



HABITAT INTERNATIONAL COALITION

Israel's Implementation of Covenant Rights and Obligations Related to Habitat

Habitat International Coalition's submission to
the UN Committee on Economic, Social and Cultural Rights
toward its review of the State of Israel's fourth periodic report
64th Pre-Sessional Working Group (11–15 March 2019)

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Consistency in the CESCR Review of Israel

When Israel joined other UN member states as a party to the Covenant in 1991, it committed to present its initial report to CESCR within two years on its progress toward achieving the “progressive realization” of economic, social and cultural (ESC) human rights within the areas of its jurisdiction and effective control. After Israel missed its first assigned reporting deadline of 30 June 1994, two coalitions of Palestinian housing rights advocacy groups—the Arab Coordinating Committee on Housing Rights in Israel (ACCHRI),¹ inside the Green Line (1949 Armistice Lines), and the West Bank-based Palestinian Housing Rights Movement (PHRM)²—presented extraordinary reports at a scheduled NGO meeting with CESCR at its 14th session (29 April to 17 May 1996). Their catalog of violations was so compelling that the Committee decided to issue a communication to the Israeli Permanent Mission requesting that the state party address the issues raised in the 14th session and comply with its covenanted reporting obligations as soon as possible.³

What followed was the first review of Israel’s implementation of the Covenant. Thanks to the diligence of the local NGOs, the Committee was able to carry out a thorough investigation, providing eyewitness to the facts on the ground. At that time, HIC supported the visit of the CESCR rapporteur for Israel to Israel/Palestine in July 1996 at the invitation of local HIC Members and other NGOs.

Israel’s Initial Review

Israel subsequently submitted its combined initial and first periodic reports to CESCR on 28 November 1997. In accordance with the standard CESCR procedures, the Committee reviewed the government report, cross-checking it with other reliable information, to produce a “list of priority concerns” in June 1998.⁴ The Israeli government delegation then appeared before the Committee at its 19th session, on 17–18 November 1998.⁵

The result counted as a milestone in UN history. The politically motivated and brief “Zionism-is-racism” resolution of 1976,⁶ expunged in 1991 for equally political reasons, may have been the first international instrument recognizing Israel’s discriminatory state ideology. However, without regard to that rhetorical document, CESCR’s Concluding Observations reflected a legal understanding of institutionalized material discrimination operated by Israel’s governmental and other state organs.⁷ Thanks to the reports and

¹ The core members of ACCHRI included the Nazareth-based Arab Human Rights Association, the Association of Forty, representing the northern “unrecognized villages,” the Galilee Society of Health Research and Services and *Adalah*: The Legal Center for Arab Minority Rights in Israel, both based in Shifa ‘Amr, Galilee, and the Association for the Protection and Defence of Bedouin Rights in Israel.

² The PHRM’s core membership consisted of the Alternative Information Center (Jerusalem), Bisan Research and Development Centre (Ramallah), al-Haq/Law in the service of Man (Ramallah), Citizens Rights Center/Arab Thought Forum (Jerusalem), Democracy and Workers Rights Center (West Bank & Gaza), LAW Society (Jerusalem) for a time, OXFAM (Québec), and Palestine Human Rights Information Center—PHRIC (Jerusalem).

³ Letter of CESCR Chairperson Philip Alston to H.E. Ambassador Yosef Lamdan, Geneva, 17 May 1996.

⁴ List of issues to be taken up in connection with the consideration of the initial report of Israel concerning the right referred to in Articles 11 of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.39), UN doc. E/C.12/Q/ISR/1, 10 June 1998.

⁵ The delegation consisted of Malkiel Blass of the High Court of Justice Division of the Ministry of Justice; Michael Atlan, head of the Legal Adviser’s Office, Ministry of Social Affairs; Yuval Shany, Ministry of Justice consultant; and Ady Schonman, Office of the Legal Adviser, Ministry of Foreign Affairs.

⁶ UN General Assembly resolution 3379 (1976).

⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, UN doc. E/C.12/1/Add.27, 4 December 1998.

testimonies provided by 15 NGOs,⁸ including civil representatives under both Israeli citizenship and military occupation, the 18 Committee members achieved understanding and consensus as to how the unholy combination of ideology, legislation and statal and parastatal institutions conspires to dispossess an entire people, beginning with their habitat (land, housing, water and food sovereignty).

This message emerged even more compelling in light of the apparent unity and complementarity with which all the diverse Palestinian and Israeli human rights organizations presented their case. The common analysis of Israel's incremental elimination and dispossession of Palestinian habitat as a shared and contemporary phenomenon was emphasized not only by the apparent seamlessness of the testimonies across the Green Line, but also by expressions of cross-Palestine solidarity. One manifestation of that was in the joint statement submitted to CESCR through the UN High Commissioner for Human Rights by seven major occupied Palestinian civil organizations in response to the 27 September 1998 attacks by Israeli forces on Palestinian citizens in Umm al-Faham/Wadi `Ara (inside the Green Line), protesting the further confiscation of their lands.⁹

Following the NGO testimonies and the "constructive dialogue" with the Israeli state delegation, CESCR observed that Israel's "excessive emphasis upon the State as a "Jewish State" encourages discrimination and accords a second-class citizenship to its non-Jewish citizens."¹⁰ More substantively, the Committee found that Israel's legislation, including its Basic Laws, implicitly discriminate against the indigenous population. The Committee noted "with concern that the Law of Return, which permits any Jew from anywhere in the world to immigrate and, thereby, enjoy virtually automatic residence and obtain citizenship in Israel, and that this discriminates against Palestinians in the *diaspora* upon whom the Government of Israel has imposed restrictive requirements that make it almost impossible to return to their land of their birth."¹¹

The Committee of experts concluded the first periodical review of Israel, analyzing for the first time in a UN forum the nature and effects of structural discrimination in Israel's laws and institutions.¹² Among Israel's breaches of the Covenant, CESCR cited the operations of the "national" institutions and expressed "grave concern" over the Status Law of 1952, which "authorized the World Zionist Organization/Jewish Agency and its subsidiaries, including the JNF [Jewish National Fund], to control most of the land of Israel, since these institutions are chartered to benefit Jews exclusively."¹³

⁸ Those present and testifying during the 19th session's public meeting with NGOs on 16 November 1998 included *Adalah* Legal Center for Arab Minority Rights, *al-Beit*, Palestinian NGO Network, Palestinian Housing Rights Movement, Habitat international Coalition (Housing and Land Rights Committee), LAW (Palestinian Society for Human Rights and the Environment), Palestinian Centre for Human Rights (Gaza), Save the Children (UK), Association for Civil Rights in Israel, Arab Coordinating Committee on Housing Rights in Israel, *B'tselem*: The Israeli Information Center for Human Rights in the Occupied Territories, Association of Forty, Center for Economic and Social Rights (London and Gaza), and Physicians for Human Rights.

⁹ "Israel's attack on Palestinian citizens of Israel," 29 September 1998, signed by the Association of Palestinian Trade Unions, Gaza Community Mental Health Programme, Palestinian Accountants Association, Palestinian Bar Association, Palestinian Engineers Union, Palestinian Independent Commission for Citizen's Rights, Palestinian Nongovernmental Organization Network.

¹⁰ *Ibid.*, para. 9.

¹¹ *Ibid.*, para. 13.

¹² Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, UN doc. E/C.12/1/Add.27, 4 December 1998.

¹³ *Ibid.*, para. 11.

The Committee identified specific forms of discrimination against Palestinian Arab citizens in housing and land. It considered the "unrecognized villages" of the Galilee and the Naqab regions¹⁴ whose resident Arab citizens "face demolition orders, lack of basic services and removal into concentrated 'townships'."¹⁵ It noted that the "mixed" (i.e., indigenous Arab and Jewish settler) towns, such as Yaffa and Lydd, whose Arab neighborhoods (where many of the estimated 270,000 "present absentees" live) have "deteriorated into virtual slums" as the result of Israeli policies.¹⁶

CESCR formally notified Israel that, in order to meet its minimum requirements under the Covenant, the state party would have to "ensure the equality of treatment of all Israeli citizens."¹⁷ It urged the Israeli government to "review the status of its relationship with the WZO/JA and JNF"¹⁸ and to revise its re-entry policies *vis-à-vis* Palestinians "to a level comparable to the Law of Return as applied to Jews."¹⁹

Despite the Committee's request, the state party has undertaken no such review of these or other institutional forms of material discrimination against persons not of Jewish faith, in general, nor against indigenous Palestinians, in particular. These issues and corresponding breaches of the Covenant remain current today, 20 years and three intervening CESCR reviews later.

Amid the so-called Oslo Process and nearly two years before the outbreak of a second *intifada* (2000), the CESCR's investigatory effort, supported by independent NGOs, took analysis back to its necessary basics to understand the root causes, institutionalized nature and unbroken pattern of human rights violations that characterize the State of Israel's performance under the Covenant. In that context, the Israeli delegation appearing before the Committee refuted Israel's obligations to report on ESC rights in the West Bank and Gaza Strip, as "jurisdiction has been transferred to the Palestinian Authority."²⁰ The Committee, like the bodies monitoring other human rights treaties, rejected Israel's dismissal of its human rights obligations in the occupied Palestinian territory (oPt).²¹ Therefore, the Committee required that Israel fill this reporting lacuna at the midpoint in its coming review period, calling for a report on the oPt in time for the November 2000 session of CESCR.²²

Despite the Committee's repeated requests, the state party has undertaken no review of the institutionalized forms of material discrimination against persons not of Jewish faith, in general, or against indigenous Palestinians, in particular. These issues and corresponding breaches of the Covenant remain current today, 20 years and three intervening CESCR reviews later.

Israel's response to the Committee's legal findings was bitter, but much prompter than its mandatory submissions to the treaty body. In a letter directed to the CESCR chair, the Government of Israel took

¹⁴ Ibid., paras. 26–38.

¹⁵ Ibid., para. 28.

¹⁶ Ibid., paras. 25, 41.

¹⁷ Ibid., para. 34.

¹⁸ Ibid., para. 35.

¹⁹ Ibid., para. 36.

²⁰ As stated by Israeli government delegation member Malchior Blum before the Committee, 17 November 1998, and cited in the Government of Israel response to the CESCR's "priority concerns," citing "90% of the population of the West Bank and Gaza Strip to a Palestinian autonomous authority," p. 1.

²¹ For example, the Human Rights Committee, monitoring the Covenant on Civil and Political Rights, and CAT, covering the Torture Convention, both have cited Israel's human rights treaty obligations in the OPTs. See also CESCR's E/C.12/1/Add.27, CCPR/C/79/Add.93, D 10 and CERD A/52/18, para. 19(3).

²² E/C.12/1/Add.27, para. 32.

umbrage at the Committee's inquiry.²³ The letter asserted Israel's "impressive accomplishment...in immigration absorption in achieving one of the highest life expectancy rates, absence of hunger and homelessness..."²⁴ In essence, the letter lamented the Committee's disregard for the government delegation's official explanations and charged the Committee with applying a "double standard" and "less-balanced standard" in the case of Israel when compared to other states, "such as Iraq, Libya and the Russian Federation."²⁵ This charge followed the visit of the CESCR's rapporteur to the country, where she witnessed the state party inducing homelessness (of Palestinians) across the Green Line.

When Israel refused to present its side of its follow-up review at CESCR's 24th session (13 November to 1 December 2000), a community of NGOs nevertheless presented relevant information.²⁶ In a letter, issued one day before the Committee convened its session to review Israel's "additional information," the state party proposed instead to submit a new, second periodic report well in time for its next (25th) session. In the letter, the Israeli government still abdicated any responsibility for upholding or reporting on economic, social and cultural human rights in the oPt, and proposed to submit a new periodic report by March 2001 and begin a new review process instead. The Committee responded formally by upholding the integrity of its earlier finding on Israel's jurisdictional responsibility in the oPt, particularly "in light of all current circumstances...and the current crisis."²⁷

The state party's refusal to provide information on its application of the Covenant in oPt already had qualified Israel as a "nonreporting" country. The resulting communication to the GoI reiterated that Israel's Covenant obligations indeed apply to the oPt and that "the State party's argument that jurisdiction has been transferred to other parties is not valid from the perspective of the Covenant, particularly in view of Israel's besieging of all the Palestinian territories occupied since 1967."²⁸

Israel's Second Periodic Review

In time for the CESCR spring 2002 pre-session, Israel did present a new periodic report²⁹ with an attached cover letter, again refusing to report on the Covenant's application in the oPt. Presenting its second report on the very eve of the session prevented the Committee from considering it with the required translations into the working languages. Nonetheless, the procedures allowed for consideration of numerous and more-timely NGO submissions³⁰ and an official response.

At that stage, the CESCR review of Israel took on a further, unprecedented dimension. The Committee was faced with a state party's obstinate refusal to apply its treaty obligations in, and report on a

²³ Letter of Israeli Ministry of Justice Director General Nili Arad and Ministry of Foreign Affairs Director General Eytan Bentsur to CESCR Chairman Philip Alston, 28 December 1998.

²⁴ *Ibid.*, p. 2, para. 3 D.

²⁵ *Ibid.*, p. 1, para. 2.

²⁶ For examples of reports before CESCR in the 24th session, see the Center on Economic and Social Rights website, at: <http://www.ceschr.org>.

²⁷ Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000.

²⁸ Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001.

²⁹ Second periodic reports submitted by States parties under articles 16 and 17 of the Covenant (Addendum): Israel, E/1990/6/Add.32, 16 October 2001, at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1990%2f6%2fAdd.32&Lang=en.

³⁰ Formal parallel reports came from *Adalah* Legal Center for Arab Minority Rights, *Badil* Resource Center for Palestinian Refugee and Residency Rights, Boston University Civil Litigation Project (USA), Center for Economic and Social Rights (USA), Habitat International Coalition (Housing and Land Rights Committee), LAW Society and Organization mondiale contre la torture.

territory it occupied (i.e., territory of effective control), despite the consensus among treaty bodies of treaty obligations in all the oPt.³¹ The Committee, therefore, took the unprecedented step of forwarding its communication to Israel in annex to an appeal to the Economic and Social Council's summer 2001 session, in accordance with provisions under Articles 21 and 22 of the Covenant. That intervention essentially underscored the need to protect Palestinian civilians and to take "effective measures,"³² such as those that the various UN bodies and human rights mechanisms already recommended and remained unimplemented.³³

The Committee rescheduled Israel to appear at Geneva on 17 August 2001 to resume consideration of the Covenant's application in the oPts and other issues, considering the most recent report by Israel in light of the requirement for the "additional information" that CESCR previously requested and the Government of Israel (GoI) omitted. While several NGOs were present to present updates on the human rights situation, GoI sent a low-level diplomat to read out a formal denunciation of the Committee as "biased," "discriminatory" and "politically motivated." He then concluded by reiterating the GoI's refusal to apply or report under the Covenant in regard to the oPt and rose from the room in protest.

The Committee's subsequent Concluding Observations concentrated on the deteriorating situation in the OPT and debunking the GoI assertion that human rights obligations do not apply there, where humanitarian law prevails. However, the Committee did issue a special observation that it remains "concerned that the State party's Law of Return denies indigenous Palestinian refugees the right to

³¹ These include, to date: Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDaW) upon Consideration of Reports Submitted by States Parties, A/52/38/Rev.1, 12 August 1997, para. 170; Concluding observations of the Human Rights Committee: Israel, CCPR/C/79/Add.93, 18 August 1998, para. 10; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.27, 4 December 1998, para. 8; Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/304/Add.45, 30 March 1998, paras. 4, 12; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001. Conclusions and Recommendations of the Committee against Torture: Israel, CAT/C/XXVII/Concl.5, 23 November 2001. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, para. 15. Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32; Concluding observations of the Committee on the Elimination of Discrimination against Women: Israel, CEDAW/C/ISR/CO/5, 5 April 2011, paras. 2, 12, 13, 16, 17, 21–24, 26, 28, 38, 40; Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/ISR/CO/3, 16 December 2011, paras. 8, 16, 19, 24, 28, 29, 32–33, 35–36; Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/14–16, 3 April 2012, paras. 3, 4, 10, 23, 24, 26, 28, 29; CRC, Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May–14 June 2013), Human Rights Committee, Concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4, 21 November 2014, paras. 5, 9, 12, 13, 15–18, 22; CRC, Concluding observations on the report submitted by Israel under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/OPSC/ISR/CO/1, 13 July 2015, para. 3, at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/82/PDF/G1515582.pdf?OpenElement>; CRC, Concluding observations on the fifth periodic report of Israel, 2016, 13 May 2016, paras. 8–9, 17–18, 24, 28, at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT_CAT_COE_ISR_23917_E.pdf; Committee against Torture (CaT), Concluding observations on the fifth periodic report of Israel, 3 June 2016, CAT/C/ISR/CO/5, paras. 8–9, at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fISR%2fCO%2f5&Lang=en; CaT, List of issues prior to submission of the sixth periodic report of Israel, CAT/C/ISR/QPR/6, 7 December 2018, para. 32, at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/CAT_C_ISR_QPR_6_33158_E.pdf.

³² Letter of 11 May 2001, *op. cit.*

³³ See S/RES/465, 1 March 1980, para. 7, at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/5AA254A1C8F8B1CB852560E50075D7D5>; General Assembly resolution "The situation in the Middle East," A/RES/37/123, 16 December 1982, para. A13, at: <http://www.un.org/documents/ga/res/37/a37r123.htm>; and A/RES/39/146, 14 December 1984, paras. B13, B16, at: <http://www.un.org/documents/ga/res/39/a39r146.htm>.

return to their homes and properties.”³⁴ CESCR also scheduled the review of Israel’s 2nd periodic report at its 30th session, May 2003. That session focused on the Committee’s list of questions to the state party issued at its pre-sessional working group in May 2002.³⁵

The review of Israel’s second periodic report reflected progress in UN treaty bodies’ consideration of Israel’s “legalized” and institutional discrimination on the basis of “Jewish nationality.” After regular rounds with the Gol representatives and concerned NGOs, the Committee had developed an appreciation of the rather obfuscatory reasoning behind this phenomenon and its link to historic and ongoing dispossession of the Palestinian people. Thus, CESCR demanded that the State party “explain the distinction between the religion and nationality status categories in Israeli law..., what types of nationality status exist in Israel, and how this status is distinct from other citizenship status in the enjoyment of economic, social and cultural rights.”³⁶ The Committee also sought answers as to what steps Israel had undertaken to implement the Committee’s recommendation that the State party review its relationship with patently discriminatory institutions such as the WZO/JA and JNF.³⁷

The Gol delegation did not provide satisfactory answers to these fundamental questions, and the Committee members generally sought to maintain a convivial atmosphere during the constructive dialogue, in order to avoid the previous conduct of the State party when refusing to cooperate in its 25th session in 2001. This diplomatic posture was maintained in the formal Concluding Observations, omitting explicit references to “breaches” of the Covenant. Nonetheless, the Committee did remain consistent with its inquiry so far about the pivotal matter of differentiated “nationality” status of citizens. Significantly, it stated:

The Committee is particularly concerned about the status of “Jewish nationality”, which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees. The Committee is also concerned about the practice of restrictive family reunification with regard to Palestinians, which has been adopted for reasons of national security. In this regard, the Committee reiterates its concern contained in paragraph 13 of its 1998 concluding observations, and paragraph 14 of its 2001 concluding observations.

Israel’s Third Periodic Review

Amid its principal subjects of concern and recommendations, the Committee reiterated its previous unanswered questions and observations in its 2011 third periodic review of Israel. CESCR noted with concern that most of the recommendations addressed to the State party following the consideration by the Committee of the State party’s second periodic report in 2003 still remained valid. Therefore, the Committee recommends that the State party follow-up to those recommendations that were issued in 2003 and that are still valid today.

The present state party report does not address most of these questions and recommendations. Therefore, in order to maintain the integrity of this inquiry and to encourage the state party’s measures consistent with its treaty obligations, this report carries over those recommendations as questions and issues for the present round. These are incorporated in the **Conclusions and Questions for the State Party** below.

³⁴ E/C.12/1/Add.69, 31 August 2001, para. 15.

³⁵ E/C.12/Q/ISR/2, 5 June 2002.

³⁶ Ibid., para. 5.

³⁷ Ibid., para. 6.

Over-riding Principles

Self-determination

A central issue related to the right to self-determination in the MENA region is the denial of that right to the Palestinian people. HLP rights violations over decades of Israel's population transfer and colonization of the country and its refusal to make reparations has been a core subject of protracted debate, discussions and countless UN resolutions, as well as a series of international armed conflicts since 1948. The control of land and territory, the right of refugee and IDP return and property restitution are central to the conflict resulting from the colonization of Palestine, the proclamation of the State of Israel in Palestine and the consequent denial of the exercise of the Palestinian people's inalienable right to self-determination.³⁸

Nondiscrimination

In 1998, the Committee on Economic, Social and Cultural Rights observed "with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. [...] large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant."³⁹ In its 2003 review, the Committee on Economic, Social and Cultural Rights also observed with particular concern that "the status of 'Jewish nationality,' which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees."⁴⁰

The Committee on the Elimination of Racial Discrimination (CERD) found similar breaches, including of its ICERD Article 3 obligations to combat apartheid, in its Concluding Observations.⁴¹

Article 11

Human Right to Adequate Housing

Israel's institutionalised material discrimination affects land rights, the human right to adequate housing and the human right to an adequate standard of living directly through its "national" institutions

³⁸ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, General List No. 131, 9 July 2004, at: <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>; Curtis Doebbler, "Human Rights and Palestine: The Right to Self-Determination in Legal and Historical Perspective," *Beijing Law Review*, Vol. 2 No. 3 (2011), at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/beijlar2&div=18&id=&page=>; John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (New York: Cambridge University Press, 2010).

³⁹ CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 4 December 1998, E/C.12/1/Add.27, para. 11, at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.27&Lang=en.

⁴⁰ CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 26 June 2003, para. 18, at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.90&Lang=en.

⁴¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/13, 9 March 2007, paras. 22, 23, 33, 34 and 35, at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fISR%2fCO%2f13&Lang=en; and CERD/C/ISR/CO/14–16, 9 March 2012, paras. 11, 15, 24–27, at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/ISR/CO/14-16&Lang=En.

recognised in law as the implementers of housing and development policy and its implementation throughout the state of Israel's jurisdiction and territory of effective control. Those institutions—primarily WZO/JA and JNF and their affiliates—are chartered to discriminate to favour of persons claiming “Jewish nationality,” at the exclusion and expense of indigenous others.⁴² They were established as proto-state entities during the Zionist colonization of Palestine, but remain part of the State of Israel, while operating outside government oversight, by virtue of a series of laws, including: World Zionist Organization-Jewish Agency (Status) Law (1952), Keren Kayemet Le-Israel Law (1953) and Covenant with Zionist Executive (1954, amended 1971).

The Palestine Conciliation Commission (1949–64) was dedicated to the restoration of housing, land and property to those Palestinians forced into cross-border refuge in 1948.⁴³ However, that international body has faced diplomatic obstruction since its inception, primarily by PCC member United States of America, and has ceased to function since 1964.⁴⁴

Prohibited under international law, nonetheless, Israel's practice of selling off Palestine refugee properties has involved mass transfers of refugee lands, structures and housing contents to the JNF⁴⁵—a

⁴² Covenant between the Government of Israel and the Jewish Agency for Israel, Law 5713 (1952), at: <http://aldeilis.net/english/the-world-zionist-organization-structure-and-functions/>; Agreement for the Reconstitution of the Jewish Agency for Israel, Jewish Federations of North America, June 2011, at: <https://cdn.fedweb.org/fed-42/2/23%2520-%2520Reconstn%2520Agt%2520JUN%25202011-2014-2015.pdf?v=1481746211>; W. T. Mallison, Jr., “The Zionist-Israel Juridical Claims to Constitute “the Jewish People” Nationality and to Confer Membership in It: Appraisal in Public International Law,” *The George Washington Law Review*, Vol. 32 (1963–64), at: <http://www.hlrn.org/img/documents/Mallison%20GWLRL%201964.pdf>; W.T. Mallison, Jr., “The Zionist-Israel Juridical Claims to Constitute ‘The Jewish People’ Nationality Entity and to Confer Membership in It: Appraisal in Public International,” *William and Mary Law Review*, Vol. 9, Issue 3 (1968), at: <http://scholarship.law.wm.edu/wmlr/vol9/iss3/3>; Walter Lehn, in association with Uri Davis, *The Jewish National Fund* (1988); David Blougrund, “The Jewish National Fund,” *Policy Studies*, No. 49, Institute for Advanced Strategic and Polical Studies, Division for Economic Policy Research (September 2001); Ilan Pappé, *Ethnic Cleansing*, *op. cit.*, “Introducing the Jewish National Fund: JNF Colonising Palestine since 1901,” *JNF eBook* (Volume 1, January 2010), at: <http://www.stopthejnf.org/documents/JNFBookVol2.pdf>; Joseph Schechla, “The Consequences of Conflating Religion, Race, Nationality and Citizenship,” *al-majdal* (2010); “Financing Racism and Apartheid: Jewish National Fund’s Violation of International and Domestic Law” (London: Palestine Land Society, August 2005), at: <http://www.plands.org/getattachment/e0de52ed-1ccc-4469-bfc3-c8c392d94cc9/financing-racism-and-apartheid>; Joseph Schechla, “Jewish Nationality, ‘National Institutions’ and Institutionalized Dispossession,” *al-majdal* (winter 2004), at: <http://BADIL.org/en/al-majdal/item/885-%E2%80%9Cjewish-nationality%E2%80%9D-national-institutions%E2%80%9D-and-institutionalized-dispossession>; Dan Leon, “The Jewish National Fund: How the Land Was ‘Redeemed,’” *Palestine-Israel Journal of Politics, Economics and Culture*, Vol. 12, No. 4 and Vol. 13, No. 1 (2005–06), at: <http://www.pji.org/details.php?id=410>.

⁴³ Rex Brynen and Roula El-Rifai, ed. *Compensation to Palestinian Refugees and the Search for Palestinian-Israeli Peace* (Chicago: University of Chicago Press, 2013); Leila Hilal, “Reparation for Lost Palestinian Property inside Israel: A review of international developments,” *Journal of Palestine Studies*, Issue. 33 (winter 2008), at: <http://www.palestine-studies.org/jq/abstract/77886>; Atif Kubursi, “Palestinian Losses in 1948, Compensation Valuations and Israel’s Ability to Pay” (London: Adam Smith International Ltd., April 2008), at: <http://www.aitransparency.com/files/2459.pdf>; Thierry J. Senechal, *Valuation of Palestinian Refugee Losses: A Study Based on the National Wealth of Palestine in 1948* (Ramallah: Negotiations Support Unit, Negotiations Affairs Department of the PLO/Palestinian Authority, 18 May 2008), at: <http://www.aitransparency.com/files/2767.pdf>.

⁴⁴ Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003).

⁴⁵ Already in January 1949, the new GoI had signed over one million dunams of land acquired during the conquest to the parastatal Jewish National Fund (JNF) to be held in perpetuity for “the Jewish people.” The first JNF acquisition totalled 1,101,942 dunams: 1,085,607 rural and 16,335 urban; the second amounted to 1,271,734 dunams: 1,269,480 rural and 2,254 urban. See Abraham Granott, *Agrarian Reform and the Record of Israel* (London: Eyre & Spottiswoode, 1956), pp. 107–110. In October 1950, the state similarly transferred another 1.2 million dunams to the JNF. A JNF spokesman explained in 1951 that the transfer to JNF title “will redeem the lands and will turn them over to the Jewish people—to the people and not the state, which in the current composition of population cannot be an adequate guarantor of Jewish ownership” (emphasis in original). See Jewish National Fund, Report to the 23rd Congress, 32–33, emphasis in original, cited in Lehn and Davis, *op. cit.*, 108.

parastatal Israeli “national” institution chartered to benefit only those of “Jewish race or descendency.”⁴⁶ Given the length of time elapsing since the 1948 and 1967 displacements and taking of Palestinian properties by Israeli forces, current occupants may be fourth- or fifth-party buyers occupying the confiscated property for decades, complicating restitution from the perspective of regular legal mechanisms and procedures.

Notorious and still-consequential in the Middle East region is Israel’s Custodian of Absentee Property Law. That 1950 legislation defines persons who were expelled, fled, or who left the country after 29 November 1947 for any reason, as well as their movable and immovable property (mainly land, houses and bank accounts etc.), as ‘absentee.’ Property belonging to absentees—as well as those determined to be of ‘enemy’ nationalities—was placed under the control of the newly proclaimed State of Israel’s Custodian for Absentee Property. The Absentee Property Law has been the main legal instrument used and sometimes revived by Israel to take possession of the land belonging to the internal Palestinian displaced persons and Palestinian refugees externally, as well as Muslim Waqf properties across Palestine.⁴⁷

These early legislative development established legal cover for a foundational doctrine of the state party reflected also in its military performance manifest since Israel’s third periodic review not only in its serial wars on the Gaza Strip in 2012 and 2014, but also an unbroken pattern of targeting the housing and habitat of the indigenous Palestinian population as a matter of policy since the proclamation of the state.⁴⁸

Human Right to Water

As a result of Israeli occupation, Palestinians experience one of the highest levels of water scarcity in the world. Physical scarcity, Israel’s destruction of infrastructure and discriminatory political governance of water all contribute to a violation of their human right to water.

People living in the oPt have access to 320 cubic meters of water annually, one of the lowest levels of water availability in the urbanized world and well below the threshold for absolute scarcity. The unequal distribution of water from aquifers shared with Israel reflect the initial destruction



Map by Sustainable Management of the West Bank and Gaza Aquifers (SUSMAQ) project, funded by DFID and in collaboration with University of Newcastle upon Tyne and the British Geological Survey (2001–2004). Published in UNDP, *Human Development Report 2006: Beyond Scarcity: Power, poverty and the global water crisis* (New York: UNDP, 2006), p. 217, at: <http://hdr.undp.org/sites/default/files/reports/267/hdr06-complete.pdf>.

⁴⁶ See Lehn and Davis, *op. cit.*

⁴⁷ Usama Halabi, “Israel’s Absentees’ Property Law: A tool for taking control of Palestinian land: The application of the law in occupied East Jerusalem: Prospects of judicial and political struggle” (Jerusalem: The Civic Coalition for Palestinians Rights in Jerusalem, September 2013), at: https://www.stophewall.org/sites/default/files/absentee_property_brief_e_final.pdf.

⁴⁸ For a review of Israel’s military doctrine of housing and habitat destruction, see Habitat International Coalition I Housing and Land Rights Network, *Targeting Homes, Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice* (Submitted to the UN Fact-finding Mission on the Gaza Conflict, 29 July 2009), at: <http://www.hic-mena.org/documents/Submission.pdf>.

of Palestinian wells and water infrastructure during and since the 1967 occupation, as well as the asymmetric power relations in water management. With steep population growth, declining water availability constrains both agriculture and human use.

As a result, gross inequality in water use has the Israeli population—not quite twice the size of the Palestinian population—using 7.5 times that available to Palestinians. In the West Bank, Israeli settlers use far more water per capita than Palestinians, and even more than Israelis in Israel; i.e., nearly nine times as much water per person as Palestinians.

Palestinians do not enjoy their established rights to the waters of the Jordan River—the main surface water source in the West Bank. Thus, nearly all of Palestinians' water needs have to be met by with groundwater aquifers. Israel's management of the western and coastal aquifers poses the main problem. Part of the Jordan Basin, the western aquifer is the single most-important source of renewable water for the oPt. Nearly three-quarters of the aquifer is recharged within the West Bank and flows from the West Bank toward the Palestinian coast (inside Israel).

Israeli representatives on the Oslo Process-established Joint Water Committee in the West Bank restrict the quantity and depth of wells operated by Palestinians. They apply far less-stringent rules on Israeli settlers, enabling them to sink deeper wells. The Israeli-imposed underdevelopment of Palestinians' water resources means that many Palestinians depend on commercial water deliveries from Israeli companies, selling back to Palestinians their own water. Israeli authorities limit even this source during periods of tension amid other punitive measures.

The construction of the controversial Separation Wall and associated regime exacerbates water insecurity. Construction of the wall has resulted in the loss of many Palestinian wells and the separation of Palestinians from their water sources, including farmers from their wells and irrigation facilities. This denial of water is especially severe in highly productive rain-fed areas around the Bethlehem, Jenin, Nablus, Qalqilya, Ramallah and Tulkarem Governorates.

With only 13% of all wells in the West Bank, settlers extract about 53% of groundwater. Water not used in the oPt eventually flows under Israeli territory and is extracted by wells on the Israeli side. This regime affects the Gaza Strip severely through multiple factors. The greatly densified population there due to Israel's population transfer of Palestinians during and since its 1947–48 War of Conquest against Palestine has led to over-extraction of the available aquifer. In addition, Israel aggressively pumps water from the aquifer that naturally flows toward the coast from Jabal al-Khalil in the southern West Bank.

Israel's strategy of over pumping concentrated around the northern Gaza Strip prevents most natural flow of the aquifer from reaching the Gaza Strip from the Israeli side of the Gaza border. (See map.) That denial of the most-vital natural resource to the Palestinian population of the Gaza Strip and the serial destruction of water and sanitation infrastructure in the context of Israeli wars against the territory leaves no option but a constant overuse of available water and water shortage, while extraction rates from the artificially shallow aquifers within the Gaza Strip far exceed the recharge rates, leading to increasing salinization of water resources with seepage of sea water.

In turn, Israel's denial of natural water resources to Gaza retards development of Palestinian agriculture. Although that sector represents an ever-shrinking share of the Palestinian economy —now estimated at

roughly 13% of income and employment, down from 27% in 1994⁴⁹—it is nonetheless crucial to the livelihoods of Gaza’s poorest people. Irrigation is currently underdeveloped, with less than a third of potential area covered because of the lack of water.

Human Right to Adequate Food

These institutionalized violations of ESC rights directed at the Palestinian people in Israel and the oPt have affected other individual and collective human rights. With regard to Article 11 of the Covenant, these include violations of the human right to food by continuing to prevent Palestinians’ access to, and control over their resources needed for food production, exploiting and diverting Palestinian natural resources to the benefit of colonizing settlers through its parastatal institutions chartered to carry out material discrimination, and rendering the Palestinian economy dependent upon Israeli products.

These measures denying Palestinians access to land and water have accompanied the loss of productivity, soil fertility and biodiversity, with their destructive impacts on food security and nutrition that the Covenant and CESCR General Comment No. 12 tries to address. The measures limiting movement and other restrictions have affected particularly the Palestinian agricultural sector and food systems, while farmers have been denied access to domestic and external markets, as well as their land and water resources.⁵⁰

Impediments to Palestinians’ economic, social and cultural development also effectively deny the exercise of their right to self-determination, depriving them of their means of subsistence. Consequently, the protracted conflict, economic stagnation, restricted trade and access to resources impede local production and normal access to food and nutrition, driving high unemployment and poverty rates for Palestine. This poses serious challenges to the achievement of Sustainable Development Goal 2 on Zero Hunger, food security and improved nutrition.⁵¹

Israel’s persistent and illegal military control of the occupied Palestinian territory since 1967 has seen periods of intensive military activity, causing considerable destruction to the environment, agriculture and economies, the repercussions of which are both cumulative and current.⁵² Israel’s denial of food supply and natural resources as a weapon is felt most drastically through its decade-long blockade of the Gaza Strip.⁵³ Israel controls the quantity of food allowed to reach the Gaza population, even calculating

⁴⁹ World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 19 May 2018, p. 6, at:

<http://documents.worldbank.org/curated/en/324951520906690830/pdf/124205-WP-PUBLIC-MAR14-5PM-March-2018-AHLC-Report.pdf>.

⁵⁰ “Human rights situation in the Occupied Palestinian Territory, including East Jerusalem,” Report of the General Secretary A/HRC/34/38, 13 April 2017, para. 66, at: <https://undocs.org/A/HRC/34/38>. See also “Human rights situation in Palestine and other occupied Arab territories,” Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63, 7 February 2013, para. 89, at: <https://unispal.un.org/DPA/DPR/unispal.nsf/5ba47a5c6cef541b802563e000493b8c/Oaed277dcb2bcf585257b0400568621>.

⁵¹ World Food Programme, “State of Palestine,” <http://www1.wfp.org/countries/state-palestine>, accessed on 19 October 2018.

⁵² Z. Brophy and Jad Isaac, “The environmental impact of Israeli military activities in the occupied Palestinian territory,” (Bethlehem: Applied Research Institute – Jerusalem (ARIJ), 2009), at: <http://www.arij.org/files/admin/2009/The%20environmental%20impact%20of%20Israeli%20military.pdf>; *The Military’s Impact on the Environment: A Neglected Aspect of the Sustainable Development Debate* (Geneva: International Peace Bureau, August 2002), at: file:///D:/HIC-HLRN/HLRN%20MENA/Program/Palestine/Environment/IPB_military_impact_2002.pdf.

⁵³ Haidar Eid, “On Gaza and the horror of the siege,” *Mondoweiss* (25 May 2017), at: <https://mondoweiss.net/2017/05/gaza-horror-siege/>; Associated Press, “Israel used ‘calorie count’ to limit Gaza food during blockade, critics claim,” *The Guardian*, (17 October 2013), at: <https://www.theguardian.com/world/2012/oct/17/israeli-military-calorie-limit-gaza>.

their per-capita calorie intake.⁵⁴ Israel's water administration also massively over-pumps and pre-empts the mountain aquifer flowing to the coastal Strip.⁵⁵ Consequently, the UN has determined that the Gaza Strip will be uninhabitable by 2020.⁵⁶

Recent Developments related to Article 11 Habitat Rights

Inside the Green Line (1949 Armistice Lines)

Since Israel invaded and annexed the Naqab region of southern Palestine in 1948, the restitution of housing and land rights remains an issue for originally Bedouin communities subject to population transfer and concentration there. Their traditionally pastoral lifestyle or status does not distinguish them as more "indigenous" than the rest of the Palestinian people, the Naqab Palestinians' underwent a distinct process by which Israel removed them from their land holdings in 1951–53 into an enclosure (*siyaj*). That process involved the destruction of some 108 villages and settlements, including seasonal habitations. That population, having the status of Israeli citizens, is nonetheless denied restitution of their housing, land and property rights consistent with an ongoing policy of demolition and forced eviction.⁵⁷ Israel has refused to recognize their customary land tenure as conferring any legal right of continued residence or use, and the traditional tenure holders are consequently at high risk of displacement also in the West Bank and Jerusalem.⁵⁸

Emblematic of Israel's treatment of Palestinian Arab citizens in the Naqab region is the case of al-Araqib. There, residents underwent the 131st time that Israeli planning authorities, police and JNF officials have demolished the village in July 2018.⁵⁹

In December 2018, the Israeli parliament has rejected a draft bill affirming citizens' right to equality. The Knesset voted down the bill by 71–38.⁶⁰ In the same month, the Legislation Committee at the Israeli Knesset yesterday approved 200 extra communities where non-Jewish inhabitants can be banned. MK Bezalel Smotrich, from the Jewish Home party, initiated the bill to add the new communities to the list of areas that enjoy power locally to discriminate as to which families and persons may move into them. The majority of the 700 Israeli communities explicitly exercising this right are in the Galilee.⁶¹ However,

⁵⁴ "Israel forced to release study on Gaza blockade," *BBC News* (17 October 2012), at: <https://www.bbc.com/news/world-middle-east-19975211>; Haaretz Exclusive 2,279 Calories per Person: How Israel Made Sure Gaza Didn't Starve State forced to release 'red lines' document," *Haaretz* (217 October 2002), at: <https://www.haaretz.com/.premium-israel-s-gaza-quota-2-279-calories-a-day-1.5193157>; Coordination of Government Activities in the Territories, "Food Consumption in the Gaza Strip – Red Lines," 1 January 2008, at: <https://www.haaretz.com/resources/Pdf/red-lines.pdf>.

⁵⁵ UNDP, Human Development Report 2006: Beyond Scarcity: Power, poverty and the global water crisis (New York: UNDP, 2006), Chapter 6 "Managing transboundary waters," p. 217, at: <http://hdr.undp.org/sites/default/files/reports/267/hdr06-complete.pdf>.

⁵⁶ "Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory: Report of the UNCTAD Secretariat," TD/B/62/3, 6 July 2015, pp. 12, 15, at: https://unctad.org/en/PublicationsLibrary/tdb62d3_en.pdf.

⁵⁷ See *The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel*, Fact-finding Report No. 13 (Cairo: HLRN, 2010), at: <http://www.hlrn.org/img/documents/Naqab%20FFM%20report%202010.zip>.

⁵⁸ NRC. "Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank," November 2015, <https://www.nrc.no/resources/reports/bedouin-rights-under-occupation-international-humanitarian-law-and-indigenous-rights-for-palestinian-bedouin-in-the-west-bank>.

⁵⁹ "Israel demolishes al-Araqib Bedouin village for 131st time," *Maan* (26 July 2018), at: <https://www.maannews.com/Content.aspx?id=780510>.

⁶⁰ Yossi Gurvitz, "Israel's Parliament Rejects Equal Rights Bill," *Middle East Monitor* (13 December 2018), at: https://www.middleeastmonitor.com/20181213-israels-parliament-rejects-equal-rights-bill/?fbclid=IwAR06tfeXns8Hg-ZlpGisv93tx062iW_uHnjNS_irfXeNeqV7tjrqu4OpN64#.XBQb-IHYRTo.facebook.

⁶¹ "Knesset Approves 200 Communities Where Arabs Are Banned," *Middle East Monitor* (10 December 2018), at:

all Israeli Regional Planning Councils retain a decisive role for the Jewish Agency—a parastatal “national” institution chartered to discriminate in favour of Jews only.

In the oPt

On 22 November 2018, the Israeli Supreme Court rejected a petition submitted by 104 Palestinians against claims by the right-wing Israeli settler organization Ateret Cohanim. That decision paves the way for 700 Palestinians to be forced from their homes. The 700 Palestinians, who make up 70 families, have been going through a legal battle to protect their right to remain in their homes since 2002. In June 2018, lawyers for the occupation admitted that the process by which the settler organisation received rights to the land was flawed. In spite of this and despite numerous UN resolutions determining Israel’s demographic changes to the oPt, including Jerusalem, null and void, the judge ruled in favour of the settlers’ rights to siege the area.

Ateret Cohanim aims to take over Palestinian properties in occupied East Jerusalem and transfer them to Israeli settlers. The ownership claims were based on arguments of the properties’ situation before the establishment of the State of Israel in 1948.⁶²

A stand-off remains after serial evictions attempts by armed Israeli police and armed forces through 2018 at the East Jerusalem village of al-Khan al-Ahmar.⁶³ The village has been the site of violent aggression against the residents throughout 2018, as well as a focus of local and international protests, including a warning to Israel from the International Criminal Court that removal of the village—as in populations transfers more generally—constitutes a war crime and crime against humanity.⁶⁴

A bill currently before the Knesset seeks to create a legal basis for the activities of the World Zionist Organization’s Settlement Division, granting it new authority over the Palestinian villages in Area C of the West Bank.⁶⁵ This act of delegating public policy to that “national” institution chartered to dispossess and discriminate against the Palestinian people would be inconsistent with the state party’s obligations under Articles 1, 2 and 11 of the Covenant.

The state party’s report claims that data relating to evictions over the past five years in its Annex II demonstrate “a steady decline in the number of eviction orders granted each year.” This statement is both false and deceptive in that the relevant Table No. 28, on page 26, relates only to mortgaged properties (2012–16) and Table No. 29 cited only the number of persons evicted from public housing apartments in 2011–14.

In 2018, Israel’s punitive demolitions and displacement have continued against Palestinian households in the West Bank at a similar pace to 2017. On average, 2018 saw about the same number of monthly

<https://www.middleeastmonitor.com/20181210-knesset-approves-200-communities-where-arabs-are-banned/>.

⁶² “Israel to evict 700 Palestinians from Silwan,” *Middle East Monitor* (22 November 2018), at: <https://www.middleeastmonitor.com/20181122-israel-to-evict-700-palestinians-from-silwan/>.

⁶³ “Akram al-Wa`ra, “Despite international condemnations, Israel prepares to demolish Khan al-Ahmar,” *Mondoweiss* (5 July 2018), at: <http://www.hlrn.org/news.php?id=p2xtZg==#.XD4JazdS-EM>.

⁶⁴ Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the Situation in Palestine, 17 October 2018, at: <http://www.hlrn.org/news.php?id=p21oZA==#.XD8XVzdS-EM>.

⁶⁵ Jonathan Lis, “New Bill Would Give Palestinian Land to World Zionist Organization, Knesset Adviser Warns,” *Haaretz* (24 December 2018), at: <https://www.haaretz.com/israel-news/.premium-new-bill-would-give-palestinian-land-in-area-c-to-wzo-knesset-adviser-warns-1.6770401>.

demolitions as recorded in 2017 (35), and around one-third of figures recorded in 2016 (91).⁶⁶ In October, the numbers rose above the annual average, whereas Israeli forces demolished or seized 51 Palestinian-owned structures in Area C and East Jerusalem, displacing 43 people and affecting the livelihoods of over 200 others. This is the second highest number of structures targeted in a single month so far in 2018 (after July).⁶⁷

While forced eviction has been recognized as a “gross violation” of human rights, in particular, the human right to adequate housing,⁶⁸ the UN Committee on Torture (CaT) has concluded that “Israeli policies on house demolitions, which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment,” as defined in Article 16 of the CaT Convention.⁶⁹

Recent Legislative developments

At this time we note, in particular, the Israeli Knesset’s recent adoption of its Basic Law: Israel as the Nation-State of the Jewish People (2018), revealing Israel’s exclusionary *raison d’état* to exclude and replace the indigenous Palestinian people. This objective Israel has been pursuing for decades, “depriving the people of its means of subsistence,” mostly under the guise of parastatal institutions, ironically registered as tax-exempt charities in over 50 countries of the world. However, since 2018, this biased set-up is unsheathed as a constitutional principle with a legislative act that also has crowned a series of laws and bills since the state party CESCRC report’s due date of December 2016.

The Knesset rang in the New Year 2017 by adopting an amendment to Israel’s *ultra vires* Basic Law: Jerusalem the Capital of Israel. It allows Israel retroactively to regularize Jewish settler “outposts” built on private Palestinian land. It also requires a majority of 80 Members of Knesset to alter the status of Jerusalem, which Israel illegally annexed in 1980.⁷⁰

Notably also, Knesset approved the *Land Regulation Law* on 6 February 2017, which allows the State of Israel to confiscate private Palestinian lands in the West Bank explicitly for settler-colony construction. The new law grants the Israeli Custodian of Absentee Property discretion to reclassify land, including all “state land” (42%) in oPT, to be eligible for Israeli colonization.

Then on 7 March 2018, the Israeli legislature adopted a law for revoking permanent residency of East Jerusalem Palestinians. It authorizes Israel’s interior minister to revoke permanent residency status of Palestinians in East Jerusalem who engage in “terror,” or other “anti-Israel activities” and any permanent residents involved in such acts. The state also can deport anyone whose residency status is revoked.

⁶⁶ OCHA, *Occupied Palestinian Territory*, 15 March 2018, at: <https://www.ochaopt.org/content/west-bank-demolitions-and-displacement-continue-similar-pace-2017>.

⁶⁷ OCHA, *Occupied Palestinian Territory*, 29 December 2018, at: <https://www.ochaopt.org/reports/west-bank-demolitions-and-displacement>.

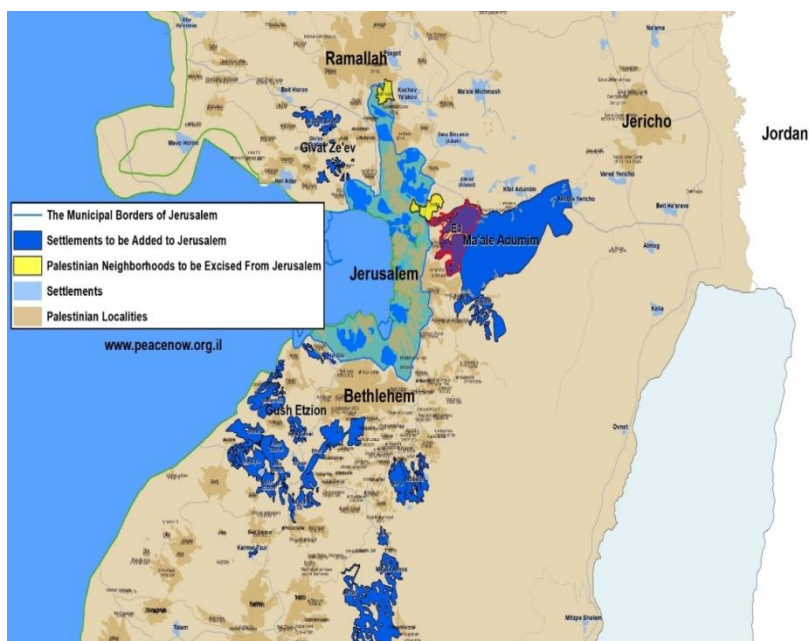
⁶⁸ Commission on Human Rights, “forced eviction,” resolution 1993/77, 10 March 1993, at: <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>; and “Prohibition of forced evictions,” resolution 2004/28, 16 April 2004, para. 1, at: http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf.

⁶⁹ Conclusions and Recommendations of the Committee against Torture: Israel, CAT/C/XVII/Concl.5, 23 November 2001, para. 6(j), at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/057C56BC9D69839385256B2000586057>.

⁷⁰ Ben Ariel, “Knesset approves 'United Jerusalem Bill',” *Israel National News* (2 January 2018), at: <http://www.israelnationalnews.com/News/News.aspx/240124>.

The criteria for such charges remain vague and the decisions potentially arbitrary. The new law makes life especially precarious for Palestinian Jerusalemites who, unlike Palestinians living in the West Bank and Gaza, are subject to Israeli law. While they have only permanent residence status in Jerusalem and do not have Israeli citizenship, they remain legally stateless, as they also do not hold Palestinian or Jordanian citizenship.⁷¹

The Civil Administration of Israel's military government in the West Bank issued Israeli (Military) Destruction Order 1797 on 18 June 2018 to authorize the demolition of any building in the territory that is either not yet completed, completed less than six months earlier, or inhabited for less than 30 days. The new Military Order further restricts right of affected parties to an entitlement to a hearing or appeal. In cases of petitions to the Israeli High Court of Justice, implementation of the demolition order would remain "frozen" until the Court's decision. However, this new condition was made more restrictive by subsequent civil legislation.



Map rendered by Peace Now indicating the placement of the three settler colonies proposed to be annexed to "Greater Jerusalem." Source: Foundation for Middle East Peace, "Settlement Report: November 2, 2017."

Based on her perception that the Israeli High Court was "overly concerned with international law and with protecting the rights of the 'occupied' population in Judea and Samaria," Israeli Justice Minister Ayelet Shaked introduced a bill, adopted on 18 July 2018, stripping the High Court's jurisdiction over West Bank land disputes. Whereas the High Court had ruled on land disputes, entry permits, and Freedom of Information Law requests in the oPt, the practice within the Green Line is to petition administrative courts on such matters. The new law seeks also flip the burden of proof for defendants in High Court petitions to the plaintiff, who is most often Palestinian. The legislation ostensibly pursues a third goal of reducing the case load on the High Court. However, critical observers note that it actually seeks further to annex the oPt by treating the West Bank, for judicial purposes, as part of Israel.⁷²

A further piece of destructive legislation remains in suspense since its introduction in October 2018. The Greater Jerusalem Bill aims to realize the Israeli claim of "Greater Jerusalem," which would be defined to include the annexation of the three settlements' blocs surrounding Jerusalem: Giva't Ze'ev, in the northwest of Jerusalem; Ma'ale Adumim, to the east; and the Gush Etzion block, southwest of Jerusalem. The bill considers the 150,000 settlers there as residents of Jerusalem, while downgrading Palestinian

⁷¹ Judith Sudilovsky, "New law allows Israel to revoke residency of East Jerusalem Palestinians," *Catholic News Service* (13 March 2018), at: <https://cruxnow.com/global-church/2018/03/13/new-law-allows-israel-to-revoke-residency-of-east-jerusalem-palestinians/>.

⁷² Jonathan Lis, "Israel Passes New Law Limiting Palestinians' Access to Court," *Haaretz* (), at: <https://www.haaretz.com/israel-news/.premium-knesset-advances-bill-barring-palestinians-from-petitioning-high-court-1.6271237>; Jacob Magid, "Bill stripping High Court's power to adjudicate West Bank land disputes advances," *Times of Israel* (25 February 2018), at: <https://www.timesofisrael.com/bill-seizing-high-courts-power-to-adjudicate-west-bank-land-disputes-advances/>.

neighborhoods. The delay in the Knesset vote is attributed to two factors: (1) a measure of international pressure and (2) opposition from the ultra-Orthodox United Torah Judaism adherents who resent their resulting Jewish demographic, as the integration of the three settler colonies would render Orthodox Jews a smaller minority among Israelis inside the city.

However, the most controversial of this new wave of Israeli legislation is the *Basic Law: Israel – Nation State of the Jewish People*. The Knesset approved this law with constitutional standing overnight on 17 July 2018, in a vote of 62–55, with two abstentions. That law has three main effects:

1. It states that “the right to exercise national self-determination” in Israel is “unique to the *Jewish people*”;
2. It establishes Hebrew as Israel’s official language, and downgrades Arabic—the indigenous language widely spoken by Arab citizens of Israel—to a “special status”; and
3. It constitutionally elevates “Jewish settlement as a national value” and mandates that the state “will labor to encourage and promote its establishment and development.”⁷³

Given the patterns of already established in more subtle legal language, these tenets are not new. However, while each of these explicit statements would be contentious on its own, taken together, they form an unequivocal statement of how Israel has enshrined institutionalized discrimination and material superiority for a single group of adherents to a particular religion as its *raison d’état*. The current trend of state performance rather indicates deliberate, longstanding and progressive unwillingness to comply with the principles and state obligations enshrined in the Covenant.

Issues and Questions for the State Party

Several issues from previous reviews of Israel’s implementation of the Covenant and remain relevant and deserve to be addressed in this fourth round. The structural dimensions and root causes of repeated and cumulative violations invoke the following sample questions:

In the Concluding Observations arising from the third periodic review of Israel, the Committee recommended that the State party follow-up to those recommendations that were issued in 2003 and that are still valid today.⁷⁴

In light of the previous three reviews and interim communications, the state party has yet to provide a review of the status of “Jewish nationality” within the state obligations arising from Article 2 of the Covenant.

The Committee remains interested in the state party’s review of the roles and functions of the state party’s “national” institutions, in particular, the World Zionist Organization/Jewish Agency and Jewish National Fund. That review should be framed within the states obligations under Articles 1, 2 and 11 of the Covenant.

Please explain what types of nationality status exist in Israel, and how this status is distinct from other citizenship status in the enjoyment of economic, social and cultural rights.

In CESCR’s third periodic review of Israel, the Committee called upon the state party to put a stop to the revocation of residency permits of Palestinians living in East Jerusalem. The Committee also urged the state party not to hinder the enjoyment of their right to social security, including access to social

⁷³ Basic Law: Israel – Nation State of the Jewish People, 18 July 2019, at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

⁷⁴ CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 2 December 2011, E/C.12/ISR/CO/3, para. 5, at: <http://undocs.org/E/C.12/ISR/CO/3>.

services, to Palestinian Jerusalemites. Please provide the Committee with information outlining efforts to protect residency and social security rights of Palestinians residing in Jerusalem.

Further to its recommendation in Israel's third periodic review, the Committee is interested to know how the state party has been able to ensure proper regulation of the private rental market, including through implementation of the Planning and Construction Procedures for the Acceleration of Construction for Housing Purposes Law 5771–2011 and meeting the criteria for adequate housing provided in General Comment No. 4 (1991) on the right to adequate housing.⁷⁵

The Committee is interested in receiving information from the state party has taken measures to stop home demolitions as reprisals and ensure that evictions in Area C conform with the duties outlined in General Comment No. 7 in cases of eviction carried out by the State party's military.

Similarly, the Committee looks forward to clarification as to the State party's undertaking to ensure that the development of special outline plans and closed military zones are preceded by meaningful consultations with affected Palestinian communities. The Committee also would like to know if and how the state party has reviewed and reformed its housing policy and improved the issuance of construction permits for Palestinians in East Jerusalem, in order to prevent demolitions and forced evictions and ensure the legality of construction in those areas.⁷⁶

The Committee furthermore urges that the State party to report on its efforts to prevent attacks by Jewish settlers against Palestinians and Palestinian property in the West Bank, including East Jerusalem, and investigate and prosecute criminal acts committed by those settlers.⁷⁷

Since Israel's third periodic review, additional issues have arisen with regard to human rights guaranteed under Article 11 of the Covenant:

Consistent with paragraph 54 of the reporting guidelines,⁷⁸ please provide a full account indicating the number of persons and families evicted within the last five years and the legal provisions defining the circumstances in which evictions may take place and the rights of tenants to security of tenure and protection from eviction in all areas of the state party's jurisdiction and effective control.

Please provide a schedule summarizing all legislation and regulations adopted and in force within the state party and territories of its effective control since the third periodic review having effect on the human right to adequate housing.

The Committee would appreciate the state party's analysis of the effect of the new Basic Law: Israel as the Nation-State of the Jewish People (2018) on the economic, social and cultural rights guaranteed in the Covenant for persons and groups not of Jewish faith within the state party and territories of its effective control.

In its third periodic review of Israel, the Committee noted with appreciation efforts made by the State party in promoting the implementation of economic, social and cultural rights, in particular the enactment in July 2011 by the Knesset of the National Council for Nutrition Security Law.⁷⁹ Could the state party provide any update to that development as to measures taken to improve nutritional

⁷⁵ E/C.12/ISR/CO/3, *op. cit.*, para. 25.

⁷⁶ E/C.12/ISR/CO/3, *op. cit.*, para. 26.

⁷⁷ *Ibid.*

⁷⁸ Guidelines on Treaty-Specific Documents to Be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2008/2, 24 March 2009, at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?key=92g0+9FnI5fx/ePqHxWObPpm//kusKEXT+B4cp/uCKqWAFsFrDexWgk2iQgS46+H&Lang=en.

⁷⁹ E/C.12/ISR/CO/3, *op. cit.*, para. 4(i).

security for impoverished and marginalized persons and communities, including those in the Israeli-occupied Palestinian territory?

The Committee looks forward to the State party's information as to how it has ensured that implementation of the Plan for the Regularization of Bedouin Housing and for the Economic Development of the Bedouin Population in the Negev, based upon the recommendations of the Goldberg Committee has avoided forced eviction, including population transfer, of Bedouins of the Naqab in line with the Committee's General Comments No. 4 and No. 7 (1997) on the right to adequate housing.⁸⁰

Since the June 2011 Supreme Court decision affirming that access to water is a basic human right,⁸¹ how has that ruling affected policies and practices toward ensuring access to water without discrimination across the state party's jurisdiction and territory of effective control?

⁸⁰ E/C.12/ISR/CO/3, *op. cit.*, para. 27.

⁸¹ E/C.12/ISR/CO/3, *op. cit.*, para. 4(iv).