

FORCED POPULATION TRANSFER: THE CASE OF PALESTINE

DENIAL OF ACCESS TO NATURAL RESOURCES AND SERVICES

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Editors: Nidal Alazza and Amaya al-Orzza.

Research: Rachel Hallowell, Granya Tiernan, Lana Ramadan, Cathrine Abuamsha, Elsa Koehler.

Copy-edit: Lubnah Shomali and Naomi M.R. Graham.

Design and Layout: Atallah Salem

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Forced Population Transfer: The Case of Palestine - Denial of Access to Natural Resources and Services

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Credit and Notations

To honor anonymity and protect the victims, in some cases their names have been omitted and information regarding their locations have been changed. Many thanks to all who have supported BADIL Resource Center throughout this research project and in particular to all interview partners who provided the foundation for this publication.

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BADIL Resource Center for Palestinian Residency and Refugee Rights

Karkafa St.

PO Box 728, Bethlehem, West Bank; Palestine

Tel.: +970-2-277-7086; Fax: +970-2-274-7346

Website: www.badil.org



BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to protect and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

Table of Contents

Introducing the Series ----- **5**

Introduction ----- **9**

Legal Framework ----- **11**

Systematic and Institutional Discrimination ----- **21**

Part I

Denial of Access to Natural Resources

 - Access to the Sea ----- 27

 - Access to Water in the West Bank ----- 39

 - Quarries ----- 49

 - Access to a Clean Environment ----- 53

Part II

Denial of Access to Services

 - The Gaza Strip ----- 59

 - Unrecognized Villages ----- 64

 - Seam Zones ----- 68

 - Old City of Hebron ----- 71

 - Area C ----- 74

 - East Jerusalem ----- 77

Conclusion ----- **83**

Recommendations ----- **87**

Introducing the Series

This series of working papers on “Forced Population Transfer: The Case of Palestine” constitutes an overview of the forced displacement of Palestinians as a historic and ongoing process which detrimentally affects the daily life of Palestinians and threatens their national existence.

Historical Context: The Case of Palestine

At the beginning of the 20th century, most Palestinians lived inside the borders of Mandate Palestine, now divided into the state of Israel, and the occupied Palestinian territory (the West Bank, including East Jerusalem, and the Gaza Strip). The ongoing forcible displacement policies following the establishment of the British mandate of Palestine in the 1920s made Palestinians the largest and longest-standing unresolved refugee case in the world today. By the end of 2014, an estimated 7.98 million (66 percent) of the global Palestinian population of 12.1 million are forcibly displaced persons. The ultimate aim of BADIL’s series is to parse the complex web of legislation and policies which comprise Israel’s overall system of forced population transfer today. The series is not intended to produce a comprehensive indictment against the State of Israel, but to illustrate how each policy fulfills its goal in the overall objective of forcibly displacing the Palestinian people while implanting Jewish-Israeli settlers/colonizers throughout Mandate Palestine (referring to “historic Palestine”, consisting of Israel, the 1967 occupied West Bank, including East Jerusalem, and the Gaza Strip).

Despite its urgency, the forced displacement of Palestinians rarely receives an appropriate response from the international community. This response should encompass condemnations and urgent interventions to provide relief or humanitarian assistance, while addressing the root causes of this forced population transfer. Short-term response from the international community is insufficient to address this issue, and as such, long-term responses should

be developed to put an end to the ongoing displacement as well as to achieve a durable solution. While many individuals and organizations have discussed the triggers of forced population transfer, civil society lacks an overall analysis of the system of forced displacement that continues to oppress and disenfranchise Palestinians today. BADIL, therefore, spearheads targeted research on forced population transfer and produces critical advocacy and scholarly materials to help bridge this analytical gap.

Forced Population Transfer

The concept of forced population transfer – and recognition of the need to tackle its inherent injustice – is by no means a new phenomenon, nor is it unique to Mandate Palestine. Concerted efforts to colonize foreign soil have underpinned displacement for millennia, and the “unacceptability of the acquisition of territory by force and the often concomitant practice of population transfer” was identified by the Persian Emperor Cyrus the Great, and subsequently codified in the Cyrus Cylinder in 539 B.C.; the first known human rights charter. Almost two thousand years later, during the Christian epoch, European powers employed population transfer as a means of conquest, with pertinent examples including the Anglo-Saxon displacement of indigenous Celtic peoples, and the Spanish Inquisition forcing the transfer of religious minorities from their homes in the early 16th century.

Today, the forcible transfer of protected persons by physical force or threats or coercion constitutes a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court. The forcible displacement of individuals without grounds permitted under international law is a very serious violation, and when those affected belong to a minority or ethnic pargroup and the policies of forcible displacement are systematic and widespread, these practices could amount to crimes against humanity.

International law sets clear rules to prohibit forced population transfer, through the specific branches of international humanitarian law, international human rights law, international criminal law and international refugee law. Both internal (within an internationally recognized border) and external displacement are regulated.

BADIL presents this series of working papers in a concise and accessible manner to its designated audiences: from academics and policy makers, to activists and the general public. Generally, the series contributes to improving the understanding of the ongoing ‘nakba’ of the Palestinian people and the

need for a rights-based approach to address it among local, regional and international actors. The term 'nakba' (Arabic for 'catastrophe') designates the first round of massive population transfer undertaken by the Zionist movement and Israel in the period between November 1947 and the cease-fire agreements with Arab states in 1949. The ongoing 'nakba' describes the ongoing Palestinian experience of forced displacement, as well as Israel's policies and practices that have given rise to one of the largest and longest-standing populations of refugees, internally displaced persons and stateless persons worldwide.

We hope that the series will inform stakeholders, and ultimately enable advocacy which will contribute to the dismantling of a framework that systematically violates Palestinian rights on a daily basis. The series is intended to encourage debate and to stimulate discussion and critical comment. Since Israeli policies comprising forced population transfer are not static, but ever-changing in intensity, form and area of application, this series will require periodic updates.

The series of working papers will address nine main Israeli policies aiming at forced population transfer of Palestinians. They are:

1. Denial of Residency
2. Discriminatory Zoning and Planning
3. Installment of a Permit Regime
4. Suppression of Resistance
5. Denial of Access to Natural Resources and Services
6. Land Confiscation and Denial of Use
7. Institutionalized Discrimination and Segregation
8. Non-state Actions (with the implicit consent of the Israeli state)
9. Denial of Reparations to Refugees and IDPs

Methodology

All papers will consist of both field and desk research. Field research will consist of case studies drawn from individual and group interviews with Palestinians affected by forced population transfer, or professionals (such as lawyers or employees of organizations) working on the issue. The geographic

focus of the series will include Israel, the occupied Palestinian territory and Palestinian refugees living in forced exile. Most of the data used will be qualitative in nature, although where quantitative data is available – or can be collected – it will be included in the research.

Desk-based research will contextualize policies of forced population transfer by factoring in historical, social, political and legal conditions in order to delineate the violations of the Palestinian peoples' rights. International human rights law and international humanitarian law will play pivotal roles, and analysis will be supplemented with secondary sources such as scholarly articles and reports.

Disclaimer

The names of the individuals who provided testimonies in the course of researching this working paper are not included due to security considerations. This is a result of fears of the participants that their involvement in this project might draw reprisals by the Israeli authorities. We thank the participants for their courage.

Introduction

Humans have been using materials or substances that occur in nature, usually referred to as natural resources, since the beginning of time. As civilizations developed, other resources such as land for cultivation, building materials, or energy sources, became essential. Because of this dependency on natural resources, access to them has been safeguarded in most bodies of local and international law. Natural resources also constitute an inherent part of the right to self-determination, as it is understood that no individual or collective can be fully free without being able to access and use the resources available to them.

This report focuses on the control of access to natural resources and services by Israel and the mechanics and consequences of this domination. While the content of this paper is not a comprehensive account of an Israeli-perpetrated policy of denial of access to natural resources and services, it demonstrates that such a policy is indeed taking place across Israel and the oPt, and that this results in the forced population transfer of Palestinians.

For the purposes of this paper, natural resources are understood as the parts of the environment that have some economic or societal benefit and are utilized as national capital. Natural resources and the ability to access them can often determine a nation's wealth and status, as resources are often state-owned, allocated for the use of the local population and leveraged in international markets. Inaccessibility, illegal exploitation or misuse of territorial natural resources can be detrimental to national development and can violate fundamental social and economic rights including the right to self-determination.¹

1 UN General Assembly [hereinafter *UNGA*], *International Covenant on Civil and Political Rights* [hereinafter *ICCPR*], 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 16 August 2017]; UNGA, *International Covenant on Economic, Social and Cultural Rights* [hereinafter *ICESCR*], 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 16 August 2017] .

Services are different from resources in that they cannot be owned as a commodity but are allocated and usually provided by the state. Services, like natural resources, are an essential part of modern civilizations as they regulate and facilitate the exercise of many human rights. The provision of essential services—such as health care, education, sanitation and public order—are typically key responsibilities of the governing body. These fundamental services are considered to be essential for a life of dignity and their universal provision *should* be guaranteed. As such, their denial usually indicates violations of basic human rights and has dire consequences for affected individuals or communities. The deprivation of natural resources and services affects all aspects of a person's daily life, sometimes including life itself. When access is denied, communities suffer, and usually act to restore access. When attempts are unsuccessful, individuals or communities are pressured to move elsewhere in search of better life conditions and improved access to basic needs.

Sometimes, the denial of access results from natural events or accidents outside human control, such as a landslide blocking the provision of services to a community. In other cases, however, the deprivation is man-made, can be intentional, and stems from economic or political goals. It is essential to realize that the control and management of natural resources, and provision of services, are not only an administrative and technical process, but can also be a sociopolitical element that can determine the quality of living conditions of those dependent on these resources and services. This is why the distribution and provision of resources and services, and design of related infrastructure, often serve a political strategy.

Following the introduction and legal framework, the first half of the paper explores the Israeli control over natural resources in the occupied Palestinian territory (oPt) and the resulting denial of access for Palestinians. The consequences of the denial are analyzed from two different angles. On the one hand, how the lack of access to essential natural resources hinders normal life in Palestinian communities, contributing to the creation of a coercive environment for affected Palestinians. On the other, how this denial of access prevents Palestinians from exercising sovereignty over their own resources and benefiting from their economic exploitation, with the subsequent loss of potential earnings. In the second half, the report analyzes the discrimination in Israeli provision of services across Mandatory Palestine, both inside Israel and the oPt. Here, the research analyses the intentional and discriminatory deprivation of services to Palestinian communities by Israel, with the aim of forcibly transferring them from the area.

LEGAL FRAMEWORK

International humanitarian law (IHL) - the applicable legal framework in situations of occupation - places specific binding obligations on Israel with respect to the administration and development of natural resources and the provision of services in the occupied Palestinian territory (oPt). Specifically, the 1949 Fourth Geneva Convention (GCIV), the Hague Regulations of 1907,² and customary international law are relevant. Additionally, the jurisprudence of the International Court of Justice (ICJ) has concluded that the applicability of IHL in a territory under occupation does not cease the application of human rights law instruments.³ Specifically, in situations of occupation, the human rights framework should complement and reinforce the protection afforded by IHL. Therefore, international human rights law (IHRL) instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also applicable.⁴ Both the aforementioned legal instruments are binding on Israel; accordingly, its administration of the oPt must adhere to both IHL and IHRL standards. Israel is also bound by customary criminal law, which is a body of international law that aims to prohibit the most grievous actions – namely war crimes, crimes against humanity, genocide and aggression – and to prosecute the perpetrators. Moreover, the International Criminal Court has jurisdiction over crimes committed in the oPt since June 2014 following the signing of the Rome Statute by the Palestinian Authority in January 2015.

2 While Israel is not a signatory to the Hague Regulations, these Regulations form part of customary international law and are therefore binding on all states.

3 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ (July 9) [hereinafter ICJ, Wall Advisory Opinion]; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 ICJ (Dec. 19); BADIL Resource Center for Palestinian Residency and Refugee Rights (BADIL), *Forced Population Transfer: The Case of Palestine, Installment of a Permit Regime*, (Bethlehem, 2015), 14, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp18-FPT-Israeli-permit-system.pdf> [hereinafter BADIL, *FPT: Permit Regime*].

4 Israel ratified both the ICCPR and ICESCR in October 1991. See: Ratification Status for Israel, Office of the United Nations High Commissioner for Human Rights (OHCHR), n.d., available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN

International Humanitarian Law

Both notions that the Occupying Power is a temporary custodian and that it does not acquire sovereignty over the occupied territory are the central principles governing IHL provisions.⁵ Article 55 of the 1907 Hague Regulations makes clear that “[t]he occupying state shall be regarded only as an administrator and usufructuary of public buildings, real estate, forests, agricultural estates belonging to the hostile state and situation in occupied territory. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.” Consequently, the Occupying Power cannot acquire title to the territory’s natural resources.

In all instances, the Occupying Power must act in a manner that guards the humanitarian assurances enshrined in the GCIV, which explicitly forbids the destruction of real or personal property and the act of pillage. International law permits the Occupying Power to utilize resources under strict provisions of military necessity, if it serves the needs of protected population, and does not involve the destruction or depletion of the resource.⁶ The Occupying Power cannot however, exploit the natural resources in an occupied territory to increase its own material wealth,⁷ or for the benefit of the colonizers residing in the territory. These acts would amount to the crime of pillage – extensive exploitation – which is prohibited under international law.⁸

Persons administered by the Occupying Power are considered a protected population and a duty is placed on the former to act in manner that benefits the latter.⁹ The Occupying Power is responsible for the wellbeing of the protected population and this includes the provision of essential services.

5 The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: <http://www.refworld.org/docid/4374cae64.html> [hereinafter *The Hague Convention*]; International Committee of the Red Cross (ICRC), *Occupation and Other Forms of Administration of Foreign Territory*, (Geneva, 2012), 56, available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf> [herein after ICRC, *Occupation*]; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 8, 12 August 1949, available at: <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> [hereinafter GCIV].

6 GCIV, art. 53, *supra* note 5.

7 Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Request for the Indication of Provisional Measures, 2000 ICJ (July 1).

8 ICRC, Rule 52 of Customary IHL: Pillage, n.d., available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule52

9 The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: <http://www.refworld.org/docid/4374cae64.html> [hereinafter *The Hague Convention*]; International Committee of the Red Cross (ICRC), *Occupation and Other Forms of Administration of Foreign Territory*, (Geneva, 2012), 56, available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf> [hereinafter ICRC, *Occupation*]; GCIV, art. 8, *supra* note 5.

The GCIV, for example, strictly guards the provision of education and imposes a duty on the Occupying Power to provide food and “medical and hospital establishments and services, public health and hygiene in the occupied territory.”¹⁰

The forcible transfer of the protected population from their place of residence without grounds permitted under international law is strictly prohibited,¹¹ and constitutes a grave breach as per Article 147 of the GCIV. The displacement of the occupied population in the context of ongoing hostilities or for imperative military reasons does not qualify as forcible transfer, but these cases must be strictly construed and the displacement must be temporary.¹²

International Criminal Law

Direct or indirect forcible transfer is recognized as one of the most heinous acts that can be committed, and amounts to a war crime under the Rome Statute of the ICC.¹³ Moreover, under the Rome Statute, when committed as part of a widespread or systematic attack against a civilian population, forcible transfer can also give rise to individual criminal responsibility as a crime against humanity.¹⁴

Jurisprudence from the ICC and other international criminal tribunals have held that forcible transfer may be caused by acts or omissions which amount to creating or taking advantage of a coercive environment.¹⁵ In many cases, the denial of access to natural resources and services leading to the deprivation of “economic, social and cultural development”¹⁶ could be considered as a contributing factor to the creation of a coercive environment, causing indirect forcible transfer.¹⁷

The wanton and willful acts of appropriating resources as well as violating the human rights of the inhabitants, creating coercive environments that lead to

10 *Id.*, arts. 50 and 56.

11 GCIV, art. 49, *supra* note 5.

12 *Ibid.*

13 UN General Assembly, *Rome Statute of the International Criminal Court*, 17 July 1998, art. 8(2)(a) (vii), available at: <http://www.refworld.org/docid/3ae6b3a84.html> [accessed 29 September 2017] [hereinafter UNGA, *Rome Statute*].

14 *Id.*, art. 7(1)(d).

15 BADIL, *Coercive Environments: Israel's Forced Population Transfer of the Palestinians in the Occupied Territory*, February 2017, <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/FT-Coercive-Environments.pdf> [hereinafter BADIL, *Coercive Environments*].

16 UNGA, *ICCPR*, art. 1, *supra* note 1; UNGA, *ICESCR*, art. 1, *supra* note 1.

17 For more information, see BADIL, *Coercive Environments*, 7-8, *supra* note 15.

forcible transfer are considered grave breaches under the GCIV.¹⁸ These acts, therefore, unless justified by military necessity or a lawful evacuation in the context of ongoing hostilities, constitute a war crime and/or a crime against humanity,¹⁹ and can be tried by the ICC in accordance with the Rome Statute.²⁰ The commission of war crimes or crimes against humanity also places a binding obligation on states to respond to the act by providing appropriate penal measures and to bring the perpetrators before a court of law.²¹

International Human Rights Law

Self-determination is a core principle of IHRL, arising from customary international law, but is also protected under common Article 1 of both the ICCPR and the ICESCR.²² The right to self-determination includes the inherent right to “freely pursue... economic, social and cultural development.”²³ A recent UN resolution reaffirmed this right and reinforced “the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination.”²⁴ The ICCPR also asserts the right “to have access, on general terms of equality, to public service in his country.”²⁵

The ICESCR provides that states have an obligation to ensure the minimum basic requirements of all rights articulated in the Covenant, which refers to adequate food, shelter and housing, education, the right to work and the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁶ States who are party to the Covenant have a duty to respect, protect, and fulfill these rights.²⁷ Modern nation-

18 GCIV, art. 147, *supra* note 5.

19 When committed as part of a widespread or systematic attack directed against any civilian population.

20 Marko Divac Oberg, “The Absorption of Grave Breaches into War Crimes,” *International Review of the Red Cross* 91, no. 873 (March 2009): 164-169, available at: <https://www.icrc.org/eng/assets/files/other/irrc-873-divac-oberg.pdf>

21 ICRC, Rule 158 of Customary IHL: Prosecution of War Crimes, n.d., available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158

22 UNGA, ICCPR, art. 1, *supra* note 1 ; UNGA, ICESCR, art. 1, *supra* note 1.

23 *Ibid.*

24 UN Human Rights Council, *Right of the Palestinian people to self-determination*, 11 April 2014, A/HRC/RES/25/27, available at: <http://www.refworld.org/docid/53bce5254.html> [accessed 16 August 2017].

25 UNGA, ICCPR, art. 25, *supra* note 1.

26 *Ibid.*; UNGA, ICESCR, *supra* note 1.

27 The ICESCR was ratified by Israel on 3 October 1991. See, OHCHR, “Key concepts on ESCRs - What are the obligations of States on economic, social and cultural rights?”, n.d., available at: <http://www.ohchr.org/EN/Issues/ESCR/Pages/WhatarethetheobligationsofStatesonESCR.aspx> [accessed 16 August 2017].

states that respect these covenants and the rights enshrined within them avoid measures that deny or prevent the enjoyment of such rights.²⁸ States are obliged to provide protection, which refers to avoiding third-party interference with the enjoyment of such rights. The obligation to ‘fulfill’ means that the state must provide, or at the very least, facilitate the enjoyment of rights by others.

Access to services is essential to actualize these fundamental human rights and a derogation of the provision of any such services presents a de facto risk of violating basic human rights.

In connection to human rights and basic services, the Committee on Economic, Social and Cultural Rights, which monitors the compliance of state parties to the ICESCR, specified that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head. [...] Rather it should be seen as the right to live somewhere in security, peace and dignity.”²⁹ The Committee added that the availability of services and infrastructure was among the factors necessary for the provision of adequate housing.³⁰

Discrimination on the “basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” in the enjoyment of these rights as well as other fundamental freedoms encompassed in the ICESCR and the ICCPR is prohibited.³¹

THE LEGAL AND JUDICIAL SYSTEM IN THE OPT SINCE 1967

Immediately after the 1967 War, Military Proclamation 1 announced that Israel had occupied and assumed administrative control of the West Bank and Gaza, which established military rule in the territory; whereas Military Proclamation 2 granted the military commander authority to administer the

28 United Nations Educational, Scientific and Cultural Organization (UNESCO), “State Obligations,” “Normative Action, Education,” n.d., available at: <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/normative-action/state-obligations/> [accessed 16 August 2017].

29 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, para. 7, available at: <http://www.refworld.org/docid/47a7079a1.html> [accessed 16 August 2017].

30 *Ibid.*

31 UNGA, ICESCR, art. 2.2, *supra* note 1.; UNGA, ICCPR, art. 26, *supra* note 1; UNGA, *Universal Declaration*, art. 7.

West Bank.³² From the onset of occupation and afterwards, military orders were consistently introduced that have restricted access to natural resources in the oPt, far exceeding the allowable derogations of the GCIV.³³ In 1980, Israel officially illegally annexed Jerusalem - by adopting the Basic Law: Jerusalem, Capital of Israel.³⁴ This is in direct violation of the IHL provision that the Occupying Power cannot attain sovereignty or title to part or all of an occupied territory. In 1981, another military order transferred all legal and administrative powers to the Israeli Civil Administration (ICA), which was tasked with administering all regional civil matters, including providing and operating public services.³⁵

The aforementioned military orders, in addition to many other orders and laws, form the pillars of Israel's authority over the oPt, which granted the Israeli administration extensive powers. This self-appointed control allowed Israel to ultimately confiscate vast swaths of lands for colony establishment and expansion, and to exploit and pillage resources while also limiting or denying the freedom of movement and other fundamental freedoms of the Palestinian residents.³⁶ For example, Military Order 92 (1967) granted complete authority over all water related issues in the oPt to the Israeli army and the *Order Concerning the Investment of Natural Resources (West Bank) (No. 389)* transferred the sovereign rights of the West Bank's natural resources to a 'competent authority' appointed by the military commander.³⁷ These measures are a distinct violation of the laws of occupation, which clearly establish the administrative role of the occupying power over occupied

32 Proclamation Concerning the Takeover of the Administration by the Israel Defense Forces, No. 1, (5727-1967); Proclamation Concerning Administrative and Judiciary Procedures (Area of the West Bank), No. 2, (5727-1967).

33 Military Order Regarding Closed Areas (Area of the West Bank), No. 34, (5727-1967). In addition, the 1970 Security Provisions Order prohibits Palestinian entry into the settlements unless they possess a special permit, see Military Order Concerning Security Provisions (Area of the West Bank), No. 378, (1970); Military Order No. 92 (1967) granted complete authority over all water related issues in the oPt to the Israeli army; Military Order No. 158 (1967) stipulated that Palestinians could not construct any new water installation without first obtaining a permit from the Israeli army and that any water installation or resource built without a permit would be confiscated; see also, Al-Haq, *Annexing Energy, Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory*, August 2015, 20, available at: <http://www.alhaq.org/publications/Annexing.Energy.pdf>

34 Basic Law: Jerusalem, Capital of Israel, 5740-1980, SH No. 980 p. 186, available at: https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm

35 Military Order Concerning the Establishment of Civilian Administration, (Area of the West Bank), No. 947, 8 November 1981.

36 See BADIL, *FPT: Permit Regime*, supra note 3.

37 Amnesty International, *Troubled Waters-Palestinians Denied Fair Access to Water*, 27 October 2009, 12, available at: <http://www.refworld.org/docid/4ae6af020.html> [accessed 17 August 2017] [hereinafter Amnesty International, *Troubled Waters*]; Military Order Concerning the Investment of Natural Resources (Area of the West Bank), No. 389, (1970), art. 2.

territory. Since 1967, more than 2,500 military orders have been issued in the West Bank and Gaza,³⁸ effectively denying Palestinian self-determination in the occupied territory while fermenting de facto Israeli sovereignty. This systematic implementation of military orders and policies has severely limited or completely denied Palestinians the ability to use natural resources and access services for the realization of their fundamental human rights, including self-determination. This ongoing denial has effectively forced the occupied Palestinian population and the economy to be dependent on Israel. And this dependency has not only continued into the era following the Oslo Accords, but has intensified alarmingly.

The Impact of the Oslo Accords

The 1995 Oslo II Accord divided the West Bank and Gaza into three areas; A, B, and C, with different security and administrative arrangements and authorities.³⁹ Along with its establishment, the Palestinian Authority (PA) was to assume full control over civil and internal security matters of Area A, which constitutes only 18 percent of the West Bank, and civil matters of Area B, accounting for 22 percent. Area C, comprising over 60 percent of the West Bank, remained under full control of the Israeli military for both security and civilian affairs, including land administration and planning. East Jerusalem was not classified as Area A, B or C under the Oslo Accords and its status was postponed to final status negotiations.⁴⁰

Following the signing of the Oslo Accords, there has been some contention as to whether or not IHL continued to apply to all of the oPt as the PA did have some degree of autonomy over Areas A and B. However, this can be subjected to the test of ‘effective control’ to ascertain whether a territory is occupied within the meaning of IHL. Legal analysis has affirmed that: “only when, and where, the occupying power has attained unquestioned control does hostile territory become subject to the legal restraints of the law of occupation.”⁴¹ Therefore, occupation is not contingent *per se* on military presence, but rather to the extent that the Occupying Power exerts effective

38 Note that military orders are no longer applicable in the Gaza Strip; up until the Israeli withdrawal from Gaza in 2005, there were over 1400 military regulations governing Gaza. See, Addameer Prisoner Support and Human Rights Association [hereinafter Addameer], *The Israeli Military System*, September 2008, available at: <http://www.addameer.org/publications/israeli-military-system>

39 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), 28 September 1995, available at: <http://www.refworld.org/docid/3de5ebbc0.html> [hereinafter Oslo II]

40 *Ibid.*

41 *Ibid.*; Harvard Program on Humanitarian Policy and Conflict Research International Humanitarian Law Research Initiative, *Legal Aspects of Israel's Disengagement Plan under International Humanitarian Law, Policy Brief*, November 2004, 6, available at: http://www.hamoked.org/items/7820_eng.pdf

control over territory. Following the Oslo Accords, Israel has maintained control over; security, land, including colonies and borders, and air and naval space in all of the West Bank and Gaza including East Jerusalem. The official position of numerous legal experts - including the International Committee of the Red Cross (ICRC) - and the international community at large, attests that the current level of control amounts to occupation and that the provisions of IHL continue to apply to all of the West Bank, including East Jerusalem and the Gaza Strip.⁴²

Article 47 of the GCIV reaffirm that: “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power.” Consequently, the Oslo Accords cannot deprive the occupied Palestinian population from the protection and rights they are entitled to under the GCIV, including Israel’s obligations vis-à-vis the administration of service provision and natural resources. Furthermore, if any of the provisions of the Accords interfere with the rights of the occupied population, such provisions are deemed invalid. As such, the Accords cannot be introduced as a justification to absolve Israel from its responsibilities; Israel ultimately remains responsible for ensuring the occupied population’s rights and benefits in its role as an Occupying Power.

As they were meant to be temporary transitional agreements, with a duration of five years, the validity of the Accords themselves could be questioned. Today, almost a quarter of a century after the signing of the Accords, their capacity to serve as a valid legal instrument to manage the affairs of the oPt is dubious at best. For the purposes of this analysis, the paper will address and deal with the Oslo Accords as a valid legal instrument; however, based on the agreed upon duration, and the lack of movement following their expiration, the validity of its provisions will be measured against relevant international rules. Thus, if the provisions contradict the GCIV or derogate the fundamental rights and entitlements of the occupied Palestinian population, their validity should be considered void.

The delegation of limited autonomy to the PA (through the Accords) does not absolve Israel’s legal responsibility for the welfare of the occupied population, and this will remain the case until occupation, including its effective control, is resolved. Accordingly, despite any conflicting provisions contained within

42 ICRC, *Occupation*, 7-10, *supra* note 5.

the Oslo Accords, Israel has a legal duty to protect the Palestinian inhabitants of the oPt, including ensuring access to adequate services.

The Oslo Accords include numerous provisions regarding the use of and access to natural resources, as well as the provision of services connected to these natural resources. Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs, and Annex IV, Protocol on Israeli-Palestinian Cooperation Concerning Regional Development Programs, of the 1993 Oslo Accords addresses cooperation in the fields of water, electricity, energy, finance, transport and communication, and the creation of an economic development program. Annex IV, moreover, cites the establishment of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area, water development projects, interconnection of electricity grids, and the regional cooperation for the transfer, distribution and industrial extraction of gas, oil and other energy resources. Article XIV of Annex I regulates the security along the coastline to the Sea of Gaza, which includes the division of the sea off the coast of the Gaza Strip into three Maritime Activity Zones.

Annex III of the 1995 Oslo Accords includes additional provisions on electricity, environmental protection, fisheries, forests, gas, fuel and petroleum, quarries and mines, and water and sewage. Most provisions include the gradual transfer of powers and responsibilities “to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory.” Besides this gradual transfer not taking place, and therefore, making many of these provisions obsolete, the Accords include provisions that directly contradict international law. For example, Article 12(B)(3) of Annex III of the 1995 Oslo Accords establishes that, “Both sides will strive to utilize and exploit the natural resources, pursuant to their own environmental and developmental policies.” This regulation contradicts the aforementioned IHL provision establishing the prohibition on the Occupying Power to exploit the natural resources of occupied territory for its own benefit or the benefit of its own civilian population in such territory. This and other provisions found in both the Oslo I and II Accords put into question the current validity of these provisions, especially in light of the temporary nature of the Accords.

Systematic and Institutional Discrimination

The very establishment of colonies by the Occupying Power in an occupied territory violates international law. Article 49 of GCIV explicitly prohibits an Occupying Power from transferring any part of its own civilian population into the territory it occupies. Since 1967, there have been over 250 illegal colonies (including outposts) established by Israel in the West Bank, including East Jerusalem.⁴³ These illegally established colonies are located adjacent to Palestinian villages and towns where a two-tier legal system exists with regards to the provision of services and the administration of laws. This two-tier system provides preferential treatment for the Jewish-Israeli colonizers while simultaneously creating a harsh living environment for Palestinians who live in the same area. The Palestinian population does not enjoy the same right of access to basic services and resources or equal use of roads and infrastructure. The two-tier segregation is further exacerbated by the implementation of a complex combination of movement and building restrictions consisting of the Annexation and Separation Wall, checkpoints, bypass roads, zoning and planning polices and a permit regime that severely hinders freedom of movement and development of infrastructure. These restrictions are only applicable to the Palestinian population.⁴⁴

Israel controls all water resources in the West Bank and determines how much water is provided to Palestinians. Water allocation is often disproportionately designated to the colonies. From all water resources in the West Bank, Palestinians are only able to use around 14 percent, whereas Israel uses 86

43 United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory Country Office [hereinafter OCHA oPt], *Humanitarian Impact of Settlements*, November 2015, available at: <https://www.ochaopt.org/content/humanitarian-impact-settlements>

44 See BADIL, *FPT: Permit Regime*, *supra* note 3.

percent.⁴⁵ This is despite the fact that the Palestinian population is five times greater than the colonizer population in the West Bank.⁴⁶ Building permits are difficult or impossible for Palestinians to obtain in East Jerusalem and in the 60 percent of the West Bank under exclusive Israeli control (Area C). Israel rejects more than 94 percent of Palestinian building permit applications and this has led to the demolition of many Palestinian-built private and public use structures in Area C, including schools and clinics, by Israeli forces for not having the appropriate building permits.⁴⁷

The discriminatory permit regime also results in significant issues with regards to access to medical services. Permits are required to travel between Gaza, the West Bank and East Jerusalem to receive medical treatment. Every year, 40,000 Palestinians – representing 20 percent of all applicants - are denied permission to travel for medical purposes.⁴⁸

Israel has also confiscated large swathes of land in Area C and Jerusalem for establishment and expansion of colonies. This act of land confiscation, and building and expanding colonies, has resulted in the dedication of lands for Israeli–Jewish use only, as well as an ever-increasing number of Palestinians being restricted from accessing their agricultural land in the vicinities of these colonies. Moreover, Israel continues to deny Palestinian farmers access to more than 35 percent of the area of Gaza; fishermen are unable to access more than 85 percent of Palestinian fishing waters.⁴⁹ As a result of these measures, more than 46 percent of Palestinians in the Gaza Strip suffer from food insecurity.⁵⁰

These systematic Israeli discriminatory policies have resulted in preventing Palestinians in the West Bank and Gaza from being able to access their natural resources and enjoy the ‘fruits’ of their land. Access to and enjoyment of

45 B'Tselem, *Summer 2016 - Israel cut back on the already inadequate water supply to Palestinians*, 27 September 2016, available at: http://www.btselem.org/water/201609_israel_cut_back_supply [accessed 17 August 2017].

46 United Nations Country Team Occupied Palestinian Territory, *Common Country Analysis*, 24 November 2016, 9 & 27, available at: http://www.unsco.org/Documents/Special/UNCT/CCA_Report_En.pdf

47 *Id.*, 13.

48 *Id.*, 66.

49 OCHA oPt, *Easing the Blockade: Assessing the humanitarian impact on the population of the Gaza Strip*, March 2011, 9, available at: https://www.ochaopt.org/documents/ocha_opt_special_easing_the_blockade_2011_03_english.pdf; United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), “Gaza Fishermen: Restricted Livelihoods,” 19 July 2016, available at: <https://www.unrwa.org/newsroom/features/gaza-fishermen-restricted-livelihoods> [hereinafter UNRWA, “Gaza Fishermen: Restricted Livelihoods”].

50 UNRWA, “2016 oPt emergency appeal,” 14 January 2016, 8, https://www.unrwa.org/sites/default/files/content/resources/2016_opt_emergency_appeal.pdf.pdf

essential services, including the development of necessary infrastructure such as schools, roads, hospitals, and sanitation and electric networks are also severely impeded or denied all together.

Such discriminatory policies also extend to the Palestinian Bedouin citizens of Israel who live in villages in the Naqab. In 1965, Israel passed the *Planning and Building Law 5275-1965*, which designated these Palestinian villages as 'unrecognized villages'.⁵¹ The Israeli government denies unrecognized villages access to basic services, such as water, electricity, telecommunications, sewage systems, healthcare, education and proper infrastructure. This is in stark contrast to Jewish-Israeli communities established in the same area, which are given automatic recognition, services and support despite the fact that they are often built without the required permits.⁵²

Historical Connection between Natural Resources, Services and Forcible Transfer

“Services, natural resources, the Oslo Accords and forcible transfer are very much connected, and this connection did not start with Oslo. Upon reading Ilan Pappé’s [Israeli historian] book, *The Ethnic Cleansing of Palestine*, you have a very vivid description of what was happening before 1948, during the 1920s, 1930s and 1940s when Zionists first came to Palestine. Ilan Pappé describes how they would be invited to Palestinian homes, and while one would be having tea with the Palestinian family, another would be outside examining the land.

The principle of the Zionist plan from the very beginning was all about having as much territory as possible with the least number of people, and this requires forcible displacement. They used British maps [from the British Mandate] and explored the land to determine the locations of the natural resources such as water for agricultural land. This formed the basis for the 1947 UN Partition Plan [which was never realized]. During 1948, the Zionist military plans were decided according to the locations of natural resources and the existing [Palestinian] population.

In 1967, immediately after the war, military orders were enacted which set the legal framework for the occupied territory. They declared this territory as

51 BADIL, “Al-Naqab: The Ongoing Displacement of Palestine’s Southern Bedouin,” *al-Majdal Magazine*, Autumn 2008-Winter 2009, 27, available at: <http://www.badil.org/en/publication/periodicals/al-majdal/item/6-al-naqab-the-ongoing-displacement-of-palestine-s-southern-bedouin.html>

52 Mossawa Center, *The New Wave of Israel’s Discriminatory Laws: The Legal Status of Palestinian Arab Citizens of Israel over the Last Decade*, September 2014, 31, available at: <http://www.mossawa.org/uploads/4864.pdf>

‘administered territory’ rather than occupied territory. This opened the doors for what Oslo only consolidated, which was effectively the identification of all natural resources in the West Bank. Of course, the demographic concentration of the Palestinian population also defined the ways in which they occupied and colonized the territory. So, again the principle was the same, as much land as possible, especially good land which had natural resources, water and agriculture, with as little [Palestinian] population as possible.

Oslo Accords

Oslo effectively legalized and consolidated what had already been planned and achieved. Basically, Oslo divided the territory along the lines that they [Israel] had already identified in terms of demographics, population and natural resources ... It wasn’t done by chance! I mean, look at Area C, why has Area C stayed under Israeli control? Firstly, because there are settlements in that area, and secondly, because all the natural resources are in Area C, and some in Area B. This means that Area C is designated for new arrivals [Jewish-Israeli colonizers] and Palestinians are subjected to a policy that basically expels them because people aren’t able to work and live. So, they abandon Area C to come to the centers such as Ramallah in which Palestinian presence is tolerated.

The two different logics operating in Area A and Area C

Regarding services, I think we need to distinguish between Areas A, B and C. There is basically no provision of services in Area C and when you don’t provide services, people tend to leave the place. This is what is happening, because when you don’t have education, schools, or universities, and you don’t have jobs; what is left?

When you look at the Jordan Valley for example, the Palestinian population in the Jordan Valley [around 30 percent of the West Bank, in Area C] is getting smaller and smaller. This is basically because of Israeli policies that motivate and facilitate the transfer [of the Palestinian residents]. This transfer is not always by means of violence or force, it seems as if they [the Palestinian residents] are deciding for themselves. They are deciding to leave because Israel, as the Occupying Power, is not fulfilling its obligations, and is purposely violating its obligations in order to expedite the transfer and movement of the Palestinian population. These transfers are directed towards little pieces of land such as Hebron, Ramallah, Nablus which are designated as Area A which are places without any access to natural resources.

The connection between providing services, access to natural resources in Area A and forcible transfer is clear to me. Basically, developing Area A helps facilitate the transfer of people because Area A becomes more attractive for

people who don't have access to anything in Area C. This leads to the emptying of Area C land as there are no services and of course there is total control over natural resources by the Israelis. The situation in Area B resembles that in Area C more than Area A, so we can put Areas C and B together. Of course, there are exceptions but in general Areas B and C are similar.

Logic Operating in Area A

The PA is now responsible for providing services for people in Area A and this is due to Oslo. Of course, they should not be responsible for providing services, because Area A is also occupied territory, regardless of what Israel or the PA says. The obligations under international law such as the protection of the population and the provision of services are not negated because of a treaty between the occupied and the occupier. In fact, the Geneva Convention has a specific provision which states that any agreement between occupier and occupied cannot negate or diminish the application or the norms of the Convention.

Thus, the PA is responsible for providing services under Oslo, but they are not responsible for this according to international law. Oslo is illegal under international law, from the outset, especially since it tries to modify the regulations, rules and obligations of the occupying power under international law. This is important because, people in Areas C and B think that they will find better services and a better life in Area A, and so, Area A becomes an alternative place that they can move to. This fits perfectly within the Israeli plan to concentrate Palestinians there, in these centers [Area A].

The international community is playing a really negative role under the guise of helping Palestinians. In reality, they are doing a huge disfavor to Palestinians. Firstly, they are paying for the occupation and they are rebuilding everything that the occupation is destroying. Israelis say that Palestinians can't go to Bethlehem through Jerusalem, so the international community with international aid, makes another road for Palestinians, instead of saying that this is illegal. It makes things look more attractive as if we're making progress, but in reality, we're not. Why should I have to take a road [Wadi al-Nar, the newly built road] that takes me an hour and a half when I should be able to take a road that takes twenty or thirty minutes?"

Emilio Dabed, Adjunct Assistant Professor of Law at Columbia University Law School and researcher.

Interview: Ramallah, 21 February 2017

Part I:

Denial of Access to Natural Resources

ACCESS TO THE SEA

The Gaza Sea

Access to Fishing

The Gaza Strip is a coastal area bordered entirely on one side by the Mediterranean Sea. Consequently, the sea has long been an essential resource for the local population. The fishing industry, in particular, is a keystone of life and economy in Gaza. Over 35,000 people depend on it for their livelihoods,⁵³ as it supports not only those directly involved in fishing but also those in affiliated industries such as boat building. Fishermen are the wage earners for an estimated 50,000 people in Gaza,⁵⁴ while significantly more rely on their fish catches as a critical food source and part of the local diet.⁵⁵ However, Israel has consistently restricted Palestinian fishermen's access to fishing areas in the Gaza sea, thus significantly contributing to the untenable economic and humanitarian situation in the Strip.

The UN Convention on the Law of the Sea declares that the sovereign territory of coastal states extends beyond their coastline to up to 12 nautical

53 OCHA oPt, *Humanitarian Bulletin occupied Palestinian territory*, July 2016, 12, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_the_humanitarian_monitor_2016_07_08_10_english.pdf

54 B'Tselem, "Israel Destroying Gaza's Fishing Sector," 29 January 2017, available at: http://www.btselem.org/gaza_strip/20170129_killing_the_fishing_sector [accessed 18 August 2017] [hereinafter B'Tselem, "Destroying Gaza's Fishing Sector"].

55 B'Tselem, "Lift the Restrictions on the Gaza Fishing Range," 24 March 2013, available at: http://www.btselem.org/gaza_strip/20130324_restrictions_on_fishing_should_be_lifted [accessed 18 August 2017].

miles (nm) or 22 kilometers(km), granting them an area known as a territorial sea.⁵⁶ Additionally, the Convention states that coastal states have the right to an Exclusive Economic Zone (EEZ) in which they are entitled to the living and non-living natural resources up to 200 nm (370.4 km) from the shore.⁵⁷ Palestinians' right to access their full EEZ was violated by the 1994 Gaza-Jericho agreement signed by Israel and the PLO, which outlines a Maritime Activity Zone extending only 20 nm (37 km)⁵⁸ from Gaza's shore, and the 2005 Bertini Commitment which supports a fishing zone of 12 nm (22.2 km) from shore.⁵⁹ Israel, however, has failed to respect even those fishing zones demarcated by these agreements,⁶⁰ enforcing fishing boundaries as close as three nm (5.5 km) from shore that it regularly changes at will.⁶¹ In April 2016, for example, Israel widened the fishing zone from six nm (11 km) to nine nm (16.6 km) in some parts of the coast but maintained it at six nm in others.⁶² Only two months later in June, all fishing zones were restricted to six nm. During periods of conflict between Israel and Gaza all fishing is prohibited, as Israel often adjusts the fishing range in a punitive manner depending on its interactions with the Hamas government in Gaza.⁶³ This amounts to collective punishment against the entire population of Gaza, which is in contravention to Article 33 of the GCIV.⁶⁴

The pattern and timing of maritime boundary restrictions also point to another impetus for decreasing the fishing zone – Israel's desire to protect its own gas

56 It should be noted that while Israel is not a signatory to this convention, Article 3 of the Convention on the Law of the Sea has been declared by the International Court of Justice as reflecting customary international law. See, *Territorial Dispute and Maritime Delimitation (Nicaragua v. Colombia)*, Judgment, 2012 ICJ, Rep. 1, 43, 50, 51, 66, 111 (Nov. 19); see also, United Nations Convention on the Law of the Sea, 10 December 1982, United Nations, Treaty Series, vol. 1833- 1835, art. 3.

57 *Id.*, art. 56.

58 Gaza-Jericho Agreement, Annex I: Protocol Concerning Withdrawal of Israeli Military Forces and Security Arrangements, PLO-Isr., 4 May 1994, art. XI, available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Gaza-Jericho%20Agreement%20Annex%20I.aspx> [accessed 18 August 2017].

59 OCHA oPt, *Humanitarian Monitoring Report –Bertini Commitments*, April 2005, 1, available at: <https://www.ochaopt.org/sites/default/files/ochaHumMonRpt0405.pdf>

60 As these agreements give Palestinians far fewer nautical miles than they are allotted within international law, the purpose of mentioning them here is not to affirm their legality but rather to note that Israel has failed to comply with even its own commitments.

61 OCHA opt, *Restricted Livelihood: Gaza's Fishermen*, July 2013, 1, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_gaza_fishermen_case_study_2013_07_11_english.pdf [hereinafter OCHA, *Restricted Livelihood*].

62 Al-Haq, "Israel's Systematic Attacks Against Palestinian Fishermen," 31 May 2016, available at: 2017, <http://www.alhaq.org/documentation/weekly-focuses/1048-israels-systematic-attacks-against-palestinian-fishermen> [accessed 18 August 2017] [hereinafter Al-Haq, "Systematic Attacks Against Fishermen"].

63 B'Tselem, "Destroying Gaza's Fishing Sector," *supra* note 54.

64 B'Tselem, "Restrictions on Fishing Range," *supra* note 55.

fields, one of which is 13 nm (24 km) from the Gaza shore.⁶⁵ After the discovery of this 'Mari-B' gas field in 2000, Israel began to limit fishing zones to no more than six nm from shore, effectively creating a seven nm (13 km) security zone around the field.⁶⁶ The size of this security zone is illegal not only because it prevents Palestinians from accessing their maritime zone but also because Mari-B and its gas platform lie one nm beyond the 12 nm (22km) limit to Israel's territorial sea. According to international law, the maximum security zone that can be established around a platform existing outside territorial seas is 500 meters, or only 0.27 nm.⁶⁷ Further evidence of the influence of gas fields on fishing restrictions is the maintenance of the six nm fishing limit even after the cessation of the 2014 war on Gaza. According to an Israeli navy commander:

Immediately following Operation Protective Edge [the 2014 war], the Palestinians went back to commercial fishing. We enforce fishing bans in order to prevent irregularities. At this time the fishing zone range is six nm [11 km]. The Palestinians requested that it be extended to 12 nm [22 km]. Such extension will produce an operational problem, as it would place them substantially closer to the Tethys and Tamar offshore rigs [Tethys being the operator of the Mari-B rig], while we maintain a very intensive defense effort around those rigs.⁶⁸

The imposed limits on fishing zones are enforced through almost daily illegal attacks on Gaza's fishermen by the Israeli navy,⁶⁹ including attacks on fishermen who are not in violation of the demarcated boundary.⁷⁰ These attacks often involve the use of live ammunition, stun grenades, rocket fire,⁷¹ net cutting,⁷² and water cannons.⁷³ Many fishermen are arrested and their boats confiscated, with 113 arrests and 48 boat confiscations made in 2016 alone.⁷⁴ Some fishermen are able to recover their boats after paying a heavy

65 Susan Power, *Israel's Deadly Catch: Special Report for United Nations Business and Human Rights Forum 2015 on the Persecution of Fishermen in the Occupied Palestinian Territory*, al-Haq, November 2015, 12, available at: <http://www.alhaq.org/publications/Deadly.Catch.Report.pdf> [hereinafter Power, *Israel's Deadly Catch*].

66 *Id.*, 50.

67 *Id.*, 52.

68 *Id.*, 50.

69 Al-Haq, "Systematic Attacks Against Fishermen," *supra* note 62.

70 Power, *Israel's Deadly Catch*, 18, *supra* note 65.

71 Melon, *Shifting Paradigms - Israel's Enforcement of the Buffer Zone in the Gaza Strip*, Al-Haq, June 2011, 11, available at: <http://www.alhaq.org/publications/publications-index/item/shifting-paradigms-israel-s-enforcement-of-the-buffer-zone-in-the-gaza-strip> [hereinafter Melon, *Shifting Paradigms*].

72 *Id.*, 17.

73 Al-Haq, "Five years into the illegal closure of the Gaza Strip," 14 June 2012, available at: <http://www.alhaq.org/advocacy/topics/gaza/588-five-years-into-the-illegal-closure-of-the-gaza-strip> [accessed 18 August 2017] [hereinafter Al-Haq, "Five years into the closure"].

74 B'Tselem, "Destroying Gaza's Fishing Sector," *supra* note 54.

500 shekel fee (roughly \$135), but the majority are denied the chance to do so. Other boats, both at sea and on the shore, are destroyed by bullet and rocket fire from Israeli forces.⁷⁵ The Department of Fisheries in Gaza's Ministry of Agriculture estimates that "the direct losses suffered by Gaza fishermen in 2016 as a result of Israeli navy fire or confiscation of boats and equipment amounts to some \$0.5 million."⁷⁶

The punitive adjustments of the fishing zones and the frequent and somewhat arbitrary nature of the attacks on fishermen, particularly when exercised on those who adhere to the restrictive fishing zones or boats that are on the shore, illustrates that they are not rooted in any justified security measures but rather in a desire to deny the Palestinian population from accessing the sea, a natural resource. Fishermen in Gaza have been forced to abandon their livelihoods and experienced a dramatic drop in their quality of life. The UN reports that of the 10,000 fishermen in Gaza in 2000, only 3,500 remained in 2013.⁷⁷ Moreover, from those 3,500, only 1,200 are able to actually fish.⁷⁸ The restricted space of the fishing zone is often insufficient to accommodate even this reduced number,⁷⁹ and has led to overfishing, decreasing fishermen's yield from 1,817 tons in 2006 to 437 tons in 2011,⁸⁰ and costing the economy approximately \$26 million per year.⁸¹ It is now extremely difficult to earn a living wage from fishing - 90 percent of Gaza's fishermen are considered impoverished,⁸² and 95 percent rely on international aid.⁸³ The lack of other available jobs, however, has forced some to risk their lives venturing into deeper waters beyond whatever fishing zone Israel has set at the time in attempts to reach areas containing more fish.⁸⁴

75 Melon, *Shifting Paradigms*, 11, *supra* note 71.

76 Even the fishermen's ability to repair their damaged boats and equipment has been deliberately obstructed by the blockade, as Israel has refused to allow the essential materials to enter Gaza on grounds that they could be used for military purposes by Hamas. In 2016, Palestinian officials personally presented Israeli military authorities with a list of items required by the fishing sector to function, none of which had been allowed in as of January 2017; *see*, B'Tselem, "Destroying Gaza's Fishing Sector," *supra* note 54.

77 OCHA, *Restricted Livelihood*, 1, *supra* note 61.

78 Ma'an Development Center, *Gaza Blockade in Numbers: Continued Denial and Deprivation*, 14 June 2015, 2, available at: <http://www.maan-ctr.org/files/server/Publications/FactSheets/Gaza%20Blockade%20In%20Numbers.pdf> [hereinafter Ma'an Development, *Gaza Blockade in Numbers*].

79 B'Tselem, "Restrictions on Fishing Range," *supra* note 55.

80 Al-Haq, "Five years into the closure," *supra* note 73.

81 Ma'an Development, *Gaza Blockade in Numbers*, 1, *supra* note 78.

82 Al-Haq, "Five years into the closure," *supra* note 73.

83 OCHA, *Restricted Livelihood*, 1, *supra* note 61.

84 B'Tselem, "The Gaza Strip - Restrictions on Fishing," 1 Jan 2011, available at: http://www.btselem.org/gaza_strip/restrictions_on_fishing [hereinafter B'Tselem, "Gaza Strip - Fishing"].

The decimation of the fishing industry has acutely exacerbated the humanitarian crisis currently faced by Palestinians in Gaza, resulting in conditions that are increasingly unlivable. Due to the importance of the fishing industry to affiliated industries and economy in Gaza, the decline in the number of fishermen has, “significantly curtailed the livelihood of thousands of families.”⁸⁵ The decline in yield has led to shortages in a food staple that is an important source of nutrition and protein for the population of Gaza,⁸⁶ where 57 percent of households are food insecure.⁸⁷ This shortage has in turn led to a hike in fish prices. The price of sardines – the most common fish in Gaza – rose from ten shekel (\$2.75) per kilogram in 2008 to 20 shekel (\$5.53) in 2012,⁸⁸ placing the cost of sustenance for average families even higher. The denial of access to the sea as a resource for fishing significantly contributes to a coercive environment in the Gaza Strip.

“We haven’t seen a sardine here for about three or four months, there aren’t many sardines these days. I think it’s because of the cold water, since we can only fish within the first five miles⁸⁹ [9.26km] of the shore. They [Israel] had extended the fishing area to six miles [11km], but at first they only allowed us to fish within three miles [5.5km]. Now its five miles, but you won’t find fish until you get nine miles out [16km].

[I have been a fisherman] since 1962. In the 1970s, we used to fish huge amounts and export to the West Bank, Israel and everywhere. Some months we used to fish around 20, 25, 30, 40, or even 50 tons. Nowadays, believe me, in one month, we don’t even get one and a half or two tons.

When I talk about the sea, my heart aches. I have a launch [a fishing boat] that I built in 1984, and I looked after it like it was one of my own children, because it’s how I earned a living. However, 10 or 15 days ago you probably heard about what happened to my cousin, Mohammad al-Hissi.⁹⁰ He was out on my launch and an Israeli boat attacked him and completely destroyed my launch. This happened five and half miles out to sea. My cousin who was on board was

85 B’Tselem, “Restrictions on Fishing Range,” *supra* note 55.

86 *Ibid.*; B’Tselem, “Gaza Strip – Fishing,” *supra* note 84.

87 Power, *Israel’s Deadly Catch*, 18, *supra* note 65.

88 B’Tselem, “Restrictions on Fishing Range,” *supra* note 55.

89 The term miles in this testimony refers to nautical miles.

90 “Mohammad al-Hissi, a 33-year-old father of three, is presumed dead after he went missing when the Israeli navy sank the vessel on which he was working on 4 January,” *see*, Maureen Clare Murphy, “Gaza fisherman is second killed by Israel this year,” *The Electronic Intifada*, 16 May 2017, available at: <https://electronicintifada.net/blogs/maureen-clare-murphy/gaza-fisherman-second-killed-israel-year>; Mersiha Gadzo, “Who killed Gaza’s fisherman Muhammad al-Hissi?,” *Al Jazeera*, 7 May 2017, available at: <http://www.aljazeera.com/indepth/features/2017/04/killed-gaza-fisherman-muhammad-al-hissi-170413123311286.html>

killed. We are trying our best to repair my launch because there are 26 families that earn a living from it.

The closure imposed on us has really affected the economy. Some days we have fish, and other days we don't. Fishermen have no other profession but fishing, but you can find fishermen's sons who are very well educated and have university degrees, but they can't find any other jobs so they end up fishing as well.

Nowadays, there is no other way to earn money but from the sea. We used to have citrus fruit farms. During the harvest, two thirds of Gaza used to work on these farms; oranges, lemons, and so on. We used to export outside Gaza, and if you ask old people about it, they will tell you about how they used to work on the citrus farms between June and September, the citrus season. People used to come and buy the fruit on trains. There would be four to five full trainloads every day and every train used to carry between 20 to 50 thousand boxes. We used to have factories that exported everywhere. Huge numbers of people used to work in this sector; on the land, picking, bringing fruits to the factories, others in transportation. Everyone used to work for the farms.

After the closure, Israel uprooted the trees; oranges, lemon, and grapefruit, etc. The citrus fruit industry was completely wiped out, and now nothing is left for us except to work out at sea.

And yes, of course they [Israeli soldiers] have targeted me, many times. If I manage to find a good area for fishing, they usually tell me, "Leave! Get away from here!", and I would tell them that I am allowed to fish here but if I protested too much, they would threaten to arrest me and take my boat.

We are all in danger here, and we have lost many children. There are three or four children from the Baker family who have been killed because the soldiers shoot randomly.⁹¹ They shoot to scare us. However, these random bullets hit people and kill them.

I have no other choice but to fish. I don't know how to make falafel! My launch that they destroyed cost me around \$2,000 and I can't afford to build another one. Since 1984 I have worked on this launch and I used to earn good money but for 10 years, the cruel closure has choked us. I have a son who is 24 years old and I can't even afford to help him get married.

Some fishermen, like the younger fishermen, in months like these they work as taxi drivers. There are Gazan fishermen who left Gaza and went to Sweden

91 Israeli shelling killed four children from the Baker family on Gaza Beach on 16 July 2014. See: Adam Chandler, "Israeli Strike on Gaza Beach Kills Four Children," *The Atlantic*, 16 July 2014, available at: <https://www.theatlantic.com/international/archive/2014/07/israeli-strike-on-gaza-beach-kills-four-children/374549/> [accessed 12 June 2017].

and other foreign countries, and they have suffered! From the Baker family, around 20 to 25 people left Gaza on a ship but the ship sank. Twenty-five people from the same family were on board; with their wives and children too. It's been almost a year and a half or two since they left and no one has ever heard anything from them. When you receive no communication from a person for two or three months, you can consider them dead."

H. Rashad, 73-year old fisherman, Gaza.

Interview: Gaza, 9 February 2017

Access to Natural Gas

In 1999, a consortium led by British Gas (BG) discovered two gas fields off the coast of Gaza in the Palestinian maritime zone. The first, called 'Gaza Marine,' is 24 km from the shoreline, while the other 'Border Field' lies on both sides of the boundary between oPt and Israeli maritime zones. It is estimated that these fields could produce 1.5 billion cubic meters of gas per year for 20 years, and could generate up to eight billion dollars in revenue.⁹² This means that if allowed to develop and commercialize this gas, Gaza could go from being one of the poorest areas on earth, to being potentially one of the richest.⁹³

However, Israel has obstructed this project at every turn, including "the extraction, sale and use of the gas."⁹⁴ According to the Applied Research Institute of Jerusalem (ARIJ):

"Israel's de facto control of Gaza's territorial waters has held back attempts to export Palestinian natural gas to international markets. Israel has refused to implement measures required to extend a pipeline to al-Areesh in Egypt (PIF, 2011); a prerequisite to liquefying the gas and exporting it to international markets. Israel has also refused to provide the necessary clearances required by developers (PIF, 2011)."⁹⁵

Finally, Israel stymied negotiations led by BG to export gas into Israel,

92 Dr. Mohammad Mustafa, "Palestine's Oil and Gas Resources: Prospects and Challenges," *Palestine Investment Fund*, 30 July 2016, available at: <http://www.pif.ps/page.php?id=85bcy34236Y85bc> [accessed 17 August 2017] [hereinafter Mustafa, "Palestine's Oil and Gas Resources"].

93 Victor Kattan, "The Gas Fields off Gaza: A Gift or a Curse?" *al-Shabaka*, 24 April 2012, available at: <https://al-shabaka.org/briefs/gas-fields-gaza-gift-or-curse/> [accessed 17 August 2017] [hereinafter Kattan, "The Gas Fields off Gaza"].

94 The Applied Research Institute - Jerusalem (ARIJ), *The Economic Cost of the Israeli Occupation of the Occupied Palestinian Territories*, 2015, 13, available at: https://www.arij.org/files/arijadmin/2016/The_Economic_Cost_of_the_Israeli_occupation_Report_upd.pdf [hereinafter ARIJ, *Economic Cost of the Israeli Occupation*].

95 *Ibid.*

prompting BG to withdraw in 2007.⁹⁶ The main reason for the breakdown in the negotiations was that Israel wanted to pay only \$2 per cubic foot of imported gas instead of the market rate of \$5 to \$7,⁹⁷ a condition that the PA and international developers could not agree to.⁹⁸

Israel's reasons for blocking Palestinians' right to extract and benefit from their natural gas resources are not necessarily rooted in a desire to exploit those resources itself, as its own natural gas reserves are sufficient to meet its current and future energy needs.⁹⁹ It can only be surmised, therefore, that this move is not only part of the wider policy of denial of access but is also a punitive measure alongside its closure of Gaza.¹⁰⁰ This objective of hegemonic control over the oPt's power supply could arguably be considered a means of establishing domination over Palestinians and their quality of life, one that can be used to lower this quality at will in an effort to punish or compel.

Currently, Palestinians in the oPt are forced to rely almost entirely on Israel for energy, with small amounts also imported from Jordan into the West Bank and from Egypt into Gaza.¹⁰¹ As a result, petroleum and electricity costs are amongst the PA's steepest expenses,¹⁰² with an annual price tag of over \$1.5 billion.¹⁰³ This makes energy prices for Palestinians in the oPt some of the highest in the world, putting a huge strain on the Palestinian economy.¹⁰⁴

Furthermore, the amount of energy received is not enough to meet Palestinian needs. The population of the West Bank currently consumes 860 megawatts (MW) per year, and is expected to consume 1,310 by 2020; in Gaza, the current demand is 410 MW and is expected to rise to 855 MW in 2020. However, while energy supply to the West Bank is relatively stable, people in Gaza receive around half of what they need, consuming around 210 MW per year. Gaza's energy plant, already functioning at half-capacity before the 2014 war on Gaza, was only able to produce 60 MW out of the

96 Tim Boersma and Natan Sachs, *Gaza Marine: Natural Gas Extraction in Tumultuous Times?*, Brookings Institution, 2015, 2, available at: <https://www.brookings.edu/wp-content/uploads/2016/06/Gaza-Marine-web.pdf> [hereinafter Boersma and Natan, *Gaza Marine*].

97 Kattan, "The Gas Fields off Gaza," *supra* note 93.

98 ARIJ, *Economic Cost of the Israeli Occupation*, 13, *supra* note 94.

99 John Reed, "Israel signs pipeline deal in push to export gas to Europe," *Financial Times*, 3 April 2017, available at: <https://www.ft.com/content/78ff60ca-184c-11e7-a53d-df09f373be87> [accessed 18 August 2017].

100 Kattan, "The Gas Fields off Gaza," *supra* note 93.

101 Boersma and Natan, *Gaza Marine*, 4-5, *supra* note 96.

102 Kattan, "The Gas Fields off Gaza," *supra* note 93.

103 Mustafa, "Palestine's Oil and Gas Resources," *supra* note 92.

104 *Ibid.*

140 MW of which it was originally capable following the war, and had to rely on expensive imported diesel fuel.¹⁰⁵ On 16 April 2017, the energy plant had to close due to lack of fuel, leaving the inhabitants of the Gaza Strip without one third of the energy normally available.¹⁰⁶ Consequently, the population of Gaza suffers daily power outages that can last 12 to 16 hours.¹⁰⁷

The living conditions created by this lack of power are becoming unbearable and significantly contribute to a coercive environment, particularly in Gaza. Israel's denial of energy, specifically natural gas, has a severe impact on the provision of services by the Palestinian authorities in Gaza. By illegally denying access to this natural resource, Israel is also in violation of its obligations as an Occupying Power, as not only is it not providing services to the occupied population, but is preventing the PA from doing so as well since they cannot use the gas for electricity.

The power cuts that leave at least one-third of Gaza's population without electricity at all times have affected nearly every part of daily life in the home. A mere few hours a day of electricity is insufficient for the use of appliances that perform essential functions, such as refrigerators and heaters.¹⁰⁸ Those living in homes without sufficient heat in the cold winter are forced to endure critical health conditions; for example, in the winter of 2015 five children died of hypothermia.¹⁰⁹ Expensive back-up generators, which are often used to supply additional energy, come with their own dangers. Dozens of Palestinians have been either injured or killed by carbon monoxide poisoning, explosions and fires caused by their use.¹¹⁰ Others have died in fires caused by the use of candles or other methods of generating light and heat. According to al-Mezan Center for Human Rights, 29 Palestinians, mostly children, have been killed by fire since 2010, including three toddlers who burned to death in May 2016 after a candle fell in their bedroom. This situation produces intense anxiety in those forced to rely on fire for heat and light. As Mazen Abu Reyala, a father of five children, expressed: "Should I wait until we get burned? Should I wait

105 Boersma and Natan, *Gaza Marine*, 5, *supra* note 96.

106 OCHA oPt, *The Humanitarian Impact of Gaza's Electricity and Fuel Crisis*, United Nations, May 2017, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Gaza%20Electricity%20Crisis.pdf> [accessed 15 August 2017] [hereinafter OCHA, *Impact of Gaza's Electricity Crisis*].

107 *Ibid.*

108 B'Tselem, "Israel Cannot Shirk Its Responsibility for Gaza's Electricity Crisis," 16 January 2017, available at: http://www.btselem.org/gaza_strip/20170117_electricity_crisis [accessed 18 August 2017].

109 "Father Finds Five-Month-Old Son Frozen to Death in Gaza," *NBC News*, 20 January 2015, available at: <http://www.nbcnews.com/storyline/middle-east-unrest/father-finds-five-month-old-son-frozen-death-gaza-n289371> [accessed 18 August 2017].

110 OCHAoPt, *Gaza's Electricity Crisis: The Impact of Electricity Cuts on the Humanitarian Situation*, May 2010, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/4EE272272D04A3D08525771C0067F100> [accessed 18 August 2017].

to return home and see that my children burned themselves because they lit candles?”¹¹¹ The use of candlelight for studying and homework by children has been detrimental to their concentration and ability to learn.¹¹² Women are likewise particularly affected: housework and cooking can be impossible without electricity and gas. Families struggle to find ways to pay for both household expenses and generator fuel, all of which can lead to internal strife in the home.¹¹³

This energy crisis could be completely averted if Palestinians in the oPt were allowed to develop their natural gas resources. As mentioned previously, these fields could produce \$8 billion in revenue for Palestinians in the oPt. The Gaza Marine field alone could generate \$2.5-7 billion over 15 years, saving the PA almost \$560 million in energy expenditures.¹¹⁴ Gaza’s power plant could be converted to run on natural gas,¹¹⁵ and the two planned power stations in the West Bank could become operable. The electricity generated by all three of these plants would create an amount that would meet most of the present consumption in the oPt,¹¹⁶ as well as wastewater treatment and water desalinization in Gaza.¹¹⁷ Palestinians could invest in and develop their energy infrastructure, the important agricultural sector in Gaza,¹¹⁸ and local industries, while allowing for national development and planning.¹¹⁹

The access to these available resources could therefore alleviate the dire humanitarian, economic and energy situation in the oPt that has been caused by the illegal denial of energy services, the Palestinian right to exploit their natural energy sources, and the adequate living conditions that must be provided by Israel as an occupying power. Revenue from natural gas could not only fund long-term economic growth and create jobs, but more importantly could grant a level of energy independence.¹²⁰ This has the

111 Nidal al-Mughrabi, “Energy crisis leaves Gaza with barely four hours of power a day,” *Reuters*, 12 January 2017, available at: <http://www.reuters.com/article/us-palestinians-gaza-energy-idUSKBN14W1YG> [accessed 18 August 2017].

112 “Palestine Remix: Gaza Left in the Dark,” *Al Jazeera*, 2013, available at: <https://interactive.aljazeera.com/aje/PalestineRemix/gaza-left-in-the-dark.html#story> [accessed 18 August 2017].

113 Oxfam International, “Electricity Crisis Brings Dark Times for Women in Gaza,” 2012, available at: <https://www.oxfam.org/en/occupied-palestinian-territory-and-israel/electricity-crisis-brings-dark-times-women-gaza> [accessed 18 August 2017].

114 Boersma and Natan, *Gaza Marine*, 9, *supra* note 96.

115 *Ibid.*

116 Mustafa, “Palestine’s Oil and Gas Resources,” *supra* note 92.

117 Boersma and Natan, *Gaza Marine*, 9, *supra* note 96.

118 *Ibid.*

119 *Id.* 10.

120 Mustafa, “Palestine’s Oil and Gas Resources,” *supra* note 92.

potential to interfere with one of Israel's primary goals in denying Palestinian gas exploitation – control over the oPt's energy resources as a tool of coercion.¹²¹ Thus, energy independence could potentially deprive Israel of the power to wage economic warfare that suppresses the population of the oPt and maintains the coercive environment.

The Dead Sea

The Dead Sea is a hypersaline lake bordering Jordan, Israel and the West Bank.¹²² While most famous for the special natural features and location that has made it an important tourist destination, it is also a uniquely lucrative source of salts and minerals.¹²³ Despite the fact that a large section of the Dead Sea's western border lies within the West Bank, Israel has illegally prevented Palestinians from accessing and exploiting this important resource, thus withholding from them a supply of capital capable of significantly benefiting the beleaguered economies in the oPt.

Israeli denial of access to Palestinian economic activity in the Dead Sea is accomplished by taking complete control of the area, through appropriation of large swathes of land along the Dead Sea's shoreline by declaring them state lands, nature reserves or closed military zones.¹²⁴ The Oslo Accords contradict international law by reinforcing this control, leaving Palestinians unable to build on or develop even those areas not already appropriated by Israel without permits from Joint Committees.¹²⁵ Moreover, the World Bank reveals that "neither the PA nor private Palestinian investors have been able to obtain construction permits for tourism-related investments

121 Power, *Israel's Deadly Catch*, 14, *supra* note 65; Susan Power, *Preventing the Development of Palestinian Natural Gas Resources in the Mediterranean Sea: Implications for Multinational Corporations Operating in Israel's Gas Industry*, al-Haq, 2014, 14, available at: <http://www.alhaq.org/publications/Gas-report-web.pdf>

122 Jaime Wisniak, "The Dead Sea – A Live Pool of Chemicals," *Indian Journal of Chemical Technology* 9 (2002): 80, available at: <http://nopr.niscair.res.in/bitstream/123456789/22829/1/IJCT%209%281%29%2079-87.pdf> [accessed 21 August 2017].

123 Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory*, al-Haq, 2012, 20-21, available at: <http://www.alhaq.org/publications/publications-index/item/pillage-of-the-dead-sea-israel-s-unlawful-exploitation-of-natural-resources-in-the-occupied-palestinian-territory> [accessed 21 August 2017].

124 *Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities*, BADIL, 2013, 64, available at: http://www.badil.org/phocadownload/Badil_docs/publications/handbook2013eng.pdf

125 *West Bank and Gaza: Area C and the Future of the Palestinian Economy*, World Bank, 2013, 22, available at: <http://documents.worldbank.org/curated/en/137111468329419171/pdf/AUS29220REPLACOEVISION0January02014.pdf> [hereinafter World Bank, *Area C and Palestinian Economy*].

(hotels, recreation facilities, supporting infrastructure) on the Dead Sea.”¹²⁶ Additionally, Palestinian freedom of movement to and within these areas is curtailed by checkpoints and denial of permits.

The result is a complete prevention of Palestinian use and development of one of their most significant natural resources, a resource that Israel and Jordan have been able to develop into two major sources of revenue. The first is the profit obtained from the tourism industry, mainly from the twenty 4- and 5-star hotels along the shore. According to the World Bank, revenues from these hotels in 2012 yielded \$291 million to Israel and \$128 million to Jordan.¹²⁷ It estimates that if Israeli restrictions on Palestinian access were lifted, Palestinians would be able to develop a tourism industry on par with Israel’s that would bring them \$290 million in annual revenue.¹²⁸

The second source of revenue is the rich deposits of salts and minerals found in the Dead Sea. Products developed from these resources have generated \$4.2 billion per year in sales for Israel and Jordan, and represent a major potential windfall for Palestinians as well. ARIJ calculates that if Palestinians had unhindered access to the Dead Sea their production would most likely range between that of Israel and Jordan, meaning they could earn between \$917.70 million and \$2,36 billion, representing 7.2 percent to 18.6 percent of the PA’s GDP in 2014.¹²⁹

The revenues from the tourism and mineral industries combined represent a figure capable of significantly bolstering the economy of the oPt. The World Bank notes that the conservative estimate of Palestinian revenue from salt and mineral products alone - \$918 million - would be “almost equivalent to the contribution of the entire manufacturing sector of Palestinian territories [sic.] today.”¹³⁰ Such an amount, if added to Palestinians’ economic resources, could contribute to ameliorating the coercive economic environment in the oPt.

¹²⁶ *Ibid.*

¹²⁷ *Id.*, 22-24.

¹²⁸ *Id.*, ix.

¹²⁹ ARIJ, *Economic Cost of the Israeli Occupation*, 28, *supra* note 94.

¹³⁰ World Bank, *Area C and Palestinian Economy*, 13, *supra* note 125.

ACCESS TO WATER IN THE WEST BANK¹³¹

Unlike some other areas in the region, the oPt does not suffer from natural fresh water scarcity.¹³² The West Bank contains two major fresh water sources: the Mountain Aquifer, which lies under the West Bank and extends into Israel, and the Jordan River, which separates Israel and the West Bank from Jordan.¹³³ These sources combined are capable of providing an adequate water supply for Palestinians living in the West Bank, yet water deprivation has reached crisis levels in that area. This deprivation, therefore, is not naturally occurring but rather strategically engineered by Israel through various policies and practices that deny Palestinians access to each water source in specific ways.¹³⁴

Israeli control over Palestinian Water

The Jordan River used to provide around 30 million cubic meters (MCM) of water per year to the West Bank before the 1967 occupation, but Israel has since denied access to river water by declaring all the land along the shores military security zones.¹³⁵ As a result, Palestinian usage of river water has been obliterated, while Israel's annual use has risen to 600-700 MCM.¹³⁶ In

131 The fact that this section focuses on the West Bank rather than the Gaza Strip is not an indication that Palestinians in Gaza are not subject to policies denying them access to water. While Gaza's access to the Coastal Aquifer is unimpeded by Israel and is therefore not technically denied access to its water resource, Israel has diverted streams flowing into Gaza and denied its population access to other Palestinian water sources in the West Bank. This has forced them to dangerously overdraw from the Coastal Aquifer, leading to contamination from wastewater and seawater and making 90-95 percent of it unsafe to drink. In this case, there could be an argument made that this is a de facto denial of access to water. However, this section highlights the West Bank because of the uniquely transparent example it provides of the design and coordination of various natural resource policies and practices specifically aimed at population transfer. See, Amnesty International, *Troubled Waters*, 14, *supra* note 37.

132 EWASH and al-Haq, *Joint Parallel Report submitted by the Emergency Water, Sanitation and Hygiene group (EWASH) and Al-Haq to the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of the Third Periodic Report of Israel: Israel's violations of the International Covenant on Economic, Social and Cultural Rights with regard to the human rights to water and sanitation in the Occupied Palestinian Territory*, 2011, 6, available at: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/EWASH-Al-Haq_Israel_CESCR47.pdf [hereinafter EWASH and al-Haq, *Joint Parallel Report*].

133 Elena Lazarou, *Water in the Israeli-Palestinian Conflict: Briefing January 2016*, European Parliamentary Research Service, European Parliament, 2016, 26, available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573916/EPRS_BRI\(2016\)573916_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573916/EPRS_BRI(2016)573916_EN.pdf) [hereinafter Lazarou, *Water in Israeli-Palestinian Conflict*].

134 EWASH and al-Haq, *Joint Parallel Report*, 6-7, *supra* note 132.

135 UN Conference on Trade and Development (UNCTAD), *The Besieged Palestinian Agricultural Sector*, New York and Geneva, 2015, 26, available at: http://unctad.org/en/PublicationsLibrary/gdsapp2015d1_en.pdf [hereinafter UNCTAD, *Besieged Palestinian Agricultural Sector*].

136 Jan Selby, "Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee," *Water Alternatives* 6, no.1 (2009): 5, available at: <http://www.water-alternatives.org/index.php/volume6/v6issue1/196-a6-1-1/file> [hereinafter Selby, "Cooperation, Domination and Colonisation"].

contrast, access to water from the Mountain Aquifer has not been entirely cut off - currently all water utilized by Palestinians in the West Bank flows from this source.¹³⁷ However, Israel has strategically used various policies and regulations to impede and deny aquifer access to Palestinian communities in a manner consistent with the creation of a coercive environment. The denial of access to essential local water resources has created a reality for many Palestinians in which they are unable to meet the demands of their daily life, and therefore are forced to leave their areas in search of greater water availability.

The Israeli government drafted military orders that explicitly targeted the water resources of the West Bank after the occupation. Military Orders 92 and 158, issued in 1967, put the Israeli army in control of all water-related issues in the oPt and banned the construction of any new water installations by Palestinians without first receiving a permit from the army. Included in the latter order was a provision that any installation or resource without a permit would be confiscated.¹³⁸ This hegemonic control over the oPt's water was then replicated and institutionalized by the Oslo II Accord in 1995, which allotted 80 percent of all mountain aquifer water in the West Bank to Israel in contravention of international law.¹³⁹ Today, Israel is using 85 percent of the water in the occupied territory for its own benefit and that of the Jewish-Israeli colonizers. Palestinians, with access to the remaining 15 percent of the water, are water-dependent on Israel and must buy water from them to meet the demand of the population. This policy contravenes international law, which clearly establishes that the occupying power can only utilize the resources of the occupied territory, such as water, if it is for the benefit of the protected population or if justified by military necessity.

This Oslo II Accord also created a Joint Water Committee (JWC) made up of both Israeli and Palestinian representatives to implement the new water policies.¹⁴⁰ The JWC is responsible for dividing aquifer water between the separate Israeli and Palestinian water supply systems and granting approval for water projects in the West Bank.¹⁴¹ Despite the presence of Palestinians in the JWC, Israel's veto power in the committee has resulted in so many denials or delays of permits for Palestinian water projects that the Palestinian Water Authority has stopped submitting permit requests

137 Amnesty International, *Troubled Waters*, 8, *supra* note 35.; Lazarou, *Water in Israeli-Palestinian Conflict*, 5, *supra* note 132.

138 Amnesty International, *Troubled Waters*, 12, *supra* note 37.

139 Oslo II, Annex III, Article 40, *supra* note 39.

140 *Ibid.*

141 EWASH and al-Haq, *Joint Parallel Report*, 7, *supra* note 132.

for certain projects out of certainty that they would be denied.¹⁴² The sheer amount of actions requiring prior permission from the JWC, including basic repairs and using pipelines over 2" in diameter,¹⁴³ fosters asymmetric Palestinian dependence on Israel to the extent that Israel has been able to extract Palestinian approval for colony water infrastructure as a precondition for its approval of important Palestinian water projects.¹⁴⁴

Area C of the West Bank is under full Israeli control and is the location of nearly all Israeli colonies. Therefore, it is the area prioritized for colony expansion and annexation by Israel and is the most vulnerable and strategically targeted for implementation of policies aimed at forcibly transferring Palestinians.¹⁴⁵ Consequently, all Palestinian water projects in Area C are required to secure an additional permit from the Israeli Civil Administration (ICA), which "is systematically 'designed to restrict the development of Palestinian communities'"¹⁴⁶ and the ICA strategically withholds permission for "the vast majority" of applications.¹⁴⁷ For example, the ICA refuses to recognize 88 percent of Palestinian villages in Area C and thus categorically denies them permission for any infrastructure¹⁴⁸ including water wells necessary to sustain the population.¹⁴⁹ Out of the 2,020 applications submitted by Palestinians in Area C between 2010 and 2014, only 1.5 percent were approved.¹⁵⁰ The ICA's obstruction has resulted in the denial or delay of even the well construction that managed to obtain JWC approval. This has been hugely deleterious because "apart from in the North-Eastern Basin, almost all of the productive zones for well-drilling from the Mountain Aquifer are in Area C."¹⁵¹

Israel has also demonstrated a refusal to abide by the terms of the Oslo Accords when they prove contrary to its interests, notably by completing projects without first applying for permits from the JWC – such as

142 Amnesty International, *Troubled Waters*, 29, *supra* note 37.

143 Selby, "Cooperation, Domination and Colonisation," 7, *supra* note 136.

144 *Id.*, 17.

145 Samit D'Cunha, "The First Plague: The Denial of Water as a Forcible Transfer Under International Humanitarian Law," *Michigan State International Law Review* 24, no. 2(2016): 301. [hereinafter D'Cunha, "The First Plague"].

146 Selby, "Cooperation, Domination and Colonisation," 9, *supra* note 136.

147 EWASH and al-Haq, *Joint Parallel Report*, 7, *supra* note 132.

148 Selby, "Cooperation, Domination and Colonisation," 9, *supra* note 136.

149 EWASH and al-Haq, *Joint Parallel Report*, 7, *supra* note 132.

150 OCHA oPt, *Under Threat: Demolition Orders in Area C of the West Bank*, September 2015, 4, available at: https://www.ochaopt.org/sites/default/files/demolition_orders_in_area_c_of_the_west_bank_en.pdf

151 Selby, "Cooperation, Domination and Colonisation," 9, *supra* note 136.

connecting colony wastewater to Palestinian plants against the wishes of the Palestinian Water Authority – and proceeding with construction of the only water project Palestinians vetoed in the JWC.¹⁵² It also appropriates more from the Mountain Aquifer than it was allotted in the Accords, withdrawing more than the aquifer’s sustainable yield by over 50 percent. This has left Palestinians with access to only the remaining 13 percent,¹⁵³ while in reality they are currently able to extract no more than ten percent.¹⁵⁴

In July 2017 the PA and Israel reached a new water agreement that will increase the amount of water that Palestinians in the oPt can buy from Israel. Israel will extract water from the Red Sea and after filtering it in a desalination plant in Jordan, the water will be diverted to Israel, Jordan and the oPt.¹⁵⁵ With the new agreement Israel will sell 32 MCM to the PA, 22 MCM will be for the West Bank for 3.3 shekel [\$0.91] per cubic meter, and 10 MCM will be sent to the Gaza Strip for 3.2 shekel [\$0.89] per cubic meter.¹⁵⁶

Lack of Water Supply

The discriminatory access to the aquifer and illegal exploitation of the aquifer has resulted in an insufficient water supply for Palestinians, forcing the PA to buy aquifer water from Mekorot, Israel’s national water company. The PA now relies on Mekorot for almost half of the West Bank’s domestic water, which it must purchase at a price set by the Israeli company.¹⁵⁷ This amount is still far below the amount required by the population, more so as Mekorot reduces Palestinian supply by up to 50 percent in the summer in order to maintain comfortable water allocation to Israel and Israeli colonies.¹⁵⁸ As Palestinians in the West Bank have a finite amount of water they receive per year, this means that the PA must

152 *Id.*, 17-18.

153 EWASH, “EWASH concerned by water restrictions in the West Bank resulting from Israeli discriminatory policies,” press release, 21 June 2016, available at: <http://www.ewash.org/sites/default/files/inoptfiles/160621%20-%20EWASH%20PR-%20Water%20Restrictions%20West%20Bank%20Result%20of%20Israeli%20Discriminatory%20Policies.pdf>

154 EWASH, *Water and Sanitation in Palestine*, 2016, available at: <http://www.ewash.org/sites/default/files/inoptfiles/160314%20%20WATER%20AND%20SANITATION%20IN%20PALESTINE.pdf>

155 Dalia Hatuqa, “Water deal tightens Israel’s control over Palestinians,” *Al Jazeera*, 1 August 2017, available at: <http://www.aljazeera.com/indepth/features/2017/07/water-deal-tightens-israel-control-palestinians-170730144424989.html>

156 *Ibid.*

157 Elizabeth Koeth, *Water for One People Only: Discriminatory Access and ‘Water-Apartheid’ in the OPT*, al-Haq, 2013, 45, available at: <http://www.alhaq.org/publications/Water-For-One-People-Only.pdf>

158 *Id.*, 48.

set Palestinian communities on a water-rotation schedule that results in long periods where they have no water delivery at all.¹⁵⁹

This lack of adequate supply has reached crisis levels in many Palestinian communities. The average Palestinian is estimated to have access to around 70 liters per capita per day (lpcd), markedly less than the 100-150 lpcd considered adequate for human survival by the World Health Organization (WHO) and discriminatorily disproportionate to the 300 lpcd Israeli colonizers in the West Bank receive.¹⁶⁰ However, the World Bank reports that a quarter of Palestinians connected to water networks receive less than 50 lpcd, while a further 16 percent receive less than 20 lpcd¹⁶¹ – a level of water access comparable to refugee camps in Sudan and the Congo.¹⁶² Moreover, the 200 Palestinian communities in Area C that are unrecognized by Israel are denied access to the water network altogether. These communities are forced to find springs, collect rainwater in cisterns, or transport water via tankers.¹⁶³ Water delivered by tankers is of poorer quality than piped water,¹⁶⁴ and often costs five times more,¹⁶⁵ prompting many of these communities to spend up to 40 percent of their income on water purchases.¹⁶⁶

“I am 54 years old and I am employed with Palestinian Preventive Security (PPS). I am married and I have eight children. I have lived my entire life in Burqa and I never left this place. Our lands in Burqa are designated as Area C.

The main problem we face with water is that the amount we get is not enough for all the people who live here; I mean when Mekorot distributes the water, the amount we receive is never enough. There is a lot of water available, but the amount we receive is limited [by Israel]. Before the neighboring colonies were built, the situation was different and people used to be able to access water.

[The lack of water in our daily life] is very annoying. Look at the sink, it’s full of dirty dishes, and the home, there is no water to clean anything! I don’t have animals here anymore; I sent them to another house in Atara [a village located

159 B’Tselem, “Background: Water Crisis,” 28 Sep 2016, available at: <http://www.btselem.org/water> [accessed 21 August 2017].

160 D’Cunha, “The First Plague,” 297-298, *supra* note 145.

161 World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, April 2009, 17, available at: <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf>

162 D’Cunha, “The First Plague,” 297, *supra* note 145.

163 Amnesty International, *Troubled Waters*, 37, *supra* note 37.

164 D’Cunha, “The First Plague,” 295, *supra* note 145.

165 Amnesty International, *Troubled Waters*, 38, *supra* note 37.

166 D’Cunha, “The First Plague,” 295, *supra* note 145.

21km from Burqa]. I moved the animals there because I have collection wells there but here, there is no water so how can I water them? If I wanted to keep them here, I would need to bring water tanks every other day which would cost around 30 Jordanian Dinar [\$42]. Keeping my animals is the only way I can earn a living so I can't give them up, and I have eight children who depend on me to be able to afford to get married.

The water company Mekorot sources the water from Beit Iba well [located in the West Bank] and it is controlled by Israel.

Friend of A. Salah: They [Israel] only allow us 100 cubic meters a day and I know this because I used to work in the village council. When I worked at the council, one meter of water used to cost us eight shekel [\$ 2.2], and then we would sell it to the people of Burqa for three shekel [\$ 0.8]. This meant that all the revenue we received from other services and taxes would be used so that the residents of Burqa would be able to get water from Israel. This has led to young people leaving this village. Look at the situation my friend Abd al-Salam is in. His home is at the top of the village and he suffers a lot. He had to move all his sheep to another village (Atara) to survive; he had to because there is no water here. In Burqa, it is not only Abd al-Salam who suffers from the lack of water, you can find no less than 50 to 70 houses who live on the hills who are really suffering too.

Look at the colonies; of course, this is an Israeli policy against us! All of the colonies have water 24 hours a day. Shafi Shamroun, which is the colony next to us, I am sure it gets 1000 cubic meters of water a day. If they wanted to give us enough water they could, but it's clear that this is a policy the occupation uses against us.

Everyone who gets married goes to work in Ramallah and eventually they go and live there too. Everyone is always saying that they can't stand to live in Burqa when there is no water. Not to mention the ones who have left Palestine, and why? Because of this pressure!"

A. Salah, Burqa, Nablus.

Interview: 20 February 2017

In addition to systematic discriminatory allocation, Israel has engaged in a variety of practices to deny water access to individual Palestinian communities in the West Bank, particularly communities located in areas that Israel desires to appropriate for colony expansion or future annexation.¹⁶⁷ The denial of permits for water projects, for example, extends to those

167 Amnesty International, *Troubled Waters*, 36-37, *supra* note 37.

aiming to merely collect spring or rain water.¹⁶⁸ Palestinians using water from springs that have been illegally declared ‘state property’ by Israel have had their water infrastructure confiscated.¹⁶⁹ Other water infrastructure such as cisterns, spring canals and agricultural pools are destroyed by Israeli forces quite often, ostensibly because they had not been issued permits.¹⁷⁰ Amnesty International has reported that in the majority of Palestinian villages they visited, cisterns were either destroyed or awaiting pending destruction by the army.¹⁷¹ Prices for tanker water have become increasingly expensive because Israeli checkpoints have prohibited or restricted Palestinian access to main roads, forcing the tankers to take long detours.¹⁷² In the Jordan Valley, where many Palestinian herder communities rely heavily on water to survive, the Israeli army has attempted to force them to leave by confiscating their water tankers during the height of summer when they need it most.¹⁷³ Finally, the route of the Annexation and Separation Wall has been planned in a way that cuts some villages off from their sources of water completely, including agricultural villages that rely on that water for their crops.¹⁷⁴ These practices have put severe pressure on Palestinian residents to leave their homes in order to seek areas with sufficient water access and supply.¹⁷⁵ As one Palestinian villager reported, “We spend a lot of money on water and never have enough. They are trying to force us out of the area by all means, taking our land is one way and limiting our access to water is another way.”¹⁷⁶

“I’m from Safareen [located in Area C], I got married to a man from this village and this is why I live here. I have seven children, five boys and two girls.

It was really hard to take care of a family of nine people in this town. You can’t organize your life well at all; you don’t know how you are going to wash their clothes, how you are going to do the dishes, clean your children and give them showers. Everything is connected to water.

I remember before the colonies arrived, we had a permit and an agreement to install a water pipe line and they had even started working on it. Then, when the colonies expanded and got closer to us, they stopped working on

168 UNCTAD, *Besieged Palestinian Agricultural Sector*, 27, *supra* note 135.

169 Amnesty International, *Troubled Waters*, 5, *supra* note 37.

170 *Id.*, 36-37.

171 *Id.*, 44.

172 *Id.*, 37.

173 *Id.*, 40.

174 *Id.*, 49.

175 D’Cunha, “The First Plague,” 302, *supra* note 145.

176 The villager is from Tuwani, in the Southern Hebron Hills. See, Amnesty International, *Troubled Waters*, 39, *supra* note 37.

this project. Colonies made our problems worse. Before we had hope, we used to feel that water would reach us one day, but now, we know that this will not happen.

Water costs us so much in this town, one cubic meter of water costs nine or ten shekel (\$2.50 or \$3.00). So, I don't feel like other women in other towns and villages where one cubic meter of water costs from two to three shekel (\$ 0.55 to \$0.80). I can't use water like they do.

I have to plan how to do the dishes in advance and how much water I can use. If I invite people over, I also have to think in advance, and budget that I will have to pay 20 to 30 shekel (\$5.50 to \$8.50) for the extra water used that day. One time my sisters came to visit me to have lunch and I found them doing the dishes using the water from the tap in the kitchen. I felt like I was dying when I saw them. I immediately told them to stop; I told them that using olive oil is cheaper than using all of this water. Even if I want to invite people over in Ramadan, the holy month, I buy plastic plates, cups and cutlery because it's cheaper than using water for the dishes.

Most of the time when I want to do the dishes I don't use water from the tap, I use a cup and a bucket. I also make my children use a cup and a bucket when they want to take a shower because it's cheaper than using the actual shower. If one of them is using the shower, I keep shouting at them to finish their shower and I keep telling them, "Come on it's enough". The other day my son had a shower and I kept shouting at him to finish it quickly and save some water. When he was done, I told him, I hope you had a nice shower and he answered, "How can I have a nice shower when you are shouting all the time, 'the water, the water'!"

I have to tell my children not to change their clothes a lot because I'm scared I'll have to wash them and use water. I also take the dirty clothes to my parent's house; I put the dirty clothes in the car and drive to another town because it's cheaper to wash them over there than at home. My son keeps telling me than he wants to move out of the town and go live in his grandparent's house in another town because they have water over there.

When we want to wash the carpets and the blankets, we all get together and go to the wells nearby the town. We go do the washing and come back. Where does this still happen today? People are going to the moon and we are still begging for water. All the women in the town have short hair; we all keep cutting our hair because we can't afford to have long hair. We don't have water for it so even our hairstyles are affected by the water.

Israel wants us out of our homes, lands, and even out of our country. This is what Israel wants and unfortunately, I don't wish that my sons and daughters

live and settle in this town. I keep telling my son to move out of here, take his wife and family and go to my parent's town. When he gets back from work in Israel, he can't take a shower every day. Sometimes he can only wash his face and hands, that's it.

Sometimes people collect rain water using wells. One of the neighborhoods was using these wells and it got mixed with sewage water because of the bad infrastructure. Now those people have lost one source of water. The residents from the town are leaving because of the water problem. More than half of the people from the town have left because of [lack of] water. Soon the town won't have anyone living in it.

Almost 50 percent of the young men in the town are unemployed. Don't you think that if we had water those young men would farm the lands and work on them? At least they would have a source of income, better than just sitting around and having nothing to do with their lives.

I have a big piece of land. This land could be used for trees and to farm it with anything that I want. It's 186 dunums (186,000 m²). When we bought the land we thought we would be able to farm it, but we actually couldn't. Not farming the land is cheaper, isn't it? I really want to keep this land but I don't know how I can with all of these problems. It's exhausting.

I feel like I'm trapped: I can't let go of my land because I have no other alternative income; and at the same time I really can't farm this land properly because I don't have enough water. I used to think that if we keep begging for water we will get it but we got tired. We keep asking people to help us and nobody will. What could be worse than this? I have been begging for water for the last 30 years!

If I had an alternative income, other than the land, I would've left a long time ago; but I can't leave my land, my trees, my olives and my home."

A. Nofal, Safareen, Tulkarem.

Interview: 20 February 2017

"I am an employee at the Palestinian Authority Health Center, and I work as a driver. I have eight children. I had lived my whole life in Safareen [located in Area C] but in 2002 I decided to move to Tulkarem [located in Area A].

Water in Tulkarem is always available in general, so is electricity, and I am not continuously asked to pay for water. In Safareen, I had to pay 180 shekel (\$51) every time I needed to buy a water tank. When you have eight kids and a wife, you have to buy a water tank every week, and I wasn't making a lot of money so this was a big problem.

[When I lived in Safareen] I used to live next to my brother and when we bought a water tank our wives used to fight over who used more water than the other. When we wanted to use a little more water or even wash the laundry, we would fight over it. The scarcity of water made us so uncomfortable; so of course, water was one of the main reasons we left the village.

We used to have to be so careful about using water and you would always hear us yelling “close the tap,” or we would delay doing the laundry. Now in Tulkarem, we can use the water, we can freely use the washing machines and even the toilets.

Back in 2002, when we were still living in Safareen, we went to Thinabeh [village] in Tulkarem and spent some time there with family. We found water, green land, we discovered everything was comfortable. When I was in Thinabeh, if I left for work at 7:30 am I would arrive at 8 am on time. So my wife suggested “Why don’t we live here?”

I found life was so much easier than in Safareen. Water, electricity, everything was available in Thinabeh. No issues at all. Life was easier, so we moved to Thinabeh. Services like water and electricity were always a problem [in Safareen].

[The decision to leave Safareen] wasn’t taken easily though; I hadn’t planned to leave this village at all. I love Safareen so much; our village is one of the most beautiful villages with good, friendly people. We all lived one life and we all loved each other. I swear to God we used to sleep at each other’s homes when we were doing Tawjihi [high school final exams in Palestine]. We had one village, one family. I swear to God, the fact that I left my village saddens me, sometimes I almost cry about the situation in the village.

There are multiple reasons behind our choice, but Israel was the cause to all of them.”

J. Saleh, Safareen, Tulkarm.

Interview: 20 February 2017

The combination of policies, practices and systems mentioned in this section have cut Palestinians off from their plentiful water sources so successfully that daily life and the existence of local agriculture and livestock industries have become unsustainable in hundreds of communities in the West Bank.¹⁷⁷ It is therefore transparent that denial of access to water is a significant contributing factor to a coercive environment which often forces people to leave. “The denial of adequate water has caused the relocation of the local

¹⁷⁷ D’Cunha, “The First Plague,” 302, *supra* note 145.

population of the West Bank, effectively ghettoizing the local population in areas with better, though often not adequate, access to water, mostly in Areas A and B.”¹⁷⁸ It is also transparent that this coercive environment is intentionally engineered by Israel, which was highlighted by a fact finding mission of the Office of the High Commissioner for Human Rights when it stated: “[t]he denial of water is *used to trigger* displacement, particularly in areas slated for expansion, especially since these communities are mostly farmers and herders.”¹⁷⁹ The West Bank therefore provides a chilling example of how specific systems and policies governing water resources can be engineered to bring about forcible transfer.

QUARRIES

One of the most important natural resources in the oPt is stone. Indeed, the stone industry is the largest industry in the oPt, “compos[ing] 7 percent of the annual GDP and [providing] around 20,000 jobs” according to the Palestinian Union of Stone and Marble industry.¹⁸⁰ Almost all Palestinian quarries and stone crushers¹⁸¹ are located in the West Bank. These quarries mainly produce building stones, uncut stone blocks and decorative stones.¹⁸² After 1967, Israel started imposing a set of restrictive measures to limit Palestinian economic growth, some of which specifically targeted the quarrying and stone crushing industry.¹⁸³ These policies can be divided into two categories: those that facilitate the exploitation of Palestinian natural resources through the establishment of several Israeli quarries in the West Bank;¹⁸⁴ and those that deny access to natural resources through restrictive Israeli permit policies and

178 *Id.*, 306.

179 *Id.*, 303.

180 Decolonizing Architecture Art Residency (DAAR), “Extraction,” n.d., available at: <http://www.decolonizing.ps/site/extraction/> [accessed 21 August 2017] [hereinafter DAAR, “Extraction”].

181 There are two kinds of stone crushers: ‘integrated crushers’ which are located at quarries and crush stones after they are removed from the ground, and ‘recycling crushers’ which break down waste from stone and marble quarries. See, Union of Stone & Marble, *The Aggregates Industry on the West Bank: A Consultation Paper*, December 2011, 3, <http://www.usm-pal.ps/en-all/resources/the-aggregates-industry-on-the-westbank.pdf> [hereinafter USM, *The Aggregates Industry*].

182 DAAR, “Extraction,” *supra* note 180.

183 Basim Makhool and Mahmoud Abu-Alrob, *Quarrying, Crushing and Stone Industries in Palestine: Current Situation and Prospects*, Palestine Economic Policy Research Institute, April 1999, 3, available at: <http://www.mas.ps/files/server/20141811122117-1.pdf>

184 Ali Abunimah, “End All Business in Israeli Settlements, Says Human Rights Watch,” *The Electronic Intifada*, 19 January 2016, available at: <https://electronicintifada.net/blogs/ali-abunimah/end-all-business-israeli-settlements-says-human-rights-watch> [accessed 21 August 2017].

land and equipment confiscation.¹⁸⁵ These two measures operate in tandem in the West Bank, acting to increase Israeli corporate profits while causing economic devastation to Palestinian communities, therefore putting pressure on Palestinians to leave these communities in search of reliable income.

In December 2011, the Israeli High Court of Justice legalized mining and quarrying by Israeli companies in the oPt. Today, there are 11 Israeli quarries in the West Bank. Most, like the Beitar-Illit and Nahal Raba quarries, are located adjacent to colonies.¹⁸⁶ These quarries have proven quite lucrative as Israeli-run stone crushers produce twice the amount of Palestinian-run crushers. According to a report published by the PA on the costs of the Israeli occupation, the assessed value of “production from mining and quarrying in the West Bank under Israeli control is an estimated \$900 million a year.”¹⁸⁷ These Israeli quarries are a violation of IHL: the GCIV prohibits the occupying power from expropriating and utilizing the natural resources of the occupied territory for its own benefit. Furthermore, this expropriation has led to a denial of access and use of this resource by Palestinians in the oPt.

This denial of access and use surpasses allowing Israeli companies to expropriate natural resources, as Israel has additionally created a set of discriminatory policies that targets Palestinian quarries and stone crushers as well. Beit Fajjar, a town located near Bethlehem, provides an example of these policies at work. Beit Fajjar was one of the major centers of stone quarrying in the West Bank, with 40 quarries that employed 80 percent of the town’s labor force.¹⁸⁸ Human Rights Watch calculated that the “industry in Beit Fajar [sic.], including quarries and stone work factories, is worth at least \$25 million per year.”¹⁸⁹ According to residents and workers in the town, Israel has been systematically disrupting their work since 2008.¹⁹⁰ Methods of disruption vary from confiscating equipment to imposing fines and extraction

185 B’Tselem, “Military effectively shutting down Palestinian quarries in Beit Fajjar to aid de facto annexation of area,” 21 Apr 2016, available at: http://www.btselem.org/planning_and_building/20160421_military_shuts_down_palestinian_quarries [accessed 21 August 2017] [hereinafter B’Tselem, “Military shutting down Palestinian quarries”].

186 Sari Bashi, “Jews and Germans Are Allowed to Quarry,” *Human Rights Watch*, 21 May 2016, available at: <https://www.hrw.org/news/2016/05/21/jews-and-germans-are-allowed-quarry> [accessed 21 August 2017] [hereinafter Bashi, “Jews and Germans”].

187 Harriet Sherwood, “Israeli companies can profit from West Bank resources, court rules,” *The Guardian*, 3 January 2012, available at: <https://www.theguardian.com/world/2012/jan/03/israeli-companies-west-bank-resources> [accessed 21 August 2017] [hereinafter Sherwood, “Israeli companies”].

188 B’Tselem, “Military shutting down Palestinian quarries,” *supra* note 185.

189 Human Rights Watch, “Israel: Quarry Shutdown Harms Palestinians,” April 2016, available at: <https://www.hrw.org/news/2016/04/21/israel-quarry-shutdown-harms-palestinians> [accessed 21 August 2017] [hereinafter HRW, “Quarry Shutdown”].

190 Sherwood, “Israeli companies,” *supra* note 187.

fees to a discriminatory permit regime. These disruptions are facilitated by the fact that most of the quarries are located in what is now designated as Area C. Consequently, despite the fact that most of these quarries are on privately owned Palestinian land, they are under the planning system of the ICA, which was established by Israel to issue, renew or cancel permits to operate the quarries.¹⁹¹ Since 1994, Israel has refused to issue any permits for new quarries in Beit Fajjar,¹⁹² and has even stopped renewing permits for the quarries that had received approval previously.¹⁹³

Moreover, Israel has hindered the export of stones and other materials extracted from the quarries in Beit Fajjar, as well as Palestinian quarries throughout the West Bank generally. The establishment of checkpoints and the construction of the Wall inhibit the flow of goods out of the West Bank into Israel and the Gaza Strip.¹⁹⁴ Palestinian quarry exports also declined due to an increased competition with Israeli-run quarries in the West Bank. Israeli policies favor the products of Israeli colonies, significantly hampering the export potential of Palestinian products to other markets. For example, all the gravel that passes through Israeli checkpoints¹⁹⁵ needs to be via the back-to-back (BTB) mechanism. This mechanism requires that the Palestinian exports be taken on Palestinian trucks to the checkpoint, where they are unloaded and then reloaded onto Israeli trucks. The products extracted in Israeli-run quarries on the West Bank are transported directly into Israel, without having to change trucks or unload or reload the cargo.¹⁹⁶

In 2016, Israeli soldiers raided 35 of the town's quarries. They confiscated heavy equipment, detained quarry workers and shut down the quarries. According to the quarries' owners and workers' lawyer, "the military is conditioning return of the equipment on retroactive payment of extraction fees for stone quarried in the last three and a half years and a commitment that they [Palestinians] won't reopen the quarries."¹⁹⁷ The livelihoods of around 3,500 workers depend on those quarries.¹⁹⁸ Moreover, quarries were the main source of income in Beit Fajjar, as many more residents were employed in related industries such as stone crushing, producing marble products in factories, or selling marble. Therefore, because of the discriminatory Israeli

191 B'Tselem, "Military shutting down Palestinian quarries," *supra* note 185.

192 Sherwood, "Israeli companies," *supra* note 187.

193 B'Tselem, "Military shutting down Palestinian quarries," *supra* note 185.

194 USM, *The Aggregates Industry*, 10, *supra* note 181.

195 With the exception of Beitunia. *See, ibid.*

196 USM, *The Aggregates Industry*, 11, *supra* note 181.

197 HRW, "Quarry Shutdown," *supra* note 189.

198 Bashi, "Jews and Germans," *supra* note 186.

policies that led to the denial of accessing quarries, many workers were forced to leave Beit Fajjar in order to find new jobs to survive.

“I’m 52 years old and I have a big family. I don’t have much work these days. I used to work for al-Atlas Company in Beit Jala. For 12 years, I have worked in these kinds of quarries and factories. But now, I am hardly getting any work. The quarries are located in an area called Khirbet Heji, which is in Area C. The quarries in this area are supposed to send stones to the factories. However, the quarries have been affected by [Israeli] soldier raids where they confiscate our equipment. Because of this, there’s hardly any work in the quarries or factories. In 2014, Israeli soldiers started raiding the quarries on a daily basis. They were saying that the quarries are theirs but the land doesn’t belong to Israel. Palestinians from Beit Fajjar own it. We used to work two or three days a week there and of course, we’d be really scared of the Israeli army coming. They would come to the area and attack us and we would have to run away and leave our work. We started working at night to avoid soldier attacks but that didn’t help at all. They started coming at night too. In the end, we just had to stop working; there was no way for us to keep on working.

The quarries are the foundation of all the work. The crushers and the factories depend on the quarries. If we can’t bring stones from the quarries then nobody else can work in the town. Everything is connected to the quarries.

Personally, I don’t have any other source of income. I had to sell the only piece of land that I had just to feed my children. I had to sell my land at a really cheap price because I was desperate. Someone who is my age, and has all the health problems that I have, won’t be able to find another job. Nobody wants to hire someone like me; who wants to hire a sick old man?

People want to leave this town and look for alternatives and other jobs but we have no options. Where should we go to? Even if they want to work in Israel, they won’t give work permits to people who are not married. The situation is really hard. There are honestly no options for the youth in this town. I personally know five young men who left a few weeks ago to search for jobs and I don’t know if they will ever come back.

This town has one important natural resource which is stones; people used to call our town “the town of the white gold.” Israel has a policy of denying people access to the stones. Their goal is to starve Palestinians and make them submit to anything they want; they want to make us hungry so we will get out of this town.”

*H. Taqatqa, Beit Fajjar.
Interview: 9 February 2017*

ACCESS TO A CLEAN ENVIRONMENT

Israel, as an occupying power, has a duty under the GCIV to “ensure and maintain public health and hygiene in the occupied territory.”¹⁹⁹ However, Israel has both ignored its obligations and instituted discriminatory policies in this regard that creates a coercive environment and leads to the forcible transfer of the occupied population. Israel is polluting and damaging the environment, thereby causing serious harm to drinking water, air quality, land fertility and public health. This pollution has forced people to leave their residential or work places. For example, the Israeli private agrochemicals company Geshuri, near Tulkarem, produced so much industrial waste that it affected the whole surrounding locality, causing air pollution and serious health problems including disproportionately high rates of cancer, asthma, eye and respiratory anomalies.²⁰⁰ As a result, this locality is considered uninhabitable, and the nearest residences have been almost completely abandoned.²⁰¹

Waste Management in West Bank

Israel uses the West Bank as a location in which to dump its waste, much of which is deemed hazardous. Types of waste dumped in the West Bank include solid waste, construction waste, and wastewater. The sources of this waste are not only the Israeli colonies inside the West Bank, but also Israel itself, which transfers its waste into the West Bank.²⁰² Serious damage to the Palestinian environment has occurred, as most of this waste is not treated and is left in unauthorized and/or inappropriate landfills or in Palestinian villages and towns. One example is the Qalqilyah landfill. Though now closed, the waste in the landfill is untreated and is thus still polluting the surrounding environment. This landfill is located on top of an aquifer and is close to a field of olives which have “been designated as unmarketable, because of an unspecified risk of contamination.”²⁰³ This is only one example of the destructive results of Israel’s waste management policy.

199 GCIV, art. 56, *supra* note 5.

200 Al Haq, *Environmental injustice in occupied Palestinian territory*, 2015, 24, available at: <http://www.alhaq.org/publications/Environmental.Injustice.Report.En.pdf> [hereinafter Al Haq, *Environmental injustice*].

201 *Ibid.*, 25.

202 Mel Frykberg, “Israel treats West Bank as its garbage dump,” *The Electronic Intifada*, 18 May 2009, available at: <https://electronicintifada.net/content/israel-treats-west-bank-its-garbage-dump/8235> [accessed 22 August 2017] [hereinafter, Frykberg, “West Bank as garbage dump”].

203 Al Haq, *Environmental injustice* 36, *supra* note 201.

“I have a Masters in Environmental Management and a PhD in Environmental Engineering and I work as a consultant for different projects related to the environment in Palestine.

Officially, the landfill in Abu Dis [in Area C]²⁰⁴ should be closed.²⁰⁵ The Abu Dis landfill was mainly used by Israelis; they used to bring all the waste from the Jerusalem area to this landfill in Abu Dis. This was happening despite the fact that waste from Jerusalem was supposed to be transferred to the landfill in Beersheba [in the Naqab].

The landfill was under the supervision and management of the Israeli Ministry of Environmental Protection and the private sector used to run it. However, under international law, it's illegal to transfer waste from inside the Green Line [from West Jerusalem in this case] to the West Bank. I remember going to the landfill once to try and take some photos, but the guys who were with me ended up getting beaten by the soldiers there.

Ninety percent of the waste was coming from Israelis in the Jerusalem area. Waste was also coming from Palestinian towns around the landfill, but it only constituted 10 percent of the total waste going to the landfill.

The landfill is hazardous and it was supposed to close a long time ago but Israel used to say that Palestinians from the West Bank don't have an alternative so we have to keep the landfill open! Now there is a Palestinian landfill near Tuqu' [town in the West Bank] and it's more environmentally friendly, so now all the cities and towns in the south of the West Bank use that one.

Usually, non-hazardous safe landfills install an isolation system. [In Abu Dis], there is no isolation system protecting the aquifer. There is also no environmental monitoring scheme; basically, the whole waste management system there is really bad.

There are Palestinian Bedouin communities who are now living next to the landfill; they were transferred there by Israel. This really damaged their way of living [herding], so now they are trying to survive from the landfill. For example, the Bedouins search for valuable materials in the waste.

This landfill, because of the toxic chemicals and poisons it's producing, is spreading many diseases to the communities living around it. It is scientifically proven that burning waste causes cancer. It can affect all the different organs in the human body; unborn babies are even vulnerable. In addition, the pollutants

204 “Restrictions on Palestinian planning and construction in Area C”, B’Tselem, 30 October 2013, available at: http://www.btselem.org/planning_and_building/restrictions_on_palestinian_planning_and_building [accessed 22 August 2017] [hereinafter B’Tselem, “Restrictions on Palestinian planning”].

205 Although Israel claims that the Abu Dis landfill is closed, it appears that waste is still being disposed of in this area.

in the air fall back down to the earth and then settle in the surrounding soil. So, the soil then transfers the toxic chemicals to the farms, to the animals and then back to the human body through food.

If you look at the site of the landfill, you can clearly see a black liquid leaking from it. This material is a poisoning, polluting liquid. It is not treated and the landfill doesn't have a facility to collect or treat these liquids coming out of the waste. The most dangerous thing is that these liquids reach the aquifer and damage one of the main sources of water in the area.

As well as this waste coming from inside the Green Line, there is also the waste produced in colonies that is dumped in Palestinian landfills and Palestinian lands.”

*Reem Musleh, Environmental Engineer, PhD, Lead Consultant of Waste Management INGO in Ramallah.
Interview: 8 February 2017*

Sewage from Colonies

The Oslo II Accords (1995) raised the issue of sewage in Article 40, but left the topic of ownership of water and sewage infrastructure in the West Bank to be settled in final status negotiations. Article 40 divides responsibility for sewage and water management between Israel and the PA, dictating that Israel must transfer its responsibilities to the PA in areas A and B. It also left the implementation of the article to the JWC, which has proven ineffective in providing adequate services to Palestinian areas, including extending basic sewage infrastructure to many places in the West Bank.

Sewage from Israel and Israeli colonies is a main cause of environmental damage in the West Bank, demonstrating that not only is Israel ignoring its duties to provide a healthy environment in the occupied territory but also that the colonies are causing serious, widespread environmental damage. It is clear that Israel is using wastewater as a tool to destroy the environment, health and livelihoods of the Palestinian population in the West Bank by directing sewage into Palestinian areas. Most of the colonies are located on hilltops which allow sewage to flow down to the Palestinian towns, villages and communities in the valleys.²⁰⁶ As a result, sewage has been contaminating drinking water, damaging crops, creating an unhealthy environment and generating many diseases. This has affected the ability of the Palestinian population to continue living in their communities.

206 Frykberg, “West Bank as garbage dump,” *supra* note 202.

One case is the Palestinian communities near the Ariel colony in the Nablus area. Ariel consists of a university, the West Ariel Industrial Park and the colony itself, which has a population of around 20,000 Jewish-Israeli colonizers.²⁰⁷ There is an estimated 2.3 cubic meters of sewage water poured into Palestinian areas daily from Ariel colony and its university alone.²⁰⁸ It is also reported that factories in the industrial zone of Barkan colony pour wastewater into the Salfit Valley, located between Nablus and Ramallah, every weekend.²⁰⁹ The sewage water coming from colonies has affected all aspects of life in this area, causing diseases to humans and animals, pollution of springs and soil, bad odors, and harming nature sites which attract tourism. “[D]ue to the concentration of pollutant elements in this zone, many agricultural fields have been destroyed and many animals and plants have been killed. Moreover, many infectious waterborne diseases, like diarrhea, have broken out especially among children.”²¹⁰

Colonies have also been dumping wastewater into al-Mawat Valley in Salfit.²¹¹ Several villages in the valley, such as Burqeen, have been flooded with sewage many times. Farmers from the Salfit area have issued complaints, particularly from Kfar ad-Deek, but nothing has been done and wastewater continues to damage the environment, health and livelihoods of Palestinians in these areas. As a result, these Palestinians are denied the prospect of living in a healthy and clean setting, unless they leave the contaminated area. This coercive environment affects their health, source of income and even land; ultimately they are forced to leave their homes and move out of their villages.

“I have five boys and two girls and I live in Burqeen [the built-up area of the village is designated A, whereas the rest of the lands are designated as Area C].

207 Tovah Lazaroff, “Settler Population Was 385,900 by End of 2015”, The Jerusalem Post, 6 October 2016, available at: <http://www.jpost.com/Israel-News/Settler-population-was-385900-by-end-of-2015-469607> [accessed 22 August 2017]; Ministry of Economy and Industry of Israel, “Information on industrial areas,” n.d., available at: <http://economy.gov.il/ENGLISH/INDUSTRY/DEVELOPMENTZONEINDUSTRYPROMOTION/ZONEINDUSTRYINFO/Pages/default.aspx>

208 “Settlement Sewage Water Pollutes Salfit Tourist Areas”, International Middle East Media Center (IMEMC), 25 May 2015, available at: <http://imemc.org/article/71696/> [accessed 22 August 2017].

209 *Ibid.*

210 Marta Fortunato, “Palestinian villages struggle as Israeli settlement waste contaminates the environment,” *Mondoweiss*, 7 August 2012, available at: <http://mondoweiss.net/2012/08/palestinian-villages-struggle-as-israeli-settlement-waste-contaminates-the-environment/> [accessed 22 August 2017].

211 “Ariel settlement sewage destroying environment in Salfit, West Bank”, Palestine News Network (PNN), 10 April 2016, available at: <http://english.pnn.ps/2016/04/10/ariel-settlement-sewage-destroying-environment-in-salfit-west-bank/>

Here, the sewage comes from everywhere, but mainly from the Ariel colony nearby and from the industrial areas next to the town.

Sometimes colonizers come with big tanks filled with sewage and waste water and just pour it out next to my home. Sometimes, they come five or six times a day with big tanks. When it rains, the sewage waters flood out onto the street and enter our home. Whenever it rains, we just know that we won't be able to leave the house.

This sewage water spreads so many diseases. The land around us is really contaminated. No matter how much we try to clean it up, there's no point because of the amount of sewage we have surrounding us. I've never thought about doing any kind of farming around the home; because of how contaminated the land, water and environment is around us. When it floods, we get really scared that one of the kids will fall into the sewage water and die. The other day, one of the kids who is only four years old, fell into the sewage water and I had to go into the water and lift him out.

Her husband: I have so many health problems. At first, we thought it was hepatitis but then I was referred to a cancer specialist. We still don't know exactly what's wrong with me but the doctor thinks I have a cancer.

All of this sewage is coming from Ariel; they are pouring their sewage onto our land on purpose. But how can we complain? Complain to who, to Ariel? And go where exactly? There's nowhere else I can go; I came here to settle down with my family and now this sewage is killing us. What could be worse than this? I have cancer and my daughter has breathing problems, you should see her, she can't take one proper breath. I don't know what to do with my daughter; she can't leave her room because if she does, she has difficulty breathing. Even at night we can't sleep because of the bad smell. I honestly don't know what to do to help myself and my children.

I don't want to keep moving from place to place. I want to settle in one place with my family. I just wish we had no sewage next to us; I wish people would sympathize with us, help us and help my children.

These colonizers want us out of our land and out of our house but we don't have any other options, we have nowhere to go. This is why we're still here in this home, only because we have to stay. Really, to be honest with you, it's a dream to build another home away from here, leave this one and never come back."

*Y. al-Sharief, Burqeen, Salfit.
Interview: 10 February 2017*

Part II: Denial of Access to Services

THE GAZA STRIP

Although Israel as the Occupying Power is ultimately responsible for service provision in the Gaza Strip, services are currently provided through a division of labor between the Hamas government in Gaza and the PA government in Ramallah.²¹² However, discriminatory Israeli energy and water provision policies combined with the 10-year-long closure and the brutal targeting of service infrastructure in the three wars on Gaza has created increasingly desperate living conditions in the Strip. As illustrated in the Natural Gas section of this paper, the lack of electricity and power outages have severely hampered the delivery of basic services. Inadequate electricity has meant that over 70 percent of households in Gaza are only supplied with piped water six to eight hours at one time every two to four days, and water pumps sometimes lack sufficient energy levels to operate.²¹³ The coastal aquifer from which Gaza sources its fresh water is rapidly depleting and has been contaminated by seawater and sewage, meaning that 90 percent of piped water is not potable. This has forced people in Gaza to rely on desalinated water brought in trucks for drinking and cooking, which is more expensive and still not of adequate quality.²¹⁴

212 Are Hovdenak, *The Public Services under Hamas in Gaza: Islamic Revolution or Crisis Management?*, Peace Research Institute Oslo (PRIO), March 2010, 5, available at: http://file.prio.no/Publication_files/Prio/The_Public_Services_under_Hamas_in_Gaza.pdf

213 OCHA, *Impact of Gaza's Electricity Crisis*, *supra* note 106.

214 World Bank, "Water Situation Alarming in Gaza," 22 November 2016, available at: <http://www.worldbank.org/en/news/feature/2016/11/22/water-situation-alarming-in-gaza> [accessed 22 August 2017].

Wastewater treatment services are in desperate need of repair and lack the energy supply to operate properly after the 2014 war on Gaza. The 90 m³ of raw or partially treated sewage that previously flowed into the Mediterranean Sea on a daily basis is now completely untreated, increasing pollution and health risks. Sewage pumping stations have also begun to fail. In November 2015, one of the main sewage pumping stations in Gaza City expelled over 35,000 m³ of untreated sewage into the neighborhood of az-Zeitoun, posing significant health risks to around 3,000 people.²¹⁵

Lack of power has also severely affected the provision of medical services in Gaza. Power outages have caused essential equipment such as lab machines and incubators to malfunction and hospitals have had to prioritize emergency surgeries, making the waiting list for elective surgeries up to 18 months long.²¹⁶ Additional healthcare problems have been created by the wars on Gaza and the closure of the Strip. There is an acute shortage of medicines and medical equipment, with Gaza's Ministry of Health reporting insufficient supplies of 149 medicines.²¹⁷

The Ministry has been unable to afford or to import enough to combat this shortage due to closure restrictions.²¹⁸ This has been hugely detrimental to the delivery of medical services, particularly to the most vulnerable groups like pregnant women and babies. Injections to stimulate development in premature babies and induce labor are in short supply, and technology like infant heart monitors and incubators are not enough to meet demand.²¹⁹

Subsequently, the number of referrals by Gaza's Ministry of Health to hospitals in the West Bank and Israel has climbed significantly, as patients are unable to access sufficient care in Gaza. However, approximately one third of exit permit applications for medical treatment were rejected or delayed by Israeli authorities, causing these patients to miss their

215 OCHA oPt, "Gaza: water and sanitation services severely disrupted due to the energy crisis," 24 November 2015, available at: <https://www.ochaopt.org/content/gaza-water-and-sanitation-services-severely-disrupted-due-energy-crisis> [accessed 22 August 2017].

216 OCHA, *Impact of Gaza's Electricity Crisis*, *supra* note 106.

217 Isra Saleh el-Namey, "Gaza's sick pay price of blockade," *The Electronic Intifada*, 27 July 2016, available at: <https://electronicintifada.net/content/gazas-sick-pay-price-blockade/17501?platform=hootsuite> [accessed 22 August 2017] [hereinafter Saleh el-Namey, "Gaza's sick"].

218 Health Cluster in the occupied Palestinian territory, "Gaza Strip: Joint Health Sector Assessment Report," September 2014, available at: http://www.emro.who.int/images/stories/palestine/documents/Joint_Health_Sector_Assessment_Report_Gaza_Sept_2014-final.pdf; Saleh el-Namey, "Gaza's sick," *supra* note 217.

219 Saleh el-Namey, "Gaza's sick," *supra* note 217.

appointments.²²⁰ A 5-year old child died on 17 April 2017 due to the failure of Israeli authorities to issue her a permit to exit for medical care in East Jerusalem.²²¹

Finally, access to education services has also been severely hampered. Reconstruction of the schools destroyed in the 2014 war on Gaza is still ongoing, and the remaining schools are too few to adequately provide for students' needs. Classes are overcrowded and run in double-shifts, meaning that students receive less teaching hours on core subjects. It has also meant that students have difficulty focusing, which has been compounded by power outages and electricity rationing.

The living conditions created by this egregious lack of basic services for the population of Gaza have made daily life intolerable and constitute a coercive environment. The prevention of access to each service is a direct result of a combination of Israeli policies of denial, the Israeli-imposed closure, and the destruction caused by the Israeli army during the wars on Gaza. In the face of the humanitarian crisis that it has created, Israel has refused to fulfill its responsibility to provide for the wellbeing of Palestinians in Gaza, leaving them trapped in a desperate situation that would force many to leave if given the chance.

According to the UN Conference on Trade and Development (UNCTAD) annual report of 2015, "The social, health and security-related ramifications of the high population density and overcrowding are among the factors that may render Gaza unlivable by 2020, if present trends continue."²²² In fact, the projected population will increase from 1.6 million to 2.13 million people in 2020 and 71,000 more housing units will be needed by then.²²³ Furthermore, the damage to the aquifer will be irreversible by 2020 and the demand for water will increase by 60 percent and reach 260 million m³. Also, the provision of electricity has to double in order to

220 OCHA oPt, "The Gaza Strip: The Humanitarian Impact of the Blockade," November 2016, available at: <https://www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016> [accessed 22 August 2017].

221 Medical Aid for Palestinians (MAP), "Palestinian child, 5, dies after being denied Gaza exit for medical treatment," 5 May 2017, available at: <https://www.map.org.uk/news/archive/post/650-palestinian-child-5-dies-after-being-denied-gaza-exit-for-medical-treatment>

222 UN Conference on Trade and Development (UNCTAD), *Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*, United Nations, 6 July 2015, 12, available at: http://unctad.org/en/PublicationsLibrary/tdb62d3_en.pdf [hereinafter UNCTAD, *Report on UNCTAD assistance*].

223 United Nations Country Team Occupied Palestinian Territory, *Gaza in 2020: A livable place?*, August 2012, 8, available at: <https://www.unrwa.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf> [hereinafter, UN Country Team, *Gaza in 2020*].

meet the demands which will be 550 MW. In terms of the health sector, it was projected before the 2014 war on Gaza that there will be a need of over 1,000 additional doctors and 2,000 nurses by 2020.²²⁴ However, the recent war destroyed and partially damaged 17 hospitals, 56 health care centers and 45 ambulance vehicles.²²⁵ Likewise, much of the educational infrastructure was destroyed in the 2014 war, creating a need for additional 440 new schools by 2020. Thus, as stated in a report by the UN Country Team in the oPt, “In the absence of sustained and effective remedial action and an enabling political environment the daily lives of Gazans in 2020 will be worse than they are now. There will be virtually no reliable access to sources of safe drinking water, standards of healthcare and education will have continued to decline, and the vision of affordable and reliable electricity for all will have become a distant memory for most.”²²⁶

“Honestly, the situation in Gaza can’t get any worse. A city of 200,000 people doesn’t even have a hospital! The closest hospital is more than a 20-minute drive.

During the wars, injured people were treated in the streets, not hospitals or clinics, and the dead were put in vegetable fridges. Many bodies were put in the shop fridges.

I have a friend whose father was really sick and he needed a specific type of test for the operation he had to have. He was really sick to the extent that we thought that he was going to die. He went to the hospital to make an appointment for the test and the next one available was in 2020, four years away. Luckily, my mother works in a hospital and spoke to one of the doctors and my friend’s father didn’t have to wait for four years. This man was lucky, but not all people in Gaza know someone who works in a hospital who can help. Those people usually die.

My mom tells me about the terrible conditions in the hospital where she works. If someone comes to the hospital with a broken arm or leg, the hospital will put him in a bed and give him pain killers and then ask his father, mother or brother to go and buy the medical materials and the plaster. The hospital doesn’t always have the medication or materials. This happens a lot!

Last year in the UNRWA clinic close by, they started using syringes more than once. They started throwing away the needles after using them but kept the syringes and used them again after cleaning them.

224 *Id.*, 3.

225 UNCTAD, *Report on UNCTAD assistance*, 11, *supra* note 222.

226 UN Country Team, *Gaza in 2020*, 16, *supra* note 223.

There are times of the year that are worse than others. For example, during the Jewish holidays, Israel closes the border for five or six days. Nothing comes into Gaza when the border is closed. People run out of gas and would start using diesel from gas stations and the hospitals would run out of everything. Everything that comes into Gaza through the Israeli border is for daily consumption so there is a big crisis if the border closes, even just for few days.

There's a specific amount of electricity allowed into the Strip so we can only use a specific amount. Our situation used to be better, we used to have electricity for 12 hours a day but now it's only for six hours a day.

For the people who don't have money, electricity isn't really a priority for them. They are focused on how to feed themselves and their families, not electricity, despite the fact that electricity is important. In some places, such as the refugee camps, the situation is really bad, there are people living in really bad housing conditions. If you push it, the whole thing will fall down. I lived in a similar area a few years ago. There were no services whatsoever, there weren't even electricity lines, but my family and I moved from that area.

Usually clinics and small medical centers have generators. We have a small medical center nearby and there is a generator there, but to be honest I've never seen the generator on and I also have never seen the medical center working. I forgot that it still exists.

Life is hard in Gaza no matter where you live, even if one person is in a slightly better situation, everyone is experiencing and feeling the same thing. Our lives are dependent on services so we all have the same problem. Even when I want to take a shower, which is the simplest thing in life, I have to calculate in advance whether we will have electricity or not. Everything depends on electricity; we have to adjust our lives to adapt to the situation."

*I. Hanoon, 25, Gaza Strip.
Interview: 14 February 2017*

In June 2017, the electricity supply to the Gaza Strip was reduced even further, to only two to four hours a day.²²⁷ The Gaza Electricity Distribution Corporation announced on 19 June 2017 that "the Israeli grids supplying

²²⁷ "Gaza faced with 2 to 3 hours of power a day after Israel begins electricity cuts," *Maan News Agency*, 19 June 2017, available at: <https://www.maannews.com/Content.aspx?id=777721> [accessed 22 August 2017]; "Gaza Power Watch: How Many Hours of Electricity Did Gaza Get Yesterday," *Haaretz*, 27 September 2017, available at: <https://www.maannews.com/Content.aspx?id=777721> [accessed 27 September 2017].

the Gaza Strip reduced their output from 120 to 112 megawatts.”²²⁸ This reduction will most probably further deteriorate the humanitarian situation in Gaza, and reduce even more the already scarce services being provided. Considering its extensive control in Gaza and its role as an occupying power, Israel is ultimately responsible for ensuring the well-being of the occupied population in the Strip and providing an adequate electricity supply. The latest cut to the electricity supply, therefore, constitutes a violation of Israel’s obligations as an occupying power.

UNRECOGNIZED VILLAGES

There are currently over 200,000 Palestinians living in the Naqab, in southern Israel. Out of those, approximately 80,000 live in 39 villages that were strategically left out of Israel’s national Master Plan in the late 1960s²²⁹ rendering them ‘unrecognized.’ This status has effectively slated the populations of these villages for displacement, as unrecognized villages are deemed illegal under Israel’s 1965 Planning and Building Law; not only are they threatened with demolition but they are not eligible for services.²³⁰ As a result, these villages lack basic service infrastructure, government services and utilities, including schools and medical centers. They are also prohibited from connecting to electricity, telecommunication and water networks.²³¹

The Israeli Planning and Building Law specifically states that homes built without a license cannot be connected to the water, electricity or telephone networks, effectively leaving all inhabitants of unrecognized villages without any of these fundamental services.²³² Children in these villages have no kindergartens or schools, which forces families to send their children to schools in some recognized villages, often far distances, to access education. In addition to that, there is no municipal authority that governs these villages,

228 *Ibid.*

229 Human Rights Watch, *Off the Map: Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages*, 30 March 2008, available at: <https://www.hrw.org/report/2008/03/30/map/land-and-housing-rights-violations-israels-unrecognized-bedouin-villages> [accessed 22 August 2017] [hereinafter HRW, *Off the Map*]; Association for Civil Rights in Israel (ACRI), “Negev Bedouins and Unrecognized Villages”, n.d., available at: <http://www.acri.org.il/en/category/arab-citizens-of-israel/negev-bedouins-and-unrecognized-villages/> [accessed 22 August 2017].

230 BADIL, *Forced Population Transfer: The Case of Palestine, Discriminatory Zoning and Planning*, (Bethlehem, 2014), 19, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf> [hereinafter BADIL, *FPT: Zoning and Planning*].

231 HRW, *Off the Map*, *supra* note 229.

232 *Ibid.*

thus, Bedouins can neither be elected nor vote in municipal representation in Israel. Since the 1970s around 85,000 Palestinian Bedouins have moved to townships in search of better services and living conditions.²³³

The Committee for the Elimination of Racial Discrimination (CERD) expressed concern regarding Palestinian Bedouin communities in the Naqab, following Israel's appearance before the Committee in 2007.

The Committee expresses concern about the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns. While taking note of the State party's assurances that such planning has been undertaken in consultation with Bedouin representatives, the Committee notes with concern that the State party does not seem to have enquired into possible alternatives to such relocation, and that the lack of basic services provided to the Bedouin may in practice force them to relocate to the planned towns[para.25].²³⁴

This evident policy of denial of access to services creates a coercive environment that Israel deliberately uses to pressure Palestinian Bedouins to abandon their ancestral lands and move into the townships, resulting in the forcible displacement of these Israeli citizens.²³⁵

"I'm from al-Araqib village and I was born here in 1973. I grew up in this village; I also got married and raised my children here. I still live in al-Araqib and I hope that one day we will have our rights and be able to live freely on this land. Since 2010, after Israel destroyed the whole village, I made a promise to spend the rest of life fighting for the rights of al-Araqib and the people who live here.

Here in the unrecognized villages, Israel doesn't provide any services. My son is in first grade and if he wants to be in school for the first class at 7:45 am or 8:00 am, he has to wake up at 5:30 am.

All of my children go to school in Rahat (nearby recognized town), which is a

²³³ Many observers believe that there are actually far fewer than 85,000 Bedouin living in the townships but that Bedouin often register their place of residence in the townships in order to receive an official address for mail and to facilitate receipt of benefits. In addition, some Bedouin who previously lived in the townships have actually moved to (or back to) the unrecognized villages without changing their official place of residence. See: Shlomo Swirski and Yael Hasson, *Invisible Citizens: Israeli Government Policy Toward the Negev Bedouin*, Adva Center - Information on Equality and Social Justice in Israel, February 2006, 33, available at: <https://adva.org/wp-content/uploads/2014/09/NegevEnglishSummary.pdf>

²³⁴ HRW, *Off the Map*, *supra* note 229.

²³⁵ Those Palestinians that remained inside the borders of what became Israel in 1948 were given Israeli citizenship. As such, Palestinian Bedouins from al-Araqib are Israeli passport holders.

completely different town but it's the closest one to al-Araqib. So, my wife has to wake up at 5:30 am to prepare all the children so they can go to school clean and be on time. I really don't understand this, even a student has to suffer and go through all of this suffering to have an education.

There are no medical services in al-Araqib. If it's an emergency, it's really hard for an ambulance to get to the village because the village is unrecognized and it doesn't exist on any Israeli maps. This means that the ambulance driver won't be able to find the village. People rely on their private cars and anyone who doesn't have a private car would ask their neighbor to borrow their car or someone would just offer a ride. Basically, we have no public transportation at all; this is why we rely on our private cars or on any private car available in the village. Even when you look at our place of residence on our ID, it's doesn't say al-Araqib because they [Israel] don't recognize it, it actually says Rahat.

We have a well in the village, and we go to the well to fill water into buckets and then come back to our homes. We're in a modern age, you would expect that we would have a water network and some kind of tap and sink, but no, we still go to the well every day.

This is all to make life hard for Bedouins, to make us want to leave to the cities where everything is available. Israel wants us to leave because they want to take our land; they want to confiscate the land. If you hear about people leaving their land, you should know that they have been forced to leave.

You know, they don't provide us services to increase the pressure on us; they want to pressure us as much as possible to make us leave. This is the main Israeli goal; they want to have a minimum number of Israeli Jews on the maximum amount of land, and have the maximum number of Palestinians on the smallest amount of land."

A. al-Turi, al-Araqib.

Interview: 23 February 2017

"I am married and I have many daughters and sons. All of them are educated, just like the rest of my family.

Our villages [referred to as unrecognized villages] have existed for hundreds of years, even before the creation of Israel, but we still don't have water, electricity, or health centers. They don't give us any of these services on purpose.

The recognized villages get services, such as electricity, sanitation, clinics, water, schools and transportation. Israel provides infrastructure, building

permits, and services to people in recognized villages. But, unrecognized villages face great difficulties getting any services at all. Even when some have thousands of people living in them, Israel doesn't provide clinics or schools. Some villages have only managed to get schools and clinics after Palestinians have taken a case to the High Court to force Israel to provide them.

In Um Al Hiran, we have no schools and clinics; our students go to schools in Hura, and we get services from Hura too. We can even manage without services; all we want is to be able to live in Um Al Hiran. We don't even want stone or zinc houses or caves; all we want is to be able to live in our village.

In the village, we get our water on donkeys; however, nowadays since people have bought cars, we can bring water tanks (4 to 5 cubic meters each) to the village. We have wells in the village, but a well is not enough for the water we need.

We have set up two pipelines to get water, one from Hura (nearby recognized village), and the other from another village, but then they [Israel] wouldn't allow the water pressure. But, the Israeli-Jews living next to Um Al Hiran have access to water, electricity, and Israel has even allowed them to make a cemetery for dogs, as well as giving them thousands of hectares.

We live a really hard life. A Bedouin is used to living a hard life and we manage it. Since Israel doesn't provide us with water, electricity or education, we try to do it by ourselves. I take my children to Hura schools to get education; we bring water tanks on donkeys, although this water is never enough. And when it comes to electricity, we buy gas canisters to manage. We can still accept to live this kind of life; all we ask is to let us stay.

The Naqab is around 13 million dunams (1,300 km²), and we only live on four percent of the whole Naqab. But, the Israeli media and public opinion try to show that we, the Bedouins, are occupying the whole Naqab, exhausting the state's resources and stealing the land. We are the original owners and the indigenous people who have lived here even before Israel was established.

Their goal is well known, the one ultimate goal, it is not only to take Um Al Hiran. Israel wants to take the whole Naqab, the recognized and the unrecognized villages, they want the whole area."

*H. Abu Al Qee'an, Um Al Hiran.
Interview: 23 February 2017*

SEAM ZONES

Seam zones are sections of Palestinian land within the oPt that are located between the 1949 Armistice Line (the Green Line) and the illegal Annexation and Separation Wall and thus segregated from the rest of the West Bank. These pieces of land have been designated by Israel as closed military areas.²³⁶ As a result, these areas are extremely isolated and Palestinian access is severely restricted and subjected to an Israeli-controlled permit regime. Approximately 50,000 Palestinians live in 57 communities within these so-called seam zones, and are defined internationally as Internally Stuck Persons.²³⁷

To obtain an access permit, Palestinians are required to meet at least one of the Israeli civil administration's qualifying criteria: ownership of a residential property within the zone, ownership of agricultural land within the zone or having a linkage to the land, or ownership of businesses located within the zone. Palestinians who do not fit one or more of these qualifications are not entitled to access seam zone land, and applications for a permit can take weeks to process. Even those who do fit the criteria can be refused entry.²³⁸

The unique situation faced by communities in the seam zones has a hugely detrimental impact on the provision of services to their residents. Israel denies seam zone communities access to Israeli municipal services while also preventing access to PA municipal services. For example, the town of Hizma, north of Jerusalem, has been split in two by the Wall, trapping one side in a seam zone. The houses within this seam zone are denied access to both water and sewage networks: the Israeli-controlled Jerusalem municipality is refusing to fulfill its legal responsibility to include them within their municipal service coverage while simultaneously restricting Palestinian movement and access to the point of denying the PA access to the area.²³⁹

These movement and access restrictions have been implemented in every seam zone, crippling their economies and generating growing levels of

236 OCHA oPt, *West Bank Movement and Access Update*, Special Focus, September 2012, 11, available at: https://www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf

237 OCHA oPt, *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*, 1, 9 July 2007, available at: https://www.ochaopt.org/sites/default/files/opt_prot_ocha_hum_impact_barrier_icjo_july_2007.pdf

238 BADIL, *Seam Zones*, Occasional Bulletin No. 25, August 2012, 4, available at: http://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-25.pdf [hereinafter BADIL, *Seam Zones*].

239 Lena Odgaard, "Israeli Wall Creates Limbo for Seam Zone Palestinians", *Al Monitor*, 2 July 2013, available at: <http://www.al-monitor.com/pulse/originals/2013/07/west-bank-seam-zone-israel-wall.html> [accessed 22 August 2017].

poverty which are further compounded by inadequate or non-existent health, education, transportation and sanitation amenities.²⁴⁰ Israel has impeded the provision of these basic necessities, greatly compromising the quality of life and thus creating a coercive environment. Essentials such as eggs, meat and dairy products require permits in order to enter the seam zones,²⁴¹ while gas for cooking and heating is prohibited completely in some of the seam zones.²⁴² The withholding of these necessities results in particular hardship for women, as they are generally in charge of cooking and housework.²⁴³ Water is provided in insufficient amounts, similar to the rest of the West Bank. However, humanitarian organizations aiming to provide additional water supplies have a particularly difficult time accessing the seam zones. At the same time, Israel denies Palestinians permission to build basic water infrastructure.²⁴⁴ Public transportation has been completely cut off, as buses are denied access.²⁴⁵ Other municipal vehicles, such as those that empty sewage tanks, are sometimes turned away at the checkpoints.²⁴⁶

The checkpoints, located both in and around the Wall and the seam zones themselves, have also become instrumental to the denial of education services. The Palestinian Ministry of Education has been prevented from effectively delivering textbooks and furniture to schools within the seam zones.²⁴⁷ Students and teachers residing in seam zones (or who study/teach at schools located within them) have encountered daily difficulties reaching their classrooms. As a result, children and teachers may be late, or classes may not start on time or at all.²⁴⁸ Checkpoint crossings also expose Palestinians, especially the children to humiliation and harassment at the hands of Israeli soldiers. This has particularly affected education access for female students, as some families have taken their daughters out of school or encouraged them to not finish in order to protect them from potential altercations.²⁴⁹

240 Hamoked, *The Permit Regime*, March 2013, 97, available at: http://www.hamoked.org/files/2013/1157660_eng.pdf

241 OCHA oPt, 10 Years Since the International Court of Justice (ICJ) Advisory Opinion, 9 July 2014, 6, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_10_years_barrier_report_english.pdf

242 Women's Centre for Legal Aid and Counselling (WCLAC), *Life Behind The Wall: Voices of Women from the Seam Zone*, Ramallah, 2010, 28, available at: <http://www.wclac.org/english/userfiles/Life%20Behind%20the%20Wall.pdf> [hereinafter WCLAC, *Life Behind The Wall*].

243 *Ibid.*

244 BADIL, *Seam Zones*, 6, *supra* note 238.

245 WCLAC, *Life Behind The Wall*, 28, *supra* note 242.

246 *Ibid.*

247 BADIL, *Coercive Environments*, 63, *supra* note 15.

248 BADIL, *Seam Zones*, 8, *supra* note 238.

249 WCLAC, *Life Behind The Wall*, 42, *supra* note 242.

Healthcare within the seam zones is restricted to the basic medical clinics allowed to exist there, which are only capable of treating minor ailments. For all other health problems, Palestinian residents must seek health services in other parts of the West Bank. Ambulances from Israel will not attend to cases within the seam zones, forcing Palestinians to seek assistance from West Bank ambulances which must cross through checkpoints, sometimes resulting in fatal delays.²⁵⁰ These delays have caused pregnant women to often relocate to the West Bank a month before their due date in case of birth complications.²⁵¹

The unlawful denial of services illustrated here has been strategically employed by Israel to create a situation of enduring privation for Palestinians in seam zones. It should therefore be recognized as part of a systematic pattern of discrimination by the occupying power which seeks to make life so difficult for these Palestinians that they are left with little option but to relocate to other parts of the West Bank.

“Life in the town depends on sharing; it depends on you sharing what you have with your neighbor. The financial situation in the town is really bad; most of the people are really poor.

The infrastructure in Nabi Samuel is almost nonexistent. Each family has created a cesspool just outside their homes and this creates a lot of problems. If someone uses the water a little bit more than usual, the house floods with sewage and waste water and the cesspool outside floods.

In the past, there were no clinics at all, now there is one clinic, run by an international non-government organization. They come maybe every week or two. They were here last Saturday but they only called for people who were over 50 years old to come to the clinic. Many people were sick and needed some medical care but they weren’t allowed to come to the clinic because it was only for the elderly people. The clinic doesn’t do a lot of things. They just did some tests; mainly blood pressure and diabetes tests. They don’t even bring the needed medications, so people still have to leave the town and buy them from outside.

Ambulances never come into the town, only in cases of death to carry out the body, but nothing else. I mean, I remember two cases where ambulances came to the town, one for a man who fell down and the other for a man who was run over by a tractor. Israeli ambulances do not come to Nabi Samuel,

250 BADIL, *Seam Zones*, 8, *supra* note 238.

251 OCHA oPt, *The Impact of Barrier on Health*, Special Focus, July 2010, 7, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_special_focus_july_2010_english.pdf

and the Palestinian Authority can't easily arrange for an ambulance to cross the [Israeli] checkpoint to enter the town. In the case of the man who was run over by the tractor, by the time the ambulance arrived, people had managed to lift the man from underneath the tractor, but his condition was really bad. The other case was my own uncle. When the ambulance arrived, my uncle was already dead and there was no more need for it but to carry out his body.”

A. Abeid, Nabi Samuel.

Interview: 6 February 2017

OLD CITY OF HEBRON

Hebron is a large commercial city in the south of the West Bank, known for being both an important religious site and the only Palestinian city besides Jerusalem to contain Israeli colonies within its urban area. The case of Hebron also provides a unique example of how service provision policies can be engineered to create two diametric environments for two peoples within a single area. This difference within service provision is enabled by the geopolitical division of Hebron into two parts. Hebron 1 (H1) consists of 80 percent of the city and is under the administration of the PA. Hebron 2 (H2) consists of the remaining 20 percent, encompassing the Old City as well as the Israeli colonies established in the city, and is under full Israeli control.²⁵² Service provision for the 6,000 Palestinians living in H2 is delegated to the PA,²⁵³ despite the fact that Israel as an occupying power is ultimately responsible for this task. In addition to shirking its duties, Israel also obstructs the PA's efforts in H2, leading to a de facto denial of services for Palestinians living in the area.²⁵⁴

Services routinely denied to Palestinian neighborhoods within H2 include water, electricity, sanitation, transportation, basic maintenance, and emergency medical and fire services.²⁵⁵ Palestinians in H2 suffer from the same water restrictions and rationing experienced by other Palestinians in the West Bank, while the colonies are connected to a constant supply of water

252 Protocol Concerning the Redeployment in Hebron, PLO-Isr., 17 January 1997, Article 2/a/1, available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/protocol%20concerning%20the%20redeployment%20in%20hebron.aspx> [accessed 22 August 2017].

253 OCHA oPt, *Fragmented Lives: Humanitarian Overview 2015*, June 2016, 21, available at: https://www.ochaopt.org/sites/default/files/annual-humanitarian-overview_10_06_2016_english.pdf

254 BADIL, *Forced Population Transfer: The Case of the Old City of Hebron*, Bethlehem: August 2016, 44, available at: [http://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/CaseStudyFPT-Hebron\(August2016\).pdf](http://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/CaseStudyFPT-Hebron(August2016).pdf) [hereinafter, BADIL, *Old City of Hebron*].

255 *Id.*, 41.

from a grid.²⁵⁶ Israeli emergency services in H2 refuse to aid Palestinians, forcing them to rely on Palestinian emergency services from H1. However, Israel has prohibited Palestinian emergency vehicles in parts of the Old City and occasionally enforces closures. As a result, Palestinian fire trucks and ambulances must take alternate routes or engage in lengthy coordination efforts with Israeli authorities in order to gain entry.²⁵⁷ The Palestine Red Crescent Society (PRCS) estimates that the time it takes for its ambulances to reach patients increased from seven to 17 minutes on average due to the closures in the Old City. When it is necessary to coordinate their services with the Israeli army – usually when they need to pass through a checkpoint – the average time to reach a patient is 47 minutes.²⁵⁸ This is often too late, and several Palestinians have died as a result of the delay in emergency medical assistance.²⁵⁹ Consequently, many pregnant women move out of the Old City before they are due to give birth so they can ensure access to medical services.²⁶⁰ Similar delays are experienced by the Palestinian fire department. Between September 2000 and January 2004, average wait time to obtain access to H2 for a fire truck was 15 minutes. In 38 cases, they were forced to wait for more than an hour.²⁶¹

This denial of access to essential services deprives Palestinians of their fundamental human rights to an adequate standard of living, medical care and social services.²⁶² It also infringes on their right to freedom from discrimination, as all of these services are provided without hindrance to the Israeli colonizers in the area. This discrimination has effectively created two environments: a supportive environment for Israeli colonizers, and a coercive environment for Palestinians. This coercive environment has led to both temporary displacements – in the case of pregnant women – and permanent ones, thus exemplifying a pattern of forcible transfer.²⁶³

Although the sharp decline in the Palestinian population in H2 following Israeli control of the area is quite apparent on the ground, there is a lack

²⁵⁶ *Id.*, 43.

²⁵⁷ *Id.*, 45.

²⁵⁸ OCHA oPt, *Humanitarian Update. Special Focus: The Closure of Hebron's Old City*, July 2005, 2, available at: https://www.ochaopt.org/sites/default/files/ochaHU0705_En.pdf [hereinafter OCHA, *Closure of Hebron's Old City*].

²⁵⁹ Interview with Abdul Majeed K. on 25 February 2016.

²⁶⁰ OCHA, *Closure of Hebron's Old City*, 2, *supra* note 258.

²⁶¹ *Ibid.*

²⁶² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), arts. 25-26, available at: <http://www.refworld.org/docid/3ae6b3712c.html> [hereinafter UNGA, *Universal Declaration*] [accessed 22 August 2017].

²⁶³ BADIL, FPT: *Old City of Hebron*, 59, *supra* note 254.

of accurate quantitative data. However, even considering socio-economic factors in the area, the lack of space and the absorption capacity of the Old City, a decrease in population from 7,500 in 1967 to 400 in 1996 (95 percent) is abnormal.²⁶⁴ Such a dramatic decline, in the absence of any major external causes such as natural disaster or a war, can only be explained by the Israeli enterprise targeting Palestinian presence in this area; the denial of basic and emergency services is a key contributing factor.

“If any of us has a heart attack, we would die before the ambulance arrives. For instance, one of Tel Rumeida residents, Hashem al-Azzeh died after he inhaled tear gas. He would have been saved if he could have made it to the hospital sooner. But the ambulances don’t have any access to Tel Rumeida unless we coordinate with Red Cross. Then the Red Cross has to coordinate with the Israelis, and the Israelis coordinate with the soldiers at the checkpoints. The ambulance has to cross three checkpoints. It takes at least 15 minutes to reach Tel Rumeida. Last year [2016] alone, four people died because the ambulance couldn’t reach them on time.

Last year [2016] as well, our neighbor’s house burned down because the fire truck had to wait until the coordination was done. Our house burned down last year too, when a settler threw a torch on it. They [the Israeli forces] refused to let the Palestinian fire truck in.”

*Abdul Majeed A. K., resident of the Old City.
Interview: 25 February 2016*

“We don’t have any kind of services here in the Old City. In summer for example, we suffer from lack of water. We only receive water every 15 days. The amount of water the colonizers use in the colonies in one day equals the amount of water we use in two months. Sometimes we don’t have any choice but to get water from the Ibrahimi Mosque by carrying it in small bottles. They [the colonizers] have a lot more services than we do. We also have a huge problem with the infrastructure. Whenever it rains, the streets of the Old City flood, we literally need boats to carry us. The water leaks into the shops and spoils the goods. The municipality of Hebron started to build infrastructure but the occupation [Israel] prevented it from continuing. Dividing Hebron into H1 and H2 has had many effects in our life, since the Palestinian Authority cannot provide us with the services they can provide to the Palestinians who live in the H1 part of the city.”

*Nasser G., resident of the Old City.
Interview: 22 February 2016*

²⁶⁴ Data collected by BADIL during field research. For more information, see, BADIL, *FPT: Old City of Hebron*, 9, *supra* note 254.

AREA C

As previously covered in this paper, Area C comprises more than 60 percent of the West Bank and is under full Israeli administrative and security control. The Oslo Accords delegated the provision of services to the Palestinian communities in Area C to the PA, but the authority to approve or deny the construction of infrastructure essential to the delivery of these services has been retained by Israel. Israeli regulations - which draw on antiquated Jordanian law and military orders - require Palestinian communities to have a Master Plan approved by the ICA in order to carry out any construction and development,²⁶⁵ or to be connected to water and electricity networks.²⁶⁶ Currently, Israel has withheld its approval of the Master Plans of over 90 percent of Palestinian communities in Area C.²⁶⁷ Moreover, while the PA can administer transportation and educational services, it cannot build a new school or road, or even expand or renovate existing ones, without Israeli approval.²⁶⁸

Subsequently, the denial of services to Palestinians in Area C is so extreme that living conditions have become unbearable for many. Few Palestinian communities are currently connected to an electricity network, while 48,000 Palestinians also remain unconnected to a water network and have therefore been forced to carry out unauthorized water infrastructure development that faces the risk of demolition.²⁶⁹

Education and health services have also been obstructed. PASSIA estimates that “some 31 percent of [Palestinian] schools in the area have inadequate water and sanitation facilities” and are often located in “unsafe tents, caravans, crude cement buildings and tin shacks.”²⁷⁰ In comparison, the Israeli colonies located in Area C face no such challenges; the Israeli Ministry of Education extends educational benefits to colonizers that include exemption

265 World Bank, *The Economic Effects of Restricted Access to Land in the West Bank*, October 2008, 8, available at: <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconomicEffectsofRestrictedAccessToLandintheWestBankOct.20.08.pdf>; BADIL, *FPT: Zoning and Planning*, *supra* note 230.

266 B'Tselem, *Acting the Landlord: Israel's Policy in Area C, the West Bank*, June 2013, 20, available at: http://www.btselem.org/download/201306_area_c_report_eng.pdf [hereinafter B'Tselem, *Acting the Landlord*].

267 B'Tselem, “Restrictions on Palestinian planning,” *supra* note 204.

268 B'Tselem, “What is Area C?,” 18 May 2014, available at: http://www.btselem.org/area_c/what_is_area_c [hereinafter B'Tselem, “What is Area C?”].

269 B'Tselem, *Acting the Landlord* 20-21, *supra* note 266.

270 Palestinian Academic Society for the Study of International Affairs (PASSIA), *Area C: The Key to the Two-State Solution*, December 2012, 9, available at: http://passia.org/media/filer_public/d0/fd/d0fd4de4-c909-413d-9cff-db058bece0fc/area-c.pdf

from tuition and matriculation exam fees, and subsidized transportation to school.²⁷¹ In addition, over 20 percent of Palestinian communities in Area C have extremely restricted access to health services, as all advanced medical service facilities and providers are located in areas A and B. Therefore people are required to travel distances, usually across checkpoints in order to access them.²⁷²

The Jordan Valley

The Jordan Valley exemplifies some of the worst service deprivation in Area C. The Valley constitutes 28.5 percent of the West Bank, 1600 km², with an estimated population of 70,000 Palestinians.²⁷³ This number has been significantly affected by the Israeli policies in the area, as the number of inhabitants decreased from 250,000 Palestinians before 1967 to the current number.²⁷⁴ The Jordan Valley also includes 37 Israeli colonies with a colonizer population of around 10,000 residents.²⁷⁵

Out of the 13 Palestinian localities located entirely inside Area C, only four receive services of any kind.²⁷⁶ The entire valley contains only 24 health clinics and 29 schools. The health clinics are old and/or run out of tents or poorly made structures, as Israel's prohibition on construction has prevented their maintenance and replacement. Their operation has also been curtailed to only two or three days per week for two hours at a time.²⁷⁷ The MA'AN Development Center has pronounced that health services in the Valley are "almost nonexistent and, if available, do not meet the needs of the population, particularly in emergency situations."²⁷⁸ This has been aggravated by the fact that Israeli soldiers often hold medical staff for long searches at checkpoints, delaying them from reaching their patients.²⁷⁹ Many of the schools have also been unable to deliver adequate

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ PLO Negotiations Affairs Department, *Israeli Annexation Policies in the Jordan Valley*, September 2013, 1, available at: <https://www.nad.ps/en/publication-resources/factsheets/israeli-annexation-policies-jordan-valley-destroying-future-state>

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ MA'AN Development Center & Jordan Valley Popular Committees, *Eye on the Jordan Valley*, 2010, 29, available at: <http://www.maan-ctr.org/old/pdfs/Eyeon%20theJVReportFinal.pdf> [hereinafter MA'AN, *Eye on the Jordan Valley*].

²⁷⁷ *Id.*, 30.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

education services due to a lack of supplies, infrastructure and classroom space. Palestinian students have been either forced to learn in classrooms that fail to meet the Palestinian Ministry of Education's health and safety regulations or to move to schools outside the Valley.²⁸⁰

While these inadequate services affect all communities in the Jordan Valley, the 20,000²⁸¹ Palestinians living in Bedouin and herding communities located in Area C have been the targets of additional Israeli policies and practices causing them to receive disproportionately less service coverage than others. All of the seven Bedouin localities in the Jordan Valley are prevented from accessing water, electricity, roads, phone lines, and waste and sewage disposal.²⁸² As these communities rely heavily on water to sustain their families and flocks, many of these additional policies and practices have been designed specifically to affect their ability to access water, which they accomplish through transporting it to their villages via water tankers. The Israeli army has also made it a practice to confiscate their water tankers, particularly at the height of summer when they and their flocks need it most.²⁸³ As a result, water consumption in Bedouin communities fell to only 20 lpcd, far under the minimum of 100 lpcd recommended by the WHO, and the 240 lpcd made accessible to the Jewish-Israeli colonizers in the area.²⁸⁴ They have also taken to restricting the movement of these tankers by confiscating them at checkpoints on their way to collect water. Amnesty International has reported that villagers in Hadidiya and Humsa were forced to relocate twice after their tankers were confiscated and they were asked to pay an impossible sum for their return along with a signed pledge that they would not attempt to reach the water source again.²⁸⁵ It becomes apparent that not only have these actions been put in place by Israel to force herders to abandon their communities and way of life, but also that these actions are extremely effective.

"I live in Khirbet Al-Samrah with my family, where I own 120 dunams since before 1967. Our community consists of five or six families and we are shepherds; the livestock is our only source of livelihood.

Most of the residents of this community left in recent years, they were forced

²⁸⁰ *Ibid.*

²⁸¹ B'Tselem, "What is Area C?," *supra* note 268.

²⁸² MA'AN, *Eye on the Jordan Valley*, 29, *supra* note 276.

²⁸³ Amnesty International, *Troubled Waters*, 40, *supra* note 35.

²⁸⁴ B'tselem, "Restrictions on Access to Water and non-Development of Water Infrastructure in Area C," 28 September 2016, available at: http://www.btselem.org/water/restrictions_in_area_c

²⁸⁵ Amnesty International, *Troubled Waters*, 41, *supra* note 37.

out by the lack of services and infrastructure. Here we suffer from a lack of any kind of infrastructure or services, such as; electricity, water, education or even transportation. We are far away from Tubas, which is the nearest city from where we could buy supplies and food; it is 23 kilometers away and there is no public transportation by which to reach Tubas.

Regarding water, we bring big tanks of water from al-Nassaryeh, exactly from Ein Shibly. Each tank of water is around 10 gallons, and each tank costs us 250 shekel (\$70). Given that we raise livestock and cultivate plants, one tank per week is not enough. Considering that we don't have much income, for us it's is a big expense to pay 250 shekel [\$69] each week.

It's the same with electricity: we don't have any electricity attachments or connection. Even if the electricity poles are 50 meters away, it is still prohibited for us to connect to them. We still use oil lamps to shed light. I wish I could show my child a TV or a computer.

Moreover, we don't have any kind of health services, if someone gets sick or hurt we have to take him to Tubas. This is really expensive for us: to go from here to Tubas, it costs 170 shekel [\$48] for transportation, in addition to this you have to add the medical expenses. Sometimes, for more serious issues, we have to go to Nablus to avail of specific medical services; in this case, I have to rent a private taxi which is much more expensive.

Regarding education, I hardly finished my [high school] diploma. I wanted to attend university but it was too far from here, I couldn't continue my studies due to the hard living conditions. So, I decided to do like my father: I bought some sheep and I settled here. The situation for my children did not change much. There is a bus that takes them every day to school, but it doesn't reach our village. So they have to walk to a spot where the bus does reach, and it is 2000 meters away from here. Each morning they have to wake up at 5 a.m. to be able to be in that spot at 6 a.m. where the bus comes and takes them to the school in Tubas."

M. Daraghmeh, Khirbet Al-Samrah, Jordan valley.

Interview: Khirbet Al-Samrah, 6 March 2013

EAST JERUSALEM

Since the illegal annexation of East Jerusalem, Israel has sought to push Palestinians out of the city and legitimize Jewish-Israeli domination, although the Palestinian area is recognized as occupied territory under international

law. Palestinian residents of East Jerusalem have experienced ongoing discriminatory and punitive denial of access to services since the annexation. In 1999, only 10 percent of the Jerusalem municipal budget was allocated to Palestinian neighborhoods, even though they represent more than one third of the total population.²⁸⁶ This type of deprivation has continued until today and can be seen through the denial of education, water and sewage, waste management, as well as social, medical, and other services.

Over 43 percent of Palestinians in Jerusalem are severed from the city by the Annexation and Separation Wall and suffer the worst cases of denial of access to services.²⁸⁷ Although these 140,000 Palestinians residing in Kafr Aqab, Shu'fat refugee camp, Dahiyat as-Salam (neighborhood of Anata), Ras Shehadeh, Abu Dis, and Ras Khamis have Jerusalem IDs and pay taxes to the municipality, their communities have been the most affected. There, as in other places in East Jerusalem, denial of access to services results in deplorable living conditions with little chance of improvement.²⁸⁸

Of all Palestinians living within the municipal boundaries of Jerusalem behind the Wall, only 300 households are connected to the Israeli Hagihon [Jerusalem's water and wastewater company] water network, despite paying for its services.²⁸⁹ While the WHO determined the minimal consumption of water per capita for minimum health and hygiene levels to be 36.5 m³ per year, residents in these neighborhoods are provided with only 20 m³. The Israeli Water Authority and the Ministry of National Infrastructure refuse to install additional water pipes.²⁹⁰ For several weeks, beginning in March 2014, nearly all homes in Shu'fat refugee camp and the three neighborhoods surrounding it were disconnected from the municipal water circuit completely.²⁹¹ Today, due to the municipality's refusal to plan more, the water lines in Shu'fat [camp], Ras Khamis, Ras Shehadeh, and Dahiyat as-Salam are only sufficient

286 B'tselem, "Neglect of Infrastructure and Services in Palestinian Neighborhoods," 1 January 2011, available at: http://www.btselem.org/jerusalem/infrastructure_and_services [hereinafter B'tselem, "Neglect of Infrastructure"].

287 Association for Civil Rights in Israel (ACRI), *East Jerusalem: Facts and Figures 2017*, 21 May 2017, 1, available at: <http://www.acri.org.il/en/wp-content/uploads/2017/05/Facts-and-Figures-2017-1.pdf> [hereinafter ACRI, *East Jerusalem*].

288 Edo Konrad, "Let's not forget that East Jerusalem Palestinians are stateless," *+972 Magazine*, 16 October 2015, available at: <https://972mag.com/lets-not-forget-that-east-jerusalem-palestinians-are-stateless/112840/>

289 ACRI, *East Jerusalem*, 11, *supra* note 287.

290 ACRI, *East Jerusalem 2015: Facts and Figures*, 12 May 2015, 11, <http://www.acri.org.il/en/wp-content/uploads/2015/05/EJ-Facts-and-Figures-2015.pdf> [hereinafter, ACRI, *East Jerusalem 2015*].

291 Gianluca Mezzofiore, "Fenced-in East Jerusalem Arab Neighbourhoods Left Without Running Water," *International Business Times*, 8 April 2014, available at: <http://www.ibtimes.co.uk/fenced-east-jerusalem-arab-neighbourhoods-left-without-running-water-1443928>

for ten percent of the residents.²⁹² Moreover, only ten percent of all sewage pipes in Jerusalem are in Palestinian neighborhoods.

Residents of Dahiyat as-Salam in Anata watched their neighborhood become an unofficial dumping ground for garbage, with trash reaching well over the tops of residents' homes and the municipality refusing to solve the problem.²⁹³

Residents of Ras Khamis paved their own main road after it became clear that the Jerusalem municipality would continue to refuse to do it.²⁹⁴ In Abu Dis, a neighborhood of East Jerusalem that was cut off by the Wall in 2002, residents suffer from restrictions in accessing health services. For example, a resident interviewed by UN OCHA said that after his renal failure, he must travel to the Beit Jala hospital for treatment. This is a 40-minute-drive three times per week, rather than going to the Augusta Victoria hospital in East Jerusalem, which is only 3.4 kilometers away from his home.²⁹⁵ Regarding infant health care facilities, only six are located in East Jerusalem, in contrast to 26 in West Jerusalem.

Palestinian residents in neighborhoods of East Jerusalem on both sides of the Wall are being forced to leave by Israel's ongoing policies of denial of access to basic services that also violate fundamental rights like an adequate quality of life. Due to a shortage of 2,000 classrooms, only 41 percent of 109,481 Palestinian students are enrolled in municipal schools in the official system.²⁹⁶ The secondary education the numbers are even lower; 41 percent go to schools with an unofficial status, and 17 percent are enrolled in private schools.²⁹⁷ In the 2016-2017 school year, of the 1,815 classrooms in the official education system used by Palestinian students in East Jerusalem, almost half, 857, were inadequate or in sub-standard condition.²⁹⁸

Additionally, only seven percent of all postal workers serve Palestinian neighborhoods and the wait at the post office is often more than two hours. In addition to the discriminatory provision of services, Palestinians of East

292 ACRI, *East Jerusalem*, 5, *supra* note 287.

293 B'tselem, "Jerusalem Municipality allows criminals to turn the Dahiyat a-Salam neighborhood into a garbage dump," 13 July 2008, available at: http://www.btselem.org/jerusalem/20080713_illegal_dumping_of_garbage_in_dahyat_a_salam

294 Nir Hasson, "Palestinian Neighborhood, Abandoned by Jerusalem, Paves Its Own Road", *Haaretz*, 12 April 2016, available at: <http://www.haaretz.com/israel-news/.premium-1.713925>

295 OCHA oPt, "The humanitarian impact of the Barrier on Palestinian communities in and around East Jerusalem, in the Abu Dis area," 9 July 2014, available at: <https://www.ochaopt.org/content/humanitarian-impact-barrier-palestinian-communities-and-around-east-jerusalem-abu-dis-area>

296 ACRI, *East Jerusalem* 2015, 6, *supra* note 290.

297 *Ibid.*

298 ACRI, *East Jerusalem*, 3, *supra* note 287.

Jerusalem are also denied customer service at municipal institutions such as the Ministry of the Interior in Jerusalem, where they are often completely denied the ability to process residency applications, a required status for Palestinians in order to remain in East Jerusalem.²⁹⁹

The plethora of denied services creates an ongoing coercive environment resulting in forcible transfer from East Jerusalem neighborhoods to other areas of the West Bank. This, in turn, enables the Israeli government to revoke their Jerusalem IDs, effectively banning Palestinians from the city. It also ensures the growth of the Jewish-Israeli population of Jerusalem while minimizing the number of Palestinians living in the city.

“There is a planned Israeli policy aiming to deny Palestinians basic services, such as; water, repairing and paving the streets, health insurance and waste management. This policy is not only in neighborhoods on the other side of the Wall [neighborhoods cut off from the rest of Jerusalem by the Wall, left on the West Bank side], but you can also see it in the Old City of Jerusalem, where they [the municipality] don’t collect waste in Palestinian areas.

In areas like Silwan, Ras el-A’moud, Jabal al-Mukaber or Wadi Hilwa [all located in East Jerusalem, west of the Wall] you can feel and see the lack of services. Those areas are overpopulated and don’t have good streets, no good education system and the infrastructure is damaged. The municipality ignores those areas which makes life really hard and forces people to move. These areas are targeted for colonizers to move in, this is why Israel denies services, denies permits, demolishes homes, and imposes high fines and taxes. All these different policies aim to force Palestinians to leave the city of Jerusalem.

This coercive environment in Jerusalem is leading to forcible transfer of Palestinians. As has been made well known publicly, Israel has announced that their plan for Jerusalem for the coming ten years is to reduce the number of Palestinians living there.³⁰⁰ One of the most well-known policies leading to the forcible transfer of Palestinians out of Jerusalem is residency revocation. Still, there are many other policies that are also creating pressure and forcing people

299 B’tselem, “Neglect of Infrastructure,” *supra* note 286.

300 The Jerusalem Local Outline Plan 2000 was published on 13 September 2004 as the authoritative blueprint for all municipal planning within the Jerusalem Municipality. In this master plan ‘keeping a solid Jewish-Israeli majority’ features as a major political objective. More specifically, the master plan seeks to maintain a ratio of 70 percent Jewish-Israelis and 30 percent Palestinians within the Israeli defined municipal boundary. It is worth mentioning that, despite the aim to pursue this proportion, the plan explicitly recognizes the most probable demographic ratio of 60:40 between Jewish-Israelis and Palestinians respectively in 2020. Other plans have developed in later years, which despite having no official status, have been backed by high-level Israeli officials. For more information, see, BADIL, *FPT: Zoning and Planning*, 39-41, *supra* note 230.

to move. Many Palestinians decide to move outside the city because they are no longer capable of living in this city with this environment.

Neighborhood cut off by the Wall

Palestinians move to the neighborhoods which are still within the Jerusalem municipality but were cut off by the Wall from the rest of East Jerusalem, such as Shu'fat refugee camp. These areas are over populated and have no structural plans for buildings or streets. If you go there you can see the poverty and negligence. People move to these neighborhoods because they can rent or buy houses at relatively inexpensive prices.

These neighborhoods are under the control of the Jerusalem municipality and should be administered by it. In reality, the municipality collects taxes from people living in these areas but without providing any services, nor infrastructure, waste management, or repairing and paving the streets. Those neighborhoods are chaos; the infrastructure is destroyed, building is unplanned, and it lacks basic service facilities such as schools. This is the result of a discriminatory Israeli policy that has been operating for years and that accumulated and became a big problem.

Israel is planning to cut these areas from the jurisdiction of the Jerusalem municipality. We are speaking about 50,000 to 70,000 Palestinians, who have Jerusalem IDs but live in these neighborhoods cut off by the Wall. Israel is planning to cut out those areas from the municipality and thus all those people will lose their residency status.

In general, Palestinians from Jerusalem are living under intense economic and social pressure to leave, and the reason behind this is political. The reason is the discriminatory Israeli policies used against Palestinians. Those discriminatory policies aim to change the demographic balance and make the Palestinian population less; this is why many Palestinians are leaving the city. The situation is really hard in Jerusalem.

Mazen Jaabari, Director of Youth Development Department, Jerusalem.

Interview: 19 June 2017

Conclusion

While other policies of forced population transfer analyzed in this series target Palestinians individually, the denial of access to natural resources and services has a collective character, targeting Palestinian communities or the Palestinian people in general. Besides their collective impact, both policies are inherently intertwined, and as such, the existence of one can often result in the other. The denial of access to energy for example, hinders or completely denies the provision of many services throughout the oPt and Israel. At the same time, lack of or insufficient sanitation or waste collection can lead to an unhealthy and polluted living environment, and affects agriculture. These policies not only constitute a practice of denial of the right to self-determination, but directly contribute to the de-development of Palestinian communities, that affects their ability to enjoy an adequate standard of living generally, and reduces their capacity to remain in their homes.

Israel's appropriation of natural resources in the oPt far exceeds the conditions that could be deemed to be military necessity and is a blatant disregard of the rules of occupation imposed by international law. This control and denial create a coercive environment for Palestinians affected by it, especially when it affects essential resources such as water or electricity. The lack of such basic resources significantly hinders the daily life of Palestinians, putting them under pressure to relocate, and in some cases, causing the forcible transfer of those affected. It is also important to emphasize that the water and electricity crisis in the oPt is derived from Israel's unlawful expropriation of Palestinian resources; it is a man-made crisis rather than a natural one. As such, the solution lies in putting an end to Israel's illegal practices and reverting the control of these resources to Palestinians. The Palestinian right to access their natural resources must be reframed within the inalienable right to self-determination. The denial of access to services, on the other hand, can either be the result of the denial of natural resources, or a standalone policy. The lack of services has a detrimental effect on the provision of education, health

and sanitation services as well as the right to work and to adequate standard of living guaranteed under the ICCPR and the ICESCR. The collective impact of the lack of basic services makes it difficult, if not impossible, for those individuals to remain in their homes. As mentioned in the legal framework, the forcible dimension of forcible transfer is not limited to physical force, but can include coercion or duress intended to transfer those affected. When considering that the majority, if not all, Palestinian communities are targeted by more than one policy of forcible transfer, the coercive environment they are subjected to becomes more apparent.

The causal relationship between the Israeli policy of denial of access to natural resources and services and forcible transfer is clearly evident; accordingly, a direct link can be made between this policy and the commission of war crimes in the oPt. The systematic and widespread implementation of this policy would also make the forcible transfer resulting from the denial of access a crime against humanity. There is a myriad of human rights violations connected to this policy which affect Palestinians on a daily basis. The denial affects rights so basic such as the right to adequate housing, right to health, right to education or right to non-discrimination.

The denial of services presents itself as the epitome of Israeli institutionalized discrimination against Palestinians. Its de facto enforcement, rather than via clear military orders or legislation, aims precisely at hiding the intentional denial of services to Palestinians. This discriminatory regime, coupled with other Israeli policies such as the permit regime, land confiscation or suppression of resistance, could also amount to the “deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part,” which would make Israeli policies vis-à-vis Palestinians amount to the crime of apartheid as per the Convention on Apartheid (1976), which applies to Palestinians in Israel and the oPt.

Each subgroup of Palestinians is subject to distinct discriminatory systems that differ in severity which are connected by one common feature: that their status is inferior to Jewish nationals. Israel’s treatment of Palestinians throughout Israel and the oPt constitutes an overall discriminatory regime aiming at controlling the maximum amount of land with the minimum amount of indigenous Palestinians residing on it. In order to limit the population growth of Palestinians within Israel, they are confined geographically, and/or forcibly displaced through Israeli legislation and policies that restrict their access to full equality and to state institutions, resources and services.

The denial of natural resources creating the coercive environment which

results in forcible transfer undercuts the possibility of exercising the Palestinian right to self-determination. These Israeli policies and practices directly attack peremptory norms of international law, some of the core and most fundamental provisions of IHL and IHRL, and constitute an ongoing crime against the Palestinian people. As such, these violations trigger third-party obligations vis-à-vis the Palestinian people.

Recommendations

Based on the obligations of third party states, BADIL calls for,

- The fulfillment of Common Article 1 of the Fourth Geneva Convention to take all available measures to halt Israel's forcible transfer of Palestinians inside the oPt, including the transfer resulting from the denial of natural resources and services;
- The fulfillment of Article 146 of the Fourth Geneva Convention to search for individuals present in their respective territory who have materially participated in the forcible transfer of Palestinians and to either bring proceedings against such persons in their national courts under the principle of universal jurisdiction, or hand over such persons to a fellow High Contracting Party so that they may be brought before a court of law;
- Applying all available measures to ensure respect and adherence to the Fourth Geneva Convention;
- Enforcing an end to any breaches of peremptory norms of international law and to neither recognize as lawful a situation created by such a serious breach, nor to render aid or assistance in maintaining that situation.
- Developing mechanisms and taking effective measures to bring Israel into compliance with international law. Responsibility and accountability for the systematic denial of natural resources and services, and more generally, for loss of life, serious health problems, material losses, and deprivation of basic human rights should be pursued through independent investigatory processes, in turn ensuring reparations and prosecuting those guilty of serious International Human Rights and Humanitarian Law violations.

The United Nations, international and regional bodies are required to:

- Condemn Israel's persistent non-cooperation with UN mechanisms, including Commissions of Inquiry and Special Procedures;
- Take effective measures to bring to an end Israeli impunity and to immediately end the systematic policy of denial of natural resources and services to Palestinians in the oPt and Israel;
- Recognize that Israeli violations of IHL and IHRL are rooted in Israel's prolonged military occupation of the oPt, which amounts to colonization. Declare that this regime of prolonged occupation, with its inherent features of racial discrimination and annexation, contradicts international law, and thwarts the pursuit of self-determination and justice for the Palestinian people.

Relevant national and international actors should make every effort to:

- Apply appropriate legal terminology to the present day reality in the oPt. Particularly, identifying that practices attributable to Israel - including denial of access to natural resources and essential services - and the resulting displacement, constitutes forcible transfer;
- Continue to develop an understanding of what constitutes a 'coercive environment' for the purpose of identifying instances of forcible transfer of Palestinians inside the oPt; and apply a similar logical framework to Israel policies vis-à-vis Palestinians inside Israel;
- Challenge Israel's institutionalized discriminatory policies and practices by challenging its legal system imposed on Palestinian people which contradicts international norms and rules, and developing effective international protection system for Palestinians as it is evident that Israel is not only unwilling to fulfill its obligations, but is deliberately denying and violating the fundamental rights of the Palestinian people.

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series utilizes an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of suppression in Palestine.