remained in the *Siyag* area while others returned to their own land outside it. To this day, the majority of these communities are not recognised by Israeli authorities and they do not receive any governmental services such as water and electricity.¹⁹⁹

In the Galilee and in cities with mixed Israeli-Jewish and Palestinian populations (known as “mixed cities”), Palestinians who fled during the 1948 War or were forced out of their homes were classified as ‘absentees’ by Israeli law. Their real property and the belongings they left behind were transferred to the management of the Custodian for Absentee Properties.²⁰⁰ In Jaffa, for example, only 4,000 Palestinian residents remained of the 70,000 who lived there until 1948, and they were concentrated in the Ajami neighbourhood, unable to return to their homes a short distance away.²⁰¹ After their homes were declared ‘Absentee Properties,’ the Israeli authorities used these homes to settle newly-arrived Jewish immigrants.²⁰² The same policies were implemented in the mixed cities of Acre, Haifa, Ramla, and Lod. In rural areas, Israeli authorities acquired rights in large swathes of land, through the enactment and implementation of the Israeli Land Acquisition Law of 1953, which allowed Israel to acquire rights from owners who did not have active possession of their land.²⁰³

3.3.2 FACTORS CONTRIBUTING TO DISPLACEMENT

The displacement and dispossession which affected the Palestinians living in Israel during and following the 1948 War still impacts their society today and exposes them to a high risk of further displacement. The loss of properties and sources of livelihood pulled families into poverty, as many were forced to rent houses and work as day labourers, to replace the homes and the businesses that they once owned. As a result, Palestinian society in Israel became more vulnerable to the impact of governmental housing policies and more dependant on aid.

Discrimination in land allocation and planning

Discrimination in land allocation and planning has been identified in a few official Israeli reports. Notably, the Governmental Commission of Inquiry into the Clashes between Security Forces and Israeli Citizens in October 2000 (known as the Or Commission), addressed the matter in its report, that was published in 2003. The Or Commission identified land issues as one of the leading factors causing a sense of discrimination and deprivation amongst Palestinian citizens of Israel.²⁰⁴

According to the Or Commission, Israel’s requisitions of Palestinian lands were clearly and declaratively associated with the interests of the Jewish majority. They were used for the establishment of Jewish municipalities and drastically reduced the lands available for municipalities in which Palestinian citizens of Israel predominate.²⁰⁵

¹⁹⁹ See Human Rights Watch, *supra* note 198; Adalah, “The Arab Bedouin and the Prawer Plan - Ongoing Displacement in the Naqab”, Briefing Paper (2012), p.1.

²⁰⁰ See the Israeli Absentee Property Law of 1950.

²⁰¹ Daniel Monterescu, The Palestinian Community in Jaffa: A Social Planning Report (Shatil – Mixed cities project, March 2007, in Hebrew) p. 12.

²⁰² See, for example, Bimkom, Housing Distress within the Palestinian Community of Jaffa: The end of protected tenancy in absentee ownership homes (March 2009); Ghazi Falah, “Israeli ‘Judaization’ Policy in Galilee”, Journal of Palestine Studies XX, no. 4 (Summer 1991), p. 73 - 75; Salah Muhsin, “Modern Displacement of Palestinians in Yaffa”, Adalah Newsletter, Volume 48, (May 2008, www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/muhsin-yaffa-2008.pdf) p.1.

²⁰³ See Adala, “Land Acquisition Law (Actions and Compensation)” www.adalah.org/en/law/view/533.

²⁰⁴ The Governmental Commission of Inquiry into the Clashes between Security Forces and Israeli Citizens in October 2000, Full report published in August 2003. See, specifically, Chapter 1, para. 33-44.

²⁰⁵ *Id.* para. 33.



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A bulldozer demolishes a house in the unrecognised Bedouin village of Sawa, as a Bedouin family self-demolishes their home. The Israeli police ordered seven families to demolish their own homes on Monday in the unrecognised village of Sawa, threatening to arrive the following day and carry out the demolition order. Local residents chose to demolish the houses themselves, to avoid a police raid and the demolition costs charged by the Israeli authorities. (Negev Desert, 2014)

Indeed, while Palestinian citizens of Israel comprise almost 20 percent of the country's population, local municipalities where Palestinian citizens of Israel predominate have effectively been allocated only 3.5 percent of its land - almost six times less land per inhabitant than Jewish-Israeli municipalities.²⁰⁶ According to the Association for Civil Rights in Israel (ACRI), this amounts to a halving of the land available to this group since 1948, while its population has increased sevenfold in the same period.²⁰⁷

Furthermore, planning measures implemented in communities of Palestinian citizens in Israel have served more to control their expansion and territorial continuity than to meet their development needs, resulting in overcrowding.²⁰⁸ Palestinian citizens of Israel remain severely underrepresented in planning structures, while Jewish organisations maintain an official role which has contributed to the exclusion of minorities.²⁰⁹ The Or Commission noted that plans to facilitate community expansions were unreasonably delayed. The decisions of governmental planning bodies did not respond to the needs of communities and, as a result, many Palestinian citizens of Israel were unable to obtain the required permits for the construction of their homes, forcing them to build homes without permits.

²⁰⁶ See Oren Yiftachel, Rassem Khamassi, Sandy Kedar, "Land and Planning", in *After the Rift: New directions for government policy towards the Arab population in Israel - an emergency report by an inter-university research team submitted to Mr. Ehud Barak, Prime Minister of Israel* (November 2000), at 17; Arab Centre for Alternative Planning (ACAP), "Local Arab Municipalities and Towns in Israel", October 2008.

²⁰⁷ ACRI, "NGO Information submitted by the Association for Civil Rights in Israel (ACRI) to the Committee on Economic, Social and Cultural Rights", (October 2011, www.acri.org.il/he/wp-content/uploads/2011/10/ICESCR2011.pdf), p. 14.

²⁰⁸ Human Rights Watch, *supra* note 198, p. 29; Naomi Carmon, *Housing Policy in Israel: Review, Evaluation and Lessons*, Israel Affairs, Vol. 7, No 4, Summer 2001, p 190; Falah, *supra* note 203, pp. 75 - 76; "New Plan for Judaizing the Galilee Stirs Controversy" (Al-Monitor, 6 December 2013); "The View from the Hilltops" (Haaretz, 14 October 2010).

²⁰⁹ Dirasat - Arab Centre for Law and Policy, "Housing in Israel : The Unique Situation of Arab-Palestinian Citizens", 16 September 2011; Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik: Mission to Israel and the occupied Palestinian territory (A/HRC/22/46/Add.1, 24 December 2012), para. 25.

Box 8. The Prawer Plan and demolitions and displacement in the Negev

In 2013, the “Prawer Plan” – which foresaw the demolition of 35 unrecognised Palestinian Bedouin villages in the Negev Desert and displacement of up to 70,000 Palestinian Bedouin citizens of Israel – passed its first reading in the Knesset.²¹⁰ The bill was based on a policy framework which was developed without prior and effective consultation of affected communities, who did not consent to this plan.²¹¹ Amongst others, it would deny them judicial remedies and limit their right to compensation, and result in their having to move to impoverished state-planned Bedouin towns.²¹² According to a community-developed plan, all villages could be recognised in their current locations if equal planning criteria were applied to the Bedouin and Jewish rural sectors.²¹³

The UN High Commissioner for Human Rights, Navy Pillay, expressed alarm, regretting that the Israeli government “continues to actively pursue a discriminatory policy of forced displacement against its own Arab citizens”. She called for a genuine consultative and participatory process, and recognition and respect for Bedouin citizens’ equal rights to property, housing and public services.²¹⁴

After an admission that the plan had not been presented to affected communities, the proposed text of the bill was dropped.²¹⁵ However, work on an amended version, as well as preparation for implementation, was set to continue.²¹⁶ Attempts to further the process are ongoing at the time of writing.²¹⁷ Furthermore, a 2015 Israeli Supreme Court decision, authorising the state to demolish a Bedouin village to build a Jewish-majority town, appears to set a broad precedent which would justify destruction of any unrecognised village, even without adoption of any further law.²¹⁸

Discrimination in housing policies

In Israel, state policies give significant support to rural towns and villages. The Negev and the Galilee in particular have been designated by the state as National Priority Areas eligible for tax benefits, subsidies and other incentives aimed at attracting investment and new residents. As the Or Commission noted, the policy behind these benefits and subsidies has been the “Judaisation” of the Israeli periphery – drawing more Jewish residents to live in areas predominately inhabited by Palestinian residents.²¹⁹

According to many critics, the financial incentives and benefits for living in the National Priority Areas are not divided equally between Jewish and Palestinian Israelis. Communities of Palestinian citizens of Israel are frequently excluded from receiving benefits through setting criteria that they cannot meet, or because their localities are not recognised by the state.²²⁰

²¹⁰ Adalah, “Demolition and Eviction of Bedouin Citizens of Israel in the Naqab (Negev) - The Prawer Plan” (www.adalah.org/en/content/view/7589).

²¹¹ Adalah, “The Prawer-Begin Bill and the Forced Displacement of the Bedouin”, (May 2013), p. 4.

²¹² *Id.*, pp. 3 - 4.

²¹³ Adalah, *supra* note 211; Adalah, “Bedouin in the Naqab Reject Prawer and Propose Alternative Plan” (18 July 2013, www.adalah.org/en/content/view/8188).

²¹⁴ UN OHCHR, “Pillay urges Israel to reconsider proposed bill that will displace tens of thousands of Bedouin”, (Press Release, 25 July 2013 <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/israeli-bill-threatens-to-evict-tens-of-thousands-of-bedouin-13748>.

²¹⁵ “Israeli government halts controversial plan to resettle 30,000 Bedouin” (Haaretz, 12 December 2013).

²¹⁶ “Netanyahu’s point man on Bedouin relocation says plan still on track” (Haaretz, 17 December 2013); “Agriculture minister takes over Bedouin resettlement issue” (Times of Israel, 5 January 2014).

²¹⁷ “Debate on Bedouin resettlement put on hold” (Times of Israel, 12 July 2015).

²¹⁸ Adalah, “The Dangerous Implications of the Israeli Supreme Court’s Decision to allow the Forced Displacement of Atir-Umm al-Hiran for the Remaining Unrecognized Bedouin Villages in the Naqab” (6 July 2015, www.adalah.org/en/content/view/8603).

²¹⁹ The Governmental Commission of Inquiry, *supra* note 205.

²²⁰ Rassem Khamaisi, “National Priority Areas”, in Rouhana and Sabbagh-Khoury, *supra* note 195, p. 111 - 114.

In 2006, the Israeli Supreme Court found that division of the country into National Priority Areas effectively resulted in unlawful discrimination against Palestinian citizens of Israel, and should be set aside.²²¹ However, the inclusion of non-Jewish communities in the National Priority Areas map has been continuously delayed.²²²

Palestinian citizens' ability to move into Jewish communities is also limited. In 2011, the Israeli Knesset passed the "Admissions Committees" Law,²²³ which allowed admission committees in small communal villages in the Negev and Galilee to exclude potential residents based on grounds of social or cultural unsuitability.²²⁴ While this law applies only to a limited number of villages whose number of households does not exceed 400, it allows such communities to design procedures and requirements that restrict the mobility of Palestinian families who wish to join their community. The law was introduced as a response to earlier High Court of Justice rulings, which determined that refusal of Palestinian citizen applicants is illegal if it is based solely on their origin and national identity.²²⁵

Similar exclusionary processes take place in mixed cities, where the historic loss of property rights during and after 1948 made Palestinian citizens of Israel vulnerable to changes in housing policies.²²⁶ After becoming tenants in government-owned properties, Palestinian citizens of Israel had little control over urban re-development plans, which affect every aspect of their lives. In recent decades, the Israeli Land Authority and its subsidiary housing companies initiated privatisation processes, offering government-owned properties for sale. Demand for real-estate in city centres as well as ideological motivations result in Palestinians being pushed out of their communities, due to lack of available properties and soaring house prices.²²⁷

 *"Mayors don't want mixed cities. We all saw the riots in Akko (Acre); we saw how dangerous it was. We can't toy with that. The reality is that different sectors do not necessarily get along. The many Arabs in Wadi Ara make it an undesirable place to live."*

Israeli Housing Minister Ariel Atias, 2009²²⁸

In December 2014, the Israeli Government appointed a team, known as the 120 Days Team, to develop a plan to address the lack of adequate housing for Palestinian communities in Israel. The 120 Days Team's report, published in June 2015, found that governmental plans for affordable housing have consistently failed to address needs of Palestinian communities in Israel and to improve their access to adequate housing. One of the report's main conclusions was that without structural changes to increase the availability of land for new construction and improvement in the planning processes, the acute housing shortage will only grow and many families will be priced out of the market.²²⁹

²²¹ HCJ 11163/03 Supreme Monitoring Committee for Arab Affairs in Israel and others v. Prime Minister of Israel (27 February 2006, http://elyon1.court.gov.il/files_eng/03/630/111/a18/03111630.a18.pdf).

²²² Adalah, Position Paper: On the Israeli Government's New Decision Classifying Communities as National Priority Areas (February 2010).

²²³ Amendment of the Order re Communal Societies (Amendment No. 8) 2011.

²²⁴ Law to Amend the Cooperative Societies Ordinance (No. 8), 5771-2011, Art. 6(C)(A)(4 – 5); Adalah, "Demanding the Cancellation of New 'Admission Committee Law'" (www.adalah.org/en/content/view/6569); Adalah, "Israeli Supreme Court upholds "Admissions Committees Law" that allows Israeli Jewish communities to exclude Palestinian Arab citizens" (17 September 2014, www.adalah.org/en/content/view/8327). For examples of community by-laws excluding Palestinian citizens of Israel, see "Israeli towns continue to rewrite bylaws to keep Arabs out" (Haaretz, 16 December 2010).

²²⁵ See Adalah, "Press Release: Challenging the ILA's Policy and Use of Admissions Committees in Allocating Land for Housing in Community Towns, Excluding Arab citizens, Mizrahim (Eastern Jews), Single Parents and Gay Individuals" (September 2011); Adalah, "Press Release: Adalah's Comments on the Supreme Court's Decision in the Kaadan Case" (April 2000).

²²⁶ Arab Association for Human Rights (AHRA), "Unprotected Citizens" (May 2008, pp. 12 - 14; Yael Allweil, Surprising Alliances for Dwelling and Citizenship: Palestinian-Israeli Participation in the Mass Housing Protests of Summer 2011, International Journal of Islamic Architecture 2.1, 41–75).

²²⁷ AHRA, supra note 227, at 23 – 27; ACRI, "Real Estate or Rights? Housing Rights and Government Policy in Israel", English Summary (July 2008, www.acri.org.il/pdf/DiurEng.pdf), p. 17.

²²⁸ Quoted in "Minister Atias: Stop Arab Takeover in the North" (YNet News, 2 July 2009).

²²⁹ Report of the 120 Days Team to Address the Housing Distress in Minorities' Localities (June 2015) p. 6.

While the government approved an action plan to adopt the Team's many recommendations, critics believe that they do not address the core factors which perpetuate the displacement of Palestinians in Israel. In April 2015, Adalah – a human rights organisation and legal centre for Palestinian citizens of Israel – published a report which concluded that the housing situation of Palestinian citizens is "a product of a deliberate, consistent, and systematic state policy, which excludes Arab citizens and sets many barriers to development in their way."²³⁰

3.3.3 IMPACTS

The general failure of the Israeli authorities to establish new localities for Palestinian citizens of Israel, and address their housing needs within existing localities leaves tens of thousands of Palestinian citizens of Israel without basic services and with their homes at risk of demolition.²³¹ This is often in the immediate vicinity of areas where development of housing and facilities for the Israeli-Jewish population is incentivised and approved, or even retroactively regularised.²³²



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Bulldozers of Tel Aviv municipality and its workers demolish the house of a Palestinian family (with Israeli citizenship), in Jaffa, Israel. (2014)

²³⁰ Adalah, Deliberate Obstacles, Not Failures: Adalah's response to the State Comptroller's Report on the subject of the housing crisis in Israel (April 2015, www.adalah.org/uploads/Response-to-Comptroller-Housing-Report-27-Apr-2015.pdf), p. 2.

²³¹ Human Rights Watch, "Israel: Stop Discriminatory Home Demolitions" (8 October 2011).

²³² Human Rights Watch, id; Human Rights Watch, *supra* note 198, p. 53; Adalah, "Israeli Supreme Court Hears Adalah's Appeal against Evacuation of Unrecognized Bedouin Village of Umm el-Hieran to Build New Jewish Town on its Ruins" (25 November 2013); Adalah, "2,300 new homes for ultra-Orthodox Jews in Arab Wadi 'Ara" (27 May 2013); Adalah, "Israeli Supreme Court Upholds Planning Authority Decision to Establish Individual Settlements in the Naqab as part of its 'Wine Path Plan' Despite Discrimination against Arab Bedouin Unrecognized Villages" (28 June 2010).

Indeed, discrimination through laws and policies form the basis of a housing system that, according to the UN Special Rapporteur on adequate housing, has “continuously failed to protect and assist Palestinian citizens of Israel”, resulting in tenure insecurity, overcrowding, evictions and demolitions.²³³ In 2015, the Israeli State Comptroller found that, out of 139 localities, only 41 were issued the updated master plans that are necessary for the construction of new homes. It also found that the annual rate of construction is 7,000 new housing units each year, compared with an annual need for 13,000 new housing units.²³⁴ Additionally, most of the areas adjacent to Palestinian towns are designated in other master plans as “open areas” or areas of “high landscape sensitivity,” which further restricts the ability of the towns to grow.²³⁵

In the unrecognised villages, Bedouin citizens of Israel continue to live without basic services and with their homes at risk of demolition. Their rights continue to be undermined, and inequality between Palestinian and Jewish citizens of Israel continues to be exacerbated. The Bedouin community in the Negev numbers about 230,000 people, representing 31 percent of the region’s population, but only 18 of 144 localities are designated for them.²³⁶ The housing shortage and the existence of master plans that do not recognise Bedouin communities result in the demolition of countless homes, many of which are demolished and re-built several times. In 2013-2015 alone, the Israeli authorities demolished more than 2,750 structures because they were built without the required permits.²³⁷

In the Negev, the house demolition policy is putting immense pressure on the Bedouin community to agree to the authorities’ housing policies.²³⁸ In January 2016, an inter-ministerial committee recommended that the government adopts the action plan devised by the 120 Days Team, for the improvement of the housing situation of Palestinian citizens in the Galilee, alongside the augmentation of “enforcement” capabilities and increasing home demolitions in these communities. While it may be too early to assess the exact impacts of the action plan, which runs to 2020, many fear that investment in housing policies may follow similar lines as those in the Negev, resulting in increased displacement as a condition for investment in infrastructure.²³⁹

²³³ UN Special Rapporteur on Adequate Housing, *supra* note 210, ‘Arab Minority Rights’ section.

²³⁴ See the Israeli State Comptroller, Report - The Housing Crisis, (2015), pp. 208-209.

²³⁵ Adalah, *supra* note n°230, p. 2.

²³⁶ Israeli Central Bureau of Statistics, 2014, Table 2.16: Settlements and Population according to district, region, religion and population group; Table 2.17: Settlements and Population according to population group, district, region and natural area.

²³⁷ Negev Coexistence Forum for Civil Equality, Enforcement Distress: House demolition policy in the Bedouin community in the Negev (June 2016), p. 11.

²³⁸ *Id.* p. 28, quoting from the Israeli Southern Directorate of Land Law Enforcement 2015 summary.

²³⁹ See: Adalah, Briefing paper: Discrimination in Land and Housing against Palestinian citizens of Israel in 2015 (20 March 2016, www.adalah.org/uploads/Adalah-Eng-40th-Land-Day-Paper-30-Mar-2016.pdf).

3.3.4 THE EUROPEAN UNION'S RESPONSE

The EU has supported Israeli civil society organisations' work on equitable planning initiatives, including in communities at risk.²⁴⁰ It has also supported initiatives focusing on rights promotion and protection in vulnerable communities.²⁴¹ Nevertheless, underlying policies necessitating this work have not been high on the political agenda,²⁴² despite EU Heads of Mission having previously recommended that the situation of minorities in Israel be regarded as a 'core issue' and not 'second tier' to the conflict.²⁴³

One exception has been the increased focus on the situation of Bedouin citizens of Israel in the Negev, triggered by the Prawer Plan and connected legislative proposals. The European Parliament called for the withdrawal of the plan, and, making a link between the displacement processes on both sides of the Green Line, called for the "protection of Bedouin communities in Area C and in the Negev".²⁴⁴ Communities were visited by diplomatic staff, and the issue has continued to be raised bilaterally in diplomatic contacts and dialogues.²⁴⁵ Publicly, the issue has been raised in European Neighbourhood Policy reports.²⁴⁶ The content of EU engagement appears to have focused on encouraging dialogue and consideration of alternative proposals.

However, in contrast to the clear pronouncements of UN human rights bodies, no EU position has been taken on policies giving rise to displacement in the Negev in light of Israel's human rights obligations - on the contrary, "developmental components" of the plan have been acknowledged.²⁴⁷ Furthermore, policies and practices which create risks and compound past displacement for Palestinian citizens of Israel beyond the Negev have not been visibly addressed at the political level.

²⁴⁰ See the list of projects supported by the EU Delegation to Israel on the Delegation website: http://eeas.europa.eu/delegations/israel/projects/list_of_projects/projects_en.htm.

²⁴¹ See e.g. EU Delegation to Israel, Project on Promoting Recognition of Bedouin Villages based on their Rights, Needs and Active Participation (from 01/2014 to 12/2016; Project on Promoting and Protecting the Rights of the Arab Bedouin of the Naqab (from 01/2013 to 12/2014).

²⁴² See generally Euro-Mediterranean Human Rights Network, Arab Association for Human Rights and Adalah, "The EU and the Palestinian Arab Minority in Israel" (February 2011), pp. 26 – 31.

²⁴³ "EU envoys concerned about Israel's Arab minority", (EU Business, 29 December 2011), quoting an EU Heads of Mission report.

²⁴⁴ See European Parliament resolution of 5 July 2012 on EU policy on the West Bank and East Jerusalem (2012/2694(RSP), para. 12.

²⁴⁵ Answer given by High Representative/Vice-President Ashton on behalf of the Commission to Written Question E-008785/2013, 14 October 2013; Answer given by High Representative/Vice-President Mogherini on behalf of the Commission to Written Question E-010402/2014, 6 February 2015.

²⁴⁶ European Commission, High Representative of the EU for Foreign Affairs and Security Policy, Joint Staff Working Document: Implementation of the European Neighbourhood Policy in Israel Progress in 2014 and recommendations for actions (25 March 2015, SWD(2015) 72 final) pp. 3 - 4; see also the Joint Staff Working Documents of 2013 (published 27 March 2014, SWD(2014) 73 final), at pp. 4, 6 – 7; of 2012 (published 20 March 2013, SWD (2013) 91 final) at pp. 2, 5; and 2011 (published 15 May 2012, SWD(2012) 115 final) at p. 5.

²⁴⁷ Answer given by High Representative/Vice-President Ashton on behalf of the Commission to Written Question E-007830/2013, 23 October 2013.

4. CONCLUSION



“Where the law should operate to safeguard their rights, Israel has instead constructed complex and overlapping legal frameworks that enable the state to aggressively pursue its policy of forced displacement against Palestinians in both Israel and the oPt through ‘legal’ means, whether they are its own citizens or ‘protected persons’ under international humanitarian law.”

Adalah – The Legal Centre for Arab Minority Rights in Israel²⁴⁸

Forced displacement and its effects are a central challenge to protecting the rights of Palestinians and promoting the development of their communities in both the oPt and Israel. Despite differences in the legal frameworks which apply in the different regions, it is similar discriminatory practices and breaches of international legal norms that lead to displacement across Israel, the West Bank (including East Jerusalem), and the Gaza Strip. As a result, displacement remains a protracted, consistent and central issue in the Palestinian-Israeli conflict and exacerbates the fragmentation, de-development and isolation of Palestinian communities. Furthermore, it compounds the historical dispossession of Palestinians, which remains one of the unaddressed roots of the conflict, and displaced communities continue to lack adequate redress.

Fundamentally, displacement erodes prospects for a just peace. As such, urgent action is needed by the international community, including the EU and its Member States in order to address this situation. As forced displacement is occurring on both sides of the Green Line, a consistent and rights-based approach is needed by the EU. Israel must uphold its duties under international law – IHL in oPt, and IHRL both within its pre-1967 borders and in the oPt. Third States have a legal obligation to ensure Israel's compliance of IHL and may not recognise a situation created by breaches of international law as lawful. Adherence with international legal norms must, therefore, take a more prominent role in EU-Israel relations.

Currently, the prevalent approach taken by the EU towards the displacement of Palestinians fails to protect their rights. Even where the EU and Member States provide humanitarian assistance to displaced Palestinians, this assistance rarely addresses the Israeli policies which are the root causes of displacement and EU statements of policy are often not accompanied by concrete action. As the current approach fails to protect Palestinians from displacement, it is more important than ever that the EU and its Member States engage with Israel in a rights-based manner, to reinforce its commitment to protecting human rights. This not only entails strongly and consistently advocating for the respect of IHL and IHRL, but also ending any acquiescence to violations, taking measures to protect communities at risk, and promoting accountability.

Israel is the primary duty bearer for the welfare of Palestinians living under its control, and it must meet its obligations towards them. The EU has limited many of its actions to ensuring that Israel does not apply its sovereignty to Area C of the West Bank and to promoting progress in the Middle East Peace Process. While this is a welcome position, it must be accompanied by a stronger stance on respect for international law. As the largest donors to the Palestinians and the biggest trading partners of Israel, the EU and Member States should prioritise the use of their leverage in bilateral relations towards the aims of promoting the shared values of democracy, respect for human rights, the rule of law and fundamental freedoms. Financial support alone is not enough to promote these values, and ensure that they bring about justice and prosperity for the region.

²⁴⁸ Adalah, From Al-Araqib to Susiya: The forced displacement of Palestinians on Both Sides of the Green Line (February 2013), p. 1.



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