

ABSENCE OF JUSTICE IN PALESTINE: DISCRIMINATION AND IMPUNITY UNDER APARTHEID

INTRODUCTION

Injustice in Palestine can be broadly listed under two categories: impunity and discrimination (or lack of equality).

Notwithstanding the overlap between the two categories, it is important to note that the absence of justice transcends the Palestinian territory occupied since 1967, but also affects all the Palestinian people, whether living under direct military occupation in the West Bank (including East Jerusalem) and the Gaza Strip, or living in exile as refugees or even Palestinians who live as Israeli citizens inside the Green Line.

Since its establishment, Israel has de facto established a regime that discriminates primarily according to religion, in addition to other factors, with the aim of retaining a clear ethno-religious demographic composition where one group dominates all others. This entails violations of very basic principles of international law, namely that of equality and non-discrimination.

In this light, it is also important to examine the notion of Israel as a “Jewish State” as conceptualized by the Israeli leadership compared to the notion that was mentioned in the Partition Plan included in GA Resolution 181.

Moreover, a major obstacle to attaining justice, and consequently peace across what constituted British mandate Palestine is Israel’s non-compliance with international law, manifested in the Charter of the United Nations, Security Council resolutions and international humanitarian law. The magnitude and impact of Israel’s non-compliance are only surpassed by the impunity that Israel has enjoyed in the international arena, despite its documented violations of basic pillars of international law. In that regard, the issue of apartheid must be considered, since the latter is highlighted as a crime against humanity.

At another level, Israel has effectively established five categories among the people of British mandate Palestine, with each category being treated differently under Israeli law and measures. Such discrimination affects Palestinians at the individual and collective levels, rendering justice a relative concept.

I. THE “JEWISH STATE” AND NON-DISCRIMINATION

The Partition Plan and the jurisdiction of the United Nations to decide on such matters, is a source of controversy since the plan violates the right to self-determination and other principles¹ of the UN Charter.

While Zionist groups and parties accepted the partition plan, in practice these groups had violated a number of major provisions of the resolution and the plan before May 1948 when the State of Israel was declared.

In line with the Charter of the United Nations, the concept of the “Jewish State” as mentioned in the partition plan entailed the principle of non-discrimination. It never intended to provide more privileges for Jewish citizens than citizens of other faiths, nor does it state that demographic majority of one ethnic/religious group needs to be maintained:

- The constitutions of both Arab and Jewish states shall include provisions *“Guaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association”* (Part I, Section B, Item 10 (d))
- No discrimination of any kind shall be made between the inhabitants on the ground of race, religion, language or sex. (Section C, Chapter 2, item 2)
- Nowhere in the plan is there any mention of demographic majorities in either envisioned states.

Practices, laws and policies employed by Israel since 1948 indicate that the concept of the Jewish state, as conceived by the Zionist movement and the subsequent Israeli regime contradicts the basic principle of non-discrimination. In 2012, the Committee on the Elimination of Racial Discrimination² highlighted the following issues in this regard:

- The existence of two systems of education, one in Hebrew and one in Arabic, which except in rare circumstances remain impermeable and inaccessible to the other community. (para. 11)
- The enactment of the Admissions Committees Law (2011), which gives private committees full discretion to reject applicants deemed “unsuitable to the social life of the community”

¹ For example: Part I, Section B of the plan entails that *“...During the transitional period no Jew shall be permitted to establish residence in the area of the proposed Arab State, and no Arab shall be permitted to establish residence in the area of the proposed Jewish State, except by special leave of the Commission.”*

² CERD/C/ISR/CO/14-16

- The absence of a general provision for equality and the prohibition of racial discrimination has been included in the Basic Law
- The absence of a definition of racial discrimination in Israeli legislation
- The enactment of a number of discriminatory laws on land issues which disproportionately affect non-Jewish communities³
- The adoption of laws and the consideration of bills conditioning social and economic benefits on completion of military service, thus excluding non-Jewish communities
- The adoption of the 2009 Special Amendment No. 6 to the Regional Councils Law (Date of General Elections) (1994), which could considerably restrict the political participation of non-Jewish minorities
- The maintenance of discriminatory laws especially targeting Palestinian citizens of Israel such as the Citizenship and Entry into Israel Law

Along the same lines, the 2013 US State Department Report on the Situation of Human Rights in Israel also maintains that:

- Arab citizens in Israel face institutional and societal discrimination
- Approximately 93 percent of land is in the public domain, including approximately 12.5 percent owned by the NGO Jewish National Fund (JNF), whose statutes prohibit sale or lease of land to non-Jews.

Repeated discussions, public and reported, among Israeli officials regarding the issue of the Arab/Palestinian “demographic threat”, indicates that the concept of the “Jewish State” that exists in the current Israeli political mind set is based on retaining a clear Jewish majority, and consequently control by Jewish centres of power. This, not only violates UN principles and its Charter, but also is in contradiction with Resolution 181, the view is racist.

- "if Israel's Arabs become well integrated and reach 35-45 percent of the population, there will no longer be a Jewish state." Netanyahu, 2003 (as Minister of Finance)
- In May 2014, Netanyahu, as the Israeli prime minister proposed to amend the Israeli Basic Law, to the effect that it defines Israel as "the nation state of one people only – the Jewish people – and of no other people".⁴

In recent years, Israeli officials repeatedly called for the recognition of Israel as the “Jewish State”, and presented it as a precondition for moving forward with the negotiations with the Palestinian side. In spite of the racist nature of this call, in light of the above, these calls have

³ the Israel Land Administration Law of 2009; the 2010 Amendment to the Land (Acquisition for Public Purposes) Ordinance (1943); the 2010 Amendment to the Negev Development Authority Law (1991), and the Admissions Committees Law (2011)

⁴ <http://www.theguardian.com/world/2014/may/04/binyamin-netanyahu-israel-jewish-state>

not been challenged in international forums or by the international community as a stark violation of the principle of non-discrimination, but they were dealt with politically as merely a demand within the framework of negotiations.

II. ABSENCE OF INTERNATIONAL JUSTICE (OR ACCOUNTABILITY FOR VIOLATIONS OF INTERNATIONAL LAW):

While the term “Israeli exceptionalism” is used to highlight different meanings, for the purpose of this section, the term is used to describe the manner in which international bodies have exempted Israel from abiding by international law or held accountable. This is in spite of the fact that a considerable number of Israeli violations have not only been documented and reported by impartial international bodies, but also condemned by various UN bodies. Such impunity has led to the perpetuation of a culture of impunity among consecutive Israeli governments and polity, security establishments and civilians (including settlers). The violations of international law almost all sources of international law, are listed as follows:

1. The Charter of the United Nations:

The principle of **non-discrimination among individuals and among states** is repeatedly reaffirmed in the Charter of the United Nations⁵ and is considered one of the pillars of the modern approach to human rights and to rule of law. Hence, the preferential treatment of Israel in terms of accountability and enforcing the rule of law actually violates the Charter itself.

While this principle of non-discrimination has been violated by the characteristics of Israel’s evolving governance system including the practices of its occupation,(mentioned above), existing Israeli legislations, ongoing policies and practices, discriminate against non-Jewish Palestinians residing within Israel, in the Palestinian territory occupied since 1967, and against Palestine refugees in exile.

Another pillar of the UN Charter is the **illegality of the acquisition of land by military force**⁶. In the aftermath of the 1948 war, Israel occupied and annexed 20% of the land of historic Palestine beyond the land that was allotted to it by the partition plan, constituting a clear case of acquiring land by military force. The fact that this illegal acquisition was accepted by the international community and became the “internationally recognized border” of Israel highlights the impunity that Israel has enjoyed ever since.

⁵ See Charter of the United Nations, second preambular paragraph; Article 1 (2); Article 1 (3); Article 2 (1); Article 13 (1)(b); Article 55 (c); and Article 76 (c).

⁶ Charter of the United Nations, Article 2 (4); and Declaration On Principles Of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations (1970), Principle 1.

In addition, Israeli has blatantly violated this principle by officially annexing occupied East Jerusalem along with 70 km² for the areas surrounding the city (and the occupied Syrian Golan) after its occupation in 1967. Contrary to the lands annexed during the 1948 war, the international community did not recognize Israeli sovereignty over East Jerusalem and has condemned its annexation in 1980 as a violation of international law (Security Council resolution 478). Yet no action has been undertaken by the international community to pressure Israel to annul the 'Jerusalem Law' which formalizes Israel's annexation of the city.

Furthermore, Israeli settlements and the construction of the wall on occupied Palestinian territory constitute de facto annexation, as attested by SG reports as well numerous other reports and resolutions, further entrenching Israeli violation of the principle of illegality of the acquisition of land by military force.

Another principle in the Charter of the United Nations is the respect for peoples' **right to self-determination**.⁷ A principle that has been continuously violated by Israel since 1948. Israeli violations of this principle are manifested in numerous policies and practices, including the denial of Palestine refugees' right to return to their country. They also include the expropriation of land, control over planning and zoning, restricting the mobility of Palestinians within their territory, Israeli settlement expansion and the wall as well as the Gaza blockade. In addition, other Israeli policies and practices that hinder social and economic development in the occupied Palestinian territory, as well as the exploitation of natural resources therein also violate this principle.

It should be noted that Article 6 of the Charter of the United Nations states that "A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be **expelled from the Organization** by the General Assembly upon the recommendation of the Security Council."

2. Security Council resolutions

The Security Council of the United Nations has issued hundreds of resolutions related to Israel, its occupation of Arab lands, and the ensuing wars. The Council has issued at least 79 resolutions criticizing Israeli actions. Furthermore, among the resolutions that solely address the Israeli occupation of Palestinian territory, Israel has violated or did not comply to at least 36 of them (see annex 1).

Although the Council has a long history of imposing coercive measures on member countries that fail to comply with its resolutions ranging from sanctions to authorization of military intervention, Israel has always enjoyed de facto impunity from actions by the Security Council.

⁷ UN Charter, Article 1 (2); Article 2 (4); Article 55, Article 56; Declaration On Principles Of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations, Principles 1, 5

One example is resolution 57 (18 September 1948) which was the first of resolutions directed against Israel in which the Security Council was “deeply shocked” by the assassination of the first UN mediator Count Folke Bernadotte in Jerusalem a day earlier. However, it is noteworthy that the Security Council in this resolution authorized all the funds required for the “expenses connected with the death and burial” of Bernadotte, but falls short of calling for an investigation and bringing to the perpetrators to justice. It was well known at the time that the Lehi Zionist paramilitary group executed the assassination.

Another example is resolution 267 (1969) which was among the rare SCRs that hinted at the possibility of further action. In this resolution, the Council first deplored Israel’s failure to “show any regard for the [previous] resolutions of the General Assembly and the Security Council” related to Israeli measures affecting the status of Jerusalem. The Council then determined to “reconvene without delay to consider what further action should be taken in this matter”. But:

- In the following month Al-Aqsa mosque was the target of arson attack and was almost completely destroyed. The Council reconvened, condemned Israel’s failure to comply and reiterated its determination to reconvene and consider further action, should Israel continue to ignore its resolutions.
- Two years later, in September 1971, the Council reconvened and issued resolution 298, in which it noted Israel’s failure to comply with previous resolutions and that it has taken further action to change the status of East Jerusalem. But contrary to previous resolutions, resolution 298 rescinded the language in which it threatened to consider further action.

When compared to the treatment of the Security Council of other countries, the impunity that Israel enjoys becomes all too prominent:

- The first SC resolution related to Iran’s nuclear program was 1696 (31 July 2006). Less than 5 months later, resolution 1737 (23 December 2006) was adopted imposing the first round of sanctions on the Iran for its “failure to [...] to comply with the provisions of Security Council resolution 1696 (2006)”.
- On 2 August 1990, Iraq invaded, occupied and later formally annexed Kuwait. The same day, Resolution 660 condemned the invasion and demanded immediate and unconditional withdrawal. 4 Days later comprehensive sanctions were imposed (Resolution 661, 6 August). 20 Days later an embargo was imposed (Resolution 665, 25 August). Resolutions continuously tightened the sanctions and embargo during the following weeks, leading up to 29 November Resolution 278 authorized the use of “all necessary means” to bring Iraq to comply with SC resolutions.

3. International humanitarian law (The Fourth Geneva Convention)

The ICRC states that international humanitarian law primarily stems from the four Geneva Conventions of 1949 and the Additional Protocols of 1977 relating to the protection of victims of armed conflicts.⁸ The most serious violations of the GCIV are considered war crimes. In the case of the military occupation, the Fourth Geneva Convention Relative to the Protection of Civilians in Times of War (GC IV) is the most relevant and most referred to.

Israel refuses to acknowledge the applicability of the GC IV in the occupied Palestinian territory. This is despite the 18 Security Council Resolutions⁹ that reaffirm such applicability and the Advisory Opinion of the International Court of Justice in 2004¹⁰.

Major principles that govern international humanitarian law during times of war (and occupation) and aim at protecting civilians include:

- The principle of distinction
- The principle of proportionality
- The principle of humane treatment
- The principle of non-discrimination
- Women and children [special protection of]

Israel as an occupying power has ignored and violated all the aforementioned principles through violating a large number of provisions of its international humanitarian law obligations as a State Party of the Fourth Geneva Convention since 1951. This includes but is not exclusive to the violation of articles:

- Article 27 by systematic and persistent inclination by the Israeli authorities to directly harm civilians not participating directly in the conduct of hostilities.
- Articles 16-21, Articles 23, 55, 56 and 59 through the regular denial of Israeli military of free passage to medical, humanitarian and relief convoys and not refraining from directly attacking medical and humanitarian facilities, vehicles and vessels, as did the attack on the Turkish Flotilla show in May 2010.
- Article 134 which states that “[t]he High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation”, by denying the Palestine refugees their right to return to their lands.
- Articles 5, 27, 31, 32, 37, 70-73 and 76 by committing illegal acts of torture and inhuman treatment along with violating their basic judicial rights under the framework of administrative detention.

⁸ https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf

⁹ Resolutions 237 (1967), 271 (1969), 446 (1979), 465 (1980), 471 (1980), 476(1980), 484 (1980), 592 (1986), 605 (1987), 636 (1989), 641 (1989), 672 (1990), 673 (1990), 681 (1990), 726 (1992), 799 (1992), 1322 (2000), 1544 (2004)

¹⁰ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 2004

- Articles 23, 26, 33, 34, 49 and 53 by regular use of collective punishments by Israeli military through acts of harmful closure to the Palestinian population, destruction of their properties aiming at expelling many from their homes and lands, to make way for Jewish settlements, which fall under illegal forced displacements under GCIV.

Many of the violations of the GC IV constitute grave breaches may amount to war crimes for which Israeli authorities must be held accountable.¹¹

The recurrent Israeli offensives on the Gaza Strip, the latest of which was the 2014 summer offensive that led to unprecedented destruction and loss of life manifest Israel's disregard for international humanitarian law. The offensive clearly entailed violations of international human rights law, including possible war crimes. This has prompted the Human Rights Council to establish and dispatch an independent, international commission of inquiry into these violations.¹² However, previous experiences have shown that Israel was not held accountable for such violations (e.g. the Goldstone report¹³ and the Flotilla¹⁴ report).

Given the failure of the Israeli judiciary to seriously prosecute those responsible of such acts as ordered by article 146 of GCIV¹⁵, the international community should make way for specific mechanisms in order to seek restorative justice for the Palestinian victims of the occupying power's illegal conduct. While international instruments have been deployed to investigate war crimes and hold perpetrators accountable in other countries (Sierra Leone, former Yugoslavia etc.) no such measure has been taken in the case of Palestine in spite the fact that Israel's documented violations date back at least to 1967 (see Security Council section above).

4. The Crime of Apartheid

The crime of apartheid is one of the crimes against humanity as identified by the Rome Statute of the International Criminal Court. The Statute defines the crime of apartheid as one of the acts "when committed as part of a widespread or systematic attack directed against any civilian

¹¹ Article 147 identifies these grave breaches as "those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

¹² See A/HRC/RES/S-21/1, para. 13.

¹³ See Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48

¹⁴ See Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

¹⁵ Article 146 (1&2) : "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be 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. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case".

population, with knowledge of the attack”, and as “inhumane acts [...] committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”.¹⁶

Along the same lines, the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) defines “the crime of apartheid”, as “*policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them*” (Article 2).

In 2012, the Committee on the Elimination of Racial Discrimination expressed its concerns and censured Israel a number of times under the rubric of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 3 refers to the prevention of apartheid and racial segregation.¹⁷ (See section on non-discrimination above).

In his January 2014 report, former United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 Professor Richard Falk examined the policies and practices that constitute apartheid. He concluded that Israeli policies and practices in the context of its prolonged occupation “constitute racial segregation and apartheid”.¹⁸

His predecessor, John Dugard, had recommended in 2007, the referral of the question of whether “elements of the [Israeli] occupation constitute forms of colonialism and apartheid” to the International Court of Justice for an advisory opinion.¹⁹ However no related action was taken.

Given the amount of legal opinions and documentation on this issue, the fact that no international legal body has taken action to investigate the issue of apartheid in Palestine, serves to highlight the impunity that Israel has enjoyed in the realm of international justice.

III. ABSENCE OF EQUALITY

As mentioned in the Section I above, Israeli governments have practiced institutional and systemic discrimination against the non-Jewish population within Israel and the occupied Palestinian territory. This has entailed grave inequalities encompassing all aspects of life. The

¹⁶ Rome Statute of the International Criminal Court, Article 7, paras. 1-2.

¹⁷ CERD/C/ISR/CO/14-16, paras. 11, 15, 24, 25, 26, 27.

¹⁸ A/HRC/25/67, para. 78.

¹⁹ A/HRC/4/17, p. 3.

population of historic Palestine is treated by the Israeli authorities and by Israeli laws differently. In this regard, this population is practically divided into 4 broad categories²⁰:

- Jewish Israeli citizens
- Non-Jewish Israeli citizens (mainly Palestinians with Israeli citizenship)
- Palestinian (non-Jewish) residents of East Jerusalem
- Palestinian (non-Jewish) residents of the West Bank and the Gaza Strip

Another category, which overlaps with Palestinian residents of the West Bank and the Gaza Strip²¹, and comprises the majority of the Palestinian people are the Palestine refugees. While the number of refugees may reach 8 million or more²², at least 5.4 million are registered as refugees with UNRWA²³.

In practice, the existing Israeli regime implements a 5-tier system on an institutional, legislative and policy levels. This system affords different civil status, rights and legal protection for the different categories of the population.²⁴

1. Palestine refugees

Millions of Palestinians residing in *de facto* exile for decades have not relinquished their right to return. A large portion of them remain in refugee camps inside the occupied Palestinian territory and in neighboring countries. Two main Israeli policies govern the issue of Palestine refugees. The first being the denial of their right to return to their land and country, while the second is the systematic confiscation of private property belonging to Palestine refugees. Both policies aim at maintaining demographic dominance of the Jewish population and control of the land and property.

The Israeli Law of Return (1950) clearly states that “Every Jew has the right to come to this country as an *oleh*” (Article 1). In a 1970 amendment, the law also granted the right to return to “*a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew...*” (Article 4A(a)).²⁵

²⁰ See CCPR/C/ISR/CO/4, para. 7, and The Association for Civil Rights in Israel, *The Status of the Right to Demonstrate in the Occupied Territories*, p. 13.

²¹ Palestine refugees constitute XX% of the West Bank population

²² PCBS, http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_PalnE2014E.pdf

²³ PCBS, http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_IntRefDy2014E.pdf

²⁴ CCPR/C/ISR/CO/4, para. 7.

²⁵ <http://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx>; An *oleh* is someone who makes an *Aliyah* or immigration to Israel.

Furthermore, successive Israeli prime ministers, including the incumbent, Benjamin Netanyahu, have consistently dismissed Palestinian refugees' right to exercise their right to return. It is "not right, not justified, and not legitimate", Netanyahu commented on the right of return, reiterating the long held Israeli position that Israel is not responsible for the fate of Palestine refugees.²⁶ The Israeli Ambassador to the United Nations went further and accused United Nations organizations, namely UNRWA, of "fueling false promises and gives grievance to dangerous myths" referring to the right of return.²⁷

For one, all the above comes in spite of the fact that the right of individuals to return home is enshrined in international humanitarian law (see GCIV Article 143 in section II (3) above) and international human rights law. For, Palestine refugees have the basic right to return to their home and country according the Universal declaration of Human Rights²⁸, and the International Covenant on Civil and Political Rights.²⁹

Furthermore, among the arguments used by Israelis and supporters of the concept of the "Jewish State", is that allowing the right of return would flood the State with millions of non-Jewish refugees and hence yield the end of the State of Israel.³⁰ The conclusion of this argument is simply dismissing an inalienable right as impractical... for a regime that seeks ethnic/religious dominance of one group over another.

The main issue concerning the issue of refugees right of return is that of discrimination and racism. By using criteria such as religious affiliation and lineage to confirm or deny a person's right to "Return" to Palestine/Israel, the existing Israeli regime has not only denied Palestine refugees from their right to return, but also from their right to non-discrimination and equality.

Another inequality that plagues Palestine refugees is the issue of dispossession by means of seizing private property utilizing a series of laws, at the foremost of which is the Absentee Property Law (1950).

²⁶ Jerusalem Post, Netanyahu on Palestinian 'right of return': There is no room for maneuver, 16 January 2014 <http://www.jpost.com/Diplomacy-and-Politics/Netanyahu-on-Palestinian-right-of-return-There-is-no-room-for-maneuver-338329>; also see New York Times, Olmert Rejects Right of Return for Palestinians, March 31, 2007, <http://www.nytimes.com/2007/03/31/world/middleeast/31mideast.html>; and Haaretz, Ariel Sharon to Haaretz: 'Iraq war created an opportunity with the Palestinians we can't miss, 13 April 2003, <http://www.haaretz.com/print-edition/news/ariel-sharon-to-haaretz-iraq-war-created-an-opportunity-with-the-palestinians-we-can-t-miss-1.13058>

²⁷ See, http://embassies.gov.il/un/The_Ambassador/Appearances/Pages/Ambassador-Ron-Prosor-at-the-Jerusalem-Post-Conference.aspx

²⁸ Article 13 (2): Everyone has the right to leave any country, including his own, and to return to his country.

²⁹ Article 12 (4): No one shall be arbitrarily deprived of the right to enter his own country.

³⁰ See http://embassies.gov.il/un/The_Ambassador/Appearances/Pages/Ambassador-Ron-Prosor-at-the-Jerusalem-Post-Conference.aspx

This law transfers “*every right*” in any property of ‘absentees’ had in an official Israeli entity, “Custodianship Council for Absentees’ Property”³¹. The law defines absentees as property owners:

- “i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or
- (ii) was in one of these countries or in any part of Palestine outside the area of Israel, or [between 29 November 1947 and 14 March 1950]
- (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine
 - (a) for a place outside Palestine before the 27th Av, 5708 (1st September, 1948); or
 - (b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment;”³²

Upon close examination of the definition above Absentees’ Property Law, similar to other laws, it becomes obvious that it is directed towards Palestine refugees’ property, or more precisely non-Jewish residents of mandate Palestine at the time when they fled, were forcefully displaced, or were residing in an Arab country or in parts of Palestine controlled by Arab armies at the time.

So coupled with other laws, Israel used the Absentees’ Property Law to claim and seize an estimated 4,200-5,800 km² of ‘abandoned’ lands. Furthermore, between 1948 and 1953 alone, 95 per cent (350 of 370) of settlements for Jewish Israelis and immigrants were created on lands confiscated under this law,³³ highlighting the nature of the displacement and dispossession that affected only non-Jewish residents of Palestine.

One further inequality in this regard was institutionalized by Israel through the *Absentees’ Property (Compensation) Law (1973)*. The law limits the ability to claim compensation for lands seized under the Absentees’ Property Law to a person who “*is an Israel resident on the date of the coming into force of this Law or who becomes an Israel resident thereafter [...]*”³⁴. This limitation clearly excludes all Palestine refugees. Lastly, in 2009, Israel passed the *Israel Land Administration Law* which allows privatization of land owned by Palestine refugees.³⁵

Thus, a non-Jewish Palestinian who became a refugee is not allowed to return to his country, his property is seized by Israeli authorities and has no mechanism to claim compensation or

³¹ Israeli ABSENTEES’ PROPERTY LAW, 5710-1950, Article 2-Article 3, <http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>

³² Israeli ABSENTEES’ PROPERTY LAW, 5710-1950, Article 1(b) <http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>

³³ COHRE, BADIL, Ruling Palestine, A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine, 2005, p. 55; <http://www.badil.org/en/documents/category/35-publications?download=102%3Aruling-palestine>

³⁴ *Absentees’ Property (Compensation) Law, 5733-1973, Article 1*, <https://www.jewishvirtuallibrary.org/jsource/Peace/absentee.html>

³⁵ Adalah, <http://www.adalah.org/en/law/view/505>

redress. At the same time, any person of Jewish ancestry can immigrate to the same land, may live and work in or on property of a Palestine refugee, and can claim compensation should the array of land and property laws deprive them of any property.

2. Palestinian (non-Jewish) residents of the West Bank and the Gaza Strip

Non-Jewish Palestinian residents of the occupied West Bank and the Gaza Strip – besides the aforementioned inequality and injustice that befell the refugees among them – are treated in a discriminatory manner on a number of levels leading to stark inequalities between them and other Jewish residents of the same land, including Israeli settlers or even Israeli and foreign visitors.

Two separate regimes thus exist in the West Bank: a regime for illegal Israeli settlers ensuring that they enjoy all the rights granted to Israeli citizens; and another regime created for Palestinians living under occupation which includes harsh military rule which primarily serves the interests of Israel and the settlers.³⁶

Legal System

The Israeli legal system has been almost entirely applied to settlers in the West Bank, while Palestinians living in the same territory are subject to the harsher military legal system. This has been upheld by the Israeli High Court of Justice where Israeli courts regard settlements in the occupied territories as “Israeli enclaves”.³⁷

It is well documented that the military court system does not ensure Palestinians basic fair trial guarantees, including minimum standards of independence, clear evidentiary or procedural rules, the presumption of innocence or the duty to hear witnesses or examine all material evidence.³⁸

This practice affects the rights and consequent treatment of any person in every stage of the legal proceedings, up to the trial to the verdict in criminal cases, which is ultimately determined according to the national identity of a person in question. This leads to discrimination, in all the stages, against Palestinians adults and minors when compared to Israelis. For example, if a Palestinian child and an Israeli child are accused of committing the same act, they will receive a substantially different legal treatment and verdicts.³⁹

Since 2001 more than 800 complaints of torture during interrogations by Israeli security services have been filed. No criminal investigation were initiated as a result.⁴⁰ Along the same

³⁶ B'tselem, 47 Years of Temporary Occupation, p. 5.

³⁷ ACRI, The Status of the Right to Demonstrate in the Occupied Territories, p. 13.

³⁸ A/HRC/22/63, para.47

³⁹ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p.7, 63, 67, 68.

⁴⁰ The Public Committee Against Torture in Israel, Prosecutorial Indifference: Systematic Failures in the Investigation of Soldier Violence against Detainees in the Occupied Palestinian Territory; June 2014, p. 5

lines, at least 133 complaints filed by Public Committee Against Torture in Israel, between 2007 and 2013 regarding soldier violence against detainees in the Palestinian Occupied territory, 73% of the complaints were closed and only two such complaints resulted in an indictment against a soldier, on assault charges.⁴¹

The Public Committee against Torture in Israel reported in July that, despite more than 776 complaints it filed since 1999, no torture complaint resulted in a criminal investigation, prosecution, or conviction. This remained a pattern during the year (2013).⁴²

Inequality is more prominent and disconcerting regarding Israel's discrimination in the treatment of Palestinian child detainees compared to the treatment it affords to Israeli child detainees.⁴³ Amidst this inequality, torture and ill-treatment of Palestinian children arrested, prosecuted and detained by Israeli security forces have been documented.⁴⁴

Furthermore, Israeli law provides safeguards against arbitrary arrest and detention, which is applied to Israeli settlers. However, for Palestinian detainees key safeguards do not apply since they are subject to the jurisdiction of Israeli military law. Thus, there is no requirement that a detainee have access to a lawyer until after interrogation, a process that may last weeks and with a conviction rate that reaches 99 percent for Palestinians.⁴⁵

This is in addition to the widespread practice of administrative detention against Palestinian people in a discriminatory manner and which constitutes arbitrary detention under international human rights law⁴⁶.

At the same time, Israel fails to hold settlers who commit acts of violence against Palestinians and their property accountable.⁴⁷ This is despite the fact that settler attacks and intimidation regularly take place during daylight hours and the identity of perpetrators are well known, or could easily be identified. However, when acts of violence are committed by Palestinians, these are swiftly and effectively addressed, indicating that the lack of law enforcement experienced by Palestinians is largely a matter of political will. Between 90 to 95 per cent of cases against Palestinians are investigated and go to court.⁴⁸

⁴¹ The Public Committee Against Torture in Israel, *Prosecutorial Indifference: Systematic Failures in the Investigation of Soldier Violence against Detainees in the Occupied Palestinian Territory*; June 2014, p. 8

⁴² US State Department, *Country Reports on Human Rights Practices for 2013: Israel and the occupied territories*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=220358&year=2013#wrapper

⁴³ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, A/67/550, para. 16

⁴⁴ CRC/C/ISR/CO/2-4, para. 35.

⁴⁵ US State Department, *Country Reports on Human Rights Practices for 2013: Israel and the occupied territories*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=220358&year=2013#wrapper; also see *Report of the UN Special Rapporteur on the Independence of Judges and Lawyers*, 18 June 2010, A/HRC/14/26/Add.1. <http://unispal.un.org/UNISPAL.NSF/0/57D00BE6597450FF8525774D0064F621>

⁴⁶ CERD/C/ISR/CO/14-16, para. 27

⁴⁷ CCPR/C/ISR/CO/4, para. 16

⁴⁸ A/HRC/22/63, para. 43, 50

Furthermore, Israeli forces have repeatedly violated their obligations under international human rights law by using excessive force to stifle dissent and freedom of expression, resulting in a pattern of unlawful killings and injuries. They have been permitted to do so with virtual impunity due, in no small part, to the authorities' failure to conduct thorough, impartial and independent investigations, even in cases that appear to have amounted to unlawful killings.⁴⁹

Freedom of Movement

Freedom of movement is strictly protected in Israeli law. However, movement restrictions have been imposed upon Palestinians residents in most of the West Bank and the Gaza Strip. To the contrary, the movement of Israelis is permitted with almost no restrictions, except for the 'Area A' territory which constitute 18 per cent of the West Bank.⁵⁰

Palestinians in Gaza and the West Bank are subject to different types of mobility restrictions. In Gaza, residents have been "locked in" under a blockade since 2007 and their access to a 100 metres strip along the border fence with Israel has been restricted. In addition to their access to sea and fishing has also been restricted to 3-6 nautical miles.⁵¹ These measures amount to collective punishment that is prohibited by Israeli law as well as international law.

In the West Bank, a complex system of access and mobility restrictions has been imposed on the Palestinians to secure the free and safe movement of settlers. Palestinians are thus separated from settlers inasmuch as possible and a string of orders and regulations distinctly apply only to Palestinians. In this regard, by February 2014, Israel had designated 65 kilometres of West Bank roads for the exclusive, or almost exclusive, use of Israelis.⁵²

In 1997, the commander of Israeli forces in the West Bank published an order declaring all municipal areas of settlements as a "closed military zone" to Palestinians, including those encompassing lands privately owned by Palestinians. This order stipulated that "the orders of this proclamation do not apply to Israelis", and included, under the term "Israeli," all citizens and residents of Israel, Jewish persons who are entitled to immigrate to Israel under the Law of Return and also any person who is not a resident of the area and holds a valid entry permit to Israel. Palestinian residents are forced to face a complicated bureaucratic mechanism only applicable to Palestinians. This is also applicable to the Seam Zone is channeled through 74 gates, the majority of which (52) are only open during the olive harvest season, from October to December.⁵³

Access of West Bank Palestinians to East Jerusalem also remains subject to acquiring an Israeli permit. Discrimination in freedom of movement is clearest in Hebron. Palestinian traffic is severely restricted in the Israeli-controlled part of the city. Palestinians are banned from using

⁴⁹ Amnesty International, *Trigger-Happy: Israel's use of Excessive Force in the West Bank*, February 2014, p. 10.

⁵⁰ ACRI, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, October 2014, p. 9.

⁵¹ See Gisha, *The Gaza Cheat Sheet*, Accessed 11 May January 2015; <http://gisha.org/reports-and-data/the-gaza-cheat-sheet>

⁵² ACRI, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, October 2014, p. 104-105.

⁵³ ACRI, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, October 2014, pp. 105-107, 110-111.

most of the roads leading to the Israeli settlements and pedestrian movement also prohibited in other areas, including parts of what was once the main commercial artery.⁵⁴

Israel also retains control over crossings from the West Bank into Jordan and by extension the outside world. According to official Palestinian figures, between June 13, 2014 and August 13, 2014, no fewer than 3,393 Palestinians who tried to cross Allenby Bridge into Jordan were turned away because of security preclusions. By comparison, throughout 2013, only 1,266 Palestinians were turned away by the Israeli authorities at Allenby Bridge en route to Jordan.⁵⁵

Residency

Israel's immigration and residency policies in the West Bank are reported to aim at decreasing the Palestinian population and to transfer its own population into the territory. This is manifested in practices and regulations that limit the ability of Palestinians to live within the West Bank and to hold a family life there as they see fit. Israelis are on the other hand not only free to relocate and reside in the occupied territory without any limitations, but also enjoy various benefits and incentives to do so.⁵⁶

Since 1967, Israel has retained control over the residency status of the Palestinian population of the occupied Palestinian territory. Discriminatory policies have resulted in the denial or revocation of civil status and residency documentation, restricting Palestinians' right to reside in, and move, between different parts of the occupied Palestinian territory, and their right to return to the occupied Palestinian territory following visits abroad. In June 2012, Israeli authorities revealed that until the establishment of the Palestinian Authority in 1994, the military had revoked the status of a 250,000 Palestinian from the West Bank and the Gaza Strip.⁵⁷

Furthermore, since 2007, Israel began to treat Palestinians originating from Gaza and living in the West Bank – as “illegal stayers, unless they hold a permit issued by the military which is only granted in extreme and exceptional humanitarian cases, and only after meeting very strict criteria. In April 2010 the Israeli army issued an order whereby the restrictions imposed on the ability of Palestinians to live in the West Bank were tightened. The order deemed any person found in the West Bank without an Israeli permit as an infiltrator and facing imprisonment, even if this person permanently resides in West Bank. The Israeli army Spokesperson clarified, upon the publication of the order, that it will not be used against Israelis. This automatically turned tens of thousands of Palestinians living in the West Bank into offenders.⁵⁸

⁵⁴ 2013, para. 60.

⁵⁵ Hamoked, Report on Human Rights Violations Perpetrated by Israel in the Summer of 2014, January 2015, p. 5.

⁵⁶ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p. 115.

⁵⁷ A/68/77-E/2013/13, paras. 10-11

⁵⁸ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, pp. 117-119.

At the same time successive Israeli governments pursued policies that encourage the expansion of settlements that are established for the exclusive benefit of Jewish Israelis. Israeli governments provided its citizens who opted to moving to such settlements with benefits and incentives.⁵⁹ This resulted in a growth rate in the settler population in the West Bank that is three times higher that of the population inside Israel during the last decade.⁶⁰ Thus, by 2013, there were approximately 250 Israeli settlements and an estimated 580,000 settlers in occupied Palestinian territory settlers (374,000 in the West Bank excluding East Jerusalem).⁶¹

Zoning, Planning and Construction

Discriminatory zoning and planning regime regulating the construction of housing and structures by Palestinians in Area C⁶² of the West Bank and by Palestinian Bedouins in the central West Bank, including the East Jerusalem periphery, that makes it almost impossible for them to obtain building permits, while facilitating the building in and expansion of Israeli settlements in those areas.⁶³

Thus, two types of communities were created in the West Bank: Palestinian cities and villages, which are subject to Jordanian law and Israeli military orders, and Jewish local and regional councils, which are subject to Israeli law and enjoy the benefits and budgets granted by Israeli legislation.⁶⁴

There is a legislative and institutional separation between the planning systems for Israelis and Palestinians. This separation enables a policy that encourages construction in settlements while freezing it in Palestinian towns and villages. The majority of West Bank settlements have detailed and updated outline plans, which facilitate their expansion and the issuance of building permits. Construction in most Palestinian villages is restricted by means of freezing the planning situation that was in place more than four decades ago, in a manner that does not enable construction or development.⁶⁵

The policy guiding planning enforcement and demolition of structures constructed without a permit is also far stricter with regards to the Palestinian population than the Israeli population.⁶⁶

The legislative and institutional separation between the planning systems of Israelis and Palestinians enabled Israel to actualize a policy encouraging construction in settlements and freezing it in Palestinian communities.⁶⁷ Along these lines, the Israeli government has

⁵⁹ A/68/513, para. 15

⁶⁰ A/68/77-E/2013/13, para.38.

⁶¹ PCBS, Press Release on Israeli Settlements in Palestine, September 2014.

⁶² Area C encompasses 62 per cent of the West Bank

⁶³ CCPR/C/ISR/CO/4, para. 9.

⁶⁴ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p. 6.

⁶⁵ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p. 8.

⁶⁶ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p. 8-9.

⁶⁷ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p. 98.

designated 100 settlements in the West Bank as national priority areas level A, which receive the maximum benefits in all fields.⁶⁸

Furthermore, the entire area that these plans have approved for legal constructions by Palestinians in Area C amounts to 18,000 dunams, which are only approximately 0.5% of Area C. Much of this land is already built-up, and there is no real option to continue building there. As a result, Palestinians are not currently allowed to build in Area C even on their privately-owned land. For the benefit of settlements, on the other hand, 26% of Area C has been approved for planning.⁶⁹

Access to and allocation of resources and services

Numerous Israeli measures are in place in the West Bank, including East Jerusalem seriously hindering the right of landowners to use and access their lands while limiting their access to other resources such as water, including the Dead Sea. Such limitations usually come in the form of Israeli military orders that designate various parcels of land as closed military zones, nature reserves, national parks, Seam Zones, or for the building of the Wall, for instance.

Palestinians have extremely limited access to the natural resources in Area C, in the West Bank, while Israeli settlers and corporations freely exploit these resources, including marble, stones, building materials, and Dead Sea minerals and salts. Palestinian public and private investments are forbidden, and sovereignty is denied in Area C.⁷⁰

Furthermore, Israel retains nearly full control over water resources in the West Bank and utilizes discriminatory policies akin to planning and zoning policies mentioned above. As an example, the daily share per capita of water consumption for Israelis reaches seven times higher than that for Palestinians.⁷¹ More than 70 Palestinian communities in Area C are not connected to the water network, and their residents rely on purchased water at vastly increased cost. The dire situation leads to water consumption rates in some of these communities as low as 20 litres per capita per day (l/c/d), one-fifth of the WHO's recommended 100 l/c/d.⁷²

3. Palestinian (non-Jewish) residents of East Jerusalem

Although Palestinian non-Jewish East Jerusalemites enjoy more rights than Palestinians in the rest of the West Bank and the Gaza Strip, they continue to suffer from inequality and discrimination to the benefit of Israeli settlers.

⁶⁸ A/68/513, para. 24-26

⁶⁹ ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014, p. 99.

⁷⁰ UNCTAD input

⁷¹ PCBS, http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_WWD2015E.pdf

⁷² OCHA, Area C of the West Bank: Key Humanitarian Concerns Update August 2014

This comes in the framework of Israeli policies in Jerusalem that has been employed by the Israeli authorities since the 1970s under the declared policy of “demographic balance”. The ‘Jerusalem 2000’ master plan, the latest manifestation of this policy, openly calls for a 60/40 demographic balance in favour of Jewish residents in the city.⁷³

With this in mind a multilayered restrictive overall planning policy for Palestinian neighbourhoods in East Jerusalem has been applied, in which construction permits and plans authorization process remain difficult and used politically to prevent Palestinians from undertaking formal and legal construction.⁷⁴

Consequently, ‘illegal’ building has been widespread in East Jerusalem, largely because opportunities for authorized construction remains extremely limited. Over 35 per cent of the land in the Israeli-defined municipal area of East Jerusalem has been confiscated since 1967 for settlement use, and only 13 per cent of the total East Jerusalem area is available for Palestinian construction. However, much of this land is already built-up, the permitted construction density is limited and the application process is difficult and expensive. A range of issues related to land registration complicate the process further.⁷⁵ Combined, these factors make it extremely difficult for Palestinians to obtain building permits from the Israeli authorities. It is estimated that at least 33 per cent of all Palestinian homes in East Jerusalem lack Israeli-issued building permits, placing over 93,000 Palestinian, to some extent, at risk of displacement.⁷⁶

The demolitions of homes and other property due to a lack of Israeli building permits are one of the causes of displacement of Palestinians’ in East Jerusalem. Another important driver of displacement is overcrowding and the inability of families to expand their living accommodation in situ.⁷⁷

Furthermore, although Israeli law entitles Palestinian residents of Jerusalem to full and equal services provided by the municipality and other Israeli authorities, the Palestinian population of Jerusalem, suffers from an incomprehensible level of neglect: municipal services such as trash collection, road resurfacing and lighting are only minimally provided. Residents suffer from a severe shortage of public buildings and facilities such as schools, public preschools and playgrounds; there is a lack of industrial and commercial zones and few social and cultural institutions.⁷⁸

There has also been increasing evidence of problematic and even criminal action by police officers from various units when dealing with Palestinians in East Jerusalem.⁷⁹

In Jerusalem displays of Palestinian political symbols were punishable by fines or imprisonment, as were public expressions of anti-Israeli sentiment. Israeli security officials regularly shut

⁷³ A/HRC/22/63, para. 25

⁷⁴ See A/69/81 E/2014/13, paras. 10-11.

⁷⁵ OCHA, *East Jerusalem: Key Humanitarian Concerns*, March 2011, p.p. 30.

http://www.ochaopt.org/documents/ocha_opt_jerusalem_report_2011_03_23_web_english.pdf

⁷⁶ See A/69/81 E/2014/13, para. 13.

⁷⁷ See OCHA, *East Jerusalem: Key Humanitarian Concerns Update*, August 2014

⁷⁸ ACRI, *The State of Human Rights in Israel and the OPT 2014*, December 2014, p.77.

⁷⁹ ACRI, *The State of Human Rights in Israel and the OPT 2014*, December 2014, p.77.

meetings or conferences held in Jerusalem affiliated with the Palestinian Liberation Organization, the Palestinian government PA, or with Palestinian officials in attendance.⁸⁰

The right to reside in East Jerusalem was restricted to those Palestinians who were recorded as living within this expanded municipal boundary upon its occupation in 1967. These Palestinian residents are treated as “aliens”, thereby exacerbating the insecurity of their permanent residency status, with strict rules governing their residency status, with a number of provisions that allow the revocation of this status.⁸¹ Using these rules, in addition to other pretexts, Israel has de facto expelled around 15,000 Palestinians from East Jerusalem so far.⁸²

The ban on the granting of Israeli citizenship to children born of an Israeli parent and a parent from the occupied Palestinian territory, the Israeli decision to stop processing residency applications for Palestinian children since 2000 as well as the arbitrary revocation of residency and identity of those living in East Jerusalem have resulted in thousands of unregistered Palestinian children excluded from access to health services, education and any other type of social benefits as well as in thousands of children being prevented from living with their parents.⁸³

In addition, thousands of Palestinian children are deprived of their right to live and grow up in a family environment with both of their parents or with their siblings. Thousands live under the fear of being separated because of the severe restrictions on family reunification under the Citizenship and Entry into Israel Law as amended in 2005 and 2007. These laws and measures also prevent children who have lost one of their parents from reuniting with their surviving parent in the West Bank.⁸⁴

4. Palestinian non-Jewish citizens of Israel

Palestinian non-Jewish citizens of Israel also face institutional and societal discrimination. In its 2012 review of Israel, the Committee for the Elimination of Racial Discrimination (CERD) expressed its increasing concern that “Israeli society maintains Jewish and non-Jewish sectors, which raises issues under article 3 of the [International] Convention [on the Elimination of All Forms of Racial Discrimination].”⁸⁵ The aforementioned article 3 is dedicated to the issue of racial segregation and apartheid in the convention.

⁸⁰ US State Department, Country Reports on Human Rights Practices for 2013, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=220358&year=2013#wrapper

⁸¹ CCPR/C/ISR/CO/4, para. 18.

⁸² See A/68/77

⁸³ CRC/C/ISR/CO/2-4, para. 29.

⁸⁴ CRC/C/ISR/CO/2-4, para. 49.

⁸⁵ CERD/C/ISR/CO/14-16, para. 11

Institutional discrimination against non-Jewish Israeli citizens, namely Palestinians and Bedouins, are embodied in a series of laws. More than 50 laws are viewed to be directly or indirectly discriminatory in this regard.⁸⁶

In this context the CERD highlighted the following laws⁸⁷:

- *Israel Land Administration Law* (2009) which practically removes restrictions of the privatization of land owned by on-Jewish Palestinians with Israeli citizenship who were displaced during previous wars but remained within Israel and permits land exchanges between the state and the Jewish National Fund (JNF)⁸⁸. The number of such ‘internally displaced people’ within Israel is today estimated to be around 250,000, of whom – 70,000-100,000 reside in what are known as ‘unrecognised villages’.⁸⁹
- The 2010 *Amendment to the Land (Acquisition for Public Purposes) Ordinance* (1943) confirms state ownership of land confiscated under this law (Acquisition for Public Purposes Law), even if it has not been used to serve the original confiscation purpose. Along with other laws (see above) this law was used to confiscate land owned by non-Jewish Palestinians and this amendment was designed to prevent Palestinian land owners from filing lawsuits to reclaim their land.
- The *Admissions Committees Law* (2011) formalized the Admission Committees, and provided the almost full discretion that to accept or reject applicants for living in housing units and plots of land in hundreds of towns built on state-owned land. Under this law, these committees are allowed to reject applicants that they deem “unsuitable to the social life of the community... or the social and cultural fabric of the town”⁹⁰. This law was consequently used to filter non-Jewish citizens from living in these towns.
- *The Citizenship and Entry into Israel Law (Temporary Provision)* suspends the possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing in the West Bank, including East Jerusalem, or the Gaza Strip, thus greatly affecting family ties and the right to marriage and choice of spouse.

In addition to the laws specifically highlighted by the CERD above, other laws clearly discriminate against Palestinian non-Jewish citizens and violate their rights. These include:

⁸⁶ See Adalah, The Discriminatory Laws Databas, <http://www.adalah.org/en/content/view/7771>

⁸⁷ CERD/C/ISR/CO/14-16, para. 11, 15-18; ; for details see Adalah, The Discriminatory Laws Databas, <http://www.adalah.org/en/content/view/7771>

⁸⁸ The JNF presently owns approximately about 13% of the area of Israel. These lands are exclusively reserved for Jewish people.

⁸⁹ COHRE, BADIL, Ruling Palestine, A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine, 2005, p. 55; <http://www.badil.org/en/documents/category/35-publications?download=102%3Aruling-palestine>

⁹⁰ Unofficial Translation, <http://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/12-Admissions-Committees-Law-2011.pdf>

- The Budget Foundations Law, Amendment No. 40 (2011) (“Nakba Law”⁹¹) which seeks to suppress activities that rejects concept of Israel as a “Jewish and democratic state” or that commemorates “Israel’s Independence Day or the day on which the state was established as a day of mourning”, by authorizing the Finance Minister to reduce state funding or support to an institution that organize such activities.⁹²
- The Law of Political Parties, Amendment 12 (2002) prohibits the registration of parties whose platforms, “deny the existence of the State of Israel as a Jewish and democratic state” or “support armed struggle of an enemy state or of a terror organization, against the State of Israel.”⁹³

A number of other laws condition the allocation of social and economic benefits on completion of military service. These exclude non-Jewish citizens, namely the majority of Palestinian citizens of Israel, who are exempted from military service from receiving these benefits.⁹⁴

Along the same lines, a number of bills that have not been passed yet also entail discriminatory dimensions against the non-Jewish Palestinian minority. Two examples of which are the following:

- The “Nation-State Law” bill, which would enshrine the definition of Israel as the nation-state of the Jewish people in a Basic Law. If passed, a definition in this respect would likely exacerbate discriminatory and racist policies against non-Jewish citizens.⁹⁵
- A bill that aims to link the degree of exemption for young families’ first home purchases from value-added tax to having performed military or national service, which discriminates against non-Jewish citizens among others.⁹⁶

In addition to the discrimination faced by Palestinian non-Jewish citizens on legislative level, they also suffer from racism within the Israeli society that is exacerbated institutionally.

Racism and racist attacks (harassment, threats and even physical violence) against the non-Jewish Palestinian minority remain a feature of societal discrimination. This trend peaked in the summer of 2014. A sharp increase in incidents of silencing, racism and incitement against the non-Jewish Palestinian minority was recorded among. This trend was supported on occasion by the Israeli authorities either through action, inaction or silence, as exemplified by the arrest of

⁹¹ Nakba (catastrophe) is the name that Palestinians, including Palestinians with Israeli citizenship, give to the anniversary of the declaration of the State of Israel on 15 May of year.

⁹² Unofficial Translation, <http://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/33-Budget-Foundations-Law-Amendment40-Nakba-Law.pdf>

⁹³ Adalah, <http://www.adalah.org/en/law/view/512>

⁹⁴ CERD /C/ISR/CO/14-16, para. 16

⁹⁵ ACRI, The State of Human Rights in Israel and the OPT 2014, p. 22

⁹⁶ Ibid.

some 1,500 protesters, almost all of them non-Jewish Palestinian citizens during the 2014 summer offensive on Gaza.⁹⁷

This leads at times to the suppression of free of expression⁹⁸ which is illegal under Israeli law, grave socio-economic disparities between Jewish and non-Jewish communities⁹⁹, employment opportunities in the public and private sectors¹⁰⁰ and underrepresentation in the in the civil service, in particular in decision-making positions.¹⁰¹ There are severe disparities between the access to bomb shelters in Jewish and non-Jewish towns which is due to, the budget crises suffered by Arab local authorities, among other reasons.¹⁰²

Furthermore, two educational systems exist, one in Hebrew and one in Arabic, which except in rare circumstances remain impermeable and inaccessible to the other community¹⁰³

Thus, in spite of some efforts by a number of human rights organizations and other civil society entities to combat racism and discrimination.

⁹⁷ ACRI, The State of Human Rights in Israel and the OPT 2014, p. 17

⁹⁸ See ACRI, The State of Human Rights in Israel and the OPT 2014, pp. 7-14.

⁹⁹ CERD/C/ISR/CO/14-16, para. 19

¹⁰⁰ CCPR/C/ISR/CO/4, para. 8

¹⁰¹ CERD /C/ISR/CO/14-16, para. 19

¹⁰² ACRI, The State of Human Rights in Israel and the OPT 2014, p. 16.

¹⁰³ CERD/C/ISR/CO/14-16, para. 11

ANNEX I

List Security Council Resolutions with which Israel failed to comply or violated:

Resolution (year)	no.	Demand/Call/Request
1	237 (1967)	<i>Calls upon</i> the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities;
2	242 (1967)	<i>Affirms</i> that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles: (i) Withdrawal of Israel armed forces from territories_occupied in the recent conflict;
3	250(1968)	<i>Calls upon</i> Israel to refrain from holding the military parade in Jerusalem which is contemplated for 2 May 1968
4	252 (1968)	<i>Urgently calls</i> upon Israel to rescind measures that change the legal status of Jerusalem, including the expropriation of land and properties thereon. <i>Considers</i> that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;
5	258(1968)	<i>Reaffirms</i> its resolution 242 (1967) of 22 November 1967, and urges all the parties to extend their fullest co-operation to the Special Representative of the Secretary-General in the speedy fulfilment of the mandate entrusted to him under that resolution.
6	(259)1968	<i>Requests</i> the Government of Israel to receive the Special Representative of the Secretary-General, to co-operate with him and to facilitate his work;
7	267 (1969)	<i>Urgently calls</i> once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect;

8	271 (1969)	<i>Calls upon</i> Israel scrupulously to observe the provisions of the Geneva Conventions <u>1/</u> and international law governing military occupation and to refrain from causing any hindrance to the discharge of the established functions of the Supreme Moslem Council of Jerusalem, including any co-operation that Council may desire from countries with predominantly Moslem population and from Moslem communities in relation to its plans for the maintenance and repair of the Islamic Holy Places in Jerusalem;
9	298 (1971)	<i>Urgently calls</i> upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace;
10	338 (1973)	<i>Calls upon</i> the parties concerned to start immediately after the cease-fire the implementation of <u>Security Council resolution 242 (1967)</u> in all of its parts
11	446 (1979)	<i>Determines</i> that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East; <i>Calls once more upon</i> Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories;
12	452 (1979)	<i>Calls upon</i> the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;
13	465 (1980)	<i>Determines</i> that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian

		<p>Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;</p> <p>... and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;</p>
14	468 (1980)	<p><i>Calls upon</i> the Government of Israel as occupying Power to rescind these illegal measures and to facilitate the immediate return of the expelled Palestinian leaders so that they can resume the functions for which they were elected and appointed,</p>
15	469 (1980)	<p><i>Calls again</i> upon the Government of Israel, as occupying Power, to rescind the illegal measures taken by the Israeli military occupation authorities in expelling the Mayors of Hebron and Halhoul and the Sharia Judge of Hebron, and to facilitate the immediate return of the expelled Palestinian leaders, so that they can resume their functions for which they were elected and appointed;</p>
16	471 (1980)	<p><i>Calls upon</i> the Government of Israel to provide the victims with adequate compensation for the damages suffered as a result of these crimes;</p> <p><i>Calls again upon</i> the government of Israel to respect and to comply with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as with the relevant resolutions of the Security Council;</p>
17	476(1980)	<p><i>Reconfirms</i> that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;</p> <p><i>Urgently calls</i> on Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy city of Jerusalem;</p>
18	478(1980)	<p>2. <i>Affirms</i> that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian</p>

		<p>and other Arab territories occupied since June 1967, including Jerusalem;</p> <p>3. <i>Determines</i> that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith;</p>
19	484 (1980)	<p>2. <i>Calls upon</i> Israel, the occupying Power, to adhere to the provisions of the [Fourth Geneva] Convention;</p> <p>3. <i>Declares</i> it imperative that the Mayor of Hebron and the Mayor of Halhoul be enabled to return to their homes and resume their responsibilities;</p>
20	592 (1986)	<i>Calls upon</i> Israel to abide immediately and scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;
21	605 (1987)	<i>Calls once again upon</i> Israel, the occupying Power, to abide immediately and scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to desist forthwith from its policies and practices that are in violation of the provisions of the Convention;
22	607 (1988)	<i>Calls upon</i> Israel to refrain from deporting any Palestinian civilians from the occupied territories;
23	608 (1988)	<p>1. <i>Calls upon</i> Israel to rescind the order to deport Palestinian civilians and to ensure the safe and immediate return to the occupied Palestinian territories of those already deported;</p> <p>2. <i>Requests</i> that Israel desist forthwith from deporting any other Palestinian civilians from the occupied territories;</p>
24	636 (1989)	<i>Calls upon</i> Israel to ensure the safe and immediate return to the occupied Palestinian territories of those deported and to desist forthwith from deporting any other Palestinian civilians;
25	641 (1989)	<i>Calls upon</i> Israel to ensure the safe and immediate return to the occupied Palestinian territories of those deported and to desist forthwith from deporting any other Palestinian civilians;

26	672 (1990)	<i>Calls upon</i> Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention, which is applicable to all the territories occupied by Israel since 1967;
27	673 (1990)	<i>Urges</i> the Israeli Government to reconsider its decision and insists that it comply fully with resolution 672 (1990) and to permit the mission of the Secretary-General to proceed in keeping with its purpose;
28	681 (1990)	<i>Urges</i> the Government of Israel to accept <i>de jure</i> applicability of the Fourth Geneva Convention of 1949, to all the territories occupied by Israel since 1967, and to abide scrupulously by the provisions of the said Convention;
29	694 (1991)	that Israel, the occupying Power, refrain from deporting any Palestinian civilian from the occupied territories and ensure the safe and immediate return of all those deported;
30	726 (1992)	<i>Requests</i> Israel, the occupying Power, to refrain from deporting any Palestinian civilian from the occupied territories;
31	799 (1992)	<i>Demands</i> that Israel, the occupying Power, ensure the safe and immediate return to the occupied territories of all those deported;
32	904 (1994)	<i>Calls upon</i> Israel, the occupying Power, to continue to take and implement measures, including, <i>inter alia</i> , confiscation of arms, with the aim of preventing illegal acts of violence by Israeli settlers; <i>Calls</i> for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory, including, <i>inter alia</i> , a temporary international or foreign presence, which was provided for in the Declaration of Principles on Interim Self-Government Arrangements, signed by the Government of Israel and the Palestine Liberation Organization at Washington, D.C. on 13 September 1993, <u>6/</u> within the context of the ongoing peace process;
33	1073 (1996)	<i>Calls</i> for the immediate cessation and reversal of all acts which have resulted in the aggravation of the situation, and which have negative implications for the Middle East peace process [referred to the action by the Government of Israel to open an entrance to a tunnel in the vicinity of Al Aqsa Mosque and its consequent results];
34	1322 (2000)	<i>Calls upon</i> Israel, the occupying Power, to abide scrupulously by its legal obligations and its responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949;

35	1435 (2002)	<p><i>Demands</i> that Israel immediately cease measures in and around Ramallah including the destruction of Palestinian civilian and security infrastructure;</p> <p><i>Demands also</i> the expeditious withdrawal of the Israeli occupying forces from Palestinian cities towards the return to the positions held prior to September 2000;</p>
36	1544 (2004)	<p><i>Calls</i> on Israel to respect its obligations under international humanitarian law, and insists, in particular, on its obligation not to undertake demolition of homes contrary to that law;</p>

(Injustice and the of Justice in the Arab World)