

APARTHEID IN ISRAEL

AN ANALYSIS OF ISRAEL'S LAWS AND POLICIES AND THE RESPONSIBILITIES OF US ACADEMIC AND OTHER INSTITUTIONS

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GLOSSARY

1967 War	On June 5, 1967, Israel engaged in a war against Egypt, Syria, and Jordan. ¹ During the conflict, Israel occupied the areas of Palestine that had been established under the British Mandate. ² In November 1967, the UN Security Council passed Resolution 242 emphasizing the Charter principles requiring Israel to withdraw from Occupied Palestinian Territory and to respect the sovereignty and territorial integrity of every state in the area. ³
Area A, B, C	The 1995 Oslo II Agreement divided the occupied West Bank into three administrative areas: Areas A, B, and C. ⁴ Israel exclusively administers Area C, which makes up more than 60 percent of the West Bank. ⁵
British Mandate of Palestine	After the First World War, with no meaningful say from the Palestinian people, Palestine was designated as a class “A” Mandate by the League of Nations and entrusted to Great Britain. ⁶ The territorial boundaries were established under a British memorandum in 1922 and the Anglo-Transjordanian Treaty of 1928. ⁷
First and second intifadas	The first and second intifadas were Palestinian uprisings against Israeli occupation in the West Bank and Gaza. ⁸ The first intifada took place from December 1987 to September 1993. ⁹ The second intifada took place from September 2000 to 2005. ¹⁰
Gaza Strip	The Gaza Strip is land bordered by the Mediterranean Sea, Egypt, and Israel. ¹¹ The Gaza Strip is a region that was occupied by Israel in

¹ U.N. General Assembly, 5th Emergency Sess., 1526th Plen. Mtg. Verbatim Record ¶28, U.N. Doc (A/PV.1548).

² ICJ Wall Opinion ¶73.

³ S.C. Res. 242, ¶1 (Nov. 22, 1967).

⁴ ICJ Occupation Opinion ¶ 65.

⁵ *Id.* ¶65.

⁶ *Id.* ¶51.

⁷ *Id.* ¶51.

⁸ Amnesty Int’l Report at p. 41-42.

⁹ *Id.* at p. 41.

¹⁰ *Id.* at p. 42.

¹¹ South Africa v. Israel Application ¶21.

1967.¹² Israel maintained effective control of the Gaza Strip from 1967 to 2005, when it withdrew its army and settlements.¹³ Nevertheless, Israel maintains control of the airspace, territorial waters, land crossings, and supply of civilian infrastructure.¹⁴

General Security Service (GSS)

The Israeli General Security Service (GSS), also known as the Israel Security Agency (ISA), was established in 1948.¹⁵ Its agents were charged with “countering of foreign espionage,” “countering of domestic political subversion,” and securing “the vital institutions within Israel and in embassies abroad.”¹⁶ In the mid-twentieth century, it primarily functioned to aid the military in preventing terrorism and political subversion.¹⁷ Agents of the GSS are involved in intelligence work and conduct interrogations of Palestinian detainees.¹⁸ GSS agents are regularly involved in torturing Palestinian detainees and are rarely punished for doing so.¹⁹

Great March of Return

The Great March of Return began on March 30, 2018 at the perimeter fence that separates Israel and Gaza, where 40-50,000 Palestinians protested against Israel’s blockade of Gaza and for the right of return.²⁰

Green Line

The Green Line refers to borders determined by Israel’s armistice with neighboring States (1948–49), separating the State of Israel-controlled territory from the other areas of Palestine (Jerusalem, West Bank, and Gaza Strip). Palestinians remaining inside the Green Line became citizens of Israel. Palestinians living in the other areas of Palestine, including refugees originating from inside the Green Line, came under the administration of Jordan (in the West

¹² ICJ Occupation Opinion ¶88.

¹³ *Id.* ¶88.

¹⁴ *Id.* ¶89.

¹⁵ Shabak, *About*, <https://www.shabak.gov.il/en/about/about/> (last visited Mar. 1, 2025).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ HSRC Report at p. 175.

¹⁹ *Id.* at pp. 181-83.

²⁰ United Nations Relief and Works Agency for Palestine Refugees in the Near East, *Gaza’s “Great March of Return” One Year On*, p.6 (Mar. 28, 2019), <https://www.unrwa.org/resources/reports/gaza%E2%80%99s-%E2%80%9Cgreat-march-return%E2%80%9D-one-year> (last visited Apr. 23, 2025).

	Bank) and Egypt (Gaza Strip) until Israel conquered those territories in the 1967 War. ²¹
Israeli Defense Force (IDF)	The Israeli Defense Force (IDF) is Israel's ground, aerial, and naval military. ²²
Knesset	The Knesset is Israel's house of representatives (or parliament), and has four main functions: pass laws, supervise government work, choose the President of Israel and the state comptroller, and deliberate over state issues through the Knesset committees and the work of the Assembly. ²³
Nakba	During the establishment of the State of Israel, over 700,000 Palestinians were expelled or forced to flee what is now Israel, in an event referred to as the Nakba, which is Arabic for "catastrophe." ²⁴
Oslo Accords	The Oslo Accords are a series of agreements signed between Israel and the Palestine Liberation Organization (PLO), which represented Palestinian political leadership, in 1993 and 1995. In the agreements Israel recognized the PLO and the PLO recognized Israel's right to exist. ²⁵
Occupied Palestinian Territory	The fragmented areas of Palestine that Israel occupies including the West Bank the Gaza Strip, and East Jerusalem. ²⁶
Palestinian Authority	The Palestinian Authority (PA) is a governing body that oversees parts of the West Bank. ²⁷

²¹ Office of the United Nations High Commissioner for Human Rights, *Key of Terms Pertaining to Israel/Palestine*, at ii, <https://www2.ohchr.org/english/bodies/cerd/docs/ngos/jointngo3.pdf> (last visited Apr. 2, 2024).

²² Israeli Defense Force, *Our Mission and Values*, <https://www.idf.il/en/mini-sites/our-mission-our-values/> (last visited Mar. 1, 2025).

²³ KNESSET, <https://www.gov.il/en/departments/knesset/govil-landing-page> (last visited Apr. 2, 2024).

²⁴ South Africa v. Israel Application ¶22. *See also* Rashid Khalidi, THE HUNDRED YEARS' WAR ON PALESTINE 74-75 (2020).

²⁵ ICJ Occupation Opinion ¶65.

²⁶ South Africa v. Israel Application ¶21.

²⁷ Al Jazeera, *What is the Palestinian Authority and How is it Viewed by Palestinians* (Oct. 11, 2023), <https://www.aljazeera.com/news/2023/10/11/what-is-the-palestinian-authority-and-how-is-it-viewed-by-palestinians> (last visited Apr. 28, 2025).

INTRODUCTION

As this report was researched, drafted, revised, and prepared for publication, the death toll in Gaza continued to rise. As of February 2025, Israeli forces had killed more than 48,000 Palestinians living in Gaza, including an estimated 15,000 children.²⁸ In January 2024, the International Court of Justice (ICJ) recognized the plausibility of the imminent risk that Israel is violating the right of Palestinians in Gaza to be protected from genocide.²⁹ In November 2024, the ICC issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and then Minister of Defense Yoav Gallant related to war crimes and crimes against humanity against Palestinians.³⁰ On May 2, 2025, the United Nations reported that Palestinians were facing mass starvation as a result of Israel's two-month blockade of all humanitarian aid.³¹

Although the attack on Gaza informs this report, most of the practices and laws it describes existed long before October 7, 2023. Its focus is not on genocide, but rather on the crime of apartheid. Specifically, this report examines Israel's laws, policies, and practices that create distinctions between Jewish Israelis and Palestinians—particularly, but not exclusively, in the Occupied Palestinian Territory. These deliberate distinctions constitute a racialized legal hierarchy in which Palestinians are subordinated to Jewish Israelis in their exercise of civil, social, political, economic, and cultural rights.³²

Over the last several years, multiple human rights organizations, experts, and scholars have concluded that Israel's systematic oppression of Palestinians meets the legal definition of apartheid. Although popular conceptions of apartheid associate the term with South Africa and Namibia, the crime is not limited to that region. Rather, apartheid is a crime whose elements—as set forth in the Apartheid Convention—include specific “inhuman acts” that are carried out for “the purpose of establishing and maintaining racial domination.”³³

²⁸ World Health Organization, *Casualties* (Feb. 22, 2025), <https://app.powerbi.com/view?r=eyJrIjoiODAxNTYzMjYtMjQ3YS00OTMzLTkxMWQwOTU1NWUwMzE5NTMwIiwidCI6ImY2MTBjMG13LWJkMjQ0NGIzOS04MTBiLTNkYzI4MGFmYjU5MCIsImMiOiJh9> (last visited Feb. 24, 2025); Unicef, *At least 322 children reportedly killed in the Gaza Strip following breakdown of ceasefire* (Mar. 31, 2025), <https://www.unicef.org/press-releases/least-322-children-reportedly-killed-gaza-strip-following-breakdown-ceasefire>.

²⁹ South Africa v. Israel Provisional Measures First Order; *see also* South Africa v. Israel Provisional Measures Second Order; *see also* South Africa v. Israel Provisional Measures Third Order.

³⁰ International Criminal Court, *Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant* (Nov. 21, 2024), <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (last visited Dec. 3, 2024).

³¹ United Nations, *Gaza: 'Worst-case scenario' unfolds as brutal aid blockade threatens mass starvation* (May 2, 2025), <https://news.un.org/en/story/2025/05/1162851>.

³² Historians and human rights experts have underscored that this system of racial domination must be understood within the context of a long term project of settler colonialism. *See generally* Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), *Genocide as Colonial Erasure Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/79/384 (Oct. 1, 2024), <https://docs.un.org/en/A/79/384> (last visited Feb. 24, 2024) (noting “[t]he current genocide is part of a century-long project of eliminatory settler colonialism in Palestine, a stain on the international system and humanity, which must be ended, investigated and prosecuted”).

³³ International Convention on the Suppression and Punishment of the Crime of Apartheid, art. II, U.N. Doc. A/9030 (1974) [hereinafter Apartheid Convention].

This report consolidates the findings of leading Palestinian, Israeli, and international human rights organizations and experts who have concluded that Israel's treatment of Palestinians amounts to apartheid. We contribute to this discussion our own analysis of the crime of apartheid, which applies equally to all States, without exception. We further analyze Israel's actions since October 7, 2023, under the framework of apartheid—something that no other report has done to date.

Examining Israel's policies and actions toward Palestinians through the lens of apartheid provides a critical paradigm of understanding. The analysis of apartheid shifts the focus from episodic violence and political negotiations to the systems of segregation, domination, and dispossession that underlie Palestinians' everyday reality and enable their dehumanization, brutalization, and extermination by Israel. In addition, it raises important questions about the obligations of third-party States as well as non-State actors.

Over the last year, universities across the United States have disciplined—and invited criminalization and deportation—of their students, staff, and faculty for protesting the widespread destruction of Palestinian life in Gaza, which, as of this writing, has continued for over 17 months.³⁴ The United Nations (UN) Special Rapporteur on Education, among others, has raised alarm about universities' brutal crackdowns on peaceful protesters.³⁵ This report is the first to analyze these actions within the framework of international protections for human rights defenders. We conclude that universities' imposition of punitive sanctions on faculty, students, and staff who have peacefully protested Israel's actions in Gaza violate protesters' rights to freedom of opinion, expression, and assembly.

This report, with its analysis of apartheid in the context of an attack on Gaza that many human rights experts have described as genocidal,³⁶ seeks to inform governments, educational institutions, students, and human rights advocates debating the legality and morality of investments, aid, and partnerships that support the crime of apartheid.

³⁴ Office of the United Nations High Commissioner for Human Rights, *Special Rapporteur on the Right to Education Conveys Alarm at Violent Crackdown on Peaceful Demonstrators at Universities Calling for a Ceasefire in Gaza* (June 24, 2024), <https://www.ohchr.org/en/news/2024/06/special-rapporteur-right-education-conveys-alarm-violent-crackdown-peaceful> (last visited Feb. 24, 2025).

³⁵ *Id.*

³⁶ There is a growing body of legal scholarship documenting Israel's actions since October 7, 2023 as genocide. See generally University Network for Human Rights, *Genocide in Gaza* (May 15, 2024), <https://www.humanrightsnetwork.org/publications/genocide-in-gaza> [hereinafter UNHR Genocide in Gaza]; Human Rights Watch, *Extermination and Acts of Genocide Israel Deliberately Depriving Palestinians in Gaza of Water* (Dec. 19, 2024), https://www.hrw.org/sites/default/files/media_2024/12/gaza1224web.pdf (last visited Feb. 19, 2025) [hereinafter HRW Extermination and Acts of Genocide]; Amnesty Int'l, *'You Feel Like You Are Subhuman' Israel's Genocide Against Palestinians in Gaza* (Dec 5, 2024) <https://www.amnesty.org/en/documents/mde15/8668/2024/en/> (last visited Feb. 19, 2024) [hereinafter Amnesty Int'l Genocide Report]; Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), *Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/HRC/55/73 (July 1, 2022), <https://docs.un.org/en/A/HRC/55/73> (last visited Feb. 24, 2024) [hereinafter Albanese Anatomy of a Genocide].

EXECUTIVE SUMMARY

This report analyzes the crime of apartheid and its application to Israel's policies and practices in the Occupied Palestinian Territory (OPT)³⁷ before and after October 7, 2023. Our analysis relies on a close examination of more than 25 credible human rights reports and judicial opinions from institutions and individuals with expertise in the region. Consistent with the findings of these experts, we conclude that Israel has committed and continues to commit the crime of apartheid as defined by the 1973 United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention).³⁸ Although Israel is not a party to the Apartheid Convention, it is nonetheless bound by customary international law to refrain from acts of apartheid. The crime of apartheid constitutes *jus cogens*: a norm that binds all states, regardless of their treaty ratification status.

Israel's perpetration of the crime of apartheid, as explained in this report, extends into numerous spheres of public and private life in Israel and the OPT. Apartheid in Israel violates the human rights of several groups protected by international law—including children, women, persons facing criminal prosecution, and others. Apartheid contributes to violations of Palestinians' rights to life, self-determination, due process, freedom from torture and cruel or degrading treatment, human dignity, freedom of movement, development, and freedom of association and expression. The crime of apartheid also provides a legal framework for assessing Israel's actions since October 7, 2023. This is the first report to undertake this analysis.

This report also examines whether academic institutions of higher education have obligations under human rights law that are triggered by the conclusion that Israel has engaged in apartheid. International law was developed to control the actions of States. Universities, like multinational corporations, are non-State actors, yet they wield immense power. Meanwhile, unlike corporations, universities also claim to embrace altruistic objectives to educate students, advance understanding, and enhance respect for individual rights. Though universities are not expressly bound by international law, their own guiding missions, alongside international guidelines for socially responsible practices by non-State actors, impose obligations that these institutions refrain from supporting crimes against humanity such as apartheid.

Finally, the report analyzes universities' use of punitive sanctions against students, faculty, and staff who have engaged in peaceful protests or acts of civil disobedience in solidarity with Palestinian victims of human rights abuses. Concluding that protestors are entitled to protection under the UN Declaration on the Rights of Human Rights Defenders, the report affirms the recent findings of the UN Special Rapporteur on freedom of opinion and expression that universities' suppression of speech and peaceful protest violates international law and undermines the role of academic institutions as bastions of free thought and civic participation.

³⁷ In some instances, advocates and scholars refer to the Occupied Palestinian Territory as the Occupied Palestinian Territories. This report follows the nomenclature set forth by the ICJ and refers to the OPT as the fragmented areas of land encompassing the West Bank, the Gaza Strip, and East Jerusalem. See generally ICJ Occupation Opinion.

³⁸ While the legal prohibition on apartheid is also explicitly addressed in two other international—the International Convention on the Elimination of Racial Discrimination and the Rome Statute of the International Criminal Court—our analysis relies specifically on the definition of apartheid as outlined in the Apartheid Convention.

LEGAL FRAMEWORK

Although “apartheid” originated as a description of institutionalized racial discrimination in South Africa between 1948 and 1990, apartheid is widely recognized to now apply outside of that specific context³⁹ and is considered a grave human rights violation prohibited by multiple international treaties.⁴⁰ Scholars and courts concur that the prohibition of apartheid is also a *jus cogens* norm, meaning that even those nations that have failed to ratify a treaty prohibiting apartheid may not engage in practices that constitute apartheid under international law.⁴¹ When referring to apartheid, this report uses the definition provided by Article II of the Apartheid Convention, which states that the crime of apartheid includes:

[T]he following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

³⁹ HSRC Report at pp. 168-69.

⁴⁰ See International Convention on the Elimination of All Forms of Racial Discrimination, art. 3, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, <https://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf> (last visited Dec. 3, 2024); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 85(4)(c), <https://bit.ly/3dBq7aL> (last visited Dec. 3, 2024); Rome Statute of the International Criminal Court, July 17, 1998, art. (7)(2)(h).

⁴¹ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, U.N. Doc. A/56/10, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf [hereinafter ARSIWA], Art. 41, para. 2; International Law Commission, *Draft conclusions on the identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, adopted at its seventy-third session*, A/77/10, 2022, https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf; International Law Commission, *Chapter V Peremptory norms of general international law (jus cogens)*, U.N. Doc. A/74/10, <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>.

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.⁴²

Given this focus, this report does not discuss human rights abuses against Palestinians in Israel and the OPT except as they relate to violations of the Apartheid Convention. Similarly, the report does not address human rights abuses committed by the Palestinian Authority or other Palestinian governmental groups. While there is substantial evidence that Hamas and other groups committed crimes against humanity (including murder, taking hostages, rape, and torture) during the October 7, 2023 attack,⁴³ there is no evidence to suggest that Hamas has engaged in acts of apartheid in its governance of Gaza. This report also excludes discussion of discrimination by any other racial group living in or outside of Israel and the OPT, as our focus remains on Israeli government policy and practices.

In addition to the Apartheid Convention, the prohibition of apartheid is also recognized in the International Convention on the Elimination of Racial Discrimination (ICERD) and the Rome Statute of the International Criminal Court (ICC).⁴⁴ Many of the reports reviewed in the foregoing analysis considered one or more of these legal instruments.⁴⁵ Our analysis focuses on the Apartheid

⁴² Apartheid Convention art. II.

⁴³ International Criminal Court, *Situation in the State of Palestine: ICC Pre-Trial Chamber I Issues Warrant of Arrest for Mohammed Diab Ibrahim Al-Masri (Deif)* (Nov. 21, 2024), <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim> (last visited Apr. 24, 2025).

⁴⁴ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, 218; *Rome Statute of the International Criminal Court*, July 1, 2002, 2187 U.N.T.S. 90, 93-94.

⁴⁵ HSRC Report at pp. 174-192 (analyzing Israeli practices under the Apartheid Convention); Amnesty Int'l Report at p. 249 (analyzing Israeli practices under the Apartheid Convention and the Rome Statute); Al-Haq Report at p. 122

Convention because it is the most comprehensive international treaty addressing the nature of apartheid and the responsibility of states to suppress and to “prevent any encouragement of” the crime of apartheid. As noted above, although Israel is not a party to the Apartheid Convention, it is bound by the prohibition of apartheid as a *jus cogens*, or peremptory norm, of international law.⁴⁶

(same); Al Mezan Report at pp. 18, 23 (same); Richard Falk Report ¶59 (same); Michael Lynk Report ¶50(a) (same); HLS IHRC Addameer Study at p. 20 (same); John Dugard Report ¶50 (describing Israel’s use of administrative detention and torture, which are encompassed in the right to life and liberty); Russell Tribunal on Palestine at p. 3 (discussing provisions of the Apartheid Convention); Francesca Albanese Report Children ¶27 (discussing apartheid under general principles of international law); Addameer Study at p. 126 (discussing use of administrative detention); HRW Report at pp. 89-90, 131-32 (the report concluded extrajudicial killings, torture, and administrative detention are all used, however, the report was not framed specifically around the Apartheid Convention); Al-Haq Joint Statement ¶109 (analyzing Israel’s actions under the Apartheid Convention, the Rome Statute, and ICERD).

⁴⁶ *Draft articles on responsibility of States for internationally wrongful acts*, [2001] 2(2) Y.B. Int’l L. Comm’n 26, 112-13, U.N. Doc. A/56/10.

CONCEPTUAL FRAMEWORK

Apartheid consists of a legal regime that imposes racial hierarchy and dominance of one group over another or others. It follows that for the Apartheid Convention to apply, there must be at least two distinct races in question. Jewish Israelis and Palestinian Arabs are two such distinct races.⁴⁷ As Michael Lynk, former UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (UN Special Rapporteur on the OPT), has observed, “[t]he important point in international law is not what these respective groups represent in terms of any purported fixed identity, but rather how these respective groups are *treated* because of their perceived identity and classification.”⁴⁸ Jewish Israelis and Palestinian Arabs perceive themselves as distinct groups and can be “distinguished by their nationality, ethnicity, religion, ancestry and descent.”⁴⁹ Palestinian Arabs perceive themselves as a group of “people who share a common origin, history and culture, as well as social and political structures and networks that have ensured a continuing bond despite forced displacement and fragmentation.”⁵⁰

Israeli law reinforces the distinction between Jewish Israeli and Palestinian Arab racial groups by legally *treating* Jewish Israelis as superior and Palestinians as inferior. As our findings below illustrate, Israel has adopted a series of laws that reinforce the distinct racial identities (and corresponding privileges and exclusions) of Jewish Israelis and Palestinian Arabs. Some of these laws have been implemented within the last decade, while others—like the 1950 Law of Return—date back more than 70 years.⁵¹ These laws create explicit legal hierarchies that place Jewish Israelis in a superior position to Palestinians.⁵² As the Russell Tribunal on Palestine⁵³ observed in a 2012 submission to UN Committee on the Elimination of Racial Discrimination (CERD), “[u]nder Israeli law and policy, group membership is an official category imposed and monitored by the state, not simply a voluntary identity. Israeli Jews are a group unified by law, sharing the same legal status wherever they reside, while Palestinian Arabs are a separate group.”⁵⁴

⁴⁷ South Africa v. Israel Provisional Measures First Order ¶45 (“The Palestinians appear to constitute a distinct ‘national, ethnical, racial or religious group’, and hence a protected group within the meaning of Article II of the Genocide Convention.”).

⁴⁸ Michael Lynk Report ¶¶32-33; *see also* International Convention on the Elimination of All Forms of Racial Discrimination, art. I, Dec. 21, 1965, 660 U.N.T.S. 195 (“In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”). Notably, social science and legal scholarship widely accept that race is a social construct. Brian K. Obach, *Demonstrating the Social Construction of Race*, 27 Teaching Sociology 252 (1999), <https://doi.org/10.2307/1319325>.

⁴⁹ Michael Lynk Report ¶33; Russell Tribunal on Palestine at p. 3.

⁵⁰ Russell Tribunal on Palestine at pp. 2-3.

⁵¹ One of the earliest examples of such laws involves Israel’s differential treatment of Jewish and Palestinian claims to nationality. *See* Susan M. Akram, *Palestinian Nationality and “Jewish” Nationality: From the Lausanne Treaty to Today*, in *Rethinking Statehood in Palestine: Self-Determination and Decolonization Beyond Partition 192, 200-01* (Leila H. Farsakh ed., 2021).

⁵² UN Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP) Chair Summary p. 3; Russell Tribunal on Palestine at p. 3.

⁵³ The Russell Tribunal was an “international citizen-based” tribunal, whose mission was to “inform and mobilise public opinion and relevant institutions and decision-makers in light of continuing failures to uphold international law in the context of the Israeli-Palestinian conflict.” Russell Tribunal on Palestine at p. 1.

⁵⁴ *Id.* at p. 3.

In evaluating whether Israel’s treatment of Palestinians meets the definition of apartheid, sections of this report examine Israel’s laws and practices in the OPT. UN human rights bodies have repeatedly found that Israel, through its decades-long occupation of the West Bank and East Jerusalem, exercises substantial control over the OPT and its Palestinian residents.⁵⁵ Israel, however, has rejected the “wall-to-wall consensus” that it has permanently occupied the OPT.⁵⁶ In 2022, former UN Special Rapporteur on the OPT Michael Lynk noted that Israel’s refusal to do so “is not an honest difference in views over the interpretation of international law, but the obfuscation of an acquisitive occupier determined to maintain permanent control over the land and its indigenous population.”⁵⁷

In its 2024 Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Occupation Advisory Opinion), the International Court of Justice (ICJ) concluded that the duration of Israel’s occupation—now more than 57 years long—does not exempt the country from its international obligations as an occupying power.⁵⁸ The ICJ noted that Israel’s policies and practices, including “the continued construction of the wall in the West Bank, the establishment of settlements and outposts, as well as the construction of related infrastructure” have amounted to “annexation of at least part of the Occupied Palestinian Territory.”⁵⁹ The ICJ further found that Israel’s belligerent occupation and annexation, as well as its exercise of sovereignty over the OPT violates the *jus cogens* prohibition on acquiring territory through the use of force.⁶⁰ The ICJ concluded that through its policies and practices, Israel’s presence in the OPT constitutes a wrongful act that entails international responsibility.⁶¹ As a consequence, the Court asserted that Israel has an obligation to rapidly end its presence in the OPT.⁶²

Likewise, Israel justifies its differential treatment of Palestinians and Jewish settlers in the OPT on the grounds that Palestinians are not Israeli citizens.⁶³ The ICJ disputed this justification, finding that Israel’s treatment of Palestinians in the OPT “constitutes systemic discrimination based on, *inter alia*, race, religion, or ethnic origin.”⁶⁴ The ICJ further found that “Israel’s legislation and measures impose and serve to maintain a near-complete separation in the West

⁵⁵ U.N. Human Rights Committee, *Concluding Observations on the Fifth Periodic Report of Israel*, U.N. Doc. CCPR/C/ISR/CO/5 (May 5, 2022); CERD 2020; U.N. Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the Sixth Periodic Report of Israel*, U.N. Doc. CEDAW/C/ISR/CO/6 (November 22, 2017); U.N. Committee Against Torture, *Concluding Observations on the Fifth Periodic Report of Israel*, U.N. Doc. CAT/C/ISR/CO/5 (June 3, 2016); ICJ Occupation Opinion.

⁵⁶ Michael Lynk Report ¶47.

⁵⁷ *Id.*

⁵⁸ ICJ Occupation Opinion ¶¶104, 108.

⁵⁹ *Id.* ¶162. The Court went on to note that Israeli officials have made statements that indicate the occupation is not temporary.

⁶⁰ *Id.* ¶254. Acquiring territory through the use of force or belligerent occupation is a violation of international law. An occupying state adopting policies, practices, or measures to render an occupation permanent, amounts to annexation. *Id.* ¶172.

⁶¹ *Id.* ¶267.

⁶² *Id.*

⁶³ International Convention on the Elimination of Racial Discrimination art. 1(2) (“This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”); *see also* HSRC Report at p. 163-66.

⁶⁴ ICJ Occupation Opinion ¶223.

Bank and East Jerusalem between the settler and Palestinian communities” in violation of Article 3 of the ICERD—which prohibits racial segregation and apartheid.⁶⁵

The ICJ’s opinion makes clear that under international human rights law, Israel is responsible for upholding its human rights obligations throughout the OPT.⁶⁶ The illegality of Israel’s presence in the OPT “does not release it from its obligations and responsibilities under international law . . . towards the Palestinian population . . . until such time as its presence is brought to an end.”⁶⁷

⁶⁵ *Id.* ¶229.

⁶⁶ *Id.* ¶¶259-64.

⁶⁷ *Id.* ¶264.

METHODOLOGY AND SCOPE

This report systematically reviews and analyzes reports and opinions by leading human rights organizations, experts, scholars, and courts around the world examining Israel's treatment of Palestinians in Israel and in the OPT under international law prohibiting apartheid. Our goal was not to conduct an independent investigation, but rather to evaluate the foundation for claims that Israel has engaged in apartheid. We focused, first and foremost, on reports of UN experts and credible human rights organizations, both within and outside Israel and Palestine.

We began with a survey of seminal reports that Israeli professor of international law and human rights Neve Gordon has labeled “the apartheid reports.”⁶⁸ In addition to reviewing the reports collated by Gordon, we identified 21 additional investigative and scholarly reports and opinions produced by UN experts, academics, courts, and reputable human rights organizations that address the question of apartheid in Israel and the OPT.⁶⁹ Each of these reports relied on a combination of primary and secondary sources, including Israeli legislation, policies, documented practices (including case studies), on-site visits, and interviews with affected persons, current and former government officials, NGO representatives, and others. We scrutinized the facts and evidence cited by each author, and where available, examined the primary sources each organization relied upon.

After summarizing and comparing the facts cited by each organization, we determined areas of consensus among the existing scholarship. We then conducted an independent analysis of whether the cited facts gave rise to violations of Article II(a-f) of the Apartheid Convention. We organized our analysis under three thematic paradigms: 1) perpetuating racial domination, 2) maintaining impoverishment and fragmentation, and 3) torture and violations of the fundamental right to life.

The geographical scope of this report is limited to Israel and the OPT. The effects of Israeli laws, policies, and practices on Palestinian refugees and Palestinians in the broader diaspora outside of the OPT, to the extent discussed in the reports reviewed, have been excluded from this report. The temporal scope of the acts described in the report ranges from 1948 to February 2025. Accordingly, this report incorporates facts relating to the events on and after October 7, 2023, when Hamas and other groups attacked soldiers and civilians in several Israeli towns, prompting Israel to commence a siege and aerial bombardment campaign of Gaza. For our analysis of recent events, in addition to reputable media coverage, we relied primarily on reports by UN agencies and proceedings before the ICJ.⁷⁰ At the time of this writing, Israel's siege and bombardment of

⁶⁸ Neve Gordon, *Between Human Rights and Civil Society: The Case of Israel's Apartheid Enablers*, 49 Law & Soc. Inquiry 1426 (2024), <https://doi.org/10.1017/lsi.2023.41>. The four reports in Gordon's list with which we began included: (1) *Israeli Practices towards the Palestinian People and the Question of Apartheid*, United Nations Economic and Social Commission for Western Asia (ESCWA) (2017); (2) *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid*, B'Tselem (2021); (3) *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, Human Rights Watch (HRW) (2021); and (4) *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, Amnesty International (2022).

⁶⁹ For a list of the principal sources we relied upon in preparing this report, see pp. 4-10.

⁷⁰ See generally *South Africa v. Israel* Verbatim Record; *South Africa v. Israel* Provisional Measures First Order; *South Africa v. Israel* Provisional Measures Second Order; *South Africa v. Israel* Provisional Measures Third Order.

Gaza is ongoing. Many human rights experts and international non-governmental organizations have concluded that Israel's assault on Gaza, accompanied by dehumanizing and inciting rhetoric evidencing requisite intent to exterminate all Palestinians in Gaza, meets the definition of genocide.⁷¹

⁷¹ See *South Africa v. Israel* Provisional Measures Third Order ¶ 38. See also *supra* note 36.

FINDINGS

I. HUMAN RIGHTS ORGANIZATIONS AND EXPERTS CONCUR THAT ISRAEL'S LAWS AND POLICIES ARE DESIGNED TO ENSURE THE DOMINANCE OF JEWISH ISRAELIS OVER PALESTINIANS.

There are four key facets to Israel's systemic domination of Palestinians that are widely reported in the materials reviewed and described in detail below. First, Israel was established as a Jewish ethno-state. To that end, it has adopted laws and policies to demographically engineer a Jewish majority. Second, Israel privileges its Jewish inhabitants by freely granting them citizenship, residence, land ownership, and other benefits that are withheld from Palestinians. Third, Israel maintains parallel legal systems, resulting in different outcomes for Palestinians and Jewish Israelis in the same geographic region. Finally, Israel prevents full participation by Palestinians in political, economic, social, and cultural life.

A. ISRAELI POLICY IS DICTATED BY THE EXPLICIT PURPOSE TO BENEFIT ITS JEWISH INHABITANTS AT THE EXPENSE OF NON-JEWISH INHABITANTS.

Israel's practices and policies prioritize Jewish Israelis over Palestinians.⁷² Specifically, Israel was founded as a Jewish state, seeks to demographically engineer a Jewish majority, establishes a Jewish nationality that is distinct and superior to Israeli citizenship, and supports parastatal organizations that exclusively benefit Jewish persons.

1. THE ESTABLISHMENT OF THE STATE OF ISRAEL AS A JEWISH STATE

Israel was founded as, and continues to be, a state primarily erected for Jewish people.⁷³ The 1948 Declaration of the Establishment of the State of Israel called Israel a "Jewish State," and its signers identified themselves as "representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement."⁷⁴ This founding ideology remains the cornerstone of Israeli State discourse and legislation. In a 1952 law, the unicameral legislature of Israel, the Knesset, declared that Israel "regards itself as the creation of the entire Jewish people."⁷⁵ This logic has persisted

⁷² Amnesty Int'l Report at p. 63; Al Mezan Report at p. 14; John Quigley at p. 227; HRW Report at p. 45; HSRC Report at p. 159; UNESCWA at pp. 30-31; Al-Haq Report at p. 39; Francesca Albanese Report SD and Settler Colonial ¶¶26, 32; Geoffrey Tennent at p. 122; Russel Tribunal on Palestine at p. 5; CERD 2012 ¶13; CERD 2020 ¶11; Michael Lynk Report ¶¶48-49; *see also* Adalah *The Discriminatory Laws Database* (Sept. 25, 2017), [https://www.adalah.org/en/content/view/7771#:~:text=Adalah's%20Discriminatory%20Laws%20Database%20\(DL%20basis%20of%20their%20national%20belonging](https://www.adalah.org/en/content/view/7771#:~:text=Adalah's%20Discriminatory%20Laws%20Database%20(DL%20basis%20of%20their%20national%20belonging) (last visited Mar. 1, 2025).

⁷³ Amnesty Int'l Report at p. 63; Al Mezan Report at p. 14; John Quigley at p. 227; HRW Report at p. 45; HSRC Report at p. 159; UNESCWA at pp. 30-31; Al-Haq Report at p. 39; Francesca Albanese Report SD and Settler Colonial ¶¶26, 32; Geoffrey Tennent at p. 122 ("Israel defines itself by a single and exclusive ethno-religious group, calling itself a Jewish State and promoting a set of particular ideals, values, culture, and heritage for the benefit of its Jewish population.").

⁷⁴ State of Israel, Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 14 May 1948, mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx; *see* John Quigley at pp. 226-27 (discussing laws).

⁷⁵ State of Israel, World Zionist Organization-Jewish Agency (Status) Law, 7 Laws of the State of Israel 3 (1952), <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf> (last visited Dec. 3, 2024).

officially since. For example, in March 2019, Prime Minister Benjamin Netanyahu declared that “Israel is not a state of all its citizens” but “the nation-state of the Jewish people and only them.”⁷⁶

At the time of Israel’s establishment, the indigenous Palestinian Arab population had resided on the land “for millennia.”⁷⁷ As a prerequisite for the creation of a Jewish state in Palestine, the Zionist movement “theorised and planned the forcible transfer of the indigenous Palestinian people and their dispossession.”⁷⁸ During the 1948 Nakba, Zionist mercenaries forced more than 700,000 Palestinians to flee their homes and native lands in Palestine; many of those Palestinians and their descendants remain in refugee camps in Gaza, Lebanon, and Jordan, as Israel has prevented their return.⁷⁹ In 1967, Israel expanded its territory after the Six Day War and occupied what is now the West Bank and the Gaza Strip, producing another estimated 350,000 refugees.⁸⁰

Although the Declaration of the Establishment of the State of Israel guarantees the right to “complete equality of social and political rights to all its inhabitants,” this proclamation has not been given full effect through legislation; nor have these rights, or a prohibition of racial discrimination, been guaranteed in Israel’s Basic Laws.⁸¹

Since Israel’s founding, the Knesset has passed several laws identifying Israel as a Jewish state and/or privileging Jewish people over or at the exclusion of Palestinians.⁸² In 1950, Israel passed the Law of Return, under which all Jewish individuals around the world are entitled to Jewish nationality within the Israeli state.⁸³ Two years later, Israel passed the 1952 Law of Nationality, which established strict limits on Palestinians’ ability to attain nationality.⁸⁴ As a result of this law, 750,000 Palestinian refugees were subjected to a blanket restriction from obtaining Israeli nationality.⁸⁵ The Law of Nationality also retroactively repealed Palestinian citizenship that had been granted prior to the establishment of Israel.⁸⁶ It thereby denationalized Palestinians who were unable to meet the stringent requirements for obtaining Israeli nationality, rendering them stateless.⁸⁷

⁷⁶ Benjamin Netanyahu, @b.netanyahu, Instagram post, 10 March 2019, [instagram.com/p/Bu0U2TABMNI](https://www.instagram.com/p/Bu0U2TABMNI) (accessed on 1 June 2020), cited in Amnesty Int’l Report at p. 67; Bill Chappell and Daniel Estrin, *Netanyahu says Israel is ‘Nation-State of the Jewish people and them alone,’* National Public Radio, 11 March 2019, cited in Michael Lynk Report ¶¶48-49.

⁷⁷ Francesca Albanese Report SD and Settler Colonial ¶26; see also Ilan Pappé, *The 1948 Ethnic Cleansing of Palestine*, 141 J. of Palestine Stud. 6, 9 (2006).

⁷⁸ Al-Haq Report at p. 39; See generally Ilan Pappé, *THE ETHNIC CLEANSING OF PALESTINE* (2007); Rashid Khalidi, *THE HUNDRED YEARS’ WAR ON PALESTINE: A HISTORY OF SETTLER COLONIALISM AND RESISTANCE* 72-77 (2020).

⁷⁹ HRW Report at p. 24; Amnesty Int’l Report at p. 81.

⁸⁰ HRW Report at p. 24; Amnesty Int’l Report at p. 81.

⁸¹ Amnesty Int’l Report at p. 63; HRW Report at p. 45; CERD 2012 ¶13; CERD 2020 ¶11.

⁸² John Quigley at p. 227.

⁸³ Susan M. Akram, *Palestinian Nationality and “Jewish” Nationality: From the Lausanne Treaty to Today*, in *Rethinking Statehood in Palestine: Self-Determination and Decolonization Beyond Partition 192, 200-01* (Leila H. Farsakh ed., 2021).

⁸⁴ *Id.*

⁸⁵ *Id.* at 201.

⁸⁶ *Id.* In 1925, during the time of the British Mandate, the Lausanne Treaty—which marked the end of World War I—expressly established Palestinian nationality. According to the treaty, Ottoman subjects or Turkish citizens residing in Palestinian territory became Palestinian citizens. *Id.* at 195-96

⁸⁷ *Id.* at 201

In 2018, the Knesset adopted the Basic Law: Israel the Nation-State of the Jewish People.⁸⁸ This quasi-constitutional legislation affirmed that the right to self-determination is exclusively granted by Israel to the Jewish people.⁸⁹ It also created a superior “Jewish Nationality” status that is “the basis of differential treatment of Jewish and non-Jewish citizens”⁹⁰ while “anchoring discrimination and legitimizing exclusion, racism, and systemic inequality.”⁹¹

Thus, in Israel, Jewish people are more privileged than non-Jewish people in “most spheres of public life, including residency rights, land ownership, urban planning, access to services and social, economic and cultural rights.”⁹² Israel’s preferential system of governance has resulted in “an enormous gap in entitlements and access to services between Israeli Jews and Palestinian Arabs, with legislation typically designed to favour Israeli Jews and keep Palestinian Arabs in a situation of inferiority.”⁹³ The Nation-State Law “only entrenched what was already established under Zionist doctrine and policy.”⁹⁴ Thus, “citizenship is not and has never been a basis for equal rights in the Israeli legal system.”⁹⁵

In 2022, UN Special Rapporteur on the OPT Michael Lynk observed that the geographic reach of the Nation-State Law is “the Land of Israel,” a term that encompasses not just the pre-1967 boundaries of Israel but also historic places of Jewish settlement, including the OPT.⁹⁶ Thus, the legally sanctioned superiority of Jewish Israelis over Palestinians extends throughout Israel, the West Bank, Gaza, and other parts of the OPT.

Beyond directly discriminating in favor of Jewish Israelis, Israel delegates regulation of state resources to parastatal organizations that explicitly seek to benefit solely Jewish Israelis.⁹⁷ The proto-state organizations World Zionist Organization-Jewish Agency (WZO-JA) and Jewish National Fund (JNF) worked closely with the British Mandate Administration as a “shadow government” in Palestine leading up to Israel’s Proclamation of Independence in 1948.⁹⁸ Since

⁸⁸ State of Israel, Basic Law: Israel the Nation State of the Jewish People, passed on 18 July 2018, main.knesset.gov.il/Activity/Legislation/Documents/yesod18.pdf (in Hebrew), Section 1(b) (an unofficial English translation is available at main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf); see Amnesty Int’l Report at p. 65; Michael Lynk Report ¶¶48-49; Al Mezan Report at p. 14; Al-Haq Report at p. 87; HRW Report at pp. 45, 149; Russel Tribunal on Palestine at p. 8; UNESCWA at p. 35; In 2020, the CERD expressed “concern[] about the discriminatory effect of the Basic Law: Israel – The Nation-State of the Jewish People (2018) on non-Jewish people in [Israel].” CERD 2020 ¶13.

⁸⁹ Amnesty Int’l Report at p. 65; Al Mezan Report at p. 14; CERD 2020 ¶13; Al-Haq Report at p. 87; HRW Report at p. 45.

⁹⁰ Amnesty Int’l Report at p. 65.

⁹¹ Al Mezan Report at p. 14.

⁹² Russell Tribunal on Palestine at p. 8.

⁹³ *Id.* at p. 5.

⁹⁴ Amnesty Int’l Report at p. 65; Michael Lynk Report ¶¶48-49; Al Mezan Report at p. 14; Al-Haq Report at p. 87; HRW Report at pp. 45, 149.

⁹⁵ Al-Haq Report at pp. 85-86.

⁹⁶ Michael Lynk Report ¶¶48-49.

⁹⁷ Al-Haq Report at p. 80; UNESCWA at p. 30; HRW Report at pp. 53-57; HSRC Report at p. 159; Geoffrey at pp. 87-88.

⁹⁸ Al-Haq Report at p. 7; see also Neve Gordon, *BETWEEN HUMAN RIGHTS AND CIVIL SOCIETY: THE CASE OF ISRAEL’S APARTHEID ENABLERS*, 49 Law & Soc. Inquiry 1426, 1435-36 (2024) <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/between-human-rights-and-civil-society-the->

their founding, these proto-state (and now parastatal) organizations have operated on discriminatory charters seeking to secure exclusive control of the land's resources to benefit persons of the "Jewish nationality," defined in racial supremacy terms.⁹⁹ In 1952, the Knesset adopted the World Zionist Organization-Jewish Agency (Status) Law, which authorized these parastatal organizations to operate as quasi-governmental entities.¹⁰⁰ WZO-JA was tasked with managing Jewish colonial settlement within the state, with a principal goal "to work actively to build and maintain Israel as a Jewish State, particularly through immigration policy."¹⁰¹ According to Palestinian human rights organization Al Haq, "[t]he Israeli state, its laws, and organs formally defer to Zionist parastatal institutions in all matters of legislation and policy affecting development, commerce, agriculture, access to and control over natural resources, urban planning, and civil matters."¹⁰² As Israeli historian Neve Gordon explained, "one cannot really understand the dispossession of Palestinians within Israel's 1948 borders and in the areas it occupied in 1967 without taking into account the central role played by the JNF."¹⁰³

This historical evidence and analysis, documented across reports and collated here, demonstrates that Israel prioritizes its Jewish inhabitants, both directly and through parastatal organizations, and necessarily denies Palestinians equal participation in the life of the country, in violation of Article II(c) of the Apartheid Convention.¹⁰⁴

2. ISRAEL HAS ADOPTED POLICIES DESIGNED TO ENSURE A JEWISH MAJORITY.

Israel's policies have been expressly designed to engineer a demographic majority of Jewish citizens.¹⁰⁵ In 2012, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed its "great[] concern[] at [Israel]'s policy of 'demographic balance', which has been a stated aim of official municipal planning documents, particularly in the city of Jerusalem."¹⁰⁶ According to a 2022 report by Amnesty International,

Since its establishment in 1948, the State of Israel has pursued an explicit policy of establishing and maintaining a Jewish demographic hegemony and maximizing its control over land to benefit Jewish Israelis while minimizing the number of Palestinians

case-of-israels-apartheid-enablers/CE2B22497C3877A08B93747C8BA3C957 (last visited Dec. 3, 2024) [hereinafter Gordon].

⁹⁹ Al-Haq Report at p. 80; *see also* Gordon at p.1436; UNESCWA at pp. 34-35; HRW Report at pp. 53-57.

¹⁰⁰ State of Israel, World Zionist Organization-Jewish Agency (Status) Law, 7 Laws of the State of Israel 3 (1952), <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/18-World-Zionist-Organization-Jewish-Agency-Status-Law-1952.pdf> (last visited Dec. 3, 2024); Al-Haq Report at p. 80; UNESCWA at p. 30; HRW Report at pp. 53-57; HSRC Report at p. 159; Geoffrey at pp. 87-88.

¹⁰¹ Al-Haq Report at p. 81; UNESCWA at pp. 34-35; *see also* HRW Report at pp. 53-57; HSRC Report at p. 160; Geoffrey at pp. 87-88.

¹⁰² Al-Haq Report at p. 82.

¹⁰³ Gordon at p.1436.

¹⁰⁴ *See* Quigley at pp. 228, 239.

¹⁰⁵ Amnesty Int'l Report at pp. 63-72; Al Mezan Report at p. I; UNESCWA at pp. 30-31; HRW Report at p. 45; Al-Haq Report at pp. 39-51, 92; CERD 2012 ¶25; Richard Falk Report ¶36.

¹⁰⁶ CERD 2012 ¶25.

and restricting their rights and obstructing their ability to challenge this dispossession.¹⁰⁷

The UN Economic and Social Commission for Western Africa (UNESCWA) characterized Israel's population policies as “demographic engineering.”¹⁰⁸ The justification for such policies is the “so-called ‘demographic threat,’” which UNESCWA described as “an openly racist reference to Palestinian population growth or the return of Palestinian refugees.”¹⁰⁹ Similarly, Al Haq reported in 2022 that Israel's 2000 Jerusalem Master Plan “is overtly discriminatory as it explicitly seeks to secure a demographic ratio of 70 per cent Israeli Jews to 30 per cent Palestinians in the city” of Jerusalem.¹¹⁰ In 2024, UN Special Rapporteur on the OPT Richard Falk said that it “has been a policy of Israel for decades, acknowledged by the Jerusalem Municipality, to maintain a demographic balance of approximately 70 per cent Jewish to 30 per cent Palestinian in Jerusalem.”¹¹¹

These findings of Israel's interest in a Jewish demographic majority are based on and supported by statements made by officials at the highest levels of the Israeli cabinet. Yitzhak Rabin, Israeli prime minister between 1992 and 1995, said, “[t]he red line for Arabs is 20 percent of the population; that must not be gone over,” adding, “I want to preserve the Jewish character of the state of Israel.”¹¹² In December 2003, Benjamin Netanyahu (then serving as minister of finance in between terms as prime minister) expressed concern over the “demographic problem” in the country and noted the need to ensure “Israel's Arabs”¹¹³ did not reach 35 to 40 percent of the population.¹¹⁴ In 2005, then Prime Minister Ariel Sharon said, when commenting on the renewal of the temporary and discriminatory 2003 Citizenship and Entry into Israel Law (see Section II(B)(1) below), that the authorities had “a correct and important intention of Israel being a Jewish state with a massive Jewish majority.”¹¹⁵ Speaking on the same law later that year, Netanyahu said, “[i]nstead of making it easier for Palestinians who want to get citizenship, we should make the process much more difficult, in order to guarantee Israel's security and a Jewish majority in Israel.”¹¹⁶

As an extension of Israel's demographic engineering efforts, Israel has worked to control as much land as possible while minimizing the number of Palestinians.¹¹⁷ In 2003, three years before becoming prime minister of Israel, Ehud Olmert stated that the parameters of the solution

¹⁰⁷ Amnesty Int'l Report at p. 63; *see also* HRW Report at p. 45 (“[d]emographic considerations, in particular the quest for a strong Jewish majority, have long animated Israeli government policy”).

¹⁰⁸ UNESCWA at pp. 30-31.

¹⁰⁹ UNESCWA at p. 31; *see also* Al Mezan Report at p. i (“Israel's intent to separate and divide Palestinians and re-engineer the demographics of the entire Palestinian population in order to assert its domination over them.”).

¹¹⁰ Al-Haq Report at pp. 39, 92.

¹¹¹ Richard Falk Report ¶36.

¹¹² Amnesty Int'l Report at p. 67; HRW Report at pp. 46-48.

¹¹³ The use of the term “Israeli Arab” is political. It is used to convey a sense of Palestinian attachment to the State of Israel rather than Palestinian or Arab identity. Muhammad Amara, *Language, Identity and Conflict: Examining Collective Identity through the Labels of the Palestinians in Israel*, J. Holy Land & Palestine Stud., Vol. 15, No. 2, at 203 (2016), <https://doi.org/10.3366/hjps.2016.0141>.

¹¹⁴ Amnesty Int'l Report at p. 67; HRW Report at pp. 46-48.

¹¹⁵ Amnesty Int'l Report at p. 67; HRW Report at pp. 50-51.

¹¹⁶ Amnesty Int'l Report at p. 67; HRW Report at pp. 50-51.

¹¹⁷ HRW Report at pp. 46-47; Amnesty Int'l Report at p. 70; Michael Lynk Report ¶46; Al-Haq Report at p. 93.

to the “demographic issue” are “to maximize the number of Jews; to minimize the number of Palestinians.”¹¹⁸ In 2014, Knesset member Yariv Levin, one year before he was appointed Israel’s minister of Jewish immigration, said: “[t]he correct policy . . . is to . . . apply sovereignty over the maximum amount of territory while keeping the Arab population within it to a minimum.”¹¹⁹ In 2016, before he became minister for foreign affairs, Yair Lapid explained, “[m]y principle says maximum Jews on maximum land with maximum security and with minimum Palestinians.”¹²⁰ Former Deputy Mayor of Jerusalem Meron Benvenisti wrote that Jerusalem’s “absurd” borders “derived from the aspiration to include ‘a maximum of land with a minimum of Arabs.’”¹²¹

Israel’s denial of Palestinians’ rights to participate in the political, social, economic, and cultural life of the state based on an explicit policy of maintaining a Jewish demographic majority violates Article II(c) of the Apartheid Convention.¹²² Additionally, Israel’s explicit moves to influence the demographic balance of the state further demonstrate its purpose in establishing and maintaining the domination by one racial group over another. This racial domination constitutes apartheid and is prohibited as such, as Israel’s acts and practices detailed in the rest of this report meet the conditions of one or more of the other elements delineated by Article II of the Apartheid Convention.

B. ISRAEL SYSTEMATICALLY PRIVILEGES ITS JEWISH INHABITANTS.

Israel grants preferential treatment to its Jewish inhabitants at the expense of Palestinians, as is the consensus among the human rights reports reviewed. Israel utilizes a variety of methods to ensure Jewish supremacy, most notably its discriminatory approach to the rights of citizenship and land ownership. In addition, Jewish Israelis receive preferential treatment in all facets of life, from access to water to a variety of social and economic benefits.

1. JEWISH PERSONS ARE AUTOMATICALLY GRANTED ISRAELI CITIZENSHIP WHILE PALESTINIANS FACE NUMEROUS HURDLES TO MAINTAIN EVEN A PERMANENT RESIDENT STATUS.

Israel discriminates against Palestinians seeking to gain citizenship.¹²³ Israel’s Citizenship Law of 1952 provides four routes to citizenship: “return,” “residence in Israel,” “birth,” and “naturalization.”¹²⁴ According to Article 2(a) of Israel’s Citizenship Law of 1952, Jewish immigrants from anywhere in the world are automatically granted citizenship under the Law of

¹¹⁸ HRW Report at pp. 46-47.

¹¹⁹ Amnesty Int’l Report at p. 70.

¹²⁰ Michael Lynk Report ¶46.

¹²¹ HRW Report at p. 64.

¹²² See Richard Falk Report ¶69; Russell Tribunal on Palestine at pp. 5-6.

¹²³ Amnesty Int’l Report at pp. 63-64, 82; HRW Report at pp. 48, 147; Al Mezan Report at p. 16; John Quigley at pp. 228-229; Bernard Regan at pp. 5-6; Russel Tribunal on Palestine at p. 5; UNESCWA at p. 32; Al-Haq Report at p. 85; HSRC Report at pp. 217-19; Geoffrey at pp. 75-76.

¹²⁴ State of Israel, Citizenship Law, No. 32 of 1952, <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/37-Citizenship-Law-1952.pdf> (last visited Dec. 3, 2024); see also HRW Report at p. 147; Al-Haq Report at p. 85; Geoffrey at pp. 75-76.

Return of 1950.¹²⁵ By contrast, under Article 3(a) of the 1952 Citizenship law, Israel conditioned the granting of Israeli citizenship to Palestinians on their continuous inhabitation of Israel from the day of its establishment, May 14, 1948, until the effective date of law.¹²⁶ International law scholar John Quigley highlights that the Citizenship Law is “an integral part of the aspiration for a Jewish state.”¹²⁷ The Citizenship Law prevented Palestinians who lived in Israel for generations prior to 1948 from returning to their homeland.¹²⁸ In 2021, still 5.7 million Palestinian refugees were registered with the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).¹²⁹ Further, these refugees have no pathway to returning to their homeland under current Israeli law. Even with a 1980 amendment to the Citizenship Law removing the requirement of continuous residence,¹³⁰ the law “retained distinctions between Jew and Arab,” as Palestinians must prove they were citizens of Palestine at the time of establishment of Israel while Jews have no proof requirement.¹³¹

After Israel annexed East Jerusalem in 1967, the government denied Israeli citizenship status to Palestinian residents of East Jerusalem. Instead, they hold fragile permanent residency status and unequal political rights.¹³² They can reside and work in the city, access social benefits, and vote in municipal elections, but may not vote in national elections or run for the Knesset.¹³³ Although they can apply for Israeli citizenship, they must prove allegiance to Israel¹³⁴ and demonstrate knowledge of Hebrew.¹³⁵ These barriers have led very few Palestinian East Jerusalem residents to apply for Israeli citizenship.¹³⁶

Over the years, thousands of Palestinians in East Jerusalem have had their residency status revoked through policies like the “center of life” policy, which requires that they prove Jerusalem residency by providing documents such as tax receipts, national insurance bills, and rental or home

¹²⁵ State of Israel, Law of Return, 710-1950; Amnesty Int’l Report at pp. 63-64, 82; HRW Report at p. 147; John Quigley at pp. 228-229; Bernard Regan at pp. 5-6; UNESCWA at p. 32; Al-Haq Report at p. 85; HSRC Report at pp. 217-18; Geoffrey at pp. 75-76.

¹²⁶ Amnesty Int’l Report at pp. 63-64, 82; HRW Report at p. 147; John Quigley at pp. 228-229; Al-Haq Report at p. 85; HSRC Report at pp. 217-18; Geoffrey at pp. 75-76.

¹²⁷ John Quigley at p. 228.

¹²⁸ Amnesty Int’l Report at pp. 63-64, 82; UNESCWA at p. 32; Al-Haq Report at p. 85; HRW Report at p. 48.

¹²⁹ Al-Haq Report at p. 84; HRW Report at p. 48; Such refugees generally end up in camps with “[h]orrific scenes unfolding in UN-run shelters” Euro-Med Human Rights Monitor, *Horrific scenes unfolding in UN-run shelters for displaced people in Gaza* (Nov. 27, 2023), <https://euromedmonitor.org/en/article/5984/Horrific-scenes-unfolding-in-UN-run-shelters-for-displaced-people-in-Gaza> (last visited Dec. 3, 2024).

¹³⁰ The 1980 amendment removed the requirement that Palestinians must prove that they were residents of Israel between 1948 and 1952, but still required proof that they were citizens of Palestine in 1948. HSRC Report at pp. 217-18; John Quigley at p. 229.

¹³¹ John Quigley at p. 229; *see also* HSRC Report at pp. 217-18.

¹³² Richard Falk Report at ¶34; B’Tselem Vibrant Democracy at p. 3; HRW Report at pp. 108-09; HSRC Report at pp. 205-07.

¹³³ HRW Report at pp. 108-09; B’Tselem Vibrant Democracy at p. 3; HSRC Report at pp. 205-07.

¹³⁴ *See* Al-Haq Report at 90-91; HSRC Report at pp. 205-07.

¹³⁵ *See* Amnesty Int’l Report at p. 84; HRW Report at pp. 108-10; Al-Haq Report at p. 90.

¹³⁶ HSRC Report at p. 205; *See also* Human Rights Watch, *Israel: Jerusalem Palestinians Stripped of Status* (2017), <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status> (last visited Dec. 3, 2024) (“Since 2003, only about 15,000 of Jerusalem’s 330,000 Palestinians have applied for citizenship [and] Israeli authorities have approved fewer than 6,000 of them.”).

ownership contracts to the Israeli Ministry of Interior in order to maintain status.¹³⁷ Israel's revocation of permanent residency status has led to the expulsion of Palestinians from East Jerusalem or the prohibition of their return, affecting their social benefits and access to health insurance.¹³⁸ Israeli settlers in East Jerusalem, however, enjoy citizenship and are exempt from laws targeting Palestinian residents, such as the "center of life" policy.¹³⁹

Within the rest of the OPT, Palestinians are treated as if they do not have a citizenship and are considered "stateless" unless they have citizenship in a third country.¹⁴⁰ Palestinians in these territories are also targeted by a "center of life" policy.¹⁴¹ After taking control of the population registries in the West Bank and Gaza in 1967, Israel has conducted several censuses to issue permits for entry and exit. Those absent during these censuses, or those who transferred their "center of life" by staying outside of the territory for extended periods of time, were denied the right to return.¹⁴² Over the last several decades, Israel has revoked the residency permits of 250,000 Palestinians in the West Bank (including East Jerusalem) and Gaza, sometimes on the grounds that they had lived abroad for more than three years.¹⁴³

The discriminatory impact of Israel's preferential citizenship regime is further exacerbated by laws such as the Citizenship and Entry into Israel Law,¹⁴⁴ a temporary 2003 order that was renewed every year through 2021.¹⁴⁵ This law prohibited Palestinians from the West Bank and Gaza, with few exceptions, from obtaining citizenship or permanent residence status in Israel or East Jerusalem.¹⁴⁶ Additionally, it prohibited Israeli citizens from transferring their status to spouses from the OPT.¹⁴⁷ The CERD twice expressed its concerns over the discriminatory nature of the Citizenship and Entry into Israel Law.¹⁴⁸ Nonetheless, in 2022 the Israeli Knesset re-adopted the Citizenship Law.¹⁴⁹

Israel's policy of preventing Palestinians from acquiring Israeli citizenship violates Article II(c) of the Apartheid Convention.¹⁵⁰ Because Palestinians who are not already Israeli citizens are

¹³⁷ HRW Report at pp. 108-09; HSRC Report at pp. 205-07; The Israeli Ministry of Interior deals with planning and construction and local government, including plans for national and provincial supervision of construction, local authority elections, local government and the Knesset, taxes, beaches, daylight saving and business licensing. *See* MINISTRY OF INTERIOR, https://www.gov.il/en/departments/ministry_of_interior/govil-landing-page (last visited Dec. 3, 2024).

¹³⁸ HSRC Report at pp. 205-07.

¹³⁹ *See* Amnesty Int'l Report at pp. 84-87; HRW Report at pp. 191-93; Al-Haq Report at p. 90.

¹⁴⁰ HSRC Report at pp. 218-19.

¹⁴¹ *See* Amnesty Int'l Report at pp. 82, 87; HRW Report at pp. 130-31, 187-91; *see also* John Quigley at pp. 229-30; HRW Report at pp. 147-51.

¹⁴² *See* Amnesty Int'l Report at pp. 82, 87; HRW Report at pp. 130-31, 187-91; *see also* John Quigley at pp. 229-30; HRW Report at pp. 147-51.

¹⁴³ B'Tselem at p. 3.

¹⁴⁴ HRW Report at pp. 50-51, 147-49; Amnesty Int'l Report at p. 82; CERD 2012 ¶18; CERD 2020 ¶15; HSRC Report at p. 211; Michael Lynk Report at p. 12; Geoffrey at p. 77.

¹⁴⁵ HRW Report at pp. 50-51, 147-49; Amnesty Int'l Report at p. 82.

¹⁴⁶ HRW Report at pp. 50-51; Geoffrey at p. 77.

¹⁴⁷ *See* Amnesty Int'l Report at pp. 82-83; HRW Report at pp. 201-02; CERD 2012 ¶18; HSRC Report at p. 211; Geoffrey at p. 77.

¹⁴⁸ CERD 2012 ¶18; CERD 2020 ¶15¶.

¹⁴⁹ Michael Lynk Report at p. 16.

¹⁵⁰ *See* Amnesty Int'l Report at pp. 93-94, 260; HSRC Report at pp. 212-19.

unable to acquire citizenship and their residency status is subject to revocation, Israel effectively denies them the right to leave and return to their country and the right to residence. For Palestinians in East Jerusalem, the risk of losing their fragile permanent resident status further impedes their freedom of movement in and out of their own country. For Palestinians throughout the OPT, the extensive permit systems (as discussed in greater depth in Section II(A)(3) below), combined with the Citizenship and Entry into Israel law, deny them their right to freedom of movement.

2. ISRAEL PROVIDES JEWISH SETTLERS AND ISRAELI NATIONALS WITH ACCESS TO WATER WHILE LIMITING PALESTINIANS' ACCESS TO THIS ESSENTIAL RESOURCE.

Israel also discriminates against Palestinians through preferential access to water.¹⁵¹ The current UN Special Rapporteur on OPT, Francesca Albanese, has noted that “Israel has administered the occupied Palestinian territory [in a way that] resembles that of a colony, ‘deeply committed to exploiting its land and resources for Israel’s own benefit, and profoundly indifferent, at very best, to the rights and best interests of the protected people.’”¹⁵²

Israel’s national water company, Mekorot, controls the majority of the water in Israel and the OPT.¹⁵³ Mekorot is a government-owned company that was declared the National Water Authority according to Israel’s Water Law.¹⁵⁴ It is controlled by the Israeli government, the Jewish Agency (JA), and the JNF.¹⁵⁵ Mekorot, similar to organizations such as the JNF and JA, implements policies and practices designed to privilege Jewish Israelis—including settlers in the OPT—over Palestinians. In Gaza, Israel has appropriated 75 percent of the sustainable groundwater.¹⁵⁶ In the West Bank, Israel controls 87 percent of the mountain water while diverting almost all of the Jordan River’s flow upstream of the West Bank.¹⁵⁷ As a result, according to the UN Special Rapporteur on the OPT Albanese, a Palestinian in the West Bank has access to only a fourth of the water available to a neighboring Israeli settler.¹⁵⁸

Israel also maintains control of the water in the OPT by declaring riverbanks “closed military zones,” destroying Palestinian water pumps and infrastructure, and denying Palestinians permits for new pumps and infrastructure.¹⁵⁹ In Gaza, the water that is available for direct use by Palestinians is largely unfit for human consumption, and the lack of access to clean water

¹⁵¹ Al Mezan Report at p. 34; Al-Haq Report at pp. 82-83; HRW Report at pp. 95-98; HSRC Report at pp. 140-42; Francesca Albanese Report Children ¶59; Geoffrey ¶ at pp. 93-94.

¹⁵² Francesca Albanese Report SD and Settler Colonial ¶32.

¹⁵³ Al Mezan Report at p. 34; Al-Haq Report at pp. 82-83; HRW Report at pp. 95-98; HSRC Report at pp. 140-42; *see also* Mekorot, *About Us*, <https://www.mekorot-int.com/about-us/> (last visited Mar. 2, 2025).

¹⁵⁴ Mekorot, *ESG Report*, <https://www.mekorot-int.com/esg-report/#:~:text=As%20a%20government%20Downed%20company,the%20Company's%20entire%20value%20chain.> (last visited Mar. 2, 2025); Mekorot, *Our History*, <https://www.mekorot-int.com/our-history/> (last visited Mar. 2, 2025).

¹⁵⁵ Al-Haq Report at pp. 82-83.

¹⁵⁶ Francesca Albanese Report Children ¶59; HRW Report at pp. 95-98.

¹⁵⁷ Francesca Albanese Report Children ¶59; HRW Report at pp. 95-98.

¹⁵⁸ Francesca Albanese Report Children ¶59; *see also* HRW Report at p. 98; *see also* Amnesty Int’l, *The Occupation of Water* (Nov. 29. 2017), <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/> (last visited Mar. 2, 2025).

¹⁵⁹ Al Mezan Report at p. 34; HRW Report at pp. 95-98; Geoffrey at pp. 93-94.

contributes to over a quarter of childhood illnesses.¹⁶⁰ Since October 2023, women in Gaza have resorted to shaving their heads and those of their children to avoid infection, as there is no clean water to wash their hair.¹⁶¹

By granting access to water in a discriminatory manner, Israel violates Article II(c) of the Apartheid Convention: such limitations on access to water create conditions that prevent the full development of Palestinians as a group and their full participation in the social and economic life of the country.¹⁶²

C. ISRAEL SUBJECTS PALESTINIANS AND JEWISH SETTLERS IN THE OPT TO DISPARATE LEGAL REGIMES THAT PROVIDE SETTLERS WITH MORE LEGAL PROTECTIONS AND RIGHTS.

Israel operates a dual legal system in the West Bank that entrenches Jewish Israeli supremacy and systematically discriminates against Palestinians.¹⁶³ Under parallel legal systems, Israel grants Israeli settlers the full rights and protections of domestic Israeli law, regardless of whether they are within Israel's borders, but governs Palestinians under military laws that they have no ability to influence.¹⁶⁴

Although the Palestinian Authority (PA) retains some powers of governance, UN Special Rapporteur on the OPT Michael Lynk reported that those powers were “exceptionally limited.”¹⁶⁵ Under the division of jurisdiction delineated in the Oslo Accords between Israel and the Palestine Liberation Organization (PLO), the Israeli military has exclusive control over about 60 percent of the West Bank; although the PA manages some affairs in the other areas of the West Bank, Israeli authorities greatly restrict its powers and retain primary authority over many aspects of Palestinians' lives.¹⁶⁶ The body of military orders that Palestinians are subject to number more than 1,800, “cover[ing] security matters, fiscal administration, taxation, transportation, land planning and zoning, management of natural resources, education, administration of justice, and more.”¹⁶⁷

¹⁶⁰ Francesca Albanese Report Children ¶59; HRW Report at pp. 141-42.

¹⁶¹ UNITED NATIONS, *No end in sight to the 'war on women' in Gaza*, UN: NEWS (July 18, 2024), <https://news.un.org/en/story/2024/07/1152246> (last visited Dec. 3, 2024); *See also* Walaa Sabah, *War on Gaza: Palestinian women forced to shave their heads due to water shortage*, MIDDLE EAST EYE, (6 February 2024 14:32 GMT), <https://www.middleeasteye.net/news/war-gaza-palestinian-women-forced-shave-their-heads-due-water-shortage> (last visited Dec. 3, 2024). Starvation, including the destroying or rendering water systems useless, constitutes a war crime under international law. Human Rights Watch, *Extermination and Acts of Genocide* (Dec. 19, 2024), <https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza> (last visited Mar. 2, 2025).

¹⁶² *See* Al Mezan Report at pp. 34-38; Francesca Albanese Report Children ¶59.

¹⁶³ HLS IHRC Addameer Study at pp. 8-9; Michael Lynk Report ¶38; Richard Falk Report ¶68; Russel Tribunal on Palestine at p. 8; HRW Report at pp. 81-87; CERD 2012 ¶27; HSRC Report at pp. 105-18.

¹⁶⁴ HLS IHRC Addameer Study at p. 8; Michael Lynk Report ¶38; Richard Falk Report ¶68; Russel Tribunal on Palestine at p. 8; HRW Report at pp. 81-87; HSRC Report at pp. 105-18.

¹⁶⁵ Michael Lynk Report ¶38.

¹⁶⁶ HRW Report at p. 80.

¹⁶⁷ HLS IHRC Addameer Study at p. 9. *See also* Michael Lynk Report ¶41; HSRC Report at pp. 113-15.

Under Israeli law, Jewish Israeli settlers have access to the same privileges as Israeli citizens within Israel's borders, including "health insurance, national insurance, social services, education, regular municipal services and the right of entry into and out of Israel and around much of the West Bank."¹⁶⁸ Where Israeli settlers would otherwise lack rights of domestic citizens of Israel, military orders assign those rights to local settler councils equivalent to municipal councils inside Israel.¹⁶⁹

Moreover, whereas Israeli settlers are tried in Israeli civilian courts, where they receive the full protection of Israeli law, Palestinians in the West Bank are tried in military courts which systematically violate due process protections.¹⁷⁰ In the military courts, the conviction rate for Palestinians exceeds 99 percent.¹⁷¹ As of 2014, no Jewish Israeli citizen had been tried in a military court for at least 30 years, according to Human Rights Watch (HRW).¹⁷²

Procedurally, Israeli authorities can withhold Palestinians' rights to communicate with counsel for twice as long as Israeli settlers. Moreover, Palestinians can be held for up to eight days before seeing a military judge, while Israeli settlers must see a judge within 24 hours of being detained (or 48 hours in exceptional cases and up to 96 hours when authorized in extraordinary cases).¹⁷³

In 2020, the CERD expressed its "concern[] . . . at the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand."¹⁷⁴ The CERD highlighted in particular the arrest and detention of children by military courts and the maintenance of administrative detention on the basis of secret evidence.¹⁷⁵ Palestinians "are tried as adults in Israeli military courts starting at the of age 16, while the Israeli civilian justice system sets the age of majority at 18."¹⁷⁶ The Israeli Supreme Court has largely refused to entertain arguments challenging the existence of separate legal regimes governing Palestinians and Israeli nationals and has failed to provide "effective and meaningful" judicial review of the military justice system.¹⁷⁷

¹⁶⁸ Michael Lynk Report ¶¶38-40; HSRC Report at pp. 106-107.

¹⁶⁹ For Example, such councils govern citizenship rights "regarding property, planning and building laws." Michael Lynk Report ¶39; *see also* HSRC Report at pp. 106-107.

¹⁷⁰ Michael Lynk Report ¶¶38-40; HLS IHRC Addameer Study at p. 9; Russel Tribunal on Palestine at p. 8; HRW Report at pp. 84-97; CERD 2012 ¶ 27; HSRC Report at pp. 115-18.

¹⁷¹ HRW Report at p. 84-87; Michael Lynk Report ¶41.

¹⁷² HRW Report at p. 85.

¹⁷³ HLS IHRC Addameer Study at pp. 9-10; HRW Report at pp. 84-87; *see also* HSRC Report at pp. 115-18.

¹⁷⁴ CERD 2020 ¶22; *see also* CERD 2012 ¶27 (expressing the CERD's "extreme[] concern[] at the existence of two sets of laws, for Palestinians on the one hand and Jewish settlers on the other hand who reside in the same territory, namely the West bank").

¹⁷⁵ CERD 2012 ¶27; *see also* HRW Report at pp. 84-87; HLS IHRC Addameer Study at pp. 9-10; HSRC Report at pp. 115-18.

¹⁷⁶ HLS IHRC Addameer Study at p. 14.

¹⁷⁷ HLS IHRC Addameer Study at p. 18.

Israel's dual legal system in the West Bank also fails to prevent or remedy settler violence against Palestinians.¹⁷⁸ "Israeli authorities routinely fail to adequately prevent, investigate, and prosecute acts of violence committed by Jewish Israeli settlers against Palestinian individuals and property, including beating, throwing stones, issuing threats, torching fields and crops, damaging homes and cars, blocking roads, using live fire, and even murder," according to the Harvard Law School International Human Rights Clinic and Addameer.¹⁷⁹ IDF units sometimes even participate in the attacks.¹⁸⁰ Indeed, Special Rapporteur on the OPT John Dugard reported, "I have witnessed such conduct on the part of the IDF myself in Hebron."¹⁸¹ Meanwhile, settlers "enjoy virtual impunity for criminal acts against Palestinians."¹⁸² In fact, over 90 percent of Israeli police investigations into settler-related violence carried out between 2005 and 2010 were closed without prosecution.¹⁸³ In 2012, the CERD expressed its concern about the increase in settler violence targeting non-Jews, the lack of meaningful investigation or prosecution, and "the impunity of terrorist groups."¹⁸⁴ In 2020, the CERD reiterated its concern about settler violence and the lack of accountability for and protection from such violence by Israel.¹⁸⁵

Israel's dual legal system violates Article II(a)(iii) and II(c) of the Apartheid Convention.¹⁸⁶ The system provides differing levels of protection to Palestinians and Jewish Israeli settlers living in the same territory, resulting in harsher treatment of Palestinians based solely on nationality. Consequently, they constitute "measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms." In addition, the imposition of a harsh military rule on Palestinians in the West Bank results in arbitrary arrest and imprisonment of Palestinians, as described in Section III(A)(2) below.

D. ISRAEL AFFIRMATIVELY PREVENTS PALESTINIANS' PARTICIPATION IN POLITICAL, ECONOMIC, SOCIAL, AND CULTURAL LIFE.

Israel excludes Palestinians from participation in political, economic, social, and cultural life in Israel and the OPT.¹⁸⁷ There are three main aspects of this campaign: (1) targeted legislation

¹⁷⁸ HLS IHRC Addameer Study at pp. 17-18; John Dugard Report ¶34; HRW Report at p. 91; CERD 2012 ¶28; CERD 2020 ¶42; Al Mezan Report at p. 51.

¹⁷⁹ HLS IHRC Addameer Study at pp. 17-18.

¹⁸⁰ HLS IHRC Addameer Study at pp. 17-18; John Dugard Report ¶34; HRW Report at p. 91.

¹⁸¹ John Dugard Report ¶34.

¹⁸² HRW Report at p. 91.

¹⁸³ *Id.* at p. 91; CERD 2012 ¶28.

¹⁸⁴ CERD 2012 ¶28.

¹⁸⁵ CERD 2020 ¶42.

¹⁸⁶ See HLS IHRC Addameer Study at pp. 19-22; Michael Lynk Report ¶50; Russell Tribunal on Palestine at p. 5; HSRC at pp. 186-92.

¹⁸⁷ UNESCWA at p. 32; Michael Lynk Report ¶50(d); John Quigley at p. 241; HLS IHRC Addameer Study at p. 10; Francesca Albanese Report SD and Settler Colonial ¶53; Al Mezan Report at pp. 25-26; Russell Tribunal on Palestine at pp. 6-7; Richard Falk Report ¶19; Francesca Albanese Report Children ¶40; HRW Report at pp. 133-34, 193-95; Al-Haq Report at pp. 125-27; HSRC Report at p. 129, 241-44; B'Tselem Vibrant Democracy at pp. 2-4; Amnesty Int'l Report at pp. 109-11; CERD 2012 ¶11; CERD 2020 ¶36.

to deprive Palestinians of political participation, (2) stunting Palestinian economic development, and (3) suppression of Palestinians' freedom of expression and participation in social life.

1. ISRAEL PREVENTS PALESTINIANS FROM PARTICIPATING IN POLITICAL LIFE WITH TARGETED LEGISLATION.

Targeted legislation by Israel denies Palestinians the right to participate in the country's political life.¹⁸⁸ Under Section 7a of Israel's Basic Law: The Knesset, a political candidate is prohibited from running for the Knesset if they explicitly or implicitly endorse "negation of the existence of the State of Israel as a Jewish and democratic state."¹⁸⁹ Israel's 1992 Law of Political Parties further prohibits the registration of any party whose goals explicitly or implicitly endorse the same.¹⁹⁰ The Central Elections Committee has repeatedly relied on Section 7a to disqualify Palestinian candidates.¹⁹¹ Although the Supreme Court has emphasized that the section must be read narrowly, it has nonetheless maintained that Palestinians' demands for equality that "deny[] Israel's character as the state of the Jewish people" could disqualify a candidate.¹⁹² As of April 2021, no government in Israel's history had ever included representatives of a Palestinian-led party, according to HRW.¹⁹³

Moreover, Palestinian Knesset members often face harassment and disciplinary actions for advocating for Palestinian rights. In 2016, three Palestinian lawmakers were suspended for meeting families of Palestinians killed by Israeli forces, whereas Jewish lawmakers faced no such consequences for similar action when they visited families of Jewish civilians who violently attacked Palestinians.¹⁹⁴

All Jewish Israelis can fully participate in Israel's elections, including the roughly 10 percent of Israel's Jewish citizens who live in the OPT.¹⁹⁵ These settlers can vote at polling stations in and near their settlements, without crossing into Israel's formal borders.¹⁹⁶ However, about 3.5 million Palestinians in the same area throughout the West Bank are not allowed to vote or run for Knesset and have no political representation in the sole power governing their lives.¹⁹⁷ The primary avenue for political expression for such Palestinians is popular protest. Yet, as described more extensively in Section II(D)(3) below, Israel does not respect Palestinians' right to freedom of expression.

¹⁸⁸ Richard Falk Report ¶69; John Quigley at pp. 239-42; B'Tselem Vibrant Democracy at p. 4; HRW Report at pp. 150-51; UNESCWA at pp. 32-33; HSRC Report at p. 129; CERD 2020 ¶36.

¹⁸⁹ State of Israel, Knesset, Basic Law: The Knesset – 1958; *see also* B'Tselem Vibrant Democracy at p. 4; HRW Report at pp. 150-51; UNESCWA at p. 32; In 2020, the CERD expressed its concern at this law's ability to "considerably weaken the right to political participation of non-Jewish minorities." CERD 2020 ¶36.

¹⁹⁰ State of Israel, Political Parties Law, 5752-1992 (Hebrew), https://www.nevo.co.il/law_html/Law01/282_001.htm (last visited Dec. 3, 2024); *see also* HRW Report at pp. 150-51.

¹⁹¹ B'Tselem Vibrant Democracy at p. 4.

¹⁹² *Id.*

¹⁹³ HRW Report at p. 151.

¹⁹⁴ *See* Amnesty Int'l Report at 109.

¹⁹⁵ B'Tselem Vibrant Democracy at pp. 2-3.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*; *see also* HSRC Report at p. 129.

Israel's policies directly preventing Palestinians' political engagement violate Article II(c) of the Apartheid Convention's prohibition of legislative or other measures "calculated to prevent a racial group or groups from participation in the political . . . life of the country."¹⁹⁸

2. ISRAEL PREVENTS, AND ACTIVELY HINDERS, THE ECONOMIC AND EDUCATIONAL DEVELOPMENT OF PALESTINIANS.

Israel prevents economic development in the OPT and, indeed, affirmatively hinders it.¹⁹⁹ In 1985, then Defense Minister Yitzhak Rabin said, "[t]here will be no development [for Palestinians in the OPT] initiated by the Israeli Government, and no permits will be given for expanding agriculture or industry [there], which may compete with the State of Israel."²⁰⁰

Israel's decades of occupation and closure of the Gaza strip have "deliberately fostered the de-development of Gaza's economy,"²⁰¹ resulting in profound levels of poverty, unemployment, aid dependency, and food insecurity in these territories.²⁰² Israel's deliberate isolation of Gaza via restricting imports and exports has ravaged its economy and left the territory dependent on Israel and foreign aid, reports unanimously found.²⁰³ Further, Israel's targeting of the fishing and agriculture industries has contributed to soaring levels of food insecurity in Gaza.²⁰⁴ The impact of the blockade on Gaza is more thoroughly analyzed in Section III(B) below.

In the West Bank, the GDP per capita in 2019 would have been 44 percent higher if not for the Israeli occupation, according to Special Rapporteur on the OPT Albanese.²⁰⁵ Even in East Jerusalem, Israel has impeded the natural growth of the Palestinian economy. According to Special Rapporteur on the OPT Falk, Palestinians must pay "high municipal taxes in return for poor services and disproportionately low public expenditure."²⁰⁶

The lack of economic development has affected Palestinians' access to education.²⁰⁷ Falk noted the "general neglect of the Arab schooling system [in East Jerusalem] in comparison to their Jewish counterparts" in West Jerusalem.²⁰⁸ The Russell Tribunal also highlighted "the unequal

¹⁹⁸ See Richard Falk Report ¶69; John Quigley at p. 243; B'Tselem Vibrant Democracy at pp. 5-6.

¹⁹⁹ Amnesty Int'l Report at p. 71; HRW Report at p. 70; Al Mezan Report at p. 21; Russel Tribunal on Palestine at p. 7; Francesca Albanese Report SD and Settler Colonial ¶¶47-52; Francesca Albanese Report Children ¶58; Richard Falk Report ¶35; Michael Lynk Report ¶50(d); HSRC Report at pp. 220-25; CERD 2012 ¶19.

²⁰⁰ Amnesty Int'l Report at p. 71; HRW Report at p. 70.

²⁰¹ Sara Roy discusses the de-development of Gaza in further detail. See generally SARA M. ROY, THE GAZA STRIP: THE POLITICAL ECONOMY OF DE-DEVELOPMENT (Institute for Palestine Studies USA, 3rd ed. 2016).

²⁰² Al Mezan Report ¶ p. 21; Russel Tribunal on Palestine at p. 7; Francesca Albanese Report SD and Settler Colonial ¶¶47-52; Francesca Albanese Report Children ¶58; HRW Report at pp. 138-40; HSRC Report at pp. 220-25.

²⁰³ Al Mezan Report at p. 21; Russel Tribunal on Palestine at p. 7; Francesca Albanese Report SD and Settler Colonial ¶¶47-52; Francesca Albanese Report Children ¶58; HRW Report at pp. 138-40; HSRC Report at pp. 220-25.

²⁰⁴ Al Mezan Report at p. 47; Francesca Albanese Report SD and Settler Colonial ¶¶47-52; Francesca Albanese Report Children ¶58.

²⁰⁵ Francesca Albanese Report SD and Settler Colonial ¶49.

²⁰⁶ Richard Falk Report ¶35.

²⁰⁷ In 2020, the CERD expressed its "concern[] [a]bout the disproportionately high dropout rates among Bedouin students and the significant gaps in the educational achievements between Arab students and Jewish students, as well as the shortage of classrooms and kindergartens in Bedouin neighbourhoods." CERD 2020 ¶38.

²⁰⁸ Richard Falk Report ¶35.

distribution of resources for educational and cultural activities for Palestinians.”²⁰⁹ Furthermore, Israel’s attacks on students and closures of schools, restriction of movement of students and teachers, and student arrests actively interfere with Palestinians’ right to education.²¹⁰

Beyond harming the economic development of Palestinians, Israel has exploited Palestinian labor for its own economic gain.²¹¹ Prior to the construction of the wall, Israel extensively used Palestinian labor for menial unskilled and semi-skilled positions in construction and agriculture.²¹² These jobs were characterized by poor working conditions, deprivation of benefits afforded to Jewish Israeli workers, and significantly lower pay than Jewish Israeli workers.²¹³ Following October 7, 2023, citing security concerns, Israel paused Palestinians’ worker permits, which has had devastating consequences for the economy in the West Bank.²¹⁴

Israel’s contribution to the impoverishment of the Palestinian economy violates Article II(c) and II(e) of the Apartheid Convention.²¹⁵ Article II(c) prohibits measures “calculated to prevent a racial group or groups from participation in the . . . economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying . . . the right to education.” Through its occupation and blockade of Gaza, Israel has deliberately prevented Palestinians’ participation in the economic life of Israel and their full development. Israel has prevented Palestinians from participating in economic and cultural life and denied them their right to education. Finally, Israel has violated Article II(e)’s prohibition of the “[e]xploitation of the labour of the members of a racial group or groups.”²¹⁶

3. ISRAEL PREVENTS PALESTINIANS FROM PARTICIPATING IN SOCIAL LIFE AND RESTRICTS THEIR RIGHTS TO FREEDOM OF EXPRESSION AND ASSEMBLY.

Palestinians in Israel are excluded from ordinary social life and do not have the right to express themselves freely.²¹⁷ Israel restricts Palestinians’ freedom of expression through explicit state policy. As mentioned in II(c) above, military orders governing the West Bank criminalize gatherings of more than 10 people that “could be construed as political” if they take place without a permit and further criminalizes the publication of material “having political significance” or

²⁰⁹ Russell Tribunal on Palestine at p. 5.

²¹⁰ HSRC Report at pp. 232-37.

²¹¹ Michael Lynk Report ¶50(d); Richard Falk Report ¶72; Russel Tribunal on Palestine at p. 7; BADIL Working Paper No. 23 at p. 71; Al-Haq Report at pp. 139–40; HSRC Report at p. 268.

²¹² Michael Lynk Report ¶50(d); Richard Falk Report ¶72; Russel Tribunal on Palestine at p. 7; HSRC Report at p. 268.

²¹³ Michael Lynk Report ¶50(d); Richard Falk Report ¶72; Russel Tribunal on Palestine at p. 7; BADIL Working Paper No. 23 at p. 71; Al-Haq Report at pp. 139–40; HSRC Report at p. 268.

²¹⁴ Becky Sullivan, *Israel's War with Hamas Disrupts Palestinian Workers and Israeli Employers Alike*, NPR (Nov. 4, 2023), <https://www.npr.org/2023/11/04/1210588361/israel-palestinian-workers-construction-economy>.

²¹⁵ See Amnesty Int’l Report at p. 260; Richard Falk Report ¶69; HSRC Report at pp. 20-25.

²¹⁶ See HSRC Report at pp. 268; Michael Lynk Report ¶50(d); Richard Falk Report ¶72.

²¹⁷ John Quigley at p. 241; HLS IHRC Addameer Study at p. 10; Francesca Albanese Report SD and Settler Colonial ¶53; Al Mezan Report at pp. 25-26; Russel Tribunal on Palestine at pp. 6-7; Richard Falk Report ¶19; Francesca Albanese Report Children ¶40; HRW Report at pp. 133-34, 193-95; Al-Haq Report at pp. 125-27; HSRC Report at pp. 129, 241-44; B’Tselem Vibrant Democracy at pp. 2-4; Amnesty Int’l Report at pp. 109-11. In 2012, the CERD expressed its concern “That Israeli society maintains Jewish and non-Jewish sectors,” “the existence of two systems of education, one in Hebrew and one in Arabic,” and “separate municipalities: Jewish municipalities and the so-called ‘municipalities of the minorities.’” CERD 2012 ¶11.

displaying “flags or political symbols” without prior military approval.²¹⁸ The Special Rapporteur on the OPT Albanese wrote, “Palestinian ‘symbols’, like the Palestinian flag, are systematically attacked and torn down, in public places, during public events, protests and even funerals, with the display of Palestinian national identity being de facto banned.”²¹⁹

The West Bank military orders also prohibit categories of conduct relevant for self-determination and used as “tools for targeting Palestinian civil society, political expression, human rights advocacy, and peaceful opposition to Israeli occupation policies.”²²⁰ These include criminalizing any attempt “to influence public opinion in the area in a manner which may harm public peace or public order” and “publish[ing] words of praise, sympathy or support for a hostile organization, its actions or objectives.”²²¹ The reports detail Israel’s reliance on this latter provision to effectively shut down prominent Palestinian civil society organizations and human rights organizations that oppose Israeli apartheid.²²²

In 2021, Israel declared six Palestinian civil society organizations unlawful: Addameer Prisoner Support and Human Rights Association, Al-Haq, Bisan Center for Research and Development, Defense for Children International Palestine (DCIP), Union of Agricultural Work Committees, and Union of Palestinian Women’s Committees.²²³ Israel’s accusations, unsupported by any evidence, of these organizations’ ties to terrorism have been widely “condemned by the UN High Commissioner on Human Rights and UN mandate holders, EU governments, and rights organizations in Israel and around the world.”²²⁴ Other efforts to halt these organizations’ work have been documented, including death threats to staff members, smear campaigns, targeting organization funding and ties to foreign institutions, arbitrary detentions without charge, and extrajudicial killings.²²⁵ More recently, in October 2024, the Knesset passed a law banning the UN Relief Works and Agency (UNRWA), an organization that provided necessary services in Gaza.²²⁶

Likewise, Israel routinely intimidates, harasses, and targets Palestinian journalists.²²⁷ Beyond Israel’s explicit restriction of Palestinians’ political expression, Israel has consistently used violent and deadly force to suppress Palestinian protests of Israeli occupation.²²⁸ One notable example is the “Great March of Return” in Gaza in 2018.²²⁹ The protests consisted of tens of

²¹⁸ IHRC Addameer Study, at p. 10; HRW Report, at pp. 193-95; HSRC Report, at p. 129, 243.

²¹⁹ Francesca Albanese Report SD and Settler Colonial, at para. 53 on p. 16.

²²⁰ HLS IHRC Addameer Study at p. 10.

²²¹ *Id.*

²²² *Id.* at p. 15; Al-Haq Report at pp. 163-65; HSRC Report at pp. 243-44.

²²³ HLS IHRC Addameer Study at p. 15.

²²⁴ HLS IHRC Addameer Study at p. 15.

²²⁵ Al-Haq Report at pp. 163-65; Richard Falk Report ¶¶74-76; Francesca Albanese Report SD and Settler Colonial ¶¶56-62; Amnesty Int’l Report at p. 111; Al Mezan Report at p. 52.

²²⁶ Amnesty International, “Israel/OPT: Law to ban UNRWA amounts to criminalization of humanitarian aid,” Oct 29, 2024, <https://www.amnesty.org/en/latest/news/2024/10/israel-opt-law-to-ban-unrwa-amounts-to-criminalization-of-humanitarian-aid/>.

²²⁷ HSRC Report at pp. 241-42.

²²⁸ Al Mezan Report at pp. 25-26; Russel Tribunal on Palestine at pp. 6-7; Francesca Albanese Report Children ¶40; HRW Report at pp. 133-34; Al-Haq Report at pp. 125-27; HSRC Report at p. 244; B’Tselem Vibrant Democracy at pp. 2-5; Amnesty Int’l Report at pp. 111-13.

²²⁹ Al Mezan Report at pp. 25-26; Francesca Albanese Report Children ¶40; HRW Report at pp. 133-34; Amnesty Int’l Report at pp. 111-13; United Nations Relief and Works Agency for Palestine Refugees in the Near East, *Gaza’s “great march of return”, one year on – impact on Palestine refugees and UNRWA services* (2019),

thousands of Palestinians gathering at the buffer zone at the separation fence between Israel and Gaza to protest through overwhelmingly peaceful means Israel’s continued violation of their basic rights and freedoms.²³⁰ Israeli military forces used deliberate and disproportionate lethal force in response, “directly targeting unarmed Palestinian protesters, including youths and children, health workers, persons with disabilities, and journalists.”²³¹ Israeli forces “killed 217 Palestinians, including 48 children, nine persons with disabilities, four paramedics, and two journalists,” and injured over 19,000 Palestinians during the protests, “including 4,974 children, with many injuries causing permanent disabilities and severe trauma.”²³² In the West Bank, regular demonstrations are consistently and constantly violently suppressed.²³³ Additionally, as Al Mezan highlights, Israel attacked journalists and media buildings during its 2012, 2014, and 2021 offensives in Gaza, unrelated to any political or other expressive activity.²³⁴ Violence against journalists has continued in Israel’s most recent operation in Gaza: from October 7, 2023 to March 2025, the International Federation of Journalists documented the deaths of 166 journalists and media workers.²³⁵

Israel’s exclusion of Palestinians from social life and denial of their freedom of expression and assembly directly violates Articles II(c) and (f) of the Apartheid Convention.²³⁶ The prevention of Palestinians’ engagement in Israeli social life, particularly through the denial of their freedom of opinion, expression, and peaceful assembly, and association, violates Section (c). The violent suppression of protests, and retaliation against journalists, individuals, and organizations opposing Israeli practices that amount to Apartheid violates Section (f).

II. HUMAN RIGHTS ORGANIZATIONS AND EXPERTS CONCUR THAT ISRAEL LIMITS PALESTINIANS’ FREEDOM OF MOVEMENT AND VIOLATES THEIR ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, LEADING TO IMPOVERISHMENT AND FRAGMENTATION OF PALESTINIAN COMMUNITIES.

Organizations and experts documented five ways that Israel deliberately perpetuates Palestinian impoverishment and fragmentation. First, Israel limits Palestinians’ freedom of movement, travel, and large-scale cohesion, namely by implementing security checkpoints, physical barriers, and a permit regime that exclusively affects Palestinians. Second, Israel encroaches on the OPT through land expropriation strategies that systematically acquire control of Palestinian land for Jewish-Israeli settlements. Third, Israel’s restriction on work and movement creates Palestinian dependence on Israel’s labor market, exploiting Palestinian labor for Israel’s

https://www.unrwa.org/sites/default/files/content/resources/gaza_gmr_one_year_on_report_eng_final.pdf (last visited Dec. 3, 2024).

²³⁰ Al Mezan Report at pp. 25-26; United Nations Relief and Works Agency for Palestine Refugees in the Near East, *Gaza’s “great march of return”, one year on – impact on Palestine refugees and UNRWA services* (2019), https://www.unrwa.org/sites/default/files/content/resources/gaza_gmr_one_year_on_report_eng_final.pdf (last visited Dec. 3, 2024).

²³¹ Al Mezan Report at pp. 25-26; *see also* Francesca Albanese Report Children ¶ 40; HRW Report at pp. 133-34; Amnesty Int’l Report at pp. 111-13.

²³² Al Mezan Report at pp. 25-26; *see also* Francesca Albanese Report Children ¶40; HRW Report at pp. 133-34.

²³³ Richard Falk Report ¶19.

²³⁴ Al Mezan Report at p. 28; *see also* HSRC Report at pp. 244-51.

²³⁵ International Federation of Journalists, *War in Gaza: Israel Must Be Held Accountable*, <https://www.ifj.org/war-in-gaza> (last visited Mar. 2, 2025).

²³⁶ HLS IHRC Addameer Study at p. 20; Russel Tribunal on Palestine at p. 7; Richard Falk Report ¶73; Al-Haq Report at pp. 125-32; HSRC Report at pp. 237-44, 269-70.

economic gains while limiting Palestinians' access to jobs, safe working conditions, and union formation. Fourth, Israel disrupts education through protracted violence against communities in the OPT and limits access to schools through movement restrictions and the permit regime, which undermines Palestinians' right to education. Finally, Israel inhibits Palestinians from receiving adequate healthcare by impeding the provision of health services and essential resources.

A. FREEDOM OF MOVEMENT

Israel intentionally hinders Palestinians' freedom of movement in violation of Article II(c) of the Apartheid Convention, which explicitly enshrines, *inter alia*, the right to freedom of movement and residence. The right to freedom of movement has direct consequences for other human rights included in Article II(c), including the right to leave and return to one's country, the right to work, and the right to establish trade unions. Israel imposes measures that impede Palestinian freedom of movement to isolate Palestinian communities from each other throughout the OPT, specifically through physical barriers and security checkpoints, a segregated roads system, a permit regime applicable exclusively to Palestinians, and travel limitations. Israel's practices also breach Article II(d), as Israel actively works to "divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group." In its 2024 Occupation Advisory Opinion, the ICJ concluded that Israel's residence permit policies, restrictions on movement, and demolition of property violate Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).²³⁷

1. PHYSICAL BARRIERS

Perhaps the most glaring symbol of Israel's segregation, isolation, and confinement of Palestinians is the 700 kilometer (km) wall that the state began building in 2002, primarily²³⁸ on Palestinian land, inside the occupied West Bank.²³⁹ In its 2004 Advisory Opinion on the Wall, the ICJ held that Israel's construction of the Separation Barrier (hereinafter the Wall) violated international law and instructed Israel to abandon it entirely.²⁴⁰ In 2007, the UN Special Rapporteur on the OPT Dugard underscored the discriminatory function of the Wall as "an instrument of social engineering designed to achieve the Judaization of Jerusalem by reducing the number of Palestinians in the city."²⁴¹ Yet, to this day, Israel's Wall remains in effect and has had protracted adverse effects on Palestinians' access to healthcare and employment and ability to sustain themselves and their families.

The Wall also prevents Palestinians from moving freely throughout the West Bank.²⁴² It has severed many Palestinian localities from the rest of the OPT, isolating them within enclaves known as "seam zones," i.e., areas situated between the Wall and the Israel's borders as established

²³⁷ ICJ Occupation Opinion ¶¶ 194, 206, 213, 223.

²³⁸ 85% of the separation barrier is constructed on Palestinian land. See Oded Balilty, *Israel's separation barrier, 20 years on*, AP NEWS (Jun 27, 2022), <https://apimagesblog.com/blog/2022/6/27/israels-separation-barrier-20-years-on>.

²³⁹ John Dugard Report at pp. 11–14.

²⁴⁰ ICJ Wall Opinion ¶¶ 120, 122, 134, 137, 150–1.

²⁴¹ John Dugard Report at 2.

²⁴² ICJ Wall Opinion ¶¶ 133–4.

by the 1949 Armistice.²⁴³ The Israeli military commander declared these seam zones to be closed military zones, meaning Palestinians' access to their land is contingent on receiving a special temporary permit issued by the Israeli military.²⁴⁴

2. ROAD "APARTHEID" AND CHECKPOINTS

In addition to the Wall, Israel has constructed another systemic barrier to Palestinian movement: the "road apartheid" system.²⁴⁵ In the West Bank, there is a "dual system of roads" for Palestinians and Israelis.²⁴⁶ While Palestinians are forced to take long, circuitous routes to travel between villages and towns, Israelis have exclusive access to speedy, well-maintained roads. The World Bank has estimated that the Wall and movement restrictions alone cost the Palestinian economy 2 to 3 percent of the territory's GDP annually.²⁴⁷

Following the 1967 War, as Israel's illegal settlements in the OPT multiplied, Israel began to develop a separate road system—euphemistically called "fabric of life" roads by the Israeli army—that was intended to divert Palestinian traffic away from Israeli settlements.²⁴⁸ At the same time, bypass roads were built for the use of Israelis, with the express purpose of connecting planned settlements while "bypass[ing] the Arab population centers."²⁴⁹ This road system, as described by the HSRC, "isolate[s] Palestinians from their land and each other while securing Israel's settlement enterprise and ensuring complete segregation between the two groups."²⁵⁰

Beginning in the 1980s, Israel's Road Plan Number 50 transformed the West Bank's road system from its North-South structure to an East-West one to benefit Jewish settlers' freedom and ease of movement.²⁵¹ Then, in 1999, Israel began constructing the Trans-Israel Highway, or Highway 6. Despite being portrayed as a solution to traffic congestion, Highway 6 not only segregates Palestinian landowners but also deprives them of their land, with 85 percent of confiscated or to-be-confiscated land belonging to Palestinians.²⁵² This intricate road network

²⁴³ See OHCHR, Key of Terms Pertaining to Israel/Palestine, at ii, <https://www2.ohchr.org/english/bodies/cerd/docs/ngos/jointngo3.pdf>.

²⁴⁴ Amnesty Int'l Report at pp. 97-8; ICJ Wall Opinion ¶¶133-4.

²⁴⁵ John Dugard Report ¶30.

²⁴⁶ Amnesty Int'l Report at p. 20; B'Tselem Report at p. 5; BADIL Working Paper No. 23 at p.19; Russell Tribunal on Palestine at p. 4; Geoffrey Tennent at p. 9; HRW Report at p. 94; HRSC Report at p. 197; Al Haq Joint Statement at pp. 2-3; CERD 2012 at p. 6. See ICJ Occupation Opinion at p. 12; CERD 2020 at p. 5; UNESCWA at p. 60; Francesca Albanese Report Children ¶56; John Dugard Report ¶¶39-40; Michael Lynk Report ¶¶42-43; Richard Falk Report ¶70.

²⁴⁷ World Bank. 'West Bank and Gaza Investment Climate Assessment' (March 2007), available at: <https://documents1.worldbank.org/curated/en/964061468339036297/pdf/404450GZ0West0Bank0restrictions01PUBLIC1.pdf>.

²⁴⁸ B'Tselem, "Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank," August 2007, at p. 87, https://www.btsalem.org/download/200708_ground_to_a_halt_eng.pdf; United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "West Bank Movement and Access Update," May 2009, <https://www.un.org/unispa/document/auto-insert-203051/>, cited in HRW report at p. 94.

²⁴⁹ Ministry of Agriculture and Settlement Division of the World Zionist Organization, *Master Plan For Settlement of Samaria and Judea, Plan for Development of the Area for 1983-1986* (Jerusalem: Spring, 1983) at p 27.

²⁵⁰ HSRC Report at p. 196; John Dugard Report ¶49.

²⁵¹ See HSRC Report at pp.196-97.

²⁵² Alessandro Petti, "Asymmetries: The Road Network in Israel-Palestine," at 25, cited in BADIL Working Paper No. 23.

serves Jewish Israeli interests, excluding Palestinians and disconnecting them from each other while promoting Israeli cohesion and control.²⁵³

Road 443—once a main thoroughfare for local Palestinian residents as a connection between Palestinian villages and the city of Ramallah—is another prominent example of this segregation. Following the second intifada in 2002, Israeli authorities prohibited all Palestinian vehicles from utilizing Road 443 for any purpose.²⁵⁴ Although the Israeli Army was eventually forced to reopen the road to Palestinians in 2010 after years of litigation, the security checkpoints for integrated streets render Road 443 effectively useless for Palestinians. Instead, Palestinians near Road 443 must use the “fabric of life” roads, which take significantly longer to reach Ramallah.²⁵⁵

Even when Palestinians use the roads designated for their use, the military subjects them to extensive delays and barriers in the form of checkpoints and other obstacles.²⁵⁶ According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Israeli authorities have erected nearly 600 permanent obstacles, including checkpoints and roadblocks, within the West Bank.²⁵⁷ In addition to this, the Israeli army routinely installs ad hoc “flying” checkpoints—i.e., temporary and unannounced makeshift obstacles—throughout the West Bank.²⁵⁸ OCHA reported that in under a year alone—between April 2019 and March 2020—Israeli forces erected nearly 1,500 “flying” checkpoints.²⁵⁹

Delays at checkpoints impede access to basic services, including but not limited to education and healthcare.²⁶⁰ At checkpoints, the Israeli military exercises unfettered authority to deny Palestinians passage through them.²⁶¹ According to B’Tselem, a preeminent Israeli civil rights organization, Israeli forces routinely turn away or humiliate and delay Palestinians at checkpoints without explanation, obstructing commutes to school, work, or appointments of all kinds.²⁶²

3. THE PERMIT SYSTEM

²⁵³ BADIL Working Paper No. 23 at pp.34–5.

²⁵⁴ HRW Report at p. 94.

²⁵⁵ *Id.* at p. 95.

²⁵⁶ John Dugard Report ¶¶23-42; CERD 2020 ¶15; Al Haq Report at p. 116; Amnesty Int’l Report at p. ¶95; B’Tselemat p. 5; BADIL Working paper No. 23 at pp. 52-53,80; HRW Report at pp. 14-5; HSRC Report at p. 199; CERD 2012 ¶24; CERD 2020 ¶¶44-45.

²⁵⁷ OCHA, “Longstanding Access Restrictions Continue to Undermine the Living Conditions of West Bank Palestinians,” Jun 8, 2020, <https://www.ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living-conditions-west-bank--palestinians>.

²⁵⁸ *Id.*

²⁵⁹ HRW Report at p. 175.

²⁶⁰ Al Haq Report at p. 115; Amnesty Int’l Report at p. 157; B’Tselem Report at p. 5; BADIL Working Paper No. 26 at p. 39; BADIL Working Paper No. 23 at pp. 52, 57; Russell Tribunal on Palestine at p. 4; HRW Report at p. 173; HRSC Report at p. 198. *See* Geoffrey Tennent at p. 16; CERD 2020 at pp. 4-5; Francesca Albanese Report Children ¶57; Michael Lynk Report ¶¶42-43, Richard Falk Report ¶14. *See, e.g.,* John Dugard Report ¶¶2936. According to data collected by the Palestinian Red Crescent Society, the average delay at checkpoints for “back-to-back” transfer procedures in emergency cases was 24 minutes. In 2019, 90% of Palestinian ambulance journeys to Jerusalem were required to follow this “back-to-back” transfer procedure. Amnesty Int’l Report at p. 209.

²⁶¹ HRW Report at p. 84.

²⁶² B’Tselem, “Restrictions on Movement,” Nov 11, 2017, https://www.btselem.org/freedom_of_movement.

Israel's permit system, first established in 1967, dictates Palestinians' ability to move between the West Bank, the Gaza Strip, East Jerusalem, Israel and abroad. The Israeli Civil Administration enforces over 100 types of permits, which are applicable exclusively to Palestinians.²⁶³ Jewish settlers and Israeli citizens are not subject to this permit regime.²⁶⁴

Israel requires Palestinians to apply for and obtain permits to travel between the OPT and to access certain restricted roads, agricultural land, or cities like Jerusalem.²⁶⁵ Israel requires Palestinians to obtain permits to work inside Israel or any of its settlements.²⁶⁶ Israeli forces also prohibit Palestinians from accessing their own property absent special permits if the land is near Jewish settlements or the Wall.²⁶⁷ Israeli military forces have broad discretion to deny or revoke any travel permit based on unspecified security concerns.²⁶⁸ While Israel asserts the permit system is necessary to protect national security interests, this pervasive, comprehensive set of restrictions—coupled with physical barriers and security checkpoints—works to control Palestinian movement, exclude Palestinian presence in settlements, and prevent Palestinians from establishing cohesive communities.

4. RESTRICTIONS ON TRAVEL ABROAD

Travel abroad for Palestinians living in the OPT is similarly severely restricted.²⁶⁹ Other than some limited exceptions for senior businesspeople and humanitarian cases, Palestinians from the OPT, except for East Jerusalemites, require special permits to travel via Israeli airports.²⁷⁰ West Bank Palestinians can only travel abroad via the Israel-controlled Allenby/King Hussein crossing into Jordan, which Israeli military and security forces often close based on undisclosed, “secret” information.²⁷¹ It is extremely prohibitive and nearly impossible for Palestinians in Gaza to travel abroad due to Israel's blockade, with limited exceptions through the Erez crossing.²⁷² If a Gaza resident wants or needs to travel through Israel, they must first obtain a special Israeli-issued permit, and the process is “complex, arbitrary, and discriminatory.”²⁷³ Stringent Egyptian restrictions on the Rafah crossing further isolate Gazans, requiring official permits from the Israeli Civil Administration to exit Gaza, effectively segregating them from the rest of the OPT, from

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ Amnesty Int'l Report at p. 75.

²⁶⁶ See generally International Labour Organization, “The Situation of Workers of the Occupied Arab Territories,” May 2023, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_883198.pdf.

²⁶⁷ *Id.* at pp. 20, 97-8; HRW Report at p. 83; John Dugard Report at p. 12; HSRC Report at p. 201.

²⁶⁸ HRW Report at pp. 174-5.

²⁶⁹ Al Haq Report at pp. 119, 146, 164; Amnesty Int'l Report at pp. 20, 95; B'Tselem at p. 3; BADIL Working Paper No. 23 at p. 41; HRW Report at p. 131. See also HRSC Report at p. 273; UNESCWA at p. 60; Francesca Albanese Report SD and Settler Colonial ¶6; Francesca Albanese Report Children ¶57; Michael Lynk Report ¶42; Richard Falk Report ¶77.

²⁷⁰ Amnesty Int'l Report at p. 20.

²⁷¹ *Id.* at p. 95.

²⁷² Al Haq Report at p. 146; Amnesty Int'l Report at p. 95; B'Tselem at p. 5; Al Mezan Report at pp. 18-19; HRW Report at pp. 172-74.

²⁷³ Al Mezan Report at p. 30; see also, Medecins du Monde Palestine, “The Labyrinths to Health in Gaza,” Dec 12, 2019, <https://www.medecinsdumonde.org/en/actualites/publications/2019/12/12/labyrinths-health-gaza>.

Israel, and from the world.²⁷⁴ Israel also bombed the international airport in Gaza in 2001, effectively preventing its reconstruction and the construction of a seaport, forcing Palestinians to rely on land crossings for travel abroad.²⁷⁵

Palestinian citizens of Israel and residents of East Jerusalem face separate discriminatory and humiliating security checks and interrogations at Israeli airports based on their national identity, despite legal efforts to challenge this practice.²⁷⁶ A petition filed to the Supreme Court of Israel in 2007 aimed to remove “national identity” as a criterion for security screening, arguing for equal treatment regardless of nationality. The Supreme Court rejected the petition in 2015, failing to address the systematic discrimination faced by Palestinian citizens and effectively condoning the discriminatory policy.²⁷⁷

5. NEIGHBORHOOD SEGREGATION

The division of the Jewish Israeli and Palestinian populations throughout the OPT’s history is well documented. The Russell Tribunal on Palestine concluded:

Israel has through its laws and practices divided the Israeli Jewish and Palestinian populations and allocated them different physical spaces, with varying levels and quality of infrastructure, services and access to resources. The end result is wholesale territorial fragmentation and a series of separate reserves and enclaves, with the two groups largely segregated.²⁷⁸

In 1978, the JA, responsible for managing Jewish national assets in Israel, formally declared the West Bank a permanent part of Israel and proposed a “master plan” that would divide the area into distinct Jewish and Palestinian zones to secure “permanent Jewish-Israeli control” over the West Bank.²⁷⁹ By the end of the twentieth century, the web of illegal Jewish settlements in the OPT had given rise to areas reserved exclusively for the Jewish population.²⁸⁰ Meanwhile, Israel increasingly turned the Palestinian zones “into a series of disarticulated enclaves connected by smaller separate roads, from which passage is controlled by checkpoints staffed by the Israeli military and private Israeli security forces.”²⁸¹

Nablus is one example of a non-contiguous Palestinian enclave or reserve in the West Bank. Nablus has a population of about 130,000 Palestinians. It is entirely landlocked, surrounded by 14 illegal Jewish Israeli settlements and 26 Israeli outposts linked by roads primarily reserved for use by Israeli settlers.²⁸² Israel has placed over 70 physical obstacles and barriers on Nablus’ road

²⁷⁴ See Amnesty Int’l Report at p. 95; HRW Report at pp. 172–74.

²⁷⁵ See Amnesty Int’l Report at p. 95.

²⁷⁶ *Id.* at 62; B’Tselem at p. 5; BADIL Working Paper No. 23 at p. 41; HRW Report at p. 175; HSRC Report at p. 196; CERD 2020 ¶¶21–22.

²⁷⁷ Amnesty Int’l Report at p. 20.

²⁷⁸ Russell Tribunal on Palestine, *Findings of the South Africa Session*, 2011 ¶5.39.

²⁷⁹ HSRC Report at p. 257; Francesca Albanese Report SD and Settler Colonial ¶45.

²⁸⁰ HSRC Report at p. 258.

²⁸¹ *Id.*

²⁸² *Id.*

junctions, preventing Palestinians from utilizing the roads linking the settlements.²⁸³ Israel's placement of the 14 settlements not only exemplifies how Israel divides the population along racial lines,²⁸⁴ but illustrates how Israel deliberately isolates Palestinian enclaves. Moreover, as noted above, Israeli authorities have also seized and destroyed Palestinian land to construct its illegal barrier, the Wall,²⁸⁵ which further entrenches Israel's division of the population along racial lines.

East Jerusalem provides another example of neighborhood segregation.²⁸⁶ In 2021, Palestinians made up 38 percent of the Jerusalem Municipality's total population—amounting to approximately 358,800 Palestinian residents.²⁸⁷ Nevertheless, almost half of these Palestinians, an estimated 150,000 as of 2021, are forced to live in under-resourced, segregated areas isolated by the Wall or other military checkpoints.²⁸⁸ In East Jerusalem, where Palestinians comprise 60 percent of the population,²⁸⁹ Israel creates and maintains neighborhood segregation through discriminatory zoning laws, disparate infrastructure investment, building permit denials, and home demolitions, all which function in tandem with its expanding settlements. For instance, Israel designates only around 15 percent of East Jerusalem's land for Palestinian residential use, and only 2.6 percent of East Jerusalem is zoned for public buildings for the city's Palestinian population.²⁹⁰ The ongoing expansion of East Jerusalem's settlements is another driver of segregation. Israel establishes settlements strategically around and within Palestinian areas, creating enclaves of Palestinian neighborhoods that are isolated from each other and the rest of the West Bank. While consolidating Israeli presence throughout East Jerusalem, this correspondingly allocates more state-sponsored incentives and infrastructure investment towards the settlements rather than Palestinian neighborhoods.²⁹¹ Israel has stymied population growth, development, and existence even in the enclaves of Palestinian communities that have survived occupation, all while bolstering illegal Jewish Israeli settlement expansion.

B. LAND EXPROPRIATION

According to Article II(d) of the Apartheid Convention, a country cannot “expropriat[e] the land or property belonging to a racial group or groups or to members thereof.” Yet, Israel has expropriated Palestinian land and property since its founding and continues these practices today, including through the expansion of illegal Israeli settlements in the West Bank as well as the

²⁸³ *Id.*

²⁸⁴ *Id.* at 263.

²⁸⁵ *Id.*

²⁸⁶ Amnesty Int'l Report at p. 74; B'Tselem at p. 4; BADIL Working Paper No. 23 at p. 54; Russell Tribunal on Palestine at p. 6; Geoffrey Tennent at p. 119; HRW Report at pp. 182, 24; Richard Falk Report ¶70, ICJ Wall Opinion ¶133. *See* ICJ Occupation Opinion at pp. 37-38; John Quigley at p. 246; Al Haq Joint Statement at p. 3; CERD 2020 at p. 8; CERD 2012 at pp. 6-7; UNESCWA at pp. 31-32. *See also*, Francesca Albanese Report Children ¶56; John Dugard Report ¶27; Michael Lynk Report ¶54.

²⁸⁷ Amnesty Int'l Report at p. 78.

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 156.

²⁹⁰ The Association for Civil Rights in Israel (ACRI), “East Jerusalem: Facts and Figures 2021,” May 2021, at 4, https://www.english.acri.org.il/post/_283.

²⁹¹ *See, e.g.*, Peace Now, “From De Jure to De Facto Annexation: 2020 Settlement Construction Report,” March 2021, <https://peacenow.org.il/wp-content/uploads/2021/04/Construction-in-Settlements-2020.pdf>.

construction of the Wall.²⁹² These practices have been extensively documented by human rights organizations and historians alike.²⁹³ Israel itself has acknowledged this historical practice. In 2003, an Israeli government-commissioned report determined:

[T]he expropriation activities were clearly and explicitly harnessed to the interests of the Jewish majority, and the land was transferred to entities such as the Jewish National Fund (JNF), which according to its own definition serves Jewish settlement, or the Israel Land Administration, which, judging from its administration patterns, served a similar objective.²⁹⁴

While Palestinians owned 90 percent of privately owned land throughout the OPT in 1948, the reverse is constructively now true; today, Israel, its institutions and citizens own the vast majority of land and property, as discussed in fourteen reports.²⁹⁵ During the 1948 Nakba, Zionist forces forcibly displaced hundreds of thousands of Palestinians from their property, and then expropriated the land and property of the Palestinians they had forcibly displaced.²⁹⁶ Following the Nakba, Israel created a new land regime to “place as much land as possible under state control in pursuit of explicit policy of ensuring Jewish control over land.”²⁹⁷

Two main laws facilitated Israel’s expropriation of Palestinians’ land and property. The Absentees’ Property Law of 1950²⁹⁸ served as the primary legal instrument for confiscation²⁹⁹ and gave Israel control over all the land and property of Palestinians displaced from their homes.³⁰⁰ The Absentees’ Property Law defined “absentee” such that Palestinians who became Israeli citizens and were not “in their usual place of residence” at the time were deemed “present absentees.”³⁰¹ This allowed Israeli authorities to seize their land and property.³⁰² The Land

²⁹² Richard Falk Report ¶70; HRW Report at p. 176 (citing B’Tselem and Kerem Navot, “This Is Ours – And This, Too,” p. 8); Yotam Berger, “Israeli Settlers ‘Upgrade’ West Bank Springs to Usurp Palestinian Land,” *Haaretz*, May 31, 2019, <https://www.haaretz.com/israel-news/.premium-israeli-settlersupgrade-west-bank-springs-to-usurp-palestinian-land>; B’Tselem, “Settlements,” Jan 16, 2019, <https://www.btselem.org/settlements>.

²⁹³ ILAN PAPPE, *THE BIGGEST PRISON ON EARTH: A HISTORY OF THE OCCUPIED TERRITORIES* 102 (2017); *see also*, ILAN PAPPE, *THE ETHNIC CLEANSING OF PALESTINE* 136 (2006).

²⁹⁴ Or Commission, Chapter I, “Before October Events: Background, Factors, Predicting Events and Police Readiness. Section A - Escalation processes in the Arab sector in light of the outbreak of riots,” (Hebrew), August 2003, <http://uri.mitkadem.co.il/vaadat-or/vaadat-or-part1.html> (accessed June 10, 2020), cited in HRW Report at p. 54.

²⁹⁵ Amnesty Int’l Report at p. 129; B’Tselem Report at p. 5; Russell Tribunal on Palestine at p. 6; Geoffrey Tennent at pp. 97, 109; HRW Report at pp. 176-8; HRSC Report at pp. 199-200; John Quigley at p. 234. *See* CERD 2012 at p. 45; UNESCWA at p. 33; Michael Lynk Report ¶39. *See, e.g.* Francesca Albanese Report Children ¶63.

²⁹⁶ Amnesty Int’l Report at p. 74.

²⁹⁷ *Id.* at p. 114.

²⁹⁸ Absentees’ Property Law, 5710-1950, 4 Laws of the State of Israel 68 (1950-51) (Isr.), available at <https://www.un.org/unispal/document/auto-insert-209845/>.

²⁹⁹ Al-Mezan Report at p. 15; Al-Haq Report at pp. 101-02; HRW Report at pp. 196-97; Geoffrey Tennent at pp. 29-30; HSRC Report at p. 264.

³⁰⁰ HSRC Report at pp. 199-200; Amnesty Int’l Report at p. 129; B’Tselem Report at p. 5; Russell Tribunal on Palestine at p. 6; Geoffrey Tennent at pp. 97, 109, HRW Report at pp. 176-8.

³⁰¹ Center on Housing Rights and Evictions and BADIL Resource Center for Palestinian Residency & Refugee Rights, *Ruling Palestine* (2005), https://badil.org/phocadownloadpap/Badil_docs/publications/Ruling%20Palestine.pdf (last visited Feb. 9, 2025) at p. 41.

³⁰² *Id.*

Acquisition Law of 1953 retroactively recognized as legal Israel's expropriation of Palestinian lands that the Israeli army and Jewish localities had taken control over between 1947 and 1949 and created the legal basis for Israel's continued land expropriation.³⁰³ In 2005, the Center on Housing Rights and Evictions (COHRE) and BADIL reported that to date an estimated 250,000 people had been internally displaced and 4.2-5.8 million dunum (4,200-5,800 km²) of "abandoned" land had been taken.³⁰⁴

HRW found that by using these laws and policies, Israel has expropriated more than two million dunams—in other words, more than one-third of the land that comprises the West Bank—from Palestinians to build Israeli settlements.³⁰⁵ Israel strategically uses land to establish or enable the establishment of Israeli settlements.³⁰⁶ As a result of Israel's expropriation tactics, the World Bank has estimated that 50 percent of land in the West Bank has been made inaccessible to Palestinians due to settlements, roadblocks, and additional restricted areas, thereby denying Palestinians the opportunity for collective economic development.³⁰⁷

In addition to expropriating Palestinian lands, Israel actively seeks to prevent Palestinians from building and maintaining homes. Throughout the OPT and present-day Israel, the Israeli government has made it nearly impossible for Palestinians to obtain building permits while continuing to demolish Palestinian homes.³⁰⁸ Human rights organizations also document the Israeli practice of demolishing Palestinian homes as collective punishment measures.³⁰⁹ In July 2015, 97 percent of all pending judicial demolition orders from the Israeli government were for buildings located in Palestinian towns.³¹⁰ In short, Israel continues to expropriate land from the growing Palestinian population and demolish their homes while simultaneously refusing to grant Palestinians permits for new buildings.

C. RIGHT TO WORK, FORM TRADE UNIONS, AND FREEDOM OF LABOR

³⁰³ Amnesty Int'l Report at p. 129.

³⁰⁴ Center on Housing Rights and Evictions and BADIL, *supra* n. 301, at p. 55.

³⁰⁵ HRW Report at pp. 91, 176. Israel has deemed 1.4 million dunams of that land as "state land," the vast majority of which is located in Area C. *Id.* at p. 91. The "state land" designation enables Israel to circumvent international law and build settlements expand the Jewish Israeli presence and serve solely their needs. Amnesty Int'l Report at p. 24.

³⁰⁶ Amnesty Int'l Report at p. 129; B'Tselem at p. 5; BADIL Working Paper No. 23 at 19 n.49; Geoffrey Tennent at p. 109; HRW Report at pp. 196-7. *See* ICJ Occupation Opinion at pp. 33-34; CERD 2020 at p. 8; CERD 2012 at p. 7; UNESCWA at p. 34; Michael Lynk Report ¶43; Richard Falk Report ¶¶16, 22. *See, e.g.,* Francesca Albanese Report SD and Settler Colonial ¶¶33, 44; John Dugard Report ¶¶32-3. *See generally,* John Quigley at V. National Institutions, VI. Land Holding, VIII. Housing.

³⁰⁷ World Bank Technical Team, 'Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy' (9 May 2007), available at: <https://documents1.worldbank.org/curated/en/964061468339036297/pdf/404450GZ0West0Bank0restrictions01PUBLIC1.pdf>

³⁰⁸ Amnesty Int'l Report at p. 130; B'Tselem Report at p. 5; BADIL Working Paper No. 23 at p. 81; Russell Tribunal on Palestine at p. 7; Geoffrey Tennent at pp. 92-93, 118; HRW Report at p. 92; Michael Lynk Report ¶43. *See* ICJ Occupation Opinion at pp. 33-34; HLS IHRC Addameer Study at p. 17; CERD 2020 at p. 8; CERD 2012 at p. 6; UNESCWA at p. 61; John Dugard Report ¶23. *See also,* UNESCWA at pp. 41, 45; Francesca Albanese Report Children ¶¶62-63. *See, e.g.,* HRW Report at p. 114; Richard Falk Report ¶28 (noting that housing demolitions correspond with the settlement boom from 2013 onwards).

³⁰⁹ HSRC Report at p. 263; Al Mezan at p. 42; CERD Bertrand Russell Peace at p. 4; HRW Report at p. 184.

³¹⁰ HSRC Report at p. 153.

Israel's policies and practices discriminate against Palestinians in the labor sector—namely, through limited access to employment, unsafe working conditions, and restrictions on Palestinian trade unions. Since 1967, the Palestinian economy in the West Bank and Gaza has shifted towards dependence on the Israeli economy and foreign aid as a result of Israel's occupation.³¹¹ In Israel, Palestinian employment overall sharply declined from 2000 to 2007 as a result of Israeli restrictions on Palestinians' ability to work, with the number of workers dropping from 146,000 to 66,806.³¹² This was by design, as the Israeli government adopted a policy intended to diminish the number of permit-holding Palestinian workers to zero by 2008.³¹³ Israeli restrictions on Palestinian workers prompted Israeli employers to seek alternative cheap labor from Asia and Eastern Europe, precipitating a stark uptick in Palestinian unemployment rates.³¹⁴ Additionally, Israeli military actions, such as destroying land and greenhouses and uprooting fruit trees, has caused direct damage to Palestinian land and property, further hindering economic development.³¹⁵

Before the first intifada, Israel relied heavily on low-wage Palestinian labor for its agriculture and construction sector, with over 100,000 Palestinian workers from the OPT entering Israel daily. While employment rates for Palestinians were higher during that period, the workers in those industries faced conditions akin to apartheid-era South Africa, including low wages, lack of union representation, and restricted movement, according to the HSRC.³¹⁶

Following the first intifada in 1987, Israel imposed barriers to Palestinian employment in Israel, drastically reducing the number of Palestinian workers. The construction of the Wall further limited access to Israeli jobs, especially during checkpoint closures. Palestinians in East Jerusalem have also faced challenges obtaining permits to work, which has had a particularly harsh impact on Palestinians involved in teaching and healthcare.³¹⁷ Restrictions on labor mobility have made it increasingly difficult for Palestinians from the West Bank to access employment in East Jerusalem, exacerbating economic hardships in the region.³¹⁸ All the while, Israeli settlers have continued to enjoy unrestricted movement and access to resources, exacerbating economic disparities.³¹⁹

Employment opportunities for Gazan workers also decreased significantly after 2006.³²⁰ In Gaza, restrictions imposed by Israel on fishing and agricultural exports led to heightened unemployment and economic instability, thereby contributing to Gaza's increased dependency on

³¹¹ Al Mezan Report at p. 21; Amnesty Int'l Report at pp. 168-69; BADIL Working Paper No. 23 at pp. 99-100; Russell Tribunal on Palestine at p. 7; Francesca Albanese Report SD and Settler Colonial ¶¶48-50; Francesca Albanese Report Children ¶58. *See also* Geoffrey Tennent at p. 95; Michael Lynk Report ¶40; Richard Falk Report ¶35. *See, e.g.,* HRW Report at p. 158; CERD 2020 at p. 7; John Dugard Report ¶51.

³¹² HSRC Report at p. 223.

³¹³ *Id.*

³¹⁴ *Id.* at 221.

³¹⁵ *Id.*

³¹⁶ *See Id.* at 268.

³¹⁷ *Id.* at 224.

³¹⁸ Amnesty Int'l Report at p. 166; BADIL Working Paper No. 23 at pp. 99-100; HRW Report at p. 172; UNESCWA at p. 61; *See* HSRC Report at p. 224; John Dugard Report ¶26; Michael Lynk Report ¶40; Richard Falk Report ¶14.

³¹⁹ *See* HSRC Report at p. 223.

³²⁰ Al Mezan Report at pp. 44-46; Amnesty Int'l Report at pp. 168-70; Russell Tribunal on Palestine at p. 7; Geoffrey Tennent at p. 95; HRW Report at p. 140; Francesca Albanese Report SD and Settler Colonial ¶50. *See* John Dugard Report ¶17; Michael Lynk Report ¶45; Richard Falk Report ¶68.

foreign aid.³²¹ As of 2019, Gaza's unemployment rate stood at approximately 50 percent, with a particularly high rate for women and young adults.³²²

Badil reports that "Israel's market is exploitative and unsafe," a finding echoed by Amnesty International, Al Mezan, and UN Special Rapporteur on the OPT Lynk.³²³ For example, Palestinians, in both Israel and the settlements in the occupied West Bank, are paid 39-44 percent of the wage Jewish Israeli workers performing a similar job received.³²⁴ Correspondingly, for Palestinian workers in the Israeli settlements, the lack of legal oversight allows Israeli employers to cut costs on safety provisions, which is especially harmful to Palestinian workers, who comprise much of the manual labor-intensive jobs.³²⁵ Moreover, given the consistent delays at security checkpoints and complicated, meandering "fabric of life" roads, Palestinian workers often must leave their homes hours before their shift begins and then are often subjected to more than 16-hour workdays without adequate health and safety provisions.³²⁶

Israel has also impeded the formation and operation of Palestinian trade unions.³²⁷ Since Israel's annexation of the OPT in 1967, Israeli forces have deterred Palestinian union maintenance and formation by arresting, torturing, and harassing union leaders as well as raiding union centers, destroying their files and documents, and shutting down union offices.³²⁸

While the Oslo Accords carved some pathways for Palestinian workers to unionize by shifting some of the oversight to the Palestinian Authority (PA), the Israeli government has refused to recognize Palestinian trade unions in Israeli settlements in the OPT.³²⁹ Further, the Histadrut, the main regulatory body for Jewish settlers' trade unions in the OPT, also controls the conditions

³²¹ Al Mezan, "2013 Statistical Report on Israeli Attacks in the Access Restricted Areas," at 3-4; CERD 2020, at para. 44; Palestinian Center for Human Rights, "Narratives Under Siege: Rafah Fishermen's Syndicate," Feb 7, 2008, at 3, <http://www.pchrgaza.org/Interventions/Narratives%20Under%20Siege%203.pdf>; OCHA, "Protection of Civilians Weekly Report No. 275," Aug 2008, http://www.ecoi.net/file_upload/470_1220616240_ocha-opt-protection-of-civilians-weekly-2008-09-02-english.pdf.

³²² "Unemployment in Gaza in Q2 of 2019 is 46.7%," Gisha press release, September 4, 2019, <https://gisha.org/updates/10396>. in HRW Report, at 140.

³²³ Al Mezan Report at pp. 44-46; Amnesty Int'l Report at p. 166; BADIL Working Paper No. 23 at p. 71; *See* Michael Lynk Report ¶50(d).

³²⁴ United Nations Conference on Trade and Development, Working Inside the Green Line (Geneva: United Nations Conference on Trade and Development, 2017), 16, https://unctad.org/en/PublicationsLibrary/tdb64d4_embargoed_en.pdf, cited in Badil Working Paper 23 at p. 68.

³²⁵ International Trade Union Confederation (ITUC), "Workers' Rights in Crisis: Palestinian workers in Israel and the settlements," December 4, 2021, <https://www.ituc-csi.org/workers-rights-in-crisis-palestine>; *See* Badil Working Paper 23 at p. 71.

³²⁶ Macro Centre for Political Economics, "The Working Conditions of Palestinian Wage Earners in Israel," Feb 2017), at 6, <http://www.macro.org.il/images/upload/items/27348794024004.pdf>, cited in Badil working paper 23, fn 266; *see also* Michael Lynk report at pp.16-17. During the pandemic, Palestinian workers endured even more precarious conditions, risking their health to earn an income. Al-Haq reports that Israeli occupying authorities failed to test and treat Palestinian workers prior to their return to the occupied Palestinian territory, while Palestinian workers who displayed symptoms were denied treatment in Israeli clinics.[...]Israeli occupying authorities even obstructed measures taken by the Palestinian Authority to contain the spread of Covid-19 among Palestinian workers and their families by opening gates in the Annexation Wall and clipping passages through barbed fence for returning Palestinian workers, to circumvent Palestinian preparedness efforts." Al-Haq Report at pp. 139-40.

³²⁷ *Id.* at 227-29.

³²⁸ HSRC Report at p. 227.

³²⁹ UNESCWA at p. 61.

under which the Palestinian General Federation of Trade Unions (PGFTU) can even pursue cases on behalf of Palestinian workers in Israeli courts. This hierarchy often renders the PGFTU powerless in the face of Israeli institutional enabling of labor abuses against Palestinians.³³⁰ Although Palestinian workers are required to pay dues to the Histadrut,³³¹ the organization fails to protect or represent Palestinian interests, and Palestinians have no say in formulating the organization's policies.³³² Due to Israel's policies and discrimination by settler employers, Palestinian workers in the OPT face challenges ranging from unpaid wages to illegal arrests during strikes³³³ with little hope of legal protections or recourse, which weakens union advocacy.³³⁴

As discussed in Section II(A), Israel requires Palestinian workers to obtain special permits to work in Israel and Israeli settlements, permits that Israel can withdraw at any time. In practice, Israeli employers not only dictate Palestinian workers' access to jobs, but also capitalize on the fear of permit revocation to deter Palestinians from unionizing, demanding equitable rights, or partaking in any form of political activity.³³⁵ Trade union efforts are limited by movement restrictions, checkpoints, permit requirements, and legal hurdles that limit workers' ability to organize and participate in union activities. These actions violate Article II(c) of the Apartheid Convention, which prohibits States from imposing measures calculated to prevent Palestinians from participating in the economic life of the country.

D. RIGHT TO EDUCATION

As a result of living under Israeli occupation, Palestinian students are subject to discrimination in all aspects of their lives. Israel's sweeping movement restrictions, as well as violent disruptions to schooling and the physical destruction of educational institutions as a byproduct of consistent conflict, deny Palestinian youth their right to education as delineated in Article II(c) of the Apartheid Convention.

1. DISRUPTIONS TO EDUCATION

³³⁰ HSRC Report at p. 230 ("Israel's policy of suppressing Palestinian trade unions, as well as carrying out direct military attacks against their property, has no reasonable security motivation, and serves to obstruct Palestinian development and impede participation in economic life.").

³³¹ The Histadrut was founded in Palestine in 1920 and played an important role in championing the Zionist movement by excluding Palestinian workers from the Israeli labor force. Its primary objective was "to facilitate the settlement of the land and to coordinate the campaign for the conquest of labor." Sai Englert, "Hebrew Labor without Hebrew Workers: The Histadrut, Palestinian Workers, and the Israeli Construction Industry," *Journal of Palestine Studies* 52 (3) (2023) at 25-26, <https://www.tandfonline.com/doi/full/10.1080/0377919X.2023.2244188>.

³³² *Id.* at 19; UNESCWA at p. 61.

³³³ HSRC Report at p. 229.

³³⁴ See Al-Haq "Captive Markets, Captive Lives: Palestinian Workers in Israeli Settlements," 2021, at 11, https://www.alhaq.org/cached_uploads/download/2021/05/01/palestinian-workers-in-israeli-settlements-webversion-1-page-view-1619871735.pdf; see also HSRC Report at p. 230.

³³⁵ Salea Alenat, "Palestinian Workers in the West Bank Settlements," *Kav La Oved*, Mar 13, 2010, cited in Who Profits, "Exploited and Essential: Palestinian Labour under Covid-19," Jun 2020, at 4, <https://www.whoprofits.org/publications/report/48>.

Israeli military actions have significantly disrupted Palestinian education in the OPT.³³⁶ Since the second intifada between 2000 and 2005, hundreds of schools and universities have been attacked, resulting in casualties among students and teachers.³³⁷ Military attacks on schools are frequent, causing injuries and interruptions to learning. Arrests, detentions, and confiscation of school equipment further hinder education.³³⁸ Students have been injured or killed by gunfire while in their classrooms, and schools have been damaged or taken over by Israeli forces.³³⁹ The closures and attacks have also led to prolonged disruptions in education, with universities and schools being closed for months at a time.³⁴⁰ Since Israel began its assault on Gaza in October 2023, UNICEF has reported that 95 percent of all schools in Gaza have sustained damage, and at least 87 percent will require significant reconstruction.³⁴¹ The war and resulting destruction of Gaza's schools has fully disrupted the education of Gazan children for over a year.

2. RESTRICTIONS ON ACCESS TO SCHOOLS

Human rights organizations and experts have documented severe restrictions on access to education in East Jerusalem, the West Bank, and Gaza. In the West Bank, including East Jerusalem, Palestinian children face challenges accessing education because of Israel's discriminatory permit system, which has led to the demolition of schools and restrictions on construction and maintenance.³⁴² Birzeit University reported that students encounter physical exhaustion and danger from soldiers and settlers, with checkpoints causing delays and disruptions.³⁴³

These impediments to Palestinians' education have long-term and discriminatory consequences: Jewish students in West Jerusalem and the settlements in East Jerusalem matriculate at a rate much higher than their Palestinian counterparts.³⁴⁴ Most notably, as of 2019, 32 percent of Palestinian students in East Jerusalem fail to complete 12 years of education, as compared to 1.5 percent of Jewish students in greater Jerusalem.³⁴⁵

In Gaza, prior to October 2023, school activities were suspended during Israel's military operations, and online classes were often ineffective due to resource limitations and electricity constraints imposed by Israel.³⁴⁶ As a result of Israel's policies, schoolchildren struggled to access

³³⁶ Amnesty Int'l Report at p. 211; BADIL Working Paper No. 26 at p. 37; UNESCWA at p. 61; Francesca Albanese Report Children ¶76; Michael Lynk Report ¶43; *see also* CERD 2012 ¶26; Francesca Albanese Report Children ¶77; John Dugard Report ¶20.

³³⁷ Helen Murray, "Education is Freedom," Adalah Newsletter, Vol. 18 (September 2005), cited in HSRC Report at p. 232.

³³⁸ Francesca Albanese Report Children ¶75.

³³⁹ *See* HSRC Report at pp. 232–34.

³⁴⁰ *Id.* at p. 234.

³⁴¹ UNICEF, "Regular attacks put Gaza schools-turned-shelters on the 'frontlines of war'," Nov 8, 2024, <https://www.unicef.org/press-releases/regular-attacks-put-gaza-schools-turned-shelters-frontlines-war>.

³⁴² Right to Education Campaign, "Right to Education Fact Sheet," *Birzeit University*, Jun 2, 2008.

³⁴³ *Id.*; *see also* Amnesty Int'l Report at p. 214; CERD 2012 ¶28; UNESCWA at p. 61; Francesca Albanese Report Children ¶57; John Dugard Report ¶20, 34; *see, e.g.*, Francesca Albanese Report Children ¶45.

³⁴⁴ HSRC Report at p. 237.

³⁴⁵ *See* HRW Report at p. 116.

³⁴⁶ *See* Francesca Albanese Report Children ¶76.

classes, leading to increased dropout rates, especially among secondary schoolchildren, and disproportionately low enrollment among children with disabilities.³⁴⁷

Palestinians in Gaza are prohibited from leaving to attend school elsewhere. Beginning in June 2007, Israel tightened restrictions on Palestinian mobility, denying exit permits to thousands of students from Gaza, including both school and university students. This prevented them from continuing their studies abroad, with only a fraction being granted permission to leave.³⁴⁸ Those restrictions continue to this day.³⁴⁹

Experts have argued that Israel's destruction of schools and universities in Gaza since October 7, 2023, amount to "scholasticide," or an intentional effort to destroy an education system.³⁵⁰ In response to the ongoing attack on Gaza, over 1,600 North American academics signed an open letter condemning "Israel's systematic attacks on educational life in Gaza," stating that as Israel wreaks havoc across Gaza, the Israeli military has either destroyed or damaged upwards of 80 percent of schools in Gaza as of April 2024.³⁵¹ The letter's authors argued that this "den[ies] [Palestinians] access to education through systematic destruction of educational infrastructure."³⁵² As of October 30, 2024, all schools, universities, and training centers in Gaza had remained closed for over a year; the internal displacement, facility destruction, and access constraints created by Israeli military operations deny all of Gaza's inhabitants—55 percent of whom are children—access to educational institutions.³⁵³

In October 2024, the Knesset passed a law banning the UNRWA, an organization that has been in operation since 1949.³⁵⁴ UNRWA provided access to education, food, water, and medical aid in Gaza.³⁵⁵ Israel's termination of UNRWA places further hurdles between Palestinian children and their right to education.³⁵⁶

E. RIGHT TO ACCESSIBLE HEALTHCARE

Israel's military assault on Gaza beginning in October 2023 has caused unparalleled devastation to Gaza's medical infrastructure. Even prior to October 2023, Gaza's healthcare was

³⁴⁷ *Id.* ¶¶76-77.

³⁴⁸ HSRC Report at p. 235.

³⁴⁹ See UNESCWA at p. 61. By denying exist permits, particularly for Palestinians confined within Gaza, Israel has prevented thousands of students from pursuing higher education abroad. HSRC Report at p. 235.

³⁵⁰ OHCHR, "UN experts deeply concerned over 'scholasticide' in Gaza," Apr 18, 2024, <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>.

³⁵¹ OHCHR, "UN experts deeply concerned over 'scholasticide' in Gaza," Apr 18, 2024, <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>.

³⁵² Judy Maltz, "More Than 1,600 North American Professors Accuse Israel of 'Scholasticide,'" *Haaretz*, Apr 9, 2024, <https://www.haaretz.com/us-news/2024-04-09/ty-article/.premium/more-than-1-600-north-american-professors-accuse-israel-of-scholasticide/0000018e-c1a3-dc93-adce-eff3471a0000>.

³⁵³ Al Mezan, "Scholasticide: Israel's deliberate and systematic destruction of the Palestinian education system in Gaza," Sep 2, 2024, <https://reliefweb.int/report/occupied-palestinian-territory/scholasticide-israels-deliberate-and-systematic-destruction-palestinian-education-system-gaza>.

³⁵⁴ Amnesty International, "Israel/OPT: Law to ban UNRWA amounts to criminalization of humanitarian aid," Oct 29, 2024, <https://www.amnesty.org/en/latest/news/2024/10/israel-opt-law-to-ban-unrwa-amounts-to-criminalization-of-humanitarian-aid/>.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

severely compromised by longstanding Israeli policies, including a 17-year blockade that restricted access to critical medical supplies, equipment, and specialized services as well as overarching restrictions on movement. Israel's discriminatory practices pertaining to healthcare in the OPT, especially in Gaza, violate Article II(c) of the Apartheid Convention because such practices and measures are calculated to prevent the full development of Palestinians by denying them basic human rights and freedoms, including access to healthcare.³⁵⁷

Israel is responsible for ensuring the health and well-being of Palestinians as the occupying power.³⁵⁸ Yet Israel's medical policies and practices demonstrate a disparate commitment to the healthcare of Israeli citizens versus that of Palestinians and further entrench the systemic inequities that exist between Israelis and Palestinians.³⁵⁹ Discriminatory practices are evident in that, by 1986, when Israel was still the governing authority for healthcare in the OPT, Israel's average expenditure on health services in the West Bank and the Gaza Strip was less than \$30 USD per capita per year, compared to its expenditure of \$350 USD per capita per year in Israel.³⁶⁰ At the same time, Israel's influence and control over population movement heavily constrains the PA Ministry of Health's ability to provide adequate healthcare to Palestinians living in the OPT.³⁶¹ As a result of discriminatory Israeli policies and underinvestment, Palestinians suffer worse health outcomes and a life expectancy almost a decade shorter than Israelis. Palestinians living in the OPT also experience a six-fold disparity in infant mortality compared to that of the Israeli population.³⁶²

The CERD raised concerns about these disparities and urged Israel to take measures to address them.³⁶³ Because healthcare remains severely underdeveloped in the OPT, doctors often refer Palestinians to Israeli Ministry of Health (MoH) facilities. Obtaining access to the Israeli

³⁵⁷ While Article II(c) does not explicitly name access to healthcare, the language of the section itself suggests the list is non-exhaustive.

³⁵⁸ Michael Lynk (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/HRC/44/60, at 23 (July 15, 2020), https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_60.pdf (last visited Feb. 9, 2025).

³⁵⁹ Al-Haq Report at p. 136; Al Mezan Report at p. 38; Amnesty Int'l Report at p. 205; BADIL Working Paper No. 26 at p. 39; BADIL Working Paper No. 23 at p. 81, CERD 2012 at p. 3, 7. *See* HLS IHRCAddameer Study at p. 17; UNESCWA at p. 50; Richard Falk Report ¶34; Michael Lynk Report ¶45; *see also* Barhoush, Y., & Amon, J. J. (2023). Medical apartheid in Palestine. *Global Public Health*, 18(1). <https://doi.org/10.1080/17441692.2023.2201612>; Barghouti, “‘Medical apartheid’: Israeli vaccine drive excludes millions of Palestinians in occupied territories [Video],” *Democracy Now*. <https://www.youtube.com/watch?v=TWNHnTMPvUY>.

³⁶⁰ Giacaman, R. (1994). Health conditions and services in the West Bank and Gaza Strip. [https://www.un.org/unispal/document/auto-insert-178290/\(open in a new window\)](https://www.un.org/unispal/document/auto-insert-178290/(open%20in%20a%20new%20window)).

³⁶¹ World Health Organization, *Right to Health: Crossing Barriers to Access Health in the Occupied Palestinian Territory* (2013) https://www.emro.who.int/images/stories/palestine/documents/who_rth_crossing_barriers_to_access_health.pdf?ua=1 at p. 16.

³⁶² Rosenthal, F. S. (2021). A comparison of health indicators and social determinants of health between Israel and the Occupied Palestinian Territories. *Global Public Health*, 16(open in a new window)(3(open in a new window)), 431–447. <https://doi.org/10.1080/17441692.2020.1808037>.

³⁶³ CERD 2020 ¶38(b); Al Haq Report at p. 136; *see also* Al Haq Report at p. 147; Al Mezan Report at p. 42; Amnesty Int'l Report at p. 275; BADIL Working Paper No. 26 at p. 39; CERD 2012 ¶20; Al Haq Joint Statement at p. 4; *see generally* Richard Falk Report ¶34.

facilities can be difficult, as Palestinians require permits from Israel to fulfill referral visits.³⁶⁴ As discussed above, however, the Israeli military routinely denies and delays permit applications.³⁶⁵

With its military onslaught and deprivation of humanitarian aid in Gaza, Israel has created an unparalleled public health crisis for all Gazans. As of October 2024, approximately half of Gaza's hospitals and two-thirds of its primary healthcare centers had shut down entirely due to extensive damage and a lack of access to essential resources such as fuel, electricity, and basic medical supplies like anesthesia.³⁶⁶ A doctor representing Doctors Without Borders (MSF) stated, "our teams have been forced to perform surgeries without anesthesia, [and] witness children die on hospital floors due to a lack of resources."³⁶⁷ In addition, because of the intensified blockade on Gaza since October 2023, Israeli authorities have prohibited, delayed, and restricted essential medical supplies from entering into the region. The Israeli government has taken months to approve supplies and required weeks-long inspections before even allowing life-saving, urgent materials such as oxygen concentrators into Gaza.³⁶⁸ Before October 2023, an estimated 500 truckloads of medical supplies entered Gaza every day; by February 2024, the number had reportedly dropped to below 100 truckloads per day.³⁶⁹ Doctors without Borders characterized Israel's actions a "deliberate deprivation" of medical care.³⁷⁰

Israel's killing of doctors and nurses, its attacks on hospitals, and the broader context of the medical crisis in Gaza has had a disproportionate impact on women due to lack of sanitary conditions and clean water, restricted access to medical care, and increased malnutrition from food shortages.³⁷¹ Women and girls are denied adequate menstrual products and are forced to use dirty rags, diapers, and even mattress straps to manage their periods.³⁷² The lack of proper menstrual care can lead to reproductive issues, urinary infection, and pelvic inflammatory disease, resulting in infertility or even death.³⁷³ Pregnant women face additional barriers as maternal health care

³⁶⁴ Amnesty Int'l Report at p. 205.

³⁶⁵ *Id.* This is particularly harmful for Palestinians in Gaza, as they are denied the access to medically recommended treatments and procedures needed for their wellbeing, thereby creating conditions to ensure their physical destruction, as described in Article II(b) of the Apartheid Convention. *See also* Al-Mezan Report at pp. 38-41.

³⁶⁶ United Nations Population Fund (UNFPA), "UNFPA Palestine Situation Report #11 – November 2024 (Covering period: 01 September – 31 October 2024)," Nov 1, 2024, <https://www.un.org/unispal/document/unfpa-sitre-01nov2024/>.

³⁶⁷ Doctors Without Borders/Médecins Sans Frontières (MSF), "One year of a war without rules leaves Gaza shattered," Oct 2, 2024, <https://www.doctorswithoutborders.org/latest/one-year-war-without-rules-leaves-gaza-shattered>.

³⁶⁸ Doctors Without Borders/Médecins Sans Frontières (MSF), "What it takes to get lifesaving supplies into Gaza," May 1, 2024, <https://www.doctorswithoutborders.org/latest/impossible-task-getting-lifesaving-supplies-gaza>.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ International Human Rights Program at the University of Toronto Faculty of Law, Global Human Rights Clinic at the University of Chicago Law School, FEMINIST FOREIGN POLICY FAIL? ASSESSING CANADA'S HUMAN RIGHTS OBLIGATIONS IN GAZA, at para. 13 (October 2024).

³⁷² Khuloud Rabah Sulaiman, "My period has become a nightmare," THE ELECTRONIC INTIFADA (March 22, 2024), <https://electronicintifada.net/content/my-period-has-become-nightmare/45286>.

³⁷³ UNFPA, MENSTRUAL HEALTH MANAGEMENT RESPONSE PLAN - GAZA STRIP 3 (June 2024), <https://palestine.unfpa.org/sites/default/files/pub-pdf/mhm-plan-gaza-v2-june-2024-final.pdf>.

units have been destroyed or are only partially functioning.³⁷⁴ According to UNICEF, in February 2024, the 5,500 women due for delivery in the following month risked losing their babies because women “do not have access to prenatal or postnatal check-ups because of bombings and need to flee for safety.”³⁷⁵ Pregnant Palestinian women are also at an increased risk of miscarriage or stillbirth due to malnutrition and stress.³⁷⁶ According to UN experts, the blockade has also restricted essential medical supplies, such as anesthesia for c-sections, resulting in “[o]ver 183 women per day giving birth without pain relief.”³⁷⁷

Dr. Rik Peeperkorn of the World Health Organization reported to the UN Security Council that only 16 of the 36 hospitals in Gaza were partially functioning as of January 3, 2025.³⁷⁸ The hospitals were only able to provide basic care, and 12,000 Palestinians were still waiting for medical evaluations.³⁷⁹ Dr. Peeperkorn estimated that it would take five to ten years to evacuate all critically patients.³⁸⁰ In North Gaza, there was only one functioning hospital and primary care was unavailable.³⁸¹

Israel’s refusal to provide or allow admission of the most basic healthcare resources did not begin in October 2023; the current conditions are the culmination of long-standing policies that have historically undermined the health of Palestinians living in Gaza. In Gaza, the longstanding military blockade has severely restricted access to healthcare and safe drinking water.³⁸² Because Israel does not permit Palestinians to travel and receive medical care elsewhere without Israeli approval, they suffer high rates of illness and mortality while waiting for permits that are often denied. For Palestinians in Gaza, even the movement of medical supplies and ambulances are curbed by the 17-year-old blockade. Additionally, Israel exacerbates this general withholding of resources by also denying permits for the importation of medical equipment, such as CT, PET, and X-ray scanning machines and spare parts into Gaza on the grounds of “dual use”

³⁷⁴ International Human Rights Program at the University of Toronto Faculty of Law, Global Human Rights Clinic at the University of Chicago Law School, FEMINIST FOREIGN POLICY FAIL? ASSESSING CANADA’S HUMAN RIGHTS OBLIGATIONS IN GAZA ¶15 (October 2024).

³⁷⁵ UNICEF, UNICEF IN THE STATE OF PALESTINE ESCALATION HUMANITARIAN SITUATION REPORT No. 19, at 1 (March 2024), <https://www.unicef.org/sop/media/3671/file/SitRep%20Gaza%20Escalation.%20No.19.pdf>

³⁷⁶ International Human Rights Program at the University of Toronto Faculty of Law, Global Human Rights Clinic at the University of Chicago Law School, FEMINIST FOREIGN POLICY FAIL? ASSESSING CANADA’S HUMAN RIGHTS OBLIGATIONS IN GAZA ¶24 (October 2024).

³⁷⁷ UNITED NATIONS, *Onslaught of violence against women and children in Gaza unacceptable: UN experts*, UN: PRESS RELEASE (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

³⁷⁸ World Health Organization, “Dr. Rik Peeperkorn, Representative for WHO occupied Palestinian territory remarks at the meeting of the United Nations Security Council on the situation of the health system in Gaza,” Dr. Rik Peeperkorn, *Remarks at the Meeting of the United Nations Security Council on the Situation of the Health System in Gaza – 3 January 2025*, WHO EMRO News (Jan. 3, 2025), <https://www.emro.who.int/opt/news/dr-rik-peeperkorn-representative-for-who-occupied-palestinian-territory-remarks-at-the-meeting-of-the-united-nations-security-council-on-the-situation-of-the-health-system-in-gaza-3-january-2.html>

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² See Al-Haq Report at pp. 136–37; AlMezan Report at pp. 38–41.

potential.³⁸³ Similarly, even before October 7, Israel obstructed the entry of nitrous oxide, which exacerbated the halting of surgical and emergency operations.³⁸⁴

Israel has also restricted imports of necessary medical equipment to the West Bank. For example, of the PA's 120 submitted requests for the entry of such equipment in 2021, only 30 were approved—and approval was withheld until February 2022.³⁸⁵ These actions fall within the broader Israeli policy to “de-develop the Palestinian healthcare system and fragment the Palestinian people and the occupied Palestinian territory.”³⁸⁶ Other discriminatory practices include denial of access to healthcare³⁸⁷ by restricting movement to access healthcare, coercing patients to collaborate with Israeli intelligence in exchange for healthcare,³⁸⁸ and attacks on Palestinian healthcare facilities and workers.³⁸⁹

We conclude that Israel is violating Article II(c) and Article II(d) of the Apartheid Convention through policies and practices that restrict Palestinians': a) freedom of movement through permits, physical barriers, checkpoints, the isolation of Palestinian communities, and stringent limits on travel; b) land ownership and use, including by expropriating land for expansive, illegal Israeli settlements; c) access to jobs and the ability to form unions; d) access to education; and e) access to healthcare.³⁹⁰ The individual and cumulative impact of these violations is Israel's prevention of Palestinians' development and denial of Palestinians' access to resources readily available to their Jewish Israeli counterparts, in violation of Article II of the Apartheid Convention.

III. HUMAN RIGHTS ORGANIZATIONS AND EXPERTS CONCUR THAT ISRAEL DENIES PALESTINIANS THEIR FUNDAMENTAL RIGHT TO LIFE AND TO BE FREE FROM TORTURE.

³⁸³ Medical Aid for Palestinians and Al-Mezan, “Delayed, denied and deprived: The collective punishment of Palestinian patients in Gaza in the context of Israel’s 15-year blockade,” <https://www.map.org.uk/downloads/map-al-mezan-access-to-health-online.pdf>.

³⁸⁴ Al Mezan, “Press Release: Al Mezan calls for an international intervention to end Israel’s restrictions on the entry of medical equipment and supplies into Gaza,” Oct 27, 2021, <https://mezan.org/en/post/32583>.

³⁸⁵ World Health Organization, “Health access barriers for patients in the occupied Palestinian territory: Monthly Report February 2022,” http://www.emro.who.int/images/stories/palestine/Feb_2022_Monthly_2.pdf?ua=1.

³⁸⁶ Al-Haq Report at p. 143; *see also* Al Mezan Report at pp. 40-41; Amnesty Int’l Report at p. 205; BADIL Working Paper No. 23 at p. 90; Francesca Albanese Report Children ¶58; John Dugard Report ¶51.

³⁸⁷ Al-Haq Report at p. 143; *see also* Al Mezan Report at p. 39. During the COVID-19 pandemic, Israel’s response discriminated against Palestinians. Some instances include authorities initially failing to provide essential information in Arabic, delaying testing facilities in Palestinian areas, and neglecting Palestinian workers’ health needs. This discriminatory approach contributed to low vaccination rates and increased COVID-19-related deaths among Palestinians; According to Al-Haq, the World Health Organization reported that in October 2022, only 51.4% Palestinians had been fully vaccinated against COVID-19 in the OPT. *See* Al-Haq Report, at 141–42. In an evident instance of systematic segregation of medical care and public health interventions, Israel enacted a policy excluding approximately five million Palestinians in the oPt from its COVID-19 vaccination program but included 666,000 Jewish-Israeli settlers living in the same territories.

³⁸⁸ *See*, Al-Haq Report at pp. 145–49.

³⁸⁹ *See, id.* at pp. 150–52; *see also*, Safeguarding Health in Conflict Coalition, “Health workers at risk: Violence against health care 2019,” 2020, <https://www.safeguardinghealth.org/sites/shcc/files/SHCC2020final.pdf>. Israeli policies and military operations have also reduced the availability of essential health care resources, including medicines, consumables, and essential equipment such as medical imaging devices.

³⁹⁰ *See generally*, Al-Haq Report; Al-Haq Joint Statement; Al Mezan Report; Amnesty Int’l Report B’Tselem; BADIL Working Paper No. 23; BADIL Working Paper No. 26; CERD 2020; CERD 2012; HLS IHRC Addameer Report; HRW Report; HSRC Report; Michael Lynk Report; Russell Tribunal on Palestine; John Quigley; UNESCWA; .

Article II(a) of the Apartheid Convention provides that states may not, as a means of maintaining racial domination of one group by another group, deprive persons of their fundamental right to life, liberty, and to be free from torture.³⁹¹ Article II(b) further provides that states may not deliberately impose on a racial group living conditions calculated to cause its physical destruction “in whole or in part.”³⁹² Thirteen of the reports we reviewed documented Israel’s longstanding disregard of these rights, either under the Apartheid Convention, the Rome Statute of the ICC, or both.³⁹³ Notably, those reports were published before Israel’s military assault on Gaza beginning in October 2023. In this section, we therefore include our own analysis of how the war on Gaza has compounded Israel’s violations of Article II. This is particularly relevant to determining whether Israel has imposed living conditions calculated to destroy Palestinians “in whole or in part” under Article II(b).

Prior to October 2023, human rights organizations and experts documented three key ways in which Israel maintained racial domination over Palestinians which are prohibited under Article II(a). First, Israel carried out extrajudicial killings of Palestinians.³⁹⁴ Second, Israel held Palestinians in arbitrary and discriminatory administrative detention.³⁹⁵ Third, Israel tortured Palestinian men, women, and children held in detention.³⁹⁶

³⁹¹ Apartheid Convention Article II(a): “Denial to a member or members of a racial group or groups of the right to life and liberty of person: (i) By murder of members of a racial group or groups; (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups.”

³⁹² Apartheid Convention Article II(b): “Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.”

³⁹³ HSRC Report at pp. 174-192 (analyzing Israeli practices under the Apartheid Convention); Amnesty Int’l Report at p. 249 (analyzing Israeli practices under the Apartheid Convention and the Rome Statute); Al-Haq Report at p. 122 (same); Al Mezan Report at pp. 18, 23 (same); Richard Falk Report ¶59 (same); Michael Lynk Report ¶ 50(a) (same); HLS IHRCAddameer Study at p. 20 (same); John Dugard Report ¶ 50 (describing Israel’s use of administrative detention and torture, which are encompassed in the right to life and liberty); CERD Russell Report at p. 3 (discussing provisions of the Apartheid Convention); Albanese Report Children ¶27 (discussing apartheid under general principles of international law); Addameer Study at p. 126 (discussing use of administrative detention); HRW Report at pp. 89-90, 131-32 (the report concluded extrajudicial killings, torture, and administrative detention are all used, however, the report was framed around the Apartheid Convention and the Rome Statute); Al-Haq Joint Statement ¶109 (analyzing Israel’s actions under the Apartheid Convention, the Rome Statute, and ICERD).

³⁹⁴ Michael Lynk Report ¶50(a); John Dugard Report ¶ 50; Russell Tribunal on Palestine at p. 3; Francesca Albanese Report Children ¶27; HSRC Report at pp. 174-77; Amnesty Int’l Report at p. 249; Al-Haq Report at p. 122; Al Mezan Report at p. 23; HRW Report at p. 131-32; Al-Haq Joint Statement ¶109; Richard Falk Report ¶59;

³⁹⁵ Michael Lynk Report ¶ 50(a); HLS IHRCAddameer Study at p. 20; John Dugard Report ¶50; Russell Tribunal on Palestine at p. 4; Francesca Albanese Report Children ¶47; Addameer Study at p. 67 (discussing how administrative detention is used as a threat against detainees); Addameer Study at p. 117 (“prisoners were threatened with placing their family members under administrative detention for a prolonged time”); HSRC Report at pp. 185-90; Amnesty Int’l Report at pp. 240-34; Al-Haq Report at p. 154; HRW Report at p. 89; Al-Haq Joint Statement ¶151; Richard Falk Report ¶61.

³⁹⁶ Michael Lynk Report ¶ 50(e); HLS IHRC Addameer Study at p. 20; John Dugard Report ¶50; Russell Tribunal on Palestine at p. 4; Francesca Albanese Report Children ¶47; Addameer Study at p. 126; HSRC Report at pp. 179-83; Amnesty Int’l Report at p. 245; Al-Haq Report at p. 158; Al Mezan Report at p. 29; HRW Report at pp. 89-90; Al-Haq Joint Statement ¶151; Richard Falk Report ¶62.

Since October 2023, Israel has also engaged in forced starvation and mass displacement of Palestinians in Gaza, accompanied by a radical escalation in its killing, detention, and torture of Palestinians. In response to Israel's acts following October 7, 2023, South Africa has alleged before the International Court of Justice that Israel has committed genocide. In addition, ICC Prosecutor Karim A.A. Khan has issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant for crimes against humanity and war crimes.³⁹⁷ "Israeli authorities are responsible for the crime against humanity of extermination and for acts of genocide," Human Rights Watch concluded through comprehensive field investigations and analysis.³⁹⁸ Similarly, in a report published in December 2024, Amnesty International concluded that Israel has committed genocide.³⁹⁹

A. ISRAEL'S ACTS PRIOR TO OCTOBER 7, 2023

1. ISRAEL DENIES PALESTINIANS THE RIGHT TO LIFE AND LIBERTY OF PERSON

Denial of the right to life and liberty of person "for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them" is an act of apartheid under Article II(a)(i)-(iii).⁴⁰⁰ Of the reports we reviewed, eleven concluded that Israel used unjustified lethal force against Palestinians.⁴⁰¹ Four reports discussed impunity for non-state actors carrying out acts of violence against Palestinians.⁴⁰² Two of the reports we reviewed—both of which were published prior to October 7, 2023—found that Israel imposed living conditions calculated to cause Palestinians' destruction.⁴⁰³

i. EXTRAJUDICIAL KILLINGS AND USE OF LETHAL FORCE ON CIVILIANS

Israel has carried out extrajudicial executions and used lethal force against Palestinian civilians. Specifically, nine of the reports we reviewed concurred that Israeli military forces have

³⁹⁷ Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant, Nov. 21, 2024, last accessed Dec. 3, 2024, <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>.

³⁹⁸ Human Rights Watch, *Israel's Crime of Extermination, Acts of Genocide in Gaza*, HRW (Dec. 19, 2024), <https://www.hrw.org/news/2024/12/19/israels-crime-extermination-acts-genocide-gaza>.

³⁹⁹ Amnesty Int'l Genocide Report. *See generally* UNHR Genocide in Gaza, *see generally* HRW Extermination and Acts of Genocide; *see generally* Albanese Anatomy of a Genocide.

⁴⁰⁰ Apartheid Convention art.II.

⁴⁰¹ Michael Lynk Report ¶50(a); John Dugard Report ¶50; Russell Tribunal on Palestine at p. 3; Francesca Albanese Report Children ¶27; HSRC Report at pp. 174-77; Amnesty Int'l Report at p. 249; Al-Haq Report at p. 122; Al Mezan Report at p. 23; HRW Report at pp. 131-32; Al-Haq Joint Statement ¶109; Richard Falk Report ¶59. Nine of the reports discussed extrajudicial killings and state policies related to the killings. In particular, some reports discussed the first and second *intifadas* as well as the Great March of Return. Michael Lynk Report ¶50(a) (asserting that Israel's acts during the occupation amount to a "denial of the right to life and liberty" and of "other inhumane and inhuman acts causing great suffering", which the Apartheid Convention prohibits); HSRC Report at p. 174; HLS IHRC Addameer Study at p. 20; John Dugard Report ¶50; Russell Tribunal on Palestine at p. 3; Amnesty Int'l Report at p. 258; Al-Haq Report at p. 122; Al Mezan Report at p. 23; Richard Falk Report ¶59.

⁴⁰² HLS IHRC Addameer Study at p. 20; Al-Haq at p. 130; Francesca Albanese Report Children ¶39; ICJ Occupation Opinion ¶151.

⁴⁰³ Al Mezan Report at p.47; Al-Haq Report at p. 162.

unlawfully killed thousands of Palestinian individuals during its military occupation of the OPT.⁴⁰⁴ In 2022, UN Special Rapporteur on the OPT Lynk reported that “between January 2008 and February 2022, 5,988 Palestinians were killed in the context of the occupation and conflict.”⁴⁰⁵ Lynk concluded that state-sanctioned extrajudicial killings were part of Israel’s “toolbox,” and included “the killings of civilians posing no immediate threat to Israeli troops, and with little or no internal accountability.”⁴⁰⁶

Israel’s documented extrajudicial killings were not limited to adults. In 2022, Amnesty International reported that “between September 2000 and February 2017 Israeli forces killed . . . 1,793 children, outside the context of armed conflict.”⁴⁰⁷ In October 2023, UN Special Rapporteur on the OPT Albanese, documented additional killings and injuries inflicted on children “mostly by Israeli forces.”⁴⁰⁸ She concluded:

In the context of occupation, the excessive use of force not only has outcomes but appears to be a functional component of Israel’s policies. This dehumanizing approach deprives Palestinians of their protected status as civilians, irrespective of their age, location or background, placing them (in the eyes of Israel) in the category of legitimate military targets rather than protected persons under international law. This strategy, which also covers extrajudicial killings and arbitrary executions, contributes to the removal and suppression of any impediment to Israel’s territorial objectives.⁴⁰⁹

Albanese further found that statements made by Israeli forces calling Palestinian children who were killed “irrelevant” are “not isolated and may reflect broader operational ethics and a legal culture within the Israeli occupation forces that devalues Palestinian civilian life.”⁴¹⁰ Al-Haq concurred that extrajudicial killings are part of a deliberate policy that includes political assassinations and indiscriminate shootings of Palestinians.⁴¹¹ Al-Haq concluded that Israel’s

⁴⁰⁴ Michael Lynk Report ¶50(a) (asserting that Israel’s acts during the occupation amount to a “denial of the right to life and liberty” and of “other inhumane and inhuman acts causing great suffering”, which the Apartheid Convention prohibits); HRSC Report at p. 174; HLS IHRC Addameer Study at p. 20; John Dugard Report ¶50; Ruseell Tribunal on Palestine at p. 3; Amnesty Int’l Reportat p. 258; Al-Haq Report at p. 122; Al Mezan Report at p. 23; Richard Falk Report ¶59.

⁴⁰⁵ Michael Lynk Report ¶50(a) (262 Israelis died during the same time period).

⁴⁰⁶ *Id.*

⁴⁰⁷ Amnesty Int’l Report at pp. 249-50 (noting further that “[P]olicing activities against civilians during belligerent occupation may never be conducted like hostilities against combatants, as they do not meet the threshold of hostilities regulated by international humanitarian law. Both the Israeli army and the police, including the border police, have authority to carry out policing activities in the OPT; in East Jerusalem, however, only the Israeli police exercise such authority. The police, not the army, have policing powers in relation to Israeli settlers in the occupied West Bank”). Amnesty International also noted that Israel has used lethal force against medics, journalists, and human rights defenders.

⁴⁰⁸ Francesca Albanese Report Children ¶28. In particular, Albanese noted that the mortality rate of Palestinian children further indicates how the right to life is threatened: “the neonatal mortality and infant mortality rates in the occupied Palestinian territory are, respectively, 9.3 and 12.7 per 1,000 live births, rising to 14.8 per 1,000 live births for children under 5, while in Israel they are 1.7, 2.7 and 3.4 per 1,000 live births.” Francesca Albanese Report Children ¶26.

⁴⁰⁹ *Id.* ¶27.

⁴¹⁰ *Id.* ¶29.

⁴¹¹ Al-Haq Report at p. 122.

policy of political assassinations targets Palestinian resistance within and outside of Palestine “in an effort to ‘erode the Palestinian leadership’ and with the effect of undermining the exercise by the Palestinian people of their right to self-determination.”⁴¹² These extrajudicial killings, according to the HSRC in 2009, “are sanctioned by the executive branch of the state, and constitute an integral part of an institutionalised system designed to eliminate dissent or resistance to the regime in order to maintain domination by one racial group over another.”⁴¹³

Prior to October 2023, some of the most lethal episodes in recent history took place during the first and second intifadas as well as during the Great March of Return.⁴¹⁴ During the first and second intifadas “more than 6,000 Palestinians [were] killed by the Israeli army.”⁴¹⁵ B’Tselem reported that in the time period between the second intifada in September 2000 and February 2017, “Israeli security forces killed 4,868 Palestinians who were not taking part in hostilities. . . . Thousands of others were wounded, thousands of homes were demolished, and vast tracts of farmland devastated.”⁴¹⁶

During the Great March of Return, Israeli forces killed 214 people and caused 8,000 injuries.⁴¹⁷ Amnesty International concluded that the “pattern of unlawful killings and infliction of serious injuries against Palestinian demonstrators appears to be aimed at eliminating opposition to Israel’s policies and practices in the OPT.”⁴¹⁸ Amnesty International found that the unlawful killings took place with “near total impunity.”⁴¹⁹ Al Mezan concluded that “Israel has systematically denied Palestinians . . . their right to life and liberty, by means of using excessive force and lethal force that is disproportionate, amounting to unlawful and extrajudicial killing of thousands of Palestinians.”⁴²⁰

ii. ISRAEL GRANTS IMPUNITY TO NON-STATE ACTORS USING FORCE AGAINST PALESTINIANS.

⁴¹²*Id.* In addition, Al Haq asserted that Israeli forces had a “systematic ‘shoot-to-kill’ policy against Palestinians,” resulting in the shooting deaths of 704 Palestinians, including 184 children, between October 2015 and September 2019. *Id.* at p. 130; *see also* Al Mezan Report at p. 26.

⁴¹³ HSRC Report at p. 177.

⁴¹⁴ UNRWA Gaza’s ‘Great March of Return,’ *supra* note 20, at p. 6.

⁴¹⁵ HSRC Report at p. 174; *see also* Al Mezan Report at p. 23.

⁴¹⁶ B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Getting Off Scot-Free: Israel’s Refusal to Compensate Palestinians for Damages Caused by Its Security Forces* (Feb. 2017), https://www.btselem.org/download/201703_getting_off_scot_free_eng.pdf (last visited Apr. 29, 2025) at p. 50.

⁴¹⁷ Amnesty Int’l Report at pp. 252-53. Al Mezan reported that during the Great March of Return Israeli forces killed 217 Palestinian individuals and injured 19,000 others. Al Mezan Report at p. 26. Al Mezan also reported on specific military offenses including Operation Cast Lead, Operation Pillar of Defense, Operation Protective Edge, and others, in Gaza. Al Mezan reported that Israeli forces “kill[ed] some 5,201 Palestinians, including 1,208 children, over a period of 13 years (2008-21).” *Id.*

⁴¹⁸ Amnesty Int’l Report at p. 250.

⁴¹⁹ *Id.* at p. 251 (noting “[t]he Israeli military justice system has consistently failed to deliver justice for Palestinian victims of unlawful killings or serious injuries and their families”).

⁴²⁰ Al Mezan Report at p. 28.

Israel provides impunity for non-state actors who use lethal force against Palestinians.⁴²¹ In its 2024 Occupation Advisory Opinion, the ICJ noted with alarm that the United Nations had documented an increase in both the frequency and severity of settler attacks on Palestinians.⁴²²

In a joint submission regarding Apartheid in the West Bank to the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel (International Commission of Inquiry), the International Human Rights Clinic at Harvard Law School (HLS IHRC) and Addameer concluded that “Israeli practices of tolerating, and in certain cases, enabling and encouraging violent attacks by Jewish Israeli settlers on Palestinian residents in the West Bank constitute another basis for a finding of an inhuman act”⁴²³ under Article II(a) of the Apartheid Convention. The HLS IHRC and Addameer concluded that:

Israeli authorities routinely fail to adequately prevent, investigate, and prosecute acts of violence committed by Jewish Israeli settlers against Palestinian individuals and property, including beating, throwing stones, issuing threats, torching fields and crops, damaging homes and cars, blocking roads, using live fire, and even murder. The acts of violence usually take place in areas where Israeli settlers are engaged in efforts to take over Palestinian land and property, and can be understood as “ideologically-motivated offenses,” with the purpose of intimidating Palestinians and driving them off their land and property.⁴²⁴

In some instances, the Israeli military forces “stood by the sidelines” or even participated in the attacks.⁴²⁵ They noted that between 2009 and 2019, “Israeli law enforcement authorities in the occupied West Bank failed to investigate 82% of 1,293 reported settler violence cases . . . 91percent were closed without indictment.”⁴²⁶

Al-Haq reported that settler violence can include “raids on towns supported by the Israeli occupying forces, attacks against Palestinians and their properties, and disruption of the Palestinian olive harvest.”⁴²⁷ In their report, Al-Haq concluded that there is “institutionalized impunity . . . for acts of settler violence.”⁴²⁸ And in 2023, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese reported an “increasingly aggressive coordinat[ion]” in settler violence in Palestinian towns in the West Bank.⁴²⁹ She reported:

⁴²¹ HLS IHRC Addameer Study at p. 20; Al-Haq Report at p. 130; Francesca Albanese Report Children ¶39; ICJ Occupation Opinion ¶151.

⁴²² ICJ Occupation Opinion ¶151.

⁴²³ HLS IHRC Addameer Study at p. 20.

⁴²⁴ *Id.* at p. 17.

⁴²⁵ *Id.* at p. 17.

⁴²⁶ *Id.* at p. 18.

⁴²⁷ Al-Haq Report at p. 131.

⁴²⁸ *Id.* at 131-32.

⁴²⁹ Francesca Albanese Report Children ¶ 39.

Extreme forms of settler violence include incursions into Palestinian property, including at night, regular “pogroms”, the torching of infrastructure and physical assaults against Palestinian residents, all under the eyes of the Israeli occupation forces, with some of it publicly praised by some senior Israeli officials. Within these incidents, children are targeted even when running away from the soldiers.⁴³⁰

Albanese further highlighted how exposure to such violence manifests in high levels of “mental and emotional distress” for Palestinian children.⁴³¹

The use of extrajudicial lethal force against Palestinians by Israeli state actors and non-state actors violates Palestinians’ right to life and contravenes Article II(a)(i) of the Apartheid Convention.⁴³²

iii. LIVING CONDITIONS CALCULATED TO CAUSE PHYSICAL DESTRUCTION

Only two of the reports we reviewed concluded that Israel deliberately imposed living conditions on Palestinians calculated to cause their physical destruction in whole or in part.⁴³³ Notably, all the reports we reviewed were published before October 7, 2023, and did not consider the actions of Israel in Gaza and the West Bank in the wake of the Hamas attack. Thus, most reports either failed to address Article II(b) of the Apartheid Convention or found that Israel’s acts failed to establish “its *intent* to cause the physical destruction of the Palestinian people.”⁴³⁴

Even before October 7, Al Mezan and Al-Haq found that Israel had deliberately imposed living conditions that caused the physical destruction of the Palestinian people.⁴³⁵ Al Mezan found that “Israeli practices and policies surrounding economic subjugation, forcing Palestinians into poverty and economic dependency” constituted a violation of Article II(b) of the Apartheid Convention. Al-Haq concurred with Al Mezan’s findings.⁴³⁶

This report does not analyze whether Israel’s acts against Palestinians prior to October 2023 violated Article II(b) of the Apartheid Convention. Rather, in Section III(B), we discuss

⁴³⁰ *Id.*

⁴³¹ *Id.* ¶ 38.

⁴³² Apartheid Convention, at art.II.

⁴³³ Al Mezan Report at p.47; Al-Haq Report at p. 162.

⁴³⁴ Russell Tribunal on Palestine at p. 4 (“The Tribunal held that although Israeli policies of blockade and collective punishment in the Gaza Strip in particular and consequent restrictions on vital supplies of food and medicine entail grave consequences for Palestinian life and health, they do not meet the threshold required by this provision of *intent* to cause the physical destruction of the Palestinian people”); HSRC Report at p. 192 (“This study does not find sufficient evidence to conclude that Israel has pursued policies and practices intended to impose on the Palestinians ‘living conditions calculated to cause its physical destruction in whole or in part’”).

⁴³⁵ Al Mezan Report at p. 47.

⁴³⁶ Al-Haq Report at p. 162. UN Special Rapporteur, John Dugard, did not specifically conclude that Israel’s actions were deliberately taken to cause the physical destruction of Palestinians in whole or in part, however, he did conclude that it can be inferred that Israel’s purpose of causing serious bodily and mental harm to Palestinians in the West Bank and Gaza was “to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them.” John Dugard Report ¶50.

Israel's actions since October 7, and conclude that they have caused living conditions calculated to cause the physical destruction of Palestinians, "in whole or in part."⁴³⁷

2. ISRAEL HOLDS PALESTINIANS IN ADMINISTRATIVE DETENTION THAT IS BOTH ARBITRARY AND DISCRIMINATORY.

Israel frequently carries out arbitrary arrests of Palestinians and holds them in administrative detention for prolonged periods.⁴³⁸ Such conduct, "[a]rbitrary arrest and illegal imprisonment" constitutes a violation of the Apartheid Convention, under Article II(a)(iii).⁴³⁹ Of the reports we reviewed, ten describe how Israel has employed administrative detention or military courts to arbitrarily deprive Palestinians of their liberty.⁴⁴⁰ In 2022, Amnesty International concluded that Israel uses administrative detention as a "pretext to persecute and deprive people of their fundamental rights and freedoms because they challenge Israel's occupation and its policies."⁴⁴¹ Noting that exact figures were difficult to obtain, Amnesty cited data indicating that several thousand Palestinian adults and children have been held in administrative detention since 1987.⁴⁴² According to B'tselem, Israel was holding 3,327 Palestinians in administrative detention as of December 2024.⁴⁴³

Several organizations have reported that Israel regularly holds Palestinian children under administrative detention.⁴⁴⁴ In 2022, Al-Haq reported that "[a]n estimated 13,000 Palestinian children have been arrested by the Israeli occupying forces in the West Bank since 2000, and some 500 to 700 Palestinian children are prosecuted in Israeli military courts each year."⁴⁴⁵ Palestinian children as young as 16 are tried in Israeli military courts, despite the fact that within the Israeli civilian justice system the age of majority is 18.⁴⁴⁶ A common charge against children includes "stone-throwing," for which a child can be imprisoned under military law for up to 20 years.⁴⁴⁷ The HLS IHRC and Addameer reported that "[m]any Palestinian children arrested on such charges reported being blindfolded, strip-searched, subjected to physical violence, and coerced to sign confessions in Hebrew, a language that they do not understand. No Israeli child is tried in military courts."⁴⁴⁸ In 2023, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese reported that "[u]pon arrest, 77 per cent of

⁴³⁷ Apartheid Convention Article II(b): "Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part."

⁴³⁸ Michael Lynk Report ¶50(a); Russell Tribunal on Palestine at p. 4. (noting that this practice has been in place for decades).

⁴³⁹ Apartheid Convention, at art.II(a)(iii).

⁴⁴⁰ HSRC Report at p. 186; Michael Lynk Report ¶50(a); HLS IHRC Addameer Study at p. 20; John Dugard Report ¶50; Russell Tribunal on Palestine at p. 4; Addameer Study at pp. 67, 117; HSRC Report at pp. 185-90; Amnesty Int'l Report at pp. 240-43; Al-Haq Report at p. 154; Richard Falk Report ¶61.

⁴⁴¹ Amnesty Int'l Report at p. 241.

⁴⁴² *Id.* at p. 240.

⁴⁴³ B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Statistic on Administrative Detention in the Occupied Territories* (Mar. 3, 2025), https://www.btselem.org/administrative_detention/statistics (last visited Apr. 29, 2025).

⁴⁴⁴ *See, e.g.*, Amnesty Int'l Report at p. 240.

⁴⁴⁵ Al-Haq Report at p. 154. The Israeli court system treats Palestinian children aged 16 and above as adults. HLS IHRC Addameer Study at p. 14.

⁴⁴⁶ *Id.* at p. 14.

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

children are denied access to a lawyer prior to interrogation.”⁴⁴⁹ Children are also isolated from families, who are not informed about their children’s whereabouts.⁴⁵⁰ Albanese reported that children are often kept in solitary confinement and their trials last an average of three minutes.⁴⁵¹ Albanese concluded that such experiences cause trauma for Palestinian children and their families.⁴⁵²

Women also face inhumane conditions in prisons. UN Women reported that Palestinian women prisoners were “subjected to some form of psychological torture and ill-treatment throughout the process of their arrest and detention, including various forms of sexual violence such as beatings, insults, threats, strip searches, and harassment.”⁴⁵³

Human rights organizations report that the length of detention can vary from months to years.⁴⁵⁴ Military Order No. 1651, which went into effect in 2010, consolidated previous military orders and gave military officials broad discretion to use administrative detention.⁴⁵⁵ Amnesty observed that Military Order 1651 authorizes military officials to order up to six months’ detention “if there are ‘reasonable grounds’ to presume that an individual presents a risk to ‘the security of the area’ or to ‘public security.’”⁴⁵⁶ Amnesty noted that the military commander can extend administrative detention orders indefinitely.⁴⁵⁷

In their joint report to the Commission of Inquiry in 2022, the HLS IHRC and Addameer reported that Military Order 1651 “grants the Israeli military broad powers to withhold a detainee’s right to communicate with a lawyer and to be brought before a judge in a timely manner.”⁴⁵⁸ As noted in Section I(C), Palestinian detainees can be held for up to eight days before they are brought before a military judge.⁴⁵⁹ Amnesty reported that “[a]lthough administrative detainees have the right to appeal every detention order and are entitled to legal counsel of their choice, neither the lawyer nor the detainee is informed of the details of the evidence against them.”⁴⁶⁰ The HLS IHRC and Addameer found that other factors, including language barriers, lack of access to “secret evidence,” lack of appointed counsel for charges less than ten years, as well as movement

⁴⁴⁹ Francesca Albanese Report Children ¶45.

⁴⁵⁰ *Id.* (finding that the families not being informed violates the Convention of the Rights of the Child and given other circumstances may constitute enforced disappearance amounting to a crime against humanity).

⁴⁵¹ *Id.*

⁴⁵² *Id.* ¶¶ 49-50.

⁴⁵³ *Id.* ¶ 51.

⁴⁵⁴ UN Women, Social and economic situation of Palestinian women and girls July 2020–June 2022, at 18 (2023), https://www.un.org/unispal/wp-content/uploads/2023/03/ESCWAREPORT_090323.pdf.

⁴⁵⁵ Amnesty Int’l Report at p. 241.

⁴⁵⁶ *Id.*; see also HSRC Report at p. 188.

⁴⁵⁷ Amnesty Int’l Report at p. 241; see also HSRC Report at p. 188 (discussing the Unlawful Combatant Act, which also furthers the use of administrative detention).

⁴⁵⁸ Amnesty Int’l Report at p. 241. If the detention order is affirmed, the Order provides that the military commander may extend the detention order every six months, subject to no total time limitation. HLS IHRC Addameer Study at p. 10.

⁴⁵⁹ HLS IHRC Addameer Study at p. 10. The HLS IHRC and Addameer concluded that the Israeli Supreme Court provides impunity to the military courts by allowing administrative detention when it is necessary, effectively giving deference to the military courts and up until 2021 only revoking administration detention in one instance. *Id.* at p. 14.

⁴⁶⁰ Amnesty Int’l Report at p. 241.

⁴⁶⁰ *Id.* at p. 241.

restrictions preventing counsel from meeting the accused, deprives Palestinians of their right to present a “meaningful defense.”⁴⁶¹

Located on occupied Palestinian lands, the military courts are not just legal sites but they are also spaces where the inferior status of Palestinians is cemented: Palestinian defendants and families enter the court through separate gates⁴⁶² and the proceedings are conducted in Hebrew, often without court provided Arabic interpreters⁴⁶³—even though Hebrew is “a language that most Palestinians in the West Bank either do not understand or do not speak fluently enough to fully comprehend a court proceeding.”⁴⁶⁴

While the Israeli Supreme Court has set some limits on the use of administrative detention as a preventative measure, Amnesty concluded that the Court “has not set clear substantive standards for reviewing administrative detention, has rarely examined whether military judges’ decisions conform to its own rulings, and has been reluctant to intervene in specific cases or question the privileged intelligence information on which detention orders are based.”⁴⁶⁵

Israel has claimed that administrative detention is necessary and preventative.⁴⁶⁶ Amnesty squarely rejected that assertion, citing “evidence collected by Amnesty International and other human rights groups over the decades” that there was an “intentional Israeli policy to detain individuals, including prisoners of conscience, solely for the non-violent exercise of their right to freedom of expression and association, and punish them for their views challenging the policies of the occupation.”⁴⁶⁷ Amnesty also cited Israel’s “policy to release administrative detainees if they agree to leave the OPT and go into exile abroad for a specified time” as evidence that undermined “Israel’s justification of the use of administrative detention as a necessary preventative measure against Palestinians.”⁴⁶⁸

Other human rights organizations and experts concur. In 2022, Al-Haq concluded that “[t]he Israeli regime has consistently resorted to widespread arbitrary detention of Palestinians both as a measure of collective punishment and to silence, intimidate, and undermine any resistance to its apartheid regime.”⁴⁶⁹ In 2022, the current UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Francesca Albanese, noted that Israel has systematically carried out arbitrary detention and imprisonment, among other things, “[s]ince 1967, to maintain its domination.”⁴⁷⁰ The former UN Special Rapporteur on the OPT Michael Lynk, similarly reported that “the military courts incarcerate thousands of Palestinians on

⁴⁶¹ HLS IHRC Addameer Study at p. 13.

⁴⁶² Neta Ziv, *Navigating the Judicial Terrain Under Israeli Occupation: Palestinian and Israeli Lawyers in the Military Courts*, 42 FORDHAM INT’L L. J. 729, 747 (2018).

⁴⁶³ Addameer, *Eyes on Israeli Military Courts* (Feb. 2022), <https://www.addameer.org/sites/default/files/publications/EyesOnIsraeliMilitaryCourt%20Booklet%28en%29.pdf> at p. 18.

⁴⁶⁴ Addameer, *The Israeli Military Court System* (July 2017), https://www.addameer.org/israeli_military_judicial_system/military_courts (last visited Feb. 22, 2025) at p. 7.

⁴⁶⁵ Amnesty Int’l Report at p. 241.

⁴⁶⁶ *Id.* at p. 242.

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.* at pp. 242-43.

⁴⁶⁹ Al-Haq Report at p. 154.

⁴⁷⁰ Francesca Albanese Report SD and Settler Colonial ¶56.

security charges through a judicial system that offers few of the international protections regarding due process or the prevention of arbitrary arrest and detention.”⁴⁷¹ Thus, “hundreds of Palestinians languish in administrative detention under open-ended confinement.”⁴⁷²

Amnesty concluded that it was “evident” that the use of administrative detention is discriminatory given “the differential access to two bodies of Israeli laws and courts, one for Palestinians and another for Israeli settlers.”⁴⁷³ Notably, as explained in Section I(C), Jewish settlers are subject to Israeli civil law and civilian courts, which provide more procedural and substantive protections than those available to Palestinians in the OPT.⁴⁷⁴ According to HRW, as of 2014 not a single Jewish Israeli citizen had been tried in a military court for at least thirty years.⁴⁷⁵ In the military courts, the conviction rate for Palestinians exceeds 99 percent.⁴⁷⁶

While numbers continue to emerge from Gaza, as of September 2024, approximately 9,440 Palestinians are known to have been in Israeli detention or prison on “security” offenses.⁴⁷⁷ “Security offenses” are broadly defined by the Israeli military in ways that are designed to suppress speech and self-determination; for example, Palestinians can face up to 10 years in prison for attempting to influence public opinion in a way that “may” harm public peace or order, and can be jailed for participating in an unpermitted gathering of more than 10 people on an issue “that could be construed as political.”⁴⁷⁸ Conversely, prior to October 7 Israeli settlers have enjoyed unrestricted freedom of speech unless it has been “a near certainty” that it would “seriously jeopardize” security interests, and can demonstrate without a permit unless the gathering is of more than 50 people, takes place outdoors, and contains “political speeches and statements.”⁴⁷⁹

We conclude that Israel’s arbitrary and discriminatory detention of Palestinians violates Article II(a)(iii) of the Apartheid Convention, which prohibits arbitrary arrest and illegal imprisonment.⁴⁸⁰

3. ISRAEL SYSTEMATICALLY TORTURES PALESTINIAN DETAINEES.

Torture is a grave violation of human rights and is prohibited under numerous treaties as well as customary international law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment (CAT) all prohibit torture.⁴⁸¹ Of the reports we reviewed, ten

⁴⁷¹ Michael Lynk Report ¶50(a).

⁴⁷² *Id.*

⁴⁷³ Amnesty Int’l Report at p. 243.

⁴⁷⁴ Russell Tribunal on Palestine at p. 5.

⁴⁷⁵ HRW Report at p. 85.

⁴⁷⁶ *Id.* at pp. 84-87; Michael Lynk Report ¶41.

⁴⁷⁷ B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Statistics on Palestinians in Israeli Custody* (Sept. 2, 2024), https://www.btselem.org/statistics/detainees_and_prisoners (last visited Feb. 22, 2025).

⁴⁷⁸ HLS IHRC Addameer Study at pp. 9-10; HRW Report at pp. 84-87; *see also* HSRC Report at pp. 115-18.

⁴⁷⁹ HRW Report at pp. 84-87.

⁴⁸⁰ Apartheid Convention, at art.II.

⁴⁸¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); U.N. International Covenant on Civil and Political Rights, Dec. 16, 1966; U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, Dec. 10, 1984; United Nations Treaty Collection, last accessed October 21, 2024. Israel signed the CAT

concur that Palestinians are regularly subjected to conditions of torture, which has sometimes been extreme enough to result in loss of life.⁴⁸² This constitutes an inhuman act under Article II(a) of the Apartheid Convention.⁴⁸³

In a 2022 report focused on Israel's use of torture and the colonial roots of the practice, Addameer noted that "Israel has been practicing physical and psychological torture against Palestinians since its foundation."⁴⁸⁴ Amnesty similarly reported that "Palestinian administrative detainees – as well as other Palestinian prisoners held by Israel – are routinely subjected to torture and other ill-treatment."⁴⁸⁵ Amnesty observed that interrogations under torture can last for weeks, with the detainee routinely denied access to a lawyer. Torture and other ill-treatment are frequently inflicted with the complicity of medical professionals.⁴⁸⁶ In 2022, Addameer reported that "over the years" 79 Palestinians have died because of the extreme nature of the torture.⁴⁸⁷

Palestinian detainees have been "subjected to prolonged positional torture where detainees are forced to remain in excruciating stress positions, like the banana position, standing upright, [and] stress positions in the interrogation chair and a small-sized chair."⁴⁸⁸ In addition, Israeli interrogators have administered "extreme beatings, sleep deprivation, electrocution, and threats of house demolitions. Detainees have been spat on, cursed at, forced to witness or hear others undergo interrogation, banned from using the toilet for long hours, and have had cigarettes put out on their bodies."⁴⁸⁹ Moreover, according to Addameer, Israeli interrogators "use detainees' families as a bargaining chip, threatening them with arrest or summoning family members to leverage them."⁴⁹⁰

Torture of detainees has persisted notwithstanding a 1999 Israeli Supreme Court decision that outlawed various forms of torture.⁴⁹¹ In 2022, then UN Special Rapporteur on the OPT Michael Lynk concluded that Israel uses torture, including "sleep deprivation, beating and slapping, humiliation, unhygienic conditions and extended shackling in contorted positions," against Palestinians despite the legal prohibition.⁴⁹² He further noted that, "[c]hallenges to the

on October 22, 1986 and ratified CAT on October 3, 1991. See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en.

⁴⁸² Michael Lynk Report ¶50(e); HLS IHRC Addameer Study at p. 20; John Dugard Report ¶50; Russell Tribunal on Palestine at p. 4; Addameer Study at p. 126; HSRC Report at pp. 179-83; Amnesty Int'l Report at p. 245; Al-Haq Report at p. 158; Al Mezan Report at p. 29; Richard Falk Report ¶62.

⁴⁸³ Apartheid Convention Article II(a)(ii): "Denial to a member or members of a racial group or groups of the right to life and liberty of person . . . By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment."

⁴⁸⁴ Addameer Study at p. 126; *see also* Al-Haq Report at p. 158.

⁴⁸⁵ Amnesty Int'l Report at p. 245.

⁴⁸⁶ *Id.* at pp. 246-67. Amnesty International noted how medical professionals complicity is especially troubling for detainees engaging in hunger strikes.

⁴⁸⁷ Addameer Study at p. 48.

⁴⁸⁸ *Id.* at p. 126; *see also* Al-Haq at p. 158.

⁴⁸⁹ Addameer Study at p. 126; *see also* Al-Haq at p. 158.

⁴⁹⁰ Addameer Study at p. 126; *see also* Al-Haq at p. 158.

⁴⁹¹ Amnesty Int'l Report at p. 246.

⁴⁹² Michael Lynk Report ¶50(e); *see also* HSRC Report at p. 181 ("During interrogation by the GSS, 68 percent of Palestinian prisoners reported being held in isolation during all or most of the interrogation period, 88 percent being held in solitary confinement and experiencing sensory deprivation during all or most of the interrogation period, 45 percent being deprived of sleep, 73 percent being given poor- quality food, 96 percent being cuffed for protracted

Israeli Supreme Court against its use have been unsuccessful. Beatings by Israeli soldiers of Palestinians during arrests are regularly reported, with little accountability.”⁴⁹³

Addameer has also found that Israeli officials go to great lengths to conceal evidence of torture by “refraining from documenting the torture Palestinian detainees endure,” and by “extending the detention of detainees” to conceal physical evidence of torture.⁴⁹⁴ Like Addameer, Amnesty found that “[p]rompt, thorough and impartial investigations by Israeli authorities into such allegations are extremely rare.”⁴⁹⁵

The Russell Tribunal on Palestine reported that “Jewish-Israeli prisoners, regardless of their crimes, are generally not categorised as security prisoners and are not subject to analogous interrogation or ill-treatment.”⁴⁹⁶ The report ultimately concluded that the measures of torture and ill treatment as well as arbitrary arrest and administrative detention “frequently go beyond what is reasonably justified by security concerns and amount to a form of domination over the Palestinians as a group.”⁴⁹⁷ The HSRC concurred, stating that “it is arguable that a primary purpose of this policy is to suppress resistance to the occupation and cement Israel’s domination over the Palestinian population in the OPT.”⁴⁹⁸

Israeli forces also use torture on children. Citing multiple human rights reports, Amnesty concluded in 2022 that Palestinian children are “among those subjected to torture and other ill-treatment, including to obtain “confessions.””⁴⁹⁹ Al-Haq reached a similar conclusion.⁵⁰⁰ In 2023, UN Special Rapporteur on the OPT Albanese reported that “[i]n over a decade, at least 1,598 Palestinian children have been subjected to ill-treatment upon arrest and detention. Allegations of torture have been widely documented.”⁵⁰¹ Albanese further reported that “Palestinian children often experience solitary confinement in windowless cells that are constantly lighted. This prohibited practice, very common during interrogation, has increased from 12.5 average days in 2022 to 16.5 in 2023.”⁵⁰² Such practices can lead to long-term developmental impairment and psychological harm.⁵⁰³

periods in the painful *shabah* position (in which the detainee’s hands and feet are tightly bound to a chair or low stool), 29 percent being subjected to a naked body search, and 73 percent to insults and other humiliations.”).

⁴⁹³ Michael Lynk Report ¶50(e); *see also* HSRC Report at pp. 180-83 (discussing how Israeli law does not recognize an absolute prohibition on torture); *see also* Amnesty Int’l Report at p. 248; *see generally* Ardi Imseis, *Moderate Torture on Trial*, 19 Berkeley J. Int’l L. 328 (2001).

⁴⁹⁴ Addameer Study at p. 127.

⁴⁹⁵ Amnesty Int’l Report at p. 245.

⁴⁹⁶ Russell Tribunal on Palestine at p. 4.

⁴⁹⁷ *Id.* The Russell Tribunal concluded that torture and ill-treatment were not limited to detainees. The Tribunal described “movement restrictions that subject Palestinians to humiliation by Israeli soldiers and Palestinian women being forced to give birth at checkpoints” as well as “house demolitions” as forms of “inhuman and degrading treatment with severe psychological consequences for men, women and children.” *Id.*

⁴⁹⁸ HSRC Report at p. 179.

⁴⁹⁹ Amnesty Int’l Report at p. 247.

⁵⁰⁰ Al-Haq at p. 159.

⁵⁰¹ Francesca Albanese Report Children ¶47.

⁵⁰² *Id.* ¶49.

⁵⁰³ *Id.*

Israel's use of torture against Palestinian detainees is routine, extreme, and life threatening. Torture is prohibited under international law. In torturing Palestinian men, women, and children Israel contravenes customary international law, the International Covenant on Civil and Political Rights, the CAT, and Article II(a) of the Apartheid Convention.

B. ISRAEL'S ACTS AFTER OCTOBER 7, 2023

Israel's unrelenting attacks on Palestinians in Gaza since October 7, 2023, have decimated entire cities and destroyed generations of Palestinian families. Multiple independent reports have documented the death and destruction in Gaza including the loss of life, use of administrative detention, and torture. Israel's bombardment of Gaza, and its imposition of a blockade limiting food, water, and other life necessities, has led the ICJ to issue provisional measures calling on Israel to "take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip."⁵⁰⁴ Israel's actions in Gaza, especially in the aforementioned context of decades of abuses against Palestinians across the OPT, generate additional facts to consider in an analysis of apartheid.

1. DENIAL OF THE RIGHT TO LIFE AND LIBERTY SINCE OCTOBER 7, 2023

The Israeli military offensive in Gaza in the wake of the October 7, 2023 attacks by Hamas has been catastrophic. On February 14, 2025, the World Health Organization reported that 48,264 Palestinians in Gaza had been killed and 111,688 had been injured.⁵⁰⁵ The UN OCHA has stated that:

In Gaza, where Palestinians have already been reeling from the impact of a 17-year-old air, sea and land blockade and repeated cycles of hostilities, Israeli military operations have resulted in a catastrophe. . . . Nearly the entire population of Gaza has been displaced, many of them multiple times, with no safe place to go. Thousands of Palestinians are arbitrarily detained, reportedly subjected to torture and other inhuman treatment and with no information on their whereabouts.⁵⁰⁶

Many of those killed and injured were women and children. As of May 2024, the Independent International Commission of Inquiry reported that 7,356 children and 5,419 women had been killed, and at least 12,332 children and 13,996 women had been injured—most by air and artillery strikes.⁵⁰⁷

⁵⁰⁴ South Africa v. Israel Provisional Measures First Order ¶86.

⁵⁰⁵ WHO, oPt Emergency Situation Update, <https://www.un.org/unispal/document/who-opt-emergency-situation-update-55-7-oct-2023-14-feb-2025/> (last visited Mar. 19, 2025).

⁵⁰⁶ OCHA, One Year of Unimaginable Suffering Since the 7 October Attack, <https://www.ochaopt.org/content/one-year-unimaginable-suffering-7-october-attack> (last visited Oct. 23, 2024).

⁵⁰⁷ Human Rights Council, May 27, 2024, A/HRC/56/26 ¶39.

The International Commission of Inquiry noted that the Israeli Security Forces caused “thousands of casualties, wreaking devastation and razing entire residential blocks and neighbourhoods to rubble in near-constant heavy bombardments.” The Commission observed that the attack on Gaza was different from previous hostilities, noting that Israel had “forcibly displaced at least 1.7 million Palestinians,” and caused “massive” fatalities and destruction. The attacks were accompanied by statements from Israeli officials showing “an intention to instrumentalize and weaponize the provision of necessities, to hold the population of the Gaza Strip hostage to achieve political and military objectives, including the forced displacement of civilians from northern Gaza Strip and the release of Israeli hostages.”⁵⁰⁸ The Commission concluded that such actions amount to collective punishment, which is a violation of international humanitarian law.⁵⁰⁹

On October 7, 2024, UN News reported “[n]early everyone in Gaza has been displaced, many multiple times over, and there is nowhere safe to go. Civilians also face extreme deprivation, with limited or no access to healthcare, food, electricity or humanitarian aid, and children have missed an entire year of education.”⁵¹⁰ In February 2025, the World Health Organization reported that 18 of the 36 hospitals in Gaza were partially functioning and 59 of the 144 primary health facilities (far less than half) were functional.⁵¹¹

Women and girls have historically experienced a disproportionate share of the suffering in situations of conflict, apartheid, and genocide.⁵¹² Gaza is no different. Of the civilians killed since October 7, 2023, UN Women reported that 70 percent are women or children.⁵¹³ The UN Women Special Representative in the OPT has expressed that the war on Gaza is essentially “a war on women” due to the devastating impact on women.⁵¹⁴ In February 2024, UN experts highlighted Israeli officials extrajudicially killing women, who were waving white pieces of cloth, as they were fleeing or seeking refuge.⁵¹⁵ Over 1 million women have been displaced.⁵¹⁶ Shelters have become overcrowded, leading to disputes and increased gender-based violence.⁵¹⁷ As the hostilities

⁵⁰⁸ *Id.* ¶50.

⁵⁰⁹ *Id.*

⁵¹⁰ UN News, UN Officials Remember Brutal 7 October Attacks, Reiterate Need for Peace, <https://news.un.org/en/story/2024/10/1155421> (last visited Oct. 23, 2024).

⁵¹¹ WHO, oPt Emergency Situation Update, <https://www.un.org/unispal/document/who-opt-emergency-situation-update-55-7-oct-2023-14-feb-2025/> (last visited mar. 19, 2025).

⁵¹² Ammal Awadallah, *The forgotten women and girls in Gaza: A sexual and reproductive health catastrophe*, BOND: NEWS (Feb. 29, 2024), <https://www.bond.org.uk/news/2024/02/the-forgotten-women-and-girls-in-gaza-a-sexual-and-reproductive-health-catastrophe/>.

⁵¹³ UN WOMEN, THE GENDERED IMPACT OF THE CRISIS IN GAZA 4 (Jan. 2024), <https://www.unwomen.org/sites/default/files/2024-01/Gender%20Alert%20The%20Gendered%20Impact%20of%20the%20Crisis%20in%20Gaza.pdf>.

⁵¹⁴ UNITED NATIONS, *No end in sight to the ‘war on women’ in Gaza*, UN: NEWS (July 18, 2024), <https://news.un.org/en/story/2024/07/1152246>.

⁵¹⁵ Office of the United Nations High Commissioner for Human Rights, *UN Experts Appalled by Reported Human Rights Violations Against Palestinian Women and Girls*, UNITED NATIONS: PRESS RELEASE (Feb. 19, 2024), <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>.

⁵¹⁶ UN WOMEN, THE GENDERED IMPACT OF THE CRISIS IN GAZA 4 (Jan. 2024), <https://www.unwomen.org/sites/default/files/2024-01/Gender%20Alert%20The%20Gendered%20Impact%20of%20the%20Crisis%20in%20Gaza.pdf>.

⁵¹⁷ *Id.* at p. 9.

continues, women increasingly become widows and the heads of household, requiring urgent humanitarian aid.⁵¹⁸

Gazans with disabilities have also been killed by Israeli military forces. In one such instance, the Israeli Defense Forces raided the home of Muhammed Bhar, who had Downs Syndrome and Autism.⁵¹⁹ When the IDF arrived, their combat dog attacked Mr. Bhar.⁵²⁰ His mother recounted:

The dog attacked him, biting his chest and then his hand. Muhammed didn't speak, only muttering 'No, no, no.' The dog bit his arm and the blood was shed. I wanted to get to him but I couldn't. No-one could get to him, and he was patting the dog's head saying, 'enough my dear enough.' In the end, he relaxed his hand, and the dog started tearing at him while he was bleeding.⁵²¹

Muhammad later died as a result of the Israeli combat dog attack.⁵²² The Israeli military told the BBC "that an army dog attacked Mr. Bhar and that after giving him initial medical treatment the soldiers left him on his own."⁵²³

Israel has also increased its use of administrative detention since October 2023.⁵²⁴ In November 2023, just one month into the conflict, Heba Morayef, the Regional Director for the Middle East and North Africa said, "[o]ver the last month we have witnessed a significant spike in Israel's use of administrative detention – detention without charge or trial that can be renewed indefinitely – which was already at a 20-year high before the latest escalation in hostilities on 7 October."⁵²⁵

On July 31, 2024, the UN OHCHR issued a report specifically regarding Israel's detention of Palestinians after October 7, 2023. The report estimated that Israel had detained 10,300 Gaza residents who were either working or receiving medical care in Israel on October 7, 2023. OHCHR reported that Israel ultimately released 3,200 detainees, and transferred 6,441 to the West Bank. As of July 2024, OHCHR estimated that 1,000 were missing.⁵²⁶

⁵¹⁸ *Id.*

⁵¹⁹ Fergal Keane, *Gaza man with Down's syndrome attacked by IDF dog and left to die, mother tells BBC*, BBC: NEWS (July 16, 2024), <https://www.bbc.com/news/articles/cz9drj14e0lo>.

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ Amnesty International, *Israel/OPT: Horrifying Cases of Torture and Degrading Treatment of Palestinian Detainees Amid Spike in Arbitrary Arrests*, <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/> (last visited Nov. 13, 2024).

⁵²⁵ *Id.* Morayef went on to assert that Israel uses administrative detention as a "key tool" for enforcing an apartheid system. *Id.*

⁵²⁶ Office of the United Nations High Commissioner for Human Rights, *Detention in the Context of the Escalation of Hostilities in Gaza (October 2023-June 2024)* (July 31, 2024), <https://www.ohchr.org/sites/default/files/documents/countries/opt/20240731-Thematic-report-Detention-context-Gaza-hostilities.pdf> (last visited Apr. 29, 2025) ¶21.

Human rights observers have reported increased use of torture following October 7, 2023. Specifically, “[d]etainees have been subjected to prolonged blindfolding, the prolonged deprivation of food, sleep deprivation, water and medical attention, prolonged exposure to the cold, being forced to kneel on gravel, deliberate humiliation, blackmailing, electric shocks, being burnt with cigarettes, and given hallucinogenic pills.”⁵²⁷ OHCHR reported that detainees were waterboarded, held with their hands suspended from the ceiling for hours, “held in cage-like facilities, forced to be naked for prolonged periods, wearing only diapers, and denied access to the toilet.”⁵²⁸ Euro-Med Monitor described an Israeli detention center as a “Guantánamo-like prison” and called for an “independent probe into Israel’s torture and murder of Gazan detainees.”⁵²⁹

In February 2024, UN experts expressed concern regarding the inhuman and degrading treatment of Palestinian women and girls in Israeli detention.⁵³⁰ Israel has severely beaten Palestinian women and denied them access to basic essentials, such as menstruation pads, food and medicine.⁵³¹ In at least one documented instance, Palestinian women were detained in cages, forced to endure the rain and cold with no food.⁵³² The experts raised concern regarding use of sexual violence, including rape, threat of rape, and strip searches of Palestinian women by male Israeli officials.⁵³³ The experts “noted that photos of [Palestinian] female detainees in degrading circumstances were also reportedly taken by the Israeli army and uploaded online.”⁵³⁴

On July 29, 2024, 10 Israeli reservists were arrested for gang raping a Palestinian detainee.⁵³⁵ Mobs of protests broke *against* the arrests of the alleged rapists.⁵³⁶ National Security Minister Ben Gvir, who is in charge of the prison service, asserted “that it was ‘shameful’ for Israel to arrest ‘[its] best heroes.’”⁵³⁷ The statement by Gvir underscores how Israel perpetuates a culture of impunity for wrongful acts against Palestinians and the importance of holding Israel as well as its agents accountable in courts of law.

2. INTERNATIONAL COURT OF JUSTICE AND INTERNATIONAL CRIMINAL COURT PROCEEDINGS

On December 29, 2023, South Africa submitted an application instituting proceedings to the International Court of Justice arguing that Israel’s actions subsequent to the attacks on October

⁵²⁷ *Id.* ¶40.

⁵²⁸ *Id.* ¶40.

⁵²⁹ Euro-Med Monitor, “New Guantánamo”: Euro-Med Monitor calls for international probe into Israel’s torture and murder of Gaza detainees, <https://reliefweb.int/report/occupied-palestinian-territory/new-guantanamo-euro-med-monitor-calls-international-probe-israels-torture-and-murder-gaza-detainees-enar> (last visited Nov. 13, 2024).

⁵³⁰ Office of the United Nations High Commissioner for Human Rights, *UN Experts Appalled by Reported Human Rights Violations Against Palestinian Women and Girls*, UNITED NATIONS: PRESS RELEASE (Feb. 19, 2024), <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ Simon Speakman Cordall, ‘Everything is Legitimate’: Israeli Leaders Defend Soldiers Accused of Rape, Al Jazeera, August 9, 2024.

⁵³⁶ *Id.*

⁵³⁷ *Id.*

7, 2023 violated the Genocide Convention.⁵³⁸ Although the legal elements of the crime of genocide differ from the definition of apartheid, the facts cited in the legal proceedings are directly relevant to the *mens rea* required for a finding that Israel has violated Article II(b) of the Apartheid Convention.

The crime of genocide requires an “*intent to destroy, in whole or in part, a national, ethnical, racial or religious group.*” This echoes the language of the Article II(b) of the Apartheid Convention, which provides that states may not deliberately impose on a racial group “living conditions calculated to cause [their] *physical destruction in whole or in part.*” In this section, we summarize the evidence presented by South Africa to support its argument that Israel committed the crime of genocide.

Regarding the nature, scope and intent of Israel’s military attacks, South Africa asserted:

[The attacks] have involved the sustained bombardment over more than 11 weeks of one of the most densely populated places in the world, forcing the evacuation of 1.9 million people or 85% of the population of Gaza from their homes and herding them into ever smaller areas, without adequate shelter, in which they continue to be attacked, killed and harmed. . . . Israel has reduced and is continuing to reduce Gaza to rubble, killing, harming and destroying its people, and creating conditions of life calculated to bring about their physical destruction as a group.⁵³⁹

In its application to the ICJ, South Africa noted that Israel dropping “dumb” bombs caused severe injury and extreme loss of life in Gaza.⁵⁴⁰ South Africa reported that Israel has killed hundreds of multigenerational families.⁵⁴¹ Due to the mortality levels, medics in Gaza have begun using a new acronym, “WCNSF,” to indicate “wounded child, no surviving family.”⁵⁴² Israel threatens Palestinian lives through weaponry and by imposing the immediate risk of death by starvation and dehydration.⁵⁴³

Noting that Gaza’s population is on the “brink of famine,”⁵⁴⁴ South Africa argued that Israel was using starvation “as a weapon of war.”⁵⁴⁵ The blockade, together with strikes on bakeries, water facilities, agricultural land, crops, orchards, and greenhouses, directly targeted the food and water supplies necessary to the survival of Palestinians living in Gaza.⁵⁴⁶

⁵³⁸ South Africa v. Israel Application.

⁵³⁹ *Id.* ¶4.

⁵⁴⁰ *Id.* ¶¶45-47.

⁵⁴¹ *Id.* ¶47.

⁵⁴² *Id.*

⁵⁴³ *Id.* ¶50.

⁵⁴⁴ *Id.* ¶63.

⁵⁴⁵ *Id.* ¶64.

⁵⁴⁶ *Id.* ¶65.

South Africa observed that pregnant Palestinian women and children were particularly affected by the lack of access to food, water, shelter, and health care services.⁵⁴⁷ Lack of water severely impacts lactating women, who are unable to obtain enough water to keep themselves or their children healthy.⁵⁴⁸ Some have had to resort to using contaminated water to prepare baby formula.⁵⁴⁹ The effects of malnutrition on children are “grave and long-lasting, preventing them from reaching their full potential in terms of physical growth, cognitive capacity, school performance and productivity later in life.”⁵⁵⁰

South Africa asserted that Israel had displaced around 85 percent of Gaza’s population. Even those who left their homes in northern Gaza for the south, pursuant to Israel’s evacuation orders, reported shelling along evacuation routes.⁵⁵¹ The conditions were such that families risked facing the bombs in an effort to return to their homes in the north.⁵⁵² South Africa cited the United Nations Secretary-General who stated, “the people of Gaza are being told to move like human pinballs – ricocheting between ever-smaller slivers of the south, without any of the basics for survival.”⁵⁵³ South Africa argued that “[t]he forced displacements in Gaza are genocidal, in that they are taking place in circumstances calculated to bring about the physical destruction of Palestinians in Gaza.”⁵⁵⁴

South Africa cited UN experts, including 15 special rapporteurs and 21 members of UN working groups who wrote that Israel’s bombing campaign “result[ed] in a colossal death toll and *destruction of life-sustaining infrastructure*.”⁵⁵⁵ South Africa argued:

Israel has destroyed not only individual homes, houses, and whole apartment blocks; it has destroyed entire streets, and entire neighbourhoods: Shuja’iyya, a suburb of Gaza City, once home to approximately 110,000 Palestinians, appears to now be a vast wasteland, entirely flattened as far as the eye can see. . . . [E]verything that once sustained Palestinian life there has been damaged or destroyed, along with so many of its people.⁵⁵⁶

To support its contention that Israel had genocidal intent, South Africa presented evidence in the form of statements issued by a series of government actors, including the Prime Minister, President, government ministers, and members of the Knesset. For example, South Africa cited the following statements by government leaders:

⁵⁴⁷ *Id.* ¶96.

⁵⁴⁸ *Id.* ¶67.

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.* ¶57.

⁵⁵² *Id.*

⁵⁵³ *Id.* ¶58.

⁵⁵⁴ *Id.* ¶60.

⁵⁵⁵ *Id.* ¶88.

⁵⁵⁶ *Id.*

Prime Minister Benjamin Netanyahu: “[W]e’re facing monsters, monsters who murdered children in front of their parents. . . . This is a battle not only of Israel against these barbarians, it’s a battle of civilization against barbarism.”⁵⁵⁷

President Isaac Herzog: “It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not aware not involved. It’s absolutely not true . . . and we will fight until we break their backbone.”⁵⁵⁸

Israeli Minister of Energy and Infrastructure Israel Katz: “All the civilian population in Gaza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.”⁵⁵⁹

These statements were among several others that South Africa cited in support of its argument that Israeli government officials possessed genocidal intent.⁵⁶⁰

On January 26, 2024, the ICJ recognized the plausibility of the imminent risk that Israel is violating the right of Palestinians in Gaza to be protected from genocide and the urgency to take measures to protect these rights. The Court issued an order granting provisional measures.⁵⁶¹ In the order, the Court called on Israel to refrain from acts violating the Genocide Convention, and to enable the delivery of basic services and humanitarian assistance.⁵⁶² In March 2024, the Court issued a second order recognizing “the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation.”⁵⁶³ The Court concluded that the humanitarian situation in Gaza was “catastrophic,”⁵⁶⁴ and directed Israel to:

Take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary; [and] [e]nsure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.⁵⁶⁵

⁵⁵⁷ *Id.* ¶101.

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.* ¶¶101-03.

⁵⁶¹ South Africa v. Israel Provisional Measures First Order ¶54.

⁵⁶² *Id.* ¶86.

⁵⁶³ South Africa v. Israel Provisional Measures Second Order ¶45.

⁵⁶⁴ *Id.* ¶¶30, 36, 46.

⁵⁶⁵ *Id.* ¶51.

On May 24, 2024, the ICJ issued a third order reiterating its provisional measures issued in January and March 2024, and called upon Israel to immediately halt its military offensive in Rafah, which “may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part.”⁵⁶⁶

In July 2024, the UN Special Rapporteur on the right to food, Michael Fakhri noted that within months of Israel announcing a “starvation campaign” on October 9, 2023, Palestinians in Gaza made up 80 percent of people in the world facing famine or catastrophic hunger.⁵⁶⁷ He concluded that “[n]ever in post-war history had a population been made to go hungry so quickly and so completely as was the case for the 2.3 million Palestinians living in Gaza.”⁵⁶⁸ In October 2024, the World Food Program warned that unless action was taken, “the lack of food and other vital humanitarian supplies entering the strip will likely lead to catastrophic consequences” in Gaza.⁵⁶⁹

The World Health Organization reported that from January to November 4, 2024, 29,054 children in Gaza were admitted for malnutrition treatment, and 6,368 of the children were admitted for severe acute malnutrition.⁵⁷⁰ The World Food Program cited an Integrated Food Security Phase Classification report indicating that more than 90 percent of Gaza’s population will face severe food insecurity by November.⁵⁷¹ The report projected that many will face “emergency hunger” or “catastrophic food insecurity,” which is the highest level of food insecurity.⁵⁷²

On November 21, 2024, the ICC issued arrest warrants for Israeli Prime Minister Netanyahu and Defense Minister Gallant related to war crimes and crimes against humanity against Palestinians.⁵⁷³ Prosecutor Khan noted, “[w]e submit that the crimes against humanity charged were committed as part of a widespread and systematic attack against the Palestinian civilian population pursuant to State policy. These crimes, in our assessment, continue to this day.”⁵⁷⁴

⁵⁶⁶ South Africa v. Israel Provisional Measures Third Order ¶57.

⁵⁶⁷ Michael Fakhri (Special Rapporteur on the right to food), *Report of the Special Rapporteur on the right to food, Michael Fakhri*, U.N. Doc. A/79/171 (July 17, 2024) <https://docs.un.org/en/A/79/171> (last visited Feb. 22, 2025) ¶ 1.

⁵⁶⁸ *Id.*

⁵⁶⁹ World Food Programme, Gaza: Urgent Action Needed as Hunger Soars to Critical Levels, <https://www.wfp.org/stories/gaza-urgent-action-needed-hunger-soars-critical-levels> (last visited Nov. 13, 2024).

⁵⁷⁰ WHO, oPt Emergency Situation Update, https://www.emro.who.int/images/stories/Sitrep_49.pdf (last visited Nov. 13, 2024).

⁵⁷¹ World Food Programme, Gaza: Urgent Action Needed as Hunger Soars to Critical Levels, <https://www.wfp.org/stories/gaza-urgent-action-needed-hunger-soars-critical-levels> (last visited Nov. 13, 2024).

⁵⁷² *Id.*

⁵⁷³ Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel’s Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant, Nov. 21, 2024, <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (last visited Dec. 3, 2024).

⁵⁷⁴ ICC, Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, May 20, 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> (last visited Oct. 25, 2024).

Israel's military offensive has caused "devastating levels of death and destruction" in Gaza.⁵⁷⁵ We conclude that Israel's acts since October 7, 2023, amount to a denial of the right to life as outlined in Article II(a) of the Apartheid Convention. Moreover, the statements of Israeli officials and military personnel, combined with the extreme loss of life and injury, lack of access to water, food, and healthcare, as well as the destruction of shelter and infrastructure are evidence of Israel's intent to inflict conditions of life calculated to bring about Palestinians' physical destruction in whole or in part, in violation of Article II(b) of the Apartheid Convention.

IV. UNIVERSITIES ARE ACTORS WITH HUMAN RIGHTS OBLIGATIONS UNDER INTERNATIONAL LAW.

Universities across the United States are facing mounting pressure to suppress speech and protests against Israel's violations of Palestinian human rights.⁵⁷⁶ Over the past year, students and faculty advocating for Palestinian rights in response to Israel's military assault on Gaza have been suspended, disciplined, and arrested.⁵⁷⁷ In January 2025, President Donald Trump signed an executive order conflating protests against the war on Gaza with antisemitism and calling on government agencies to impose civil and criminal penalties on protestors.⁵⁷⁸ In a statement released one day after the executive order, President Trump threatened all noncitizen campus protesters with deportation based on their political views, stating, "come 2025, we will find you, and we will deport you. I will also quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before."⁵⁷⁹

These were not empty threats. On March 8, 2025, inside a university-owned residence, authorities arrested and detained Columbia University student Mahmoud Khalil because of his

⁵⁷⁵ South Africa v. Israel Provisional Measures First Order ¶168.

⁵⁷⁶ *UN Experts Concerned Over Repression of Protests and Arrests of Students in US*, U.N. NEWS (Apr. 30, 2024), <https://news.un.org/en/story/2024/04/1149181>.; *USA: Free Speech On Campus Needs To Be Protected, Not Attacked, Say Experts*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Jul. 25, 2024), <https://www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts>.

⁵⁷⁷ Ryan Quinn, *Pro-Palestinian Columbia Professor Departs After Investigation*, INSIDE HIGHER ED (Jan. 10, 2025), <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2025/01/10/pro-palestine-columbia-professor-departs-after>; *Breaking: Two More Students Suspended Following Threats From Administration*, THE CORNELL DAILY SUN (May 1, 2024), <https://cornellsun.com/2024/05/01/breaking-two-more-students-suspended-following-threats-from-administration/>; *Universities Should Protect Students' Right to Protest, End Crackdown on Peaceful Protests*, AMERICAN CIVIL LIBERTIES UNION (May 1, 2024), <https://www.aclu.org/press-releases/universities-should-protect-students-right-to-protest-end-crackdown-on-peaceful-protests>; *Hundreds of University Students Arrested in US as Gaza War Protests Spread*, AL JAZEERA (Apr. 28, 2024), <https://www.aljazeera.com/news/2024/4/28/hundreds-of-university-students-arrested-in-us-as-gaza-war-protests-spread>; *US University Protests Over Gaza Prompt Hundreds of Arrests*, BBC NEWS (Apr. 29, 2024), <https://www.bbc.com/news/world-us-canada-68895250>.

⁵⁷⁸ EXEC. ORDER, *Additional Measures to Combat Anti-Semitism*, <https://www.whitehouse.gov/presidential-actions/2025/01/additional-measures-to-combat-anti-semitism/> (Jan. 29, 2025); *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism*, THE WHITE HOUSE (Jan. 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>.

⁵⁷⁹ *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism*, THE WHITE HOUSE (Jan. 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>.

role in campus protests against Israel's actions in Gaza.⁵⁸⁰ As of this writing, the U.S. government is seeking to deport Khalil, who has a green card, and has transferred him to a detention center in Louisiana.⁵⁸¹ In a statement made from detention, Khalil asserted:

My unjust detention is indicative of the anti-Palestinian racism that both the Biden and Trump administrations have demonstrated over the past 16 months as the U.S. has continued to supply Israel with weapons to kill Palestinians and prevented international intervention.

For decades, anti-Palestinian racism has driven efforts to expand U.S. laws and practices that are used to violently repress Palestinians, Arab Americans, and other communities. That is precisely why I am being targeted.⁵⁸²

Since Khalil's arrest, the Trump administration has detained and threatened other students with deportation for their alleged participation in protests and/or speech against Israel's policies.⁵⁸³

This section analyzes universities' human rights obligations regarding campus protesters as well as their responsibilities to examine their own indirect support for apartheid through investments and collaboration with Israeli institutions.

A. UNIVERSITIES' OBLIGATIONS TO REFRAIN FROM SUPPORTING PRACTICES THAT CONSTITUTE APARTHEID

The crime of apartheid is a *jus cogens* norm, thus giving rise to universal obligations on the part of third-party States.⁵⁸⁴ Specifically, States must refrain from supporting or enabling practices that constitute apartheid.⁵⁸⁵ The obligations of non-State actors like corporations and universities are not as straightforward under international human rights law, which has historically focused on State action. Nevertheless, a growing scholarly consensus holds that States are no longer "solely and exclusively . . . subjects of international law."⁵⁸⁶

⁵⁸⁰ Larry Neumeister, *Columbia University Student Says His Detention is Indicative of Anti-Palestinian Racism in US*, Associated Press (Mar. 18, 2025), <https://apnews.com/article/columbia-university-mahmoud-khalil-ice-arrests-cebf66ac78ace72647891c16ed43ac1a>.

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ See, e.g., Rumeysa Ozturk, *Tufts Student, Detained by ICE*, CBS News (Apr. 14, 2025), <https://www.cbsnews.com/boston/news/tufts-student-rumeysa-ozturk-ice-detained/>; Akela Lacy, *Palestinian Student Leader was Called in for Citizenship Interview—then Arrested by ICE*, The Intercept (Apr. 14, 2025), <https://theintercept.com/2025/04/14/ice-columbia-student-mohsen-mahdawi-citizenship-interview/>.

⁵⁸⁴ Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), [2022] 2 Y.B. Int'l L. Comm'n, pt. 2, at 6, U.N. Doc. A/77/10, para. 43. Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2022.pdf.

⁵⁸⁵ *Id.* at 2.

⁵⁸⁶ Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law*, 23 Eur. J. Int'l L. 294 (2012). Available at <https://heinonline-org.proxy.library.cornell.edu/HOL/Page?handle=hein.journals/eurint23&div=27>.

Numerous non-State actors, including terrorist groups, corporations, and civil society organizations, are constituents of international law with independent obligations for them arising under it.⁵⁸⁷ As international legal scholar Markos Karavias has observed, this conclusion applies with particular force to corporations, which are “structurally more akin” to States and international organizations.⁵⁸⁸ As explained below, universities are similar to corporations in many respects, yet they have largely escaped accountability in their engagement with problematic human rights actors around the world. Like corporations, universities often lay claim to significant international influence, investment, and presence. For this reason, the framework of corporate social responsibility can be instructive in interpreting the obligations of universities under international human rights law.

Corporations’ sprawling investments; legal and financial connections; multiple campuses; and broad social, economic, and political influence invest them with the character of international actors. “Indeed, in some instances, the corporation may even be more influential than the state,” according to legal scholar Barnali Choudhury.⁵⁸⁹ Recognizing the transnational scope of corporate power and influence, many countries have moved to regulate corporate conduct to prevent human rights abuses and environmental harm.⁵⁹⁰

One area of consensus is that corporations are not just responsible actors in the context of climate change and labor relations, but also are obligated to align their activities with respect for human rights. The UN *Guiding Principles on Business and Human Rights (Guiding Principles)* establish a “global standard of practice that is now expected of all States and businesses with regard

⁵⁸⁷ Kristina Daugirdas, *How and Why International Law Binds International Organizations*, 57 Harv. Int’l L. J. 325 (2016). Available at <https://repository.law.umich.edu/articles/1824>.

⁵⁸⁸ Markos Karavias, *The Concept of Corporate Obligations under International Law*, in *Corporate Obligations under International Law*, OXFORD MONOGRAPHS IN INTERNATIONAL LAW (2013). Available at <https://doi.org/10.1093/acprof:oso/9780199674381.003.0002> (last visited Nov. 22, 2024).

⁵⁸⁹ Barnali Choudhury, *Corporations as International Economic Law Actors*, ENCYCLOPEDIA OF INT’L ECON. L. (forthcoming 2024), available at <https://ssrn.com/abstract=4475474>.

⁵⁹⁰ In August 2023, the European Union adopted mandatory reporting standards concerning environmental, social and governance (ESG) goals of private corporations. These reporting requirements obligate corporations not only to regularly update EU governance structures on their efforts to maintain sustainable practices and limit environmental and social externalities but also require that such corporations “[h]ave their sustainability disclosures *audited by an independent third-party auditor* before they are filed with the relevant authority.” Reports must include specific disclosures on topics such as climate change, communities affected by corporate operation, biodiversity, anti-corruption and anti-bribery efforts, workforce conditions and rights. Beth Sasfai et al., *EU Adopts Long-Awaited Mandatory ESG Reporting Standards*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 23, 2023), <https://corpgov.law.harvard.edu/2023/08/23/eu-adopts-long-awaited-mandatory-esg-reporting-standards/>. In the United States, the Securities and Exchange Commission (SEC) has recently adopted rules requiring standardized disclosures on climate-related risks associated with their industry and operations. Press Release, *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors*, U.S. SEC. & EXCH. COMM’N, (Mar. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-31>.

to business and human rights.”⁵⁹¹ These documents establish that corporations, including private universities, have a responsibility to respect human rights.⁵⁹²

The *Guiding Principles* state that corporations should refrain from “infringing on the human rights of others”⁵⁹³ and should “avoid causing or contributing to adverse human rights impacts through their own activities and business relationships.”⁵⁹⁴ The “responsibility of business enterprises to respect human rights refers to internationally recognized human rights,” including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.⁵⁹⁵ The definition of “activities” includes actions and omissions, and the definition of “business relationships” includes relationships with “business partners” as well as “any other non-State or State entity directly linked to its business operations, products or services.”⁵⁹⁶ Even where a corporation does not directly contribute to the human rights abuses, it can have an adverse impact that flows from its operations.⁵⁹⁷ An example includes “[p]roviding financial loans to an enterprise for business activities that, in breach of in breach of agreed standards, result in the eviction of communities.”⁵⁹⁸

To implement these principles, “business enterprises should have in place policies and processes appropriate to their size and circumstances, including . . . [a] human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights,” such as “[p]rocesses to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”⁵⁹⁹ Amnesty International describes corporate human rights responsibilities as “requir[ing] companies to ‘avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur,’ further explaining that if ‘a company identifies that it may cause or contribute to human rights abuses,

⁵⁹¹ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* 1 (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf [hereinafter *Guiding Principles on Business*]. U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS; AN INTERPRETIVE GUIDE* 3, 17 (2012), https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf [hereinafter *Corporate Responsibility to Respect Human Rights*]. The United Nations High Commissioner for Refugees policy document *The Corporate Responsibility to Respect Human Rights* explains the meaning and intent of the *Guiding Principles*.

⁵⁹² *USA: Free Speech On Campus Needs To Be Protected, Not Attacked, Say Experts*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Jul. 25, 2024), <https://www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts>; *Guiding Principles on Business*, at 13.

⁵⁹³ *Guiding Principles on Business* at p. 13.

⁵⁹⁴ *Id.* at p. 14.

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.* at p. 13.

⁵⁹⁷ *Corporate Responsibility to Respect Human Rights* at p. 17.

⁵⁹⁸ *Id.*

⁵⁹⁹ *Guiding Principles on Business* at pp. 15-16. This “protect, respect and remedy” framework has been the subject of much discussion in scholarly literature, and “is recognized by virtually every voluntary initiative and features in such soft law instruments as the ILO Tripartite Declaration and the OECD Guidelines.” John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, CSR Initiative, Working Paper No. 31 John F. Kennedy Sch. of Gov’t, Harvard Univ. (2007), (forthcoming in *Am. J. Int’l L.*); Nicola Jägers, *UN Guiding Principles at 10: Permeating Narratives or Yet Another Silo?*, 6 *BUS. & HUMAN RTS. J.* 198, 198–211 (2021), <https://doi.org/10.1017/bhj.2021.9>.

and that it cannot prevent these abuses, *the only possible course of action is not to undertake the relevant activity.*”⁶⁰⁰

As with corporations, universities are integral players in national domestic and international policy, with ties to a vast array of political and social institutions through alumni, shared programs, and other vital connections. Yet universities arguably have an even greater obligation to protect international human rights than private corporations. This is rooted in universities’ educational mission and the benefits they often receive from the State in recognition of their charitable purpose. In the United States, for example, universities are generally registered as 501(c)(3) nonprofit charitable organizations under the Internal Revenue Code.⁶⁰¹ While this status entitles them to ample taxation benefits and enables them latitude in the use of their funding, it also constrains them in their investment activity under a variety of state and federal statutes. The Uniform Prudent Management of Investment Funds Act (UPMIFA)—adopted in 49 states and the District of Columbia—obligates charitable institutions to consider their “asset[s]’ special relationship or special value to the charitable purposes of the institution” in “managing and investing [its] institutional fund.” In many states, charities are subject to stringent financial disclosure, solicitation, and auditing requirements not required of profit-making entities. These requirements suggest that, from a legal standpoint, universities may in fact be *more* responsible for actions that frustrate recognized human rights than their for-profit counterparts, who are obliged to pursue no affirmative social good.⁶⁰²

As social actors, universities have embraced the responsibility to advocate for the social welfare of communities around the world. The *Talloires Declaration On the Civic Roles and Social Responsibilities of Higher Education*, an official statement first made at the Talloires international conference in 2005 and signed by over 500 university leaders in over 50 countries, recognizes these responsibilities.⁶⁰³ It recognizes that higher institutions “exist to serve and strengthen the society of which they are part” by “[creating] social capital” and “preparing students to contribute positively to local, national and global communities.”⁶⁰⁴ Universities also acknowledge a commitment to education to improve global society in their own mission statements and core values. Cornell University’s mission statement, for example, states “[the university] value[s] engagement in our community, our state, and the broader world, learning about their needs and strengths, and applying the knowledge we create *for the benefit of society.*”⁶⁰⁵ Cornell’s core values include “educat[ing] the next generation of global citizens” and “through public service, to enhance the lives and livelihoods of students, the people of New York *and others around the*

⁶⁰⁰ Chapter 7: Corporate Responsibility Under International Standards, Amnesty International (Jan. 30, 2019), <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-7-corporate-responsibility>. [emphasis added]

⁶⁰¹ *Tax-Exempt Status of Universities and Colleges*, Association of American Universities (2019). Available at <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Taxation-Finance/Tax-Exempt-Status-Universities-post-TCJA.pdf>.

⁶⁰² Eva Brems, Laurens Lavrysen & Lieselot Verdonck, *Universities as Human Rights Actors*, 11 J. HUM. RTS. PRAC. 229, at 232, 229–38 (2019), <https://doi.org/10.1093/jhuman/huz012> [hereinafter *Universities as Human Rights Actors*].

⁶⁰³ The Talloires Declaration on the Civic Roles and Social Responsibilities of Higher Education, TALLOIRES NETWORK (2005), <https://talloiresnetwork.tufts.edu/wp-content/uploads/TalloiresDeclaration2005.pdf>.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Cornell University Core Values*, CORNELL UNIV. (2019) (emphasis added), <https://www.cornell.edu/about/values.cfm>.

world.”⁶⁰⁶ UCLA states its purpose is the “creation, dissemination, preservation and application of knowledge *for the betterment of our global society.*”⁶⁰⁷ Harvard’s mission includes “inspiring every member of our community *to strive toward a more just, fair, and promising world.*”⁶⁰⁸

Universities hold uniquely privileged positions in society and serve important functions with global reach. Universities play a crucial social role in education, research, and policy and “should correspondingly be considered as bearers of important social obligations.”⁶⁰⁹ Higher education institutions exist to develop new research, educate the next generation of policy and service providers, and provide objective evidence and research that informs government policies.⁶¹⁰ Universities may also serve an important social function in protecting vulnerable members of society. Students and staff on campuses around the world “participate[] in legal aid clinics dealing with human rights violations; have been members of NGOs and have written briefs for these organizations; and finally have been appointed independent experts of intergovernmental bodies such as the UN treaty bodies.”⁶¹¹ The research and study conducted at many universities directly engages with the rule of law on an international level to pursue accountability for human rights violations.⁶¹² In the United States especially, university researchers directly influence the government’s foreign policy decisions.⁶¹³ This global influence comes with a particular duty of care when dealing with the human rights of the communities affected by these actions.

Apartheid, as a violation of *jus cogens* norms, stands apart from most other human rights abuses. It is universally recognized as a crime against humanity which presents a grave threat to world order, peace, and security.⁶¹⁴ Unlike other human rights violations, which universities might navigate with a focus on harm reduction or constructive engagement, apartheid imposes an unequivocal legal and moral imperative to act.⁶¹⁵ The peremptory nature of the prohibition against apartheid leaves no room for compromise or inaction; it demands full accountability and rejection.⁶¹⁶ Institutions of higher learning that influence global policy and teach future leaders

⁶⁰⁶ *University Mission*, CORNELL UNIV. (emphasis added), <https://www.cornell.edu/about/mission.cfm>

⁶⁰⁷ *Mission and Values*, UCLA (emphasis added), <https://www.ucla.edu/about/mission-and-values>

⁶⁰⁸ *Mission, Vision, & History*, HARVARD COLLEGE (emphasis added), <https://college.harvard.edu/about/mission-vision-history>

⁶⁰⁹ Eva Brems, Laurens Lavrysen & Lieselot Verdonck, *Universities as Human Rights Actors*, (forthcoming in J. HUM. RTS. PRAC.) (manuscript at 238), <https://ssrn.com/abstract=3310367> (Jan. 4, 2019).

⁶¹⁰ Stéphanie Lagoutte & Danielle Soskin, *The Role of Academia in Human Rights Protection and Promotion*, Danish Inst. for Human Rights, at 9 (2018). Available at https://www.humanrights.dk/files/media/migrated/working_paper_academia_september2018.pdf.

⁶¹¹ *Id.*

⁶¹² *The Role of Universities and Law Schools in Documenting Serious International Crimes and Advancing the Rule of Law*, 17 UTRICHT L. REV. 87 (2021). Available at <https://utrechtlawreview.org/articles/10.36633/ulr.666>.

⁶¹³ *The Role of the University in the Human Rights Movement: An Interdisciplinary Discussion Held at Harvard Law School*, Harvard Law Sch. Human Rights Program, at 13 (2004). Available at <https://hrp.law.harvard.edu/wp-content/uploads/2023/05/The-University-and-Human-Rights.pdf>.

⁶¹⁴ *Rome Statute of the International Criminal Court*, art. 7, July 17, 1998, 2187 U.N.T.S. 90. G.A. Res. 721 (VIII), 8 U.N. GAOR Supp. No. 17, at 6–7, U.N. Doc. A/2630 (1953).

⁶¹⁵ Sévine Knuchel, *State Immunity and the Promise of Jus Cogens*, 9 J. Int’l Hum. Rts. 149, 153 (2011), <https://research-ebSCO-com.proxy.library.cornell.edu/linkprocessor/plink?id=88677d0d-4298-321d-88f2-8b6d1f9c55f1>.

⁶¹⁶ Between 1977 and 1988, anti-apartheid activists called for complete divestment from South Africa to economically isolate and “weaken an apartheid state that thrived on overseas investment”. Following anti-apartheid activism on campuses across the U.S in the 1980s, universities divested over \$150 million from South Africa between 1984 and

have an elevated responsibility to ensure their actions and affiliations unequivocally align with the principles of justice and human dignity and actively oppose systems that perpetuate grave violations of human rights, especially *jus cogen* norms. Failure to do so not only undermines their legitimacy but also risks complicity in perpetuating the most egregious of harms.

This complicity is not merely theoretical. Some universities maintain direct financial and institutional ties to Israeli defense companies and military-linked research. For example, MIT has received over \$11 million in research funding from the Israeli Ministry of Defense since 2015.⁶¹⁷ And Cornell University has partnered with the Technion-Israel Institute of Technology to create The Jacobs Institute, located on Roosevelt Island in New York City.⁶¹⁸ Technion researches and develops military technology that Israel has relied on “to sustain its occupation of Palestinian land.”⁶¹⁹ Technion’s unmanned D-9 bulldozer was used in Operation Cast Lead, an attack on Gaza that killed 1,400 Palestinians in 2008-2009, and has reportedly been used to demolish Palestinian homes.⁶²⁰ Technion has also developed drone technology for military use.⁶²¹ These are just two examples of U.S. universities’ relationships with Israeli institutions that facilitate the provision of material support, human resources, and professional backing to actors and actions deeply implicated in apartheid.

B. UNIVERSITIES’ OBLIGATIONS TO PROTECT HUMAN RIGHTS DEFENDERS’ RIGHTS TO FREE EXPRESSION, ASSEMBLY, AND ASSOCIATION

Universities’ repression of peaceful student protest likewise exists in the framework of these institutions’ obligations under international human rights law. Students and faculty opposing apartheid and genocide are not merely dissenting voices but human rights defenders, a category outlined in the UN Declaration on Human Rights Defenders (UNDHRD),⁶²² who have rights to

1986. Georgetown, Harvard, University of Washington, and Middlebury divested another \$198 million after facing student pressure. Amanda Joyce Hall, *Students Are the Spark: Anti-Apartheid in the Long 1980s*, 108 J. Afr. Am. Hist. 370, 370, 387–88, 395 (2023), <https://www-journals-uchicago-edu.proxy.library.cornell.edu/doi/pdfplus/10.1086/725828>.

⁶¹⁷ MIT FACULTY NEWSLETTER, No More MIT Research for Israel’s Ministry of Defense? (May–June 2024), <https://fnl.mit.edu/may-june-2024/no-more-mit-research-for-israels-ministry-of-defense/>; MIT Coalition for Palestine, MIT Science for Genocide, at 30 (2024), <https://archive.org/details/mit-science-for-genocide/page/30>; <https://fnl.mit.edu/may-june-2024/no-more-mit-research-for-israels-ministry-of-defense/>; *MIT IMOD Sponsorships - summary (public)*, (last visited Feb. 28, 2025), tinyurl.com/mit-imod-sponsorships;

⁶¹⁸ *Jacobs Technion-Cornell Inst., Who We Are*, CORNELL TECH, <https://tech.cornell.edu/jacobs-technion-cornell-institute/who-we-are/>.

⁶¹⁹ Adam Hudson, *Cornell NYC Tech’s Alarming Ties to the Israeli Occupation*, THE NATION, Mar. 1, 2013, <https://www.thenation.com/article/archive/cornell-nyc-techs-alarming-ties-israeli-occupation/>.

⁶²⁰ *Id.*

⁶²¹ *Id.* Cornell also maintains partnerships with Lockheed Martin, a company which the UN has called on to “case the sale, transfer and diversion of arms, munitions and other military equipment to Israel”. *States and companies must end arms transfers to Israel immediately or risk responsibility for human rights violations: UN experts*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS. (June 20, 2024), <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>; Corporate Partners, CORNELL UNIV. SYS. ENG’G, <https://www.systemseng.cornell.edu/se/programs/meng-degree-distance-learning/corporate-partners> (last visited Feb. 28, 2025).

⁶²² OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS., *Declaration on Human Rights Defenders* (last visited Feb. 28, 2025), <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders>.

freedom of expression, peaceful assembly, and association.⁶²³ Article 1 of the UNDHRD provides that “[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”⁶²⁴ Article 5 protects the rights of individuals “to meet or assemble peacefully” and to “form, join and participate in non-governmental organizations, associations or groups” for “the purpose of promoting and protecting human rights and fundamental freedoms.” Article 9 provides that people have the right, both individually and in association with others, “[t]o complain about the policies and actions of individual officials and governmental bodies.” And Article 12 of the UNDHRD emphasizes the duty of states to protect individuals who promote and defend human rights from any form of “violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”⁶²⁵

Universities, as key sites for public discourse, knowledge, and debate, have a duty to uphold these rights, particularly when students and faculty advocate for justice in situations of grave human rights violations.⁶²⁶ In July 2024, UN human rights experts expressed concern over the massive crackdown on students protesting apartheid and genocide on various university campuses across the United States, stating that such actions are a “grave violation of the rights to peaceful assembly and freedom of expression guaranteed by international human rights law.”⁶²⁷ And in October 2024, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a report to the United Nations General Assembly concluding that institutions in North America and Europe had engaged in “an extensive pattern of unlawful, discriminatory and disproportionate restrictions and repression of freedom of expression, primarily of Palestinian activists and their supporters.”⁶²⁸

The report of the Special Rapporteur on freedom of opinion and expression documents the ways in which universities and other institutions have suppressed speech in violation of protestors’ human rights to freedom of speech and opinion. The Rapporteur states that “universities . . . have played a disturbing role, intimidating, isolating and silencing voices that differ from theirs.”⁶²⁹ The

⁶²³ Articles 19 and 21 of the International Covenant on Civil and Political Rights, ratified by the United States, and Article 5 of the Declaration on Human Rights Defenders, provide that states must respect individuals’ freedom of peaceful assembly. *USA: Free Speech On Campus Needs To Be Protected, Not Attacked, Say Experts*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Jul. 25, 2024), <https://www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts>; Amid Campus Crackdowns, Gaza War Triggers Freedom of Expression Crisis, SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION (Apr. 25, 2024), <https://srfreedex.org/amid-campus-crackdowns-gaza-war-triggers-freedom-of-expression-crisis/>.

⁶²⁴ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144 (Mar. 8, 1999), <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/Declaration/declaration.pdf>.

⁶²⁵ *Id.*

⁶²⁶ *Academic Freedom Is Just as Crucial as Free Press or Independent Judiciary, Says U.N. Experts*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS. (June 20, 2024), <https://www.ohchr.org/en/press-releases/2024/06/academic-freedom-just-crucial-free-press-or-independent-judiciary-says>.

⁶²⁷ *USA: Free Speech On Campus Needs To Be Protected, Not Attacked, Say Experts*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Jul. 25, 2024), <https://www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts>

⁶²⁸ *Global threats to freedom of expression arising from the war on Gaza: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/79/319 (Aug. 23, 2024).

⁶²⁹ *Id.* ¶5.

Rapporteur observed that the majority of protests across the United States in support of the Palestinian people were peaceful.⁶³⁰ Nevertheless,

the authorities resorted to repressive measures, including widespread police action against the demonstrators and stigmatization of Palestinian advocacy as inherently dangerous. In addition, State and federal lawmakers have proposed over 45 pieces of legislation aimed at restricting street protests in support of Palestine, punishing student protestors and stigmatizing their Palestinian advocacy as “terrorism”.⁶³¹

Responses by some universities to peaceful “encampments” by student protestors were “harsh and disproportionate.”⁶³² In some cases, universities called riot police, who at times used excessive force to remove the protestors from campus.⁶³³ In addition to criminalizing protestors, universities have also imposed harsh disciplinary sanctions against student protestors, “including suspension, possible expulsion, eviction from campus housing and the threat of deportation of some foreign students, which could jeopardize their scholarships and future careers.”⁶³⁴

The actions of many U.S. universities, combined with political pressure from the federal government, has chilled speech on campuses and threatened academic freedom. The Special Rapporteur observed that

Students, researchers and faculty members complain about a culture of intimidation in European and North American institutions in which they are afraid to express their views for fear of being deemed “antisemitic”, harassed, threatened, fired from their jobs or denied research funds. Scholars, faculty and students have complained of being investigated by their institutions about their social media posts and of being targeted by online smear campaigns, doxing and harassment. . . . Scores of courses, lectures, seminars or panel discussions about Palestine have been cancelled, and some adjunct faculty members have not had their appointments renewed because they spoke out in solidarity with Palestinians.⁶³⁵

University crackdowns on protestors have been accompanied by a tendency to conflate criticism of Israel with antisemitism.⁶³⁶ The Special Rapporteur described how critics of the global “boycott, divest and sanctions” (BDS) movement, in particular, wrongly ascribed antisemitic views to its supporters. The BDS movement

makes three demands on Israel: “ending the occupation; ensuring full equality of all citizens and not privileging the rights derived from Jewish identity; and respecting and allowing the right of return for Palestinian refugees.” All three [of these demands] are aligned with the international obligations of Israel, which it has so far failed to uphold. Many civil society organizations and individuals, including

⁶³⁰ *Id.* ¶36.

⁶³¹ *Id.*

⁶³² *Id.* ¶41.

⁶³³ *Id.*

⁶³⁴ *Id.* ¶42.

⁶³⁵ *Id.* ¶44.

⁶³⁶ *Id.* ¶75.

some Jewish groups, support and participate in the movement. A key demand of the campus demonstrators, which included many Jewish groups and students, was the divestment of their universities from Israel-linked companies. Nevertheless, the movement is regarded in some Western countries, including Germany and the United States, as being discriminatory and antisemitic.⁶³⁷

While states have an obligation to combat antisemitism, they may not weaponize accusations of antisemitism to suppress political speech that they disagree with.⁶³⁸ Yet some universities, including Harvard University, have adopted definitions of antisemitism that conflate criticism of Israel with antisemitism, further jeopardizing academic freedom.⁶³⁹ Along these lines, the Special Rapporteur underscored her concern that “the ‘working definition’ of antisemitism of the International Holocaust Remembrance Alliance contravenes this critical international standard of freedom of expression, and yet is being promoted heavily by various entities.”⁶⁴⁰

Crackdowns on protesters not only violate fundamental freedoms but also contribute to a chilling effect, discouraging academic inquiry and civic engagement. Suppressing protests by human rights defenders not only violates the United States’s responsibilities under international law but also undermines the role of academic institutions as bastions of free thought and civic participation. This report endorses the recommendations of the Special Rapporteur on freedom of opinion and expression, who forcefully called on states and universities to protect the rights of student protestors to express their views on Israel’s human rights violations, and to shield them from unjust accusations of antisemitism:

International human rights law draws a clear line between political criticism, from which no State can be shielded, and antisemitism as a serious form of religious and racial hatred, which must be condemned. The genocide in Gaza, the violation of human rights in the occupied Palestinian Territory and the failure of Israel to respect its international legal obligations, including the occupation of Palestinian territory, are matters of global public interest. There is no scope for restricting freedom of expression on such matters.⁶⁴¹

The human rights principles we describe in this section have largely been ignored in the debate over the treatment of campus protestors and the extent to which universities—through their investments as well as their relationships with Israeli institutions—may be providing direct or indirect support to the implementation of apartheid laws and practices. Universities’ failure to engage seriously with the human rights framework not only undermines their stated commitments to global citizenship and social responsibility but risks rendering universities complicit in perpetuating the very systems of oppression they claim to oppose.

⁶³⁷ *Id.* ¶76.

⁶³⁸ *Id.* ¶87.

⁶³⁹ *See id.* ¶79.

⁶⁴⁰ *Id.* The Special Rapporteur observed that the IHRA definition “was never intended to be used as a framework for regulating expression and does not meet the international legal standards for restriction or prohibition of speech.” *Id.* ¶80.

⁶⁴¹ *Id.* ¶88.

CONCLUSION AND RECOMMENDATIONS

To university administrators:

Universities are responsible actors under international law. The United Nations Special Rapporteur on the right to freedom of opinion and expression has called on academic institutions to abstain from retaliation against students and other members of the academic community for their peaceful advocacy and protests, including non-violent civil disobedience, and to protect free speech.

Universities are also obliged to ensure their actions and affiliations align with the principles of justice and human dignity. This includes, at a minimum, ensuring that they do not support grave violations of human rights. To that end, universities must:

Disclose financial investments in companies that have provided weaponry and other goods or services that support Israel's illegal occupation and commission of grave human rights violations in Gaza. Implement a transparent process for reviewing the nature and extent of those investments, and commit to a timetable for divestment.

End financial investments and partnerships with the Israeli government and Israeli institutions that provide support, directly or indirectly, to Israel's illegal occupation and commission of grave human rights violations in Gaza.

Protect student protestors and support their rights to free assembly and free speech.

Refrain from disciplining, criminalizing, or otherwise retaliating against members of the university community who criticize Israel's treatment of Palestinians.

Recognize and address anti-Palestinian, anti-Arab, and anti-Muslim discrimination within the university context.

Recognize and address antisemitism in the university context. Antisemitism as racial and religious hatred against Jews should be clearly distinguished from criticism of Israel as a state. To that end, universities should refrain from adopting the "working definition" of antisemitism of the International Holocaust Remembrance Alliance.

Refrain from taking disciplinary action against non-violent student protestors and cease existing disciplinary proceedings against students and faculty for peaceful protest activities.

Protect the principle of academic freedom as applied to faculty who speak, teach, and write about Israel's treatment of Palestinians.

Resist, within the bounds of the law, any attempts by the federal government to surveil, persecute, or deport members of the university community (including students, staff, and faculty) for criticizing Israel or supporting the human rights of Palestinians.

To the United States and countries that provide financial and/or military aid to Israel:

The ICJ in its Occupation Advisory Opinion concluded that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the OPT and not to render aid or assistance in maintaining the situation.⁶⁴² The Court found serious breaches of peremptory norms of international law that require all States not to render aid or assistance in maintaining the unlawful occupation. All States have a duty to implement measures to bring the internationally wrongful acts identified by the ICJ to an end. This includes a responsibility to take measures to bring about an end to apartheid.

When a State knowingly aids or assists another State in the commission of an internationally wrongful act, the complicit State is also committing a wrongful and potentially criminal act. To that end, we call on the United States Government to:

End all weapons shipments to Israel.

Call for an immediate ceasefire.

Take immediate action to prevent Israel's commission of crimes against humanity and war crimes against Palestinians.

To the Government of Israel:

In its Occupation Advisory Opinion, the ICJ held that Israel must cease any and all actions that change the legal status, geographical nature, and demographic composition of the OPT. Israel must not make any attempt to acquire territory by force or transform its occupation into annexation. Moreover, Israel must comply with all laws pertaining to jus ad bello, jus in bello, international humanitarian law, and international human rights law. Israel must respect Palestinians' right to self-determination. To that end, we call upon the Government of Israel to:

Bring to an end the illegal occupation of the Palestinian Territory in compliance with the July 2024 Advisory Opinion of the International Court of Justice.

Cease all new settlement activity.

Dismantle the "separation barrier," and disarm and dismantle checkpoints across all of the Occupied Palestinian Territory (OPT).

Repeal all legislation that discriminates against Palestinians.

Dismantle the Israeli military court system.

Allow humanitarian aid to enter Gaza without impediment.

⁶⁴² ICJ Occupation Opinion ¶279.

Rescind the military directive designating Al Haq and other Palestinian human rights organizations as terrorist groups.

Implement a system of economic, land-based, health, and educational reparations to the Palestinian people.

To the United Nations and human rights bodies:

The United Nations should take all available measures to support Palestinians' right to self-determination, as set forth in the ICJ's Occupation Advisory Opinion. To that end, we call on the United Nations to:

Grant the State of Palestine permanent membership to the United Nations.

The UN Security Council should authorize the deployment of a peacekeeping force in the Occupied Palestinian Territory to ensure compliance with the ICJ's Advisory Opinion requiring an immediate end to Israel's illegal occupation.

Continue to document and investigate Israel's violations of international human rights and humanitarian law.

Continue to call for an end to the illegal occupation of the OPT.