

The Legal Status of the Israeli Occupation

- Legal Opinion -



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Yesh Din, June 2023

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A. Introduction

1. In June 1967, Israel occupied the West Bank, East Jerusalem, the Gaza Strip, the Sinai Peninsula and the Golan Heights. During the 56 years since then, it has annexed the Golan Heights and East Jerusalem (in direct violation of the customary prohibition international law places on annexing occupied territories without negotiation and agreement between the parties) and returned the Sinai Peninsula to Egypt as part of a peace agreement.
2. In 1995, Israel and the Palestine Liberation Organization (PLO) signed an interim agreement on the West Bank and the Gaza Strip.¹ The agreement included, inter alia, the establishment of the Palestinian National Council and the transfer of certain, limited, governmental powers from the Israeli military government to the Council. Most of those powers were confined to parts of the West Bank designated as Area A and Area B, that consisted primarily of the urban areas and the built-up areas in the villages. Israel retained civil and security powers in the remaining area, designated as Area C, which constitute 60% of the West Bank and include most of the agricultural lands and development reserves in the West Bank. The agreement preserved Israel's overall control over the West Bank and in the Gaza Strip and was intended to serve as an interim arrangement until a permanent agreement was signed. Such agreement was never signed, and the interim agreement remains in force.
3. In 2005, Israel announced that it had unilaterally terminated its presence as an occupying power in the Gaza Strip.² However, this position has not been accepted by the international community in view of the control retained by Israel over various dimensions of life in Gaza.³
4. This opinion examines the nature of Israeli control of the occupied Palestinian Territories (OPT), identifying and outlining its main characteristics, and analyzes accordingly the impact Israel's policies and practices in these territories have had on the legal status of the Israeli occupation.

1 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, available at <https://www.gov.il/en/Departments/General/the-israeli-palestinian-interim-agreement>.

2 As part of the disengagement plan approved by the Israeli Knesset in October 2004. Following the protracted military conflict between Israel and the Hamas organization which took control of the Strip in 2007, Israel designated the Gaza Strip as enemy territory in 2014.

3 For the position of the General Assembly see General Assembly resolution 76/126 (17 December 2021). For the joint position of the members of the Fourth Geneva Conventions see Letter dated 29 December 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, UN. Doc. A/69/711-S/2015/1 (9 January 2015), Annex A, para. 8. For the position of the International Red-Cross see [here](#).

5. Yesh Din was established in 2005 as a volunteer organization working to promote and protect the human rights of Palestinians in the West Bank. Over nearly two decades, Yesh Din has gained knowledge and expertise on the nature of the Israeli occupation regime, particularly in the West Bank. For this reason, the opinion will focus on this area. This opinion is intended to enrich readers' knowledge of the nature of the Israeli occupation regime amid proceedings taking place at the International Court of Justice (ICJ) relating to the UN General Assembly's request for an advisory opinion on this matter.⁴

B. The Main Features of Israeli Rule over the OPT

6. Over the course of 56 years of Israeli occupation, Israeli authorities, military and civilian, involved in the design of policy in the Palestinian territories, have transformed them beyond recognition. This transformation was effected through a number of policies and practices - the most important and farthest-reaching of which are: (1) **demographic engineering of the occupied territory;** (2) **physical and legal separation along national lines;** (3) **application of Israeli sovereignty in the occupied territory.**
7. In other words, the main features of Israeli governance, i.e., the fundamental characteristics of Israeli rule applied to the West Bank are: a drive towards altering the national composition of the local population by massively increasing the number of Israeli Jews; geographical restriction and marginalization of Palestinians; effecting separation along national lines across the living spaces of the West Bank; and the constant gradual, yet persistently, application of Israeli sovereignty over the territory.
8. **The combination of these main features, whose implementation is detailed below, means that the most prominent attribute of the Israeli occupation in the Palestinian territories (certainly the West Bank and East Jerusalem) is the ambition to make it permanent, i.e., not in a temporary state.**

4 UNGA resolution A/RES/77/247 on "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem" (December 30, 2022). The questions the International Court of Justice was called upon to answer are: "(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures? (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

9. It is worth noting that the Government of Israel often cites legitimate security interests in fighting terrorism to justify harmful practices, sometimes to the point of massive human rights abuses against Palestinians living in the OPT. Our position is that while possibly justified in certain contexts, the security argument is entirely irrelevant to the three policy categories presented and analyzed in this opinion. On the contrary: not only do these policies directly violate the fundamentals of the international law of occupation, but some constitute sources of tension that are detrimental to the security in the area.
10. The aforementioned features are detailed as follows.

C. Demographic Engineering of the OPT: the Expansion of Israeli-Jewish Presence and the Limitation of Palestinian Presence

11. The most prominent feature, the central axis that dictates the character of Israel's regime in the OPT, is its endeavor to alter the demographic composition in the area and cement control by demographic means. From its inception, the Israeli occupation was striving to "Judaize" the OPT with the goal of eroding its designation as a Palestinian territory and bolstering Israel's claim to sovereignty over it. To this end, for over five decades, Israel has been implementing policies designed to encourage its own civilian population to migrate to the Palestinian territory, while making massive investments in the development of Jewish settlements and supporting infrastructure all across the OPT. At the same time, the military regime restrains and suppresses parallel development of the Palestinian space through a variety of measures, including expropriating public and private Palestinian lands and allocating them for Jewish development, limiting housing and infrastructure construction for the Palestinian population, and denying Palestinians access to their lands, including by condoning systematic severe violence meted out by Jewish settlers against the Palestinian population (and at times aiding it).
12. The demographic engineering of the area is, thus, achieved through two symmetrical lines of policy and practice - one aimed at expanding Israeli-Jewish presence in the area to the greatest extent possible, the other at pushing Palestinian presence into built-up and urban enclaves and away from open spaces.

i. Colonization: Encouraging Israeli-Jewish Settlement in the West Bank

13. The settlement enterprise is the defining motive of Israel's policy in the OPT. Today, there are 132 Israeli settlements in the West Bank and an additional 146 unauthorized outposts (settlements that did not formally receive all the required permits from the military regime and are, therefore, designated as illegal), including small shepherd farms. The total number of Israeli settlers living in the West Bank as of the end of 2022 stands at 465,000 (455,000 of whom are Jewish), making up almost 5% of the total Israeli population⁵ and about 14% of all residents of the West Bank.⁶ The migration of roughly half a million people over the short period of 56 years was made possible thanks to a consistent policy on the part of the State of Israel to incentivize the establishment of Jewish settlements and industry areas in the OPT. The system of incentives is extensive and elaborate and includes, but is not limited to, significant benefits in the field of housing (cheap land, state-financed mortgages and subsidized loans), in the fields of education, welfare and taxation, as well as provision of various grants.⁷ Significant grants are also given directly to local municipal authorities for a wide variety of activities.⁸ Benefits are also given to factories and the agricultural sector in the form of tax benefits, grants and assistance related to the regulation and financing of personnel employed or volunteering in these ventures.
14. Alongside settlements, which were established pursuant to a formal procedure, unauthorized outposts have been thriving in the West Bank. Outposts are settlements founded without state approval and a planning infrastructure, often by taking over unregistered lands or private Palestinian lands.⁹ However, Israel joins in establishing many of them: unauthorized outposts are built with support from the Civil Administration unit of the Military regime, the Israeli Ministry of Housing, the Ministry of Agriculture, the Settlement Division in the World Zionist Organization (financed by the State of Israel) and the municipal regional councils.¹⁰ The State of Israel goes to great lengths to retroactively approve the establishment of the outposts, even going as far as passing the Regularization Law in 2017 in order to retroactively and extensively legalize outposts built on private Palestinian land.¹¹ While Israel's Supreme

5 [Israel Central Bureau of Statistics figures](#).

6 Peace Now, [Settlements Map 2023](#) (January 5, 2023).

7 B'Tselem and Kerem Navot, [This Is Ours - And This, Too](#) (March 2021) pp. 10-19.

8 B'Tselem, [Land Grab Israel's Settlement Policy in the West Bank](#) (May 2002), pp. 73-47.

9 Talya Sasson, [Opinion Concerning Unauthorized Outposts](#) (Jerusalem (February 2005); Yesh Din, [Under the Radar - Israel's silent policy of transforming unauthorized outposts into official settlements](#) (March 2005), pp. 8-9. (Hebrew).

10 Yesh Din, [Under the Radar - Israel's silent policy of transforming unauthorized outposts into official settlements](#) (2015).

11 Law Regularizing Settlement in Judea and Samaria 5777-2017.

Court struck down the law, ruling it violated Palestinians' rights to property and to equality,¹² regularization procedures of individual outposts continue, with 23 already legalized and 13 in the process of legalization.¹³ In February 2023, the Israeli Security Cabinet adopted a resolution to retroactively legalize additional nine outposts.

15. In its efforts to advance the settlement enterprise, the State of Israel has allocated extensive budgets for electricity, water, sewage and road infrastructure designed to serve Jewish settlements. The West Bank's road system was upgraded for the purpose of providing settlements with access routes directly into the center of Israel, bolstering settlement blocs and to create segregation between Israeli and Palestinian passengers, while giving preferential treatment to the former.¹⁴ Additional massive security investments should also be mentioned such as allocation of personnel to guard settlements and outposts, as well as building and maintaining physical security infrastructure such as fences around settlements, the the separation wall surrounding settlement blocs and the creation of buffer zones along its entire route.¹⁵
16. According to the most recent data, the total area assigned to the jurisdiction of municipal regional councils in the West Bank extends over 40% of its entire area (about 2,188,000 dunams).¹⁶ The built-up areas of the settlements take up about 2% of the West Bank, and the rest is designated for future development of, almost exclusively, Jewish settlements. Additionally, unauthorized outposts, particularly Shepherd farms, have taken over more lands outside the jurisdiction of the councils (between 100,000 and 200,000 dunams).¹⁷
17. An identical, accelerated process has taken place in East Jerusalem, which, as noted, was annexed shortly after its occupation. Today, 230,000 Israelis live in East Jerusalem, most of them in 12 neighborhoods built on land expropriated "for public needs" immediately after the occupation. In total, about 30% of the land area in East Jerusalem has been expropriated.¹⁸

12 HCJ 17/1308, **Municipality of Silwad et al. v. Knesset** (June 9, 2020)

13 Peace Now, [Outpost Legalization - Key Figures](#) (November 30, 2022) (Hebrew).

14 Ofek - The Israeli Center for Public Affairs and Breaking the Silence, [Highway to Annexation - Israeli Road and Transportation Infrastructure Development in the Bank West](#) (December 2020).

15 According to the most recent State Comptroller's report, the construction of the fence cost ILS 8.3 billion by 2021, with the addition of annual maintenance costs, which in 2021, amounted to approximately ILS 161 million. State Comptroller's Report, 247, 248 (Effectiveness of the Seam Zone Barrier - Operational Solutions and Operation) (February 2023).

16 Peace Now, [figures](#).

17 Yesh Din, [Plundered Pastures: Israeli settler shepherding outposts in the West Bank and their infringement on Palestinians' human rights](#) (December 2021).

18 B'Tselem website, [East Jerusalem](#).

ii. Limiting Palestinian spaces and means of subsistence

18. Israel's settlement project in the West Bank hinges on dispossessing the Palestinian population of its land and pushing it into enclaves. A plethora of measures, civilian and military alike, have been adopted over the years to facilitate the expropriation of Palestinian land and to deny Palestinians access to lands still in their possession. It is estimated that nearly a third of the area of the West Bank and half of Area C is designated as closed off to Palestinians by Israel.¹⁹
19. The main method for seizing Palestinian lands in the West Bank is declaring an area as "state land" and allocating it for the establishment of a Jewish settlement.²⁰ This method takes advantage of the fact that land in the West Bank was only partially regularized prior to the Israeli occupation, as neither the British mandate authorities, who began the process, nor the Jordanian authorities, which continued it, completed it, which left about 70% of the land in the West Bank formally unregistered in the official land registry.²¹ So far, over a million dunams of West Bank lands have been declared state land by the Israeli military regime.²² In most cases, declarations were carried out without participation and effective notification of the civilian population and without transparency.²³ In 1999, procedures amending previous declarations were initiated without public notices and without a right of appeal for Palestinians harmed as a result of these procedures.²⁴ The purpose of declaring an area as state

19 Kerem Navot, [A Locked Garden - Declaration of Closed Areas in the West Bank](#) (March 2015), p.10.

20 Pursuant to the Order regarding Government Property (Judea and Samaria) (No. 59) 5727-1967. Israel relies on the provisions of the Ottoman Land Law, according to which the state may take possession of land that has not been cultivated continuously for ten years or where agricultural cultivation stopped for three years or more. Sections 68 and 78 of the law. It should be noted that until 1979, the seizure of land for the establishment of settlements was justified on the basis of military needs. The practice was stopped following the Alon Mora case. See High Court of Justice 390/79, **Duikat v. the Government of Israel** (22 October 1979). However, to this day there are dozens of settlements within their boundaries that were seized in this way before 1979.

21 Sasson report, supra note 9, p. 61 Yesh Din, [Renewing settlement of title in Area C in the West Bank: A breach of international law and violation of Palestinians' rights](#) (April 2021).

22 Yesh Din, [III-Gotten Gains: Theft of Palestinian land - declaring "state land" where settlement of title was halted when Israel occupied the West Bank](#), (February 2021).

23 B'Tselem, **Land Grab**, supra note 8, pp.-52-55.

24 In 2014, when this practice was exposed, Israeli NGOs Yesh Din and Bimkom, together with Palestinian local councils, filed a petition against it (HCJ 7986/14 **Bimkom - Planners for Planning Rights et al. v. Head of the Civil Administration et al.** (judgement dated February 2020)). Following the judgment a slight amendment was made to the law applicable in the area via the Order regarding Appellate Committees (Amendment No. 28) (Amendment) (Judea and Samaria) (No. 2013), 2021. In July 2021, Yesh Din and Bimkom - Planners for Planning Rights filed a High Court petition demanding the repeal of the sections of Order No. 2013 that limit the possibility of filing an appeal against the expansion of "state lands" declarations made before the Order went into effect. HCJ 5288/21 **Yesh Din - Volunteers for Human Rights and Bimkom - Planners for Planning Rights v. Commander of IDF Forces in the West Bank**. Following the petition, the order was amended once more, (in November 2022), but this amendment still

land is to remove the affected area from Palestinian use and hand it over to settlers.²⁵ Figures provided to human rights organizations clearly demonstrate this - **99.76%** of the public lands allocated by the Civil Administration Unit in the military regime were allocated to Israeli parties! Less than 0.25% was allocated for the use of Palestinian residents. In absolute numbers: throughout the occupation, 1,624 dunams of land have been allocated to Palestinians, compared to 674,459 allocated to Jewish settlements.²⁶

20. At the same time, massive areas have been closed off to Palestinians' access and presence. Since 1997, Palestinians have been barred from entering areas under settlements jurisdiction, almost 10% of the West Bank, without a special permit.²⁷ Additional sections of the West Bank have been seized for military purposes: nearly a million dunams of private Palestinian land and state land (about a third of Area C and 17.5% of the entire West Bank) have been declared firing zones used for military training. Large areas along the borders, primarily the Jordanian border (area 151) and the "seam zone" (the area trapped between the separation wall built around settlement blocs and the Green Line), spanning a total of about 300,000 dunams, which is more than 9% of Area C and more than 5% of the entire West Bank, were declared closed off to Palestinians.²⁸ Additionally, private Palestinian lands were seized or expropriated for the purpose of construction of roads and security facilities around settlements, such as fences and buffer zones (known as Special Security Areas, or SSAs).²⁹
21. Palestinians are pushed out of their lands also by unofficial means through Jewish settlers who take over their lands in closed off areas for illegal building, agricultural activity and pasture. In addition, the Palestinian population is regularly subjected to severe acts of violence by Jewish settlers designed to drive them away from their lands. Acts of violence include physical harm, harassment and threats, vandalism, trespass, as well as the theft and damaging of crop and livestock.³⁰ This violence, which has become systematic and widespread over the years, is backed by the

precludes gaining information about of many declarations that have been made and greatly reduces the ability to appeal them.

- 25 Yesh Din, [The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion](#), (June 2020) p. 47.
- 26 CA 7668/18 **Sawalha v. Angel et al.**, paragraph 35 of the opinion of President Hayut; CFH 6364/20 **Minister of Defense v. 'Abd al-Fatah Salha**, paragraph 33 of Justice Vogelmann's opinion; HCJ 2055/17 **Ein Yabrud Municipality v. Knesset**, paragraph 49 of the opinion of President Hayut.
- 27 Declaration regarding Area Closure (Israeli Communities) (Judea and Samaria) 5757-1997. Extended via Declaration regarding Area Closure (Israeli Communities) (Judea and Samaria) 5762-2002.
- 28 Respectively: Order regarding Area Closure - Jordan Valley (West Bank) (No. 151), 5727-1967; Declaration regarding Closure of Area No. 03/2/S (Seam Zone) (Judea and Samaria) 5763-2003;
- 29 Kerem Navot, [A Locked Garden - Declaration of Closed Areas in the West Bank](#) (March 2015), p. 57.
- 30 **Plundered Pastures**, supra note 17.

Israeli establishment, and carried out with impunity. Israel takes no measures to prevent these acts of violence, nor does it enforce the law against the perpetrators.³¹ The military rarely intervenes in favor of Palestinians, preferring, as a matter of course, to remove them from their own lands, sometimes using force, as a means to prevent further clashes with delinquent settlers.³²

22. Beyond land expropriation and denial of rights to access and use Palestinian lands, the Civil Administration Unit stomps out urban planning and development for the Palestinian population required to correspond to the natural population increase and its basic needs. Amendments to Jordanian law adopted by the military regime revoked the powers of planning committees in Palestinian villages and granted planning powers to the planning committees of Jewish settlements.³³ While 132 official settlements have been established or regularized by the Civil Administration so far, not a single Palestinian settlement has been established by the military regime. The area available for Palestinian construction pursuant to old outline plans is only 0.6% of Area C (compared to the area available for settlement development which is tenfold). The Civil Administration does not initiate new outline plans for Palestinian communities and has approved only one percent of all building permit applications made by Palestinians between 2016 and 2021.³⁴ As a result, most of the Palestinian construction in Area C is carried out without a permit, leaving residential and public structures as well as infrastructure facilities exposed to systematic demolitions.³⁵
23. Significant harm to the Palestinian population's means of subsistence derives also from Israeli takeover of the West Bank's natural resources, primarily water. Israel has assumed powers over the production and use of water in the West Bank and subjected drilling wells to its approval.³⁶ Most of the water Israel has produced from the Mountain Aquifer, for instance, has been directed for use by the settlements (about 70%) and the rest to Palestinian communities. The Water Agreement, signed as part of the Interim Agreement between Israel and the Palestinian Authority, cemented Israel's monopoly and allowed it to prevent the Palestinian Authority from developing

31 Since 2005, 93% of all investigations of hate crimes against Palestinians ended without prosecution. Only 3% matured into a conviction. Yesh Din, [Law Enforcement on Israeli Civilians in the West Bank](#) (Settler Violence), Data Sheet, December 2022.

32 B'Tselem, [State Business: Israel's misappropriation of land in the West Bank through settler violence](#) (November 2021) p. 10; Yesh Din, [Yitzhar – A Case Study: Settler violence as a vehicle for taking over Palestinian land with state and military backing](#) (August 2018).

33 Order regarding Town, Village and Structure Planning (Judea and Samaria) (No. 418) 5731-1971. Order regarding Removal of New Structures (Judea and Samaria) (No. 1797) 5778-2018 dramatically reduced the ability to appeal a demolition order.

34 Bimkom, [Destructive Planning Policies West Bank 2018-2022](#) (2013) p. 2.

35 Figures on the demolition of Palestinian structures can be found on the [B'Tselem](#) and [OCHA](#) websites.

36 Order No. 92 regarding Powers on Water Laws (June 15, 1967).

an efficient water sector. While the settlements enjoy access to the Israeli water system, Palestinian communities depend on natural sources and water purchased from Israel. These communities suffer from a chronic water shortage and systematic demolitions of their “unauthorized” water sources (reservoirs and cisterns).³⁷

24. Israel has also taken over other natural resources, mainly stone and gravel, by issuing quarrying licenses to Israeli companies and, in some cases, to quarries controlled by Israeli settlements, which pocket most of the profits from these licenses. New quarrying licenses are no longer issued to Palestinian-owned companies.³⁸ 94% of the quarries’ production is transferred to the Israel, with the remainder divided between the settlements, the Israeli military and the Palestinian construction industry.³⁹ The aggressive exploitation of natural resources in Area C generates income for the Civil Administration, derived from royalties amounting to hundreds of millions of shekels, at the expense of the Palestinian economy. This ongoing plunder is being cynically justified as benefitting the Palestinian population.⁴⁰

37 B'tselem, [Parched Israel's policy of water deprivation in the West Bank](#) (April 2023).

38 Human Rights Watch, [Occupation, Inc. - How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights](#) (January 2016).

39 Figures provided by the state in response to a petition filed by Yesh Din against continued mining and quarrying activities in the OPT. The Supreme Court dismissed the petition, partly based on the outrageous grounds that mining provides employment and income for Palestinian residents and allows the military government to utilize the revenues for the development of the area and thus discharge its obligations towards it. See also: HCJ 2164/09 **Yesh Din - Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.**, (December 26, 2011), paragraphs 12-13.

40 Yesh Din, [The Great Drain - Israeli quarries in the West Bank: High Court sanctioned institutionalized theft](#), (September 2017).

D. Physical and Legal Separation based on nationality; the creation of separate physical spaces and separate legal systems for Palestinians and Jewish settlers

25. Another central feature of Israeli control in the West Bank is the creation of separate living spaces, both physical and legal, for the two groups living in the area.

i. Physical separation

26. The Israeli occupation of the West Bank is characterized by a system of physical separation between the two groups living in the area. Some might say this is a separation between parties that are not interested in living together. However, international law prohibits such separation regardless of what members of the separated groups might want. Moreover, Israel's separation policy does not "ask" Israelis and Palestinians what they want. Rather, it is applied, physically and legally, along national lines. As a consequence, rules regulating this separation are applied also to people who do not support it, such as peace and human rights activists. Arguing that the separation is put in place for security reasons does not make it legal either.
27. Formal legal separation between groups in the West Bank began in 1997, when Palestinians were banned from entering settlements. A system of military orders was put in place, and settlement security coordinators were given the power to stop Palestinians who wished to travel through settlement lands or lands located within the jurisdiction of the local municipal councils.⁴¹ This system of orders is applied by a bureaucratic apparatus that issues entry permits to Palestinian laborers who build, clean and landscape for the settlers. The establishment of the apparatus cemented the principle for the separation policy for years to come: All Palestinians are banned from areas where there is Israeli presence unless they can show "cause" and received a permit for this purpose from the military.
28. Later on, the ban on Palestinian access was expanded to large areas located around and near settlements, the abovementioned Special Security Areas, or SSAs. Hundreds of dunams around dozens of settlements have been declared SSAs and fenced in. Many of these areas include cultivated Palestinian farmland. Keys to the gates of these SSAs are kept by settlement security coordinators, and with them, the power and authority to prevent Palestinian landowners from accessing their land or to refer them to the military "coordination mechanism". Access to many more lands

41 See, e.g.: Declaration regarding Area Closure (Israeli Communities) (Judea and Samaria) 5756-1996.

adjacent to settlements has been permanently or seasonally blocked and subjected to permit regimes.⁴²

29. The erection of the separation wall along parts of the Green Line (the Israeli border) added another element of physical separation. On the one side of the wall, dozens of settlements connected to Israel, and adjacent to them a few dozen Palestinian villages and hundreds of thousands of dunams of Palestinian land, while on the other side the majority of the Palestinian population. The route chosen for the wall trapped a Palestinian space between the wall and the Green Line, which consists of about 9% of the West Bank (the seam zone). A declaration issued by the IDF commander in the West Bank designated the entire space as a closed military zone, access to which is prohibited to all except three “types of people” to whom the declaration does not apply.⁴³ The first two “types” are Israelis and tourists who have a visa to enter and remain in Israel. The third “type” are Palestinians with permits allowing them to work in settlements. It is important to note that the definition of “Israelis,” which, as noted, are excluded from the declaration, covers Israeli citizens, permanent residents of the State of Israel and anyone entitled to Israeli citizenship under Israel’s Law of Return, i.e., every Jewish person.
30. This is how the physical and legal reality of the separation began developing. A Palestinian who owns land passed down through generations must visit the offices of the Civil Administration and ask for a permit to pass through the gate that leads to it. At the same time, any Jew from anywhere in the world, even if they have never lived in Israel or the West Bank, may cross the wall freely. The permit regime has turned Palestinians who live in the enclaves fenced into the zone into illegal aliens in their own lands and in their own homes, requiring a permit to continue living in therein. It has severely undermined their basic rights - primarily the right to freedom of movement, the right to make a living and to live in dignity and the right to family. The permit regime has led to systematic dispossession of Palestinians from their lands in the seam zone: according to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the number of permit applications dropped by 77% between 2014 and 2021 due to the high rate of rejections, the short validity of the permits and the limited operation periods of the gates. OCHA estimates that barriers to accessing farmlands have resulted in a 60% reduction in yield in seam zone lands.⁴⁴

42 B’Tselem, [Access Denied - Israeli measures to deny Palestinians access to land around settlements](#) (September 2008). Settlers often unofficially take over lands for building and agriculture. See Chaim Levinson, “Settlers Using West Bank Security Zones to Expropriate Palestinian Land”, [Haaretz English website](#) (May 7, 2015)

43 Declaration regarding Closure of Area No. 03/2/S (Seam Zone) (Judea and Samaria) 5764-2003.

44 OCHA, [The humanitarian impact of 20 years of the Barrier - December 2022](#). HaMoked: Center for the Defence of the Individual received similar figures. See: HaMoked: Center for the Defence of the Individual, [Creeping Dispossession - Israeli Restrictions on Palestinian Farming Beyond the Barrier](#) (October 2021).

31. Simultaneously, movement of Israelis has also been restricted, and military legislation banned their entry into Area A (Palestinian cities), with few exceptions who were granted permits from the military.⁴⁵
32. The settlements, SSAs and, particularly, the separation wall and permit regimes have painted whole areas with colors of nationality. Jewish areas and Palestinian areas. An intricate system of separate roads (referred to as “bypass” roads) was built to minimize interaction between the populations on traffic routes as well.

ii. Legal separation:

33. In the years since the institution of a military government in the West Bank, the military regime has made far-reaching changes to the applicable law in the area through proclamations and orders. Theoretically, the military government and the laws it enacts, along with Jordanian law, which survived Jordanian rule, apply to anyone who is present in the West Bank, including Israelis, whether they are visitors or residents. In practice, however, simultaneously with the development of military justice system, the Israeli legislature applied much of **Israeli law**, most notably, Israeli criminal law, personally and extraterritorially to Israelis living in the West Bank, and in some cases, also to individuals covered by Israel's law of return (i.e., Jews) who are not citizens of Israel.
34. As early as 1967, Israel's parliament, the Knesset, enacted the Emergency Regulations (Judea and Samaria - Adjudication of Offenses and Legal Aid), which applied Israeli criminal law to Jewish residents of the West Bank. As a matter of policy, Jewish Israeli citizens are tried in Israeli courts pursuant to Israeli criminal law rather than military law, which is stricter, even when the offenses are committed in the West Bank.⁴⁶ The result is the application of different legal systems that prioritize ethno-national origin over the principle of equality before the law and discriminate against the Palestinian population in relation to the Jewish population.
35. Over the years, additional laws have been applied to settlers using the Defence (Emergency) Regulations. They include laws governing, among other things, entry into Israel, conscription, bar association rules, income tax, the population registry, national insurance, public health insurance, traffic laws, inheritance laws, and

⁴⁵ Declaration regarding Area Closure (Prohibition on Access and Stay (Israelis) (Area A), 5761-2000.

⁴⁶ [Backyard Proceedings: The implementation of due process rights in the military courts in the Occupied Territories](#), Yesh Din (December 2007), pp. 57-59; The Association for Civil Rights in Israel, [One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank](#), (October, 2014), pp. 39-63; Smadar Ben Natan, “Among their People: The application of Israeli law in military courts in the Territories”, **Theory and Criticism** 2014, 43, 50-52 (Hebrew). Most of the criminal law applicable to the West Bank is found in the Order regarding Security Provisions, which contains a list of criminal offenses, penalties, evidence laws, legal procedure rules and court powers. Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651) - 2009.

adoption and legal capacity laws. Notable among these is an amendment to the Knesset election law that allows Jewish citizens living in the West Bank to vote where they live, despite living outside Israel proper.⁴⁷

36. Concurrently, the military commander subjected Israeli municipal authority in the West Bank (Israeli regional and local councils and their residents) to a string of **Israeli** administrative laws in a number of fields, giving the local Israeli bureaucracy parallel powers to those it would have had inside Israel. This is carried out using a “pipelining” technique, a process by which military orders apply Israeli law (Knesset legislation) to Israeli municipal authorities in the West Bank.
37. The military orders that set up municipal local and regional councils empowered these local authorities to run their own education systems, business licensing programs, water and sewage corporations, bylaws, collection systems, elections and local government affairs.⁴⁸ Israeli municipal authorities were granted powers in the area of planning as well. As part of the military orders, tribunals for local affairs were established with powers to apply Israeli law in a wide variety of civil issues such as public health, transportation, urban planning, agricultural laws, environmental laws, consumer laws, trade and industry, communications laws, labor laws and family law.
38. This legislation has sharpened the divide between Palestinian communities and settlements in the physical sense and has broadened the gap in terms of civil status and political influence, as well as the scope and nature of the legal rights granted to each group. On the one hand, Palestinians whose civil rights, including the right to vote and be elected, have been suspended for the duration of the occupation, and on the other hand, settlers who enjoy the full set of rights derived from their Israeli citizenship.
39. This has created two types of communities in the West Bank: one type is Palestinian villages and towns that come under Jordanian law (as well as British Mandate law and Ottoman law it did not repeal), military orders, and, in areas A and B, the laws of the Palestinian Authority. The other type is Jewish local and regional settlement municipalities that come extensive under Israeli law and Israeli administration. The Israeli administrative law that applies to settlement communities has been dubbed the “enclave law.”⁴⁹

47 Section 147 of the Knesset Elections Law [Incorporated Version], 5729-1969

48 Local Council (Judea and Samaria) Bylaw, 5741-1981 regulates the powers established in the Order regarding Administration of Local Councils (Judea and Samaria) (No. 892) 5741-1981. Local Council (Judea and Samaria) Bylaw, 5739-1979 regulates the powers established in the Order regarding Administration of Local Councils (Judea and Samaria) (No. 783) 5739-1979.

49 “Enclave law” is a term coined by Prof. Amnon Rubinstein; see A. Rubinstein, “The Changing Status of the Territories

40. The result is a regime which applies two sets of legal systems in its territory. Israelis are largely governed by “pipelined” and extraterritorially applied Israeli legislation, while Palestinians are governed by stricter Jordanian and military law (and, to a limited degree, laws enacted by the Palestinian Authority). In broad terms, this process can be said that decade-long settlement by Israeli citizens in the heart of the occupied territory has led to systematic discrimination, enshrined in legislation and jurisprudence, affecting many aspects of the lives of Palestinian residents of the West Bank.⁵⁰
41. Palestinians are thus denied (among other things) the right to equality in every sense, but primarily in its most basic sense: equality before the law.⁵¹ Such systematic, institutionalized discrimination applied according to group affiliation also constitutes a severe violation of the right to dignity and effectively undermines the broadest basis for the concept of human rights: the shared humanity of all people.
42. Aside from the issue of discrimination, the military regime denies Palestinians many rights, such as the right to due process⁵² (which Israelis enjoy given that that the process of investigation and prosecution is carried out by Israeli civilian institutions), the right to leave and enter the West Bank and travel freely within it,⁵³ privacy and family rights,⁵⁴ as well as the freedom of assembly, freedom of expression and

- From Escrow to Legal Mongrel,” *Iyunei Mishpat* 11:439, 450 (1987) (Hebrew).

- 50 **One Rule, Two Legal System, supra note 46** (October, 2014). The full report lists the differences between the law applicable to Israelis and Palestinians in the West Bank in terms of arrest laws, the right to due process, the definition of crimes and the penalties they carry, minors, traffic law, freedom of expression and protest, planning and building law, freedom of movement and immigration policy.
- 51 Since the French Revolution, the concept of “personal law” has been gradually replaced with the concept of territoriality, whereby legal norms apply to all persons within the territorial jurisdiction of the legislature. The 14th Amendment to the American Constitution, made in 1868, expresses this principle succinctly: “No State shall... deny to any person within its jurisdiction the equal protection of the laws.”
- 52 The last comprehensive report on due process flaws in the military courts is **Backyard Proceedings supra note 46**, published by Yesh Din in 2007. Since then, some changes have been made but systemic flaws have not been corrected, see: **One Rule, Two Legal Systems, supra note 46**, pp. 39-60; Nery Ramati and Karin Torn-Hibler, “Cooperation between the Police and the Israel Security Agency in the Interrogation of Suspected Security Offenders”, **Mishpat, Hevrah veTarbut**, D (2021), 459 (Hebrew).
- 53 B’Tselem, **Ground to a Halt: Denial of Palestinians’ Freedom of Movement in the West Bank** (August 2007). Yesh Din, **Arbitrary Collective Punishment: Infringement of Palestinians’ freedom of movement in the West Bank under the pretext of security** (December 2019). For a current overview of military checkpoints, see B’Tselem [website](#).
- 54 A stark example of how the dual system violates Palestinians’ right to privacy while upholding Israelis’ is the law governing entry into private quarters and searches. While military law gives every officer nearly limitless powers to enter the private homes of Palestinians and carry out searches in them, Israeli law, which applies to Israelis, normally requires court sanctioned search warrants, which are given only if one of a few, well-defined, grounds has been shown. When Yesh Din argued this was wrongful discrimination, the Legal Advisor – Judea & Samaria responded:

protest.⁵⁵ The harsh legal discrimination has not spared Palestinian minors. While Israeli minors benefit from the rights set out in the advanced Israeli Youth Law (Adjudication and Treatment), that applies the principle of the child's best interest also to the criminal system, Palestinian minors are subject to military legislation designed to establish authoritarian rule and priorities deterrence. Military legislation come nowhere near the standards set in international law for the treatment of minors in criminal proceedings, meaning that at any given moment, hundreds of Palestinian minors are held in custody by Israeli authorities in contravention of their rights as minors.⁵⁶

43. The fact that the application of Israeli laws to settlers confers rights should not obfuscate the fact that it also withholds rights from Palestinians. Therefore, though the dual system of laws could be seen as an act of extending rights to one group, it is, at the same time, an act of denying them to the other.
44. The dual legal system described above is a policy of systemic, institutionalized discrimination that **denies Palestinians basic human rights** in that it creates a legal system in which rights are granted or denied on the basis of group affiliation.

E. Application of sovereign powers

45. Officially, Israel avoided using obvious sovereign powers in the West Bank in the early years of the occupation, with the exception of East Jerusalem, which Israel annexed in 1967 through a government order that applied Israeli law, jurisdiction and administration to that particular area.⁵⁷ Israeli governments have considered the remainder of the West Bank an "administered territory," and Israel exercised governmental powers over them not as the sovereign but under the cover of orders

"Given that the criminal legal systems applicable to Israelis and Palestinians in the Area are different, the fact that search laws are also different does not attest to discrimination, but rather a distinction made on the basis of relevant legal and factual differences" (quoted in a High Court petition filed by Yesh Din and Physicians for Human Rights - Israel: HCJ 2189/20 **Rab'a al-'Aziz 'Abdallah Hamed et al. v. IDF Commander in the West Bank**, filed March 22, 2020. Yesh Din, [A Life Exposed: Military invasions of Palestinian homes in the West Bank](#) (November 2020).

- 55 Examples include requiring a permit for a gathering of more than ten people, defining the display of flags or political symbols and the publication of materials such as posters, photos and political documents as prohibited incitement. Order Regarding the Prohibition of Acts of Incitement and Hostile Propaganda (No. 101) 5727-1967.
- 56 B'Tselem, [Minors in Jeopardy: Violation of the Rights of Palestinian Minors by Israel's Military Courts](#), (March 2018).
- 57 Order regarding Law and Administration (No. 1) (5727-1967) (June 28, 1967). The city's annexation was given a normative and declarative boost with the passing of Basic Law: Jerusalem the Capital of Israel in 1980 and the naming of the annexed area in Section 5 of this law in 2000. Basic Law: Jerusalem the Capital of Israel (Amendment) 5761-2000 (December 7, 2000).

applying Israeli law in the West Bank issued by the military commander pursuant to the powers vested in him by international humanitarian law.

46. Israel's approach has taken a turn in recent years, engaging in acts that constitute clear expression of sovereignty, such as extending norms through primary Knesset legislation to the West Bank, as well as transferring powers reserved to the military commander to the hands of the Israeli government apparatus and stretching its powers beyond the Green Line.⁵⁸
47. The most prominent legislative act was the Regularization Law which set up a system for expropriating private Palestinian land in the West Bank.⁵⁹ Since then, other laws, whose shared feature is entrenching sovereign powers in the OPT have been enacted (a process referred to as "creeping legal annexation").⁶⁰ Examples include: extending the powers of the Israeli Council for Higher Education to Israelis in the West Bank, powers previously held by the military regime;⁶¹ consolidating the Israeli Criminal Record Registry with that of the West Bank;⁶² extending income tax breaks and agricultural and energy benefits to settlers;⁶³ and recently, the amendment to the Law regarding Disengagement from the Gaza Strip which allows presence of Israelis in sites from which settlements were removed as part of the Disengagement Plan (in the northern part of the West Bank).⁶⁴
48. Alongside the blurring process of the (physical and normative) line between the State of Israel and the West Bank, attempts to officially and unilaterally annex the area have intensified:
 - 1) On December 31, 2017, members of the central committee of the ruling Likud party voted in favor of a proposed resolution stating the Government of Israel should annex the West Bank

58 Yesh Din, ["Through the Lens of Israel's Interests": The Civil Administration in the West Bank](#) (January 2017).

59 See discussion in supra notes 11-13. The Regularization Law was preceded by another Knesset law with extraterritorial application in the West Bank. That law concerned a prohibition on memorials for terrorists: The Law Prohibiting Memorials Commemorating Terrorists, 5758-1998.

60 Current information about relevant laws and bills as part of Yesh Din's monitoring project is available [at](#).

61 Council for Higher Education Bill (Amendment - Israeli Institutions in the Area) 5778-2018.

62 Criminal Register and Rehabilitation Law, 5779-2019.

63 Income Tax Ordinance Amendment Bill (No. 226), 5776-2016; Law regarding Encouraging Investment in Renewable Energy (Tax Benefits for Generating Electricity from Renewable Energy), 5777-2016; The Poultry Council Law (Production and Sale) (Amendment No. 17) 5778-2018.

64 Implementation of Disengagement Law (Amendment No. 7) 5783-2023.

- 2) In early April 2019, a few days before the elections for the 21st Knesset, Prime Minister Binyamin Netanyahu declared he would promote the gradual application of Israeli sovereignty in the West Bank during several interviews in the Israeli media. Netanyahu said he had discussed “consensual annexation” of the territories in question with the American administration.⁶⁵ He repeated these statements also in the lead-up to the following election campaign.⁶⁶
- 3) Declarations regarding annexation plans increased after the Trump administration published its so-called “Deal of the Century”, which would have seen the West Bank splintered with large parts of it annexed to Israel while the rest would be designated for the Palestinian entity to be established.⁶⁷
- 4) In December 2022, Israel’s 37th government, led by Binyamin Netanyahu, promulgated its guiding principles, the first paragraph of which states: “The Jewish people have an exclusive and indisputable right to all parts of the Land of Israel. The Government will promote and develop settlement in all parts of the Land of Israel ... Judea and Samaria.”⁶⁸ The coalition agreement with the Religious Zionism party goes as far as stating that: “The Prime Minister will advance the formulation and promotion of a policy as part of which sovereignty will be applied to Judea and Samaria.”
- 5) In February 2023, an agreement was signed for the transfer of some administrative powers, i.e. government powers, held by the military regime (specifically the Civil Administration Unit), including enforcement powers, to the supervision of a new Minister and administration unit created within the Ministry of Defense.⁶⁹ Once this transfer of powers is complete, the minister within the Ministry of Defense will effectively serve as the civilian governor of the West Bank.
- 6) According to the agreement, the Governor would have the power to appoint officials within the Civil Administration Unit and the Unit for Coordinator of Government Activities in the Territories, which are the bodies that exercise all

65 See, e.g.: “[Netanyahu: We will gradually apply Israeli sovereignty in the West Bank, not just the blocs](#)”, *Maariv*, April 6, 2019 (Hebrew).

66 <https://www.ynet.co.il/articles/0.7340.L-5585816.00.html> (Hebrew).

67 [Peace to prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People](#) (January 2020).

68 <https://main.knesset.gov.il/mk/government/Documents/CA37-RZ.pdf> (Hebrew)

69 Memorandum of Understanding and Division of Powers and Responsibilities between the Minister of Defense and the Additional Minister in the Ministry of Defense (February 23, 2023). Furthermore, the establishment of “Settlement Administration” has been announced who will be tasked with bolstering the settlement enterprise (including retroactively approving illegal settlement in the West Bank, expanding the powers of Israeli government ministries and other agencies to settlements and extending the application of Israeli law to settlers).

civilian powers in the OPT, as well as their legal advisors (who will no longer be military officers but Israeli public servants instead). The Governor will also be solely responsible for adoption of relevant policy. Issues such as planning and building, enforcement pertaining to illegal construction, policies on land and infrastructure and legislation on civilian matters are now under the Governor's authority. The agreement contains clauses designed to obfuscate the transfer of powers by presenting the Governor as subordinate to the Minister of Defense.⁷⁰ However, according to the Agreement document, the Minister of Defense will only be able to impose his opinion on the Governor in extreme cases, and in any event, decisions will be made in circumvention of the military commander, who no longer has these powers.

- 7) The agreement stipulates that the new administration to be instituted under the new Governor would act to expand the dual legal system and that the powers of Israeli government ministries would be expanded such that they may exercise administrative powers beyond the Green Line, in the settlements.

49. The above list is indicative of a clear, accelerated process of legal annexation of the West Bank. Entrusting the management of civilian life in the OPT to an Israeli Governmental official in contravention of the military commander signifies that future actions by the Civil Administration Unit in the West Bank will have a decidedly sovereign character.⁷¹ It is an expression of sovereignty that sheds the restrictions international law places on a temporary administration of the occupied territory.

F. The legality of the occupation

50. The general overview of Israel's control over the territories in the West Bank demonstrates that Israel has abused the legal framework that has allowed it to hold onto these territories and administrate them, that is, the international law of occupation, in order to effect a process of de facto and de jure annexation of the OPT, exploit its natural resources to the detriment of the occupied population, create a large community of citizens of the occupying power in the OPT, and to subvert the interests of Palestinians as protected persons.

70 For instance, Section 1 of the agreement clarifies that: "Nothing in this document shall alter the legal status of the Judea and Samaria Area, the laws applicable therein or the powers of the government and the Ministry of Defense with respect thereto. The matters listed in this document shall be implemented according to the law applicable in the Area and according to the powers vested in the Minister of Defense as the minister in charge of IDF forces in the Area pursuant to the provisions of Basic Law: The Military."

71 Yesh Din, Ofek Center, Breaking the Silence, the Association for Civil Rights in Israel, [Policy Paper: What Israel's 37th government's guiding principles and coalition agreements mean for the West Bank](#) (January 2023).

51. Over the years, the military rule in the Palestinian territories has used the tools given to it by the laws of occupation to establish an apparatus that works against the local population and towards its dispossession in favor of the interests of the Jewish population that took over large parts of the West Bank on behalf of the State of Israel. The military rule's abdication of its responsibility towards the Palestinian territory and population leads to the inevitable conclusion that the military occupation of the West Bank has transformed into illegal colonial rule.
52. Israel's power to manage the territories it captured in 1967 derives from international law and, particularly, the laws of occupation. These are enshrined primarily in the Fourth Hague Convention of 1907 and its customary regulations and the Fourth Geneva Convention of 1949, to which Israel is party.⁷² The law of occupation is based on three main principles: **First**, occupation does not confer sovereignty over the territory. The occupied people retains the sovereignty over the territory under the principle of self-determination.⁷³ Unilateral annexation of an occupied territory by the occupier is absolutely prohibited under international law.⁷⁴ The **second** principle is that the occupier bears a duty of trusteeship toward the local population, and must administer the territory for the benefit of the occupied population.⁷⁵ While the occupying government may employ measures that curtail rights when necessitated by its security interests, it may not subjugate the welfare of the population to its interests as a principle. It is important to emphasize that the needs of the occupying government are not identical to the needs of the occupying power as a whole, and the military commander may not employ measures that serve interests that go beyond maintaining proper administration of the occupied territory.⁷⁶ The **third** principle follows from the first two and complements them – occupation is temporary.⁷⁷ Occupation is not meant to be permanent, as evidenced by the fact that the law of

72 Israel does not recognize the formal application of the Fourth Geneva Convention, but has agreed to litigate on the basis of its "humanitarian provisions." In the ICJ's advisory opinion about the legality of the separation fence, the court rejected Israel's position and ruled that the Convention does apply in the OPT. The court also ruled that alongside humanitarian law, which serves as specific law, human rights conventions applied as well, including the ICCPR, the ICESCR and the CRC. [Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice \(ICJ\)](#), 9 July 2004, paras. 90-101, 107-113.

73 Eliav Lieblich, Eyal Benvenisti, **Occupation in International Law (2022)**, pp. 11-12. See the Wall Advisory Opinion, *Ibid.*, paras. 117-118, 122.

74 The Wall Advisory Opinion, *supra* note 72.

75 Article 43 of the Hague Regulations, which acts as a mini-constitution of the laws of occupation, stipulates: "The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

76 Lieblich and Benvenisti, *supra* note 73, p. 82

77 Yoram Dinstein, **The International Law of Belligerent Occupation** (2nd ed. 2019) 58; Hanne Cuyckens, **Revisiting the Law of Occupation** (2017) pp. 74-76.

occupation focuses on preserving the status quo and confine itself to outlining the proper balance between the needs of the occupied population and the competing needs of the occupier until a diplomatic resolution is reached.⁷⁸

53. What characterizes the Israeli occupation is not necessarily the numerous violations of specific rules committed as part of it, but rather the fact that the total sum of these violations has fundamentally undermined the pillars of the regime of occupation - temporariness, trusteeship and the prohibition on annexation - thereby nullifying not just the legitimacy of the occupation but also its legal justification.⁷⁹ **In other words: This is a case in which the occupying power subverts the objects of the laws of occupation, rendering its occupation of the territory legally invalid and generating a legal obligation to end it.**
54. The UN's Special Rapporteur on the Situation of Human Rights in the Palestinian Territories⁸⁰ reached the same conclusion, as has the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel.⁸¹
55. The law of occupation gives the occupying power broad powers designed to enable it fulfill the objects of this legal field, primarily to serve the interests of the occupied population and to strive for an agreed-upon solution. These powers, which are attached to an authoritarian regime lacking representation, separation of powers and checks and balances, are susceptible to abuse by an occupier that betrays the task it was entrusted with in order to exploit the occupied territory, make changes to it and even annex it.
56. This is precisely what has happened to the Israeli occupation: East Jerusalem was annexed by government decree, and Israeli control over the West Bank has been cemented, resulting in de facto annexation while processes of de jure annexation are underway.⁸²

78 Aeyal Gross, **The Writing on the Wall Rethinking the International Law of Occupation** (2017) pp. 28-35

79 Orna Ben-Naftali Aeyal M. Gross Keren Michaeli, "Illegal Occupation: Framing the Occupied Palestinian Territory", 23 **Berkley Journal of International Law** (2005) 551; Ardi Imseis, "Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020" 31 **EJIL** (2020) 1055.

80 Michael Lynk, [Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 \(A/72/556\)](#), 23 October 2017.

81 [Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel \(A/77/328\)](#), 14 September 2022.

82 Amichai Cohen and Yuval Shani, "Discrimination, Annexation and the Regulation Law", **Ihoney Mishpat Forum**, 45; (Hebrew) Alice M. Panepinto "Jurisdiction as Sovereignty Over Occupied Palestine" 26 (3) **Social & Legal Studies** (2016); Omar M. Dajani, "Israel's Creeping Annexation," **AJIL Unbound** , Volume 111 , 2017 , pp. 51 311–32.

57. Within the West Bank, the military regime, acting on the instructions of Israeli government, has dispossessed the Palestinian population of about half of Area C (by outlining jurisdictions of municipal local and regional councils, designating firing zones, and allowing settlers to use violence in order to take over lands) and is actively and openly pursuing other tactics to exclude them from the rest. Meanwhile, Israel has encouraged about half a million Israelis to migrate to these areas and has built infrastructure on a massive scale for their sake. The strategic locations of settlements and outposts have split the West Bank into several strips from east to west, thereby preventing territorial contiguity between Palestinian communities and severing familial, social and economic ties between them.⁸³ These locations were not chosen at random but with the object of obstructing Palestinian political independence and the right to self-determination.
58. In conjunction with the fragmentation of the West Bank, Israel has also taken steps to merge the occupied territory into its own territory through physical means, by developing road infrastructure connecting the territories directly to the center of Israel, as well as by legal and administrative means, by applying Israeli law to Israelis living in the OPT and establishing Israeli governmental institutions and services in the territories, such as municipalities, educational facilities, ministerial offices, the national insurance agency, public health services and more. The transfer of powers relating to the administration of civilian affairs from the military regime to the minister within the Israeli defense ministry, who is also heading the administration unit responsible for the settlement development in the West Bank, adds a significant sovereign dimension to the control Israel exercises over the West Bank.⁸⁴ The economic, human and political investment in the settlement enterprise has irreversibly transformed the West Bank, including East Jerusalem, making the de facto annexation a fait accompli. The International Court of Justice reached this conclusion already in 2004, with respect to the consequences of the separation wall.⁸⁵ Since the court rendered that opinion, the process has intensified in many areas and in many ways.
59. Settlements are not established in legal vacuum. On the contrary, the Fourth Geneva Convention explicitly prohibits the transfer of nationals of the occupying power to the occupied territory, without exception,⁸⁶ and such transfer is defined as a war crime in the 1977 Protocol Additional to the Geneva Conventions⁸⁷ and the Rome Statute of

83 **This is ours**, supra note 7, pp. 42-63; Yesh Din, [The Road to Dispossession - A Case Study - The Outpost of Adei Ad](#) (February 2023).

84 Ronit Levine-Schnur, Tamar Megiddo, Yael Berda, [A Theory of Annexation](#) (2023) pp. 36-46. The authors maintain that this element, along with the normative and the symbolic elements, indicates a shift in sovereignty amounting to prohibited annexation for all intents and purposes.

85 The Wall Advisory Opinion, supra note 72, para.121

86 Article 49(6) of the Fourth Geneva Convention.

87 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of, Victims of

1998.⁸⁸ Over the years, the UN Security Council and General Assembly have passed multiple resolutions regarding the illegality of Israeli settlements in the West Bank,⁸⁹ and in 2004, the ICJ ruled they constitute a violation of the prohibition on the transfer of the occupying power's nationals to the occupied territory set out in the Fourth Geneva Convention.⁹⁰ Against this united front Israel remains defiant, insisting that the prohibition applies only to forced transfers of nationals and perceives the position of the international community as politicization of humanitarian law.⁹¹ This approach does not correspond to the reality of the settlement enterprise, which realizes what the legal prohibition set out to prevent: a situation in which the establishment of the occupier's population in the occupied territory leads to human rights violations of the occupied population, and to the annexation of the territory.⁹²

60. The transformation of the occupation regime into an agent for the annexation of the West Bank to Israel has put it on a collision course with the duty of trust owed to the Palestinians who constitute the protected population. The near absolute identification of the military regime with the interests of settler, has turned the Palestinian residents from protected persons to unwelcome guests in their own territory. The resources of the military regime resources are currently directed towards supporting and developing the settlement enterprise and against the Palestinian residents, whose very presence in the area is seen as an existing or potential security threat. With the backing of the Israeli Supreme Court, the duty of the military commander to ensure the well-being and safety of the local occupied population was extended to Israeli settlers as well, thereby erasing the special status of Palestinians as protected persons.⁹³ This normative distortion has legitimized the use of security measures against the Palestinian population anytime a security claim can be made in favor of settler protection. This, in turn, has been used to whitewash a plethora of measures such as land expropriation, the erection of the separation wall, the creation of vulnerable Palestinian enclaves, the violation of freedom of movement, the creation of segregated communities, infrastructure and roads and other measures that

International Armed Conflicts (Protocol 1), June 8, 1977, 1125 U.N.T.S. 3, Art. 85(4)(a).

- 88 Rome Statute of the International Criminal Court, Art. 8(2)(b)(viii), July 17, 1998, U.N. Doc. A/CONF. 183/9, Art. 8(2)(b)(viii)
- 89 The most notable UN Security Council resolutions regarding the illegality of the settlements are, 446 (1979), 452 (1979), 465 (1980), 2334 (2016). The settlements are a regular topic on the agenda of the General Assembly, which adopts annual resolutions about them.
- 90 The Wall Advisory Opinion, *supra* note 72, para. 120. The ICJ ruled that the settlements, in combination with the construction of the fence, constitute an attempt to change the demographic composition of the West Bank. para. 133.
- 91 [Ministry of Foreign Affairs, Israeli Settlements and International Law](#) (30.11.2015).
- 92 Jean S. Pictet, **The Geneva Conventions of 12 August 1949 Commentary - IV Geneva Convention relative to the Protection of Civilian Persons in Time of War** (1958) 283
- 93 E.g.: HCJ 7957/04 **Mara'abeh v. Prime Minister of Israel**, (September 15, 2005), paras. 18-20; See HCJ 2150/07 **Abu Safiya v. Minister of Defense** (December 29, 2009), para. 20.

strip Palestinians of their rights in favor of the safety of Israeli settlers and their undisturbed presence in the West Bank.⁹⁴

61. This is the inevitable outcome of disrupting the principle of temporariness that lies at the core of the law of occupation. The 56-year-long Israeli occupation is the longest in modern history. Despite past negotiations between Israel and representatives of the Palestinian people, which might have potentially ended the conflict, Israel now has no aspirations to renew diplomatic processes that would lead to ending the conflict.⁹⁵ Turning the occupation paradigm into a permanent situation serves the Israeli interest in annexing the territory without a formal declaration. Israel uses the prolongation of the occupation as a legal justification for taking measures that contradict the prohibition on land expropriation and other measures that violate the status quo (the “prolonged occupation” doctrine).⁹⁶ However, the longer the occupation continues, the weaker the justification underlying the legitimacy of the occupier’s powers becomes and the weaker the protections afforded to the occupied population get.
62. The illegality of the Israeli occupation is rooted, therefore, in Israel’s abuse of the rights granted to it by international law to temporarily administer the territory. In its current form, the organizational and normative structure of the occupation apparatus in the West Bank is aimed at serving the Jewish population in the West Bank, enabling and maintaining the annexation of territories to the State of Israel and acting in a manner contrary to the interests of the civilian population it was entrusted with protecting. When the occupation paradigm becomes a means of perpetuating the control and administration of the OPT and disguising policies and actions amounting to apartheid as permissible security measures, it cannot be considered legal under international law.⁹⁷

94 For overview and analysis, see: David Kretzmer and Yaël Ronen, **The Occupation of Justice** (2nd ed. 2021)

95 This process peaked with the adoption of the Trump administration’s so-called deal of the century that envisioned unilateral annexation of large parts of Area C to Israel, extremely limited self-government for the Palestinians and Israeli security control over the entire area - Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People. The plan was approved by both Prime Minister Netanyahu and then Defense Minister Benny Gantz: Jonathan Lis, “Gantz: I Will Bring Trump’s Plan for Approval in Knesset Next Week”, **Haaretz English website**, January 29, 2020.

96 While relying on the status quo as justification for having separate legal systems or avoiding action that would benefit the Palestinian population such as urban development. For the “prolonged occupation doctrine,” see, e.g., HCJ 2164/09 **Yesh Din - Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.**, (December 26, 2011).

97 Compare with the ICJ advisory opinion on Namibia. [Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia](#), International Court of Justice (ICJ), 21 June 1971. In the opinion, the Court upheld the UN General Assembly resolution to terminate the mandate over Namibia which belonged to South Africa as well as the declaration by the UN Security Council of its presence in the territory as an illegal occupation. Unlike the case of the Israeli occupation, the source of authority for South Africa over Namibia stemmed

G. The nature of the occupation regime and the crime of apartheid

63. Any military occupation is a regime of control and oppression. Given that almost from its inception, the Israeli occupation engaged in colonizing the occupied territory, and therefore creating a community of privileged occupying citizens living alongside the occupied whose rights are, for the most part, suspended, the legal classification of the Israeli occupation cannot be complete without examining the crime of apartheid. Such an examination can only lead to one conclusion - that Israel is, in fact, committing the crime of apartheid in the West Bank.⁹⁸
64. Apartheid is a term for a type of regime and for an international crime. Once an ideology of a regime in a specific time and place in the history of the 20th Century, it has turned to an international crime that constitutes a crime against humanity. The crime of apartheid has a clear definition, and although its origin is historically linked to the racist regime in South Africa, **it is now an independent legal concept, which exists without being founded on racist ideology.**
65. Over the years, the prohibition on apartheid has gained the highest normative status attainable in international law - *jus cogens*, a prohibition with no exceptions that cannot be suspended or derogated from even during wars and emergencies. Any norm or international undertaking that contradicts it is void.⁹⁹
66. The term apartheid was first defined in 1973, in the International Convention on the Suppression and Punishment of the Crime of Apartheid (hereinafter: the Apartheid Convention), which stipulates that the crime of apartheid is a crime against humanity.¹⁰⁰

from the mandate it received from the League of Nations and was overseen by the General Assembly which also had the authority to terminate it. Nevertheless, the rationale applied by the Court is equally relevant: the Court interpreted the mandate terms, the source of authority for South Africa's control over the territory, in light of the principle of self-determination and on this basis concluded that South Africa was prevented from annexing the territory. The Court accepted the position of the General Assembly that the apartheid regime implemented in Namibia violated the mandatory's duty to ensure the welfare of the population under the mandate and that this constituted a valid basis for termination of the mandate by the Assembly.

- 98 Yesh Din, **Apartheid - Legal Opinion** (supra note 25); [Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, UN Doc. A/HRC/49/87](#) (21.3.22); Amnesty International, [Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity](#) (February 1m 2022); Human Rights Watch, [A Threshold Crossed Israeli Authorities and the Crimes of Apartheid and Persecution](#) (April 27, 2021).
- 99 Article 53 of the Vienna Convention on the Law of Treaties, 1969. Annex to the Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) 2022.
- 100 An earlier source for the prohibition on apartheid can be found in Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, as follows: "States Parties particularly condemn racial

Apartheid is also included in the list of crimes against humanity that fall under the jurisdiction of the International Criminal Court in the Rome Statute, which entered into force in 2002.¹⁰¹

67. The definition of apartheid differs between the two conventions, but they do share fundamental elements: **inhuman acts committed in order to preserve a regime of systematic oppression and domination by one racial group over another.** While the Rome Statute's definition of the crime of apartheid is narrower than that of the Apartheid Convention,¹⁰² the commonly held view is that the broader definition of the Apartheid Convention carries a customary status.¹⁰³ For the sake of caution, the legal analysis in this section refers mainly to the Rome Statute definition.
68. The elements of the crime as developed under international to date are: (a) the presence of different racial groups (according to the broad definition of the term "racial group" in international law, particularly the International Convention on the Elimination of All Forms of Racial Discrimination); (b) the act/s are part of a systematic or widespread attack against a civilian population; (c) the context of an institutionalized regime that maintains domination of one group over others and systematically oppresses another group; (d) the commission of one of the acts defined as inhuman and listed in Article 2(a)-2(f) of the Apartheid Convention or Article 7(1) of the Rome Statute; (e) the acts are committed with intent to establish and maintain the above context; (f) a mental element of awareness by the perpetrator of the existence of the elements of the offense.
69. The prohibition on apartheid applies in the context of military occupation as well.¹⁰⁴ The laws of occupation do permit curtailing the political liberties of the occupied population and taking measures that impinge on its rights where the occupier's military needs require it or in keeping with local laws for the purpose of maintaining public order. In this sense, it is *lex specialis*, which trumps other laws of more general

segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

- 101 Though Israel is not party to these conventions, the *jus cogens* status of the prohibition on apartheid obligates Israel.
- 102 First, it includes a more limited list of inhuman acts. Second, it requires the existence of a regime of systematic domination and oppression as a factual basis, unlike the Apartheid Convention, which requires only that such a regime exist as an element of special intent, that is, there is no requirement for the regime to actually exist, just for the inhuman acts to be carried out with intent to establish and maintain such a regime.
- 103 Miles Jackson, "The Definition of Apartheid in Customary International Law and the International Convention on the Elimination of All Forms of Racial Discrimination," 71 **International & Comparative Law Quarterly** (2022) 831.
- 104 Geneva Conventions Additional Protocol I, Article 85(4)(c); Miles Jackson [Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law](#) (23 March 2021), <https://www.diakonia.se/ihl/news/expert-opinion-occupation-palestine-apartheid/>; Marco Longobardo, [Preliminary but Necessary: The Question of the Applicability of the Notion of Apartheid to Occupied Territory](#), (2.12.2.201).

application.¹⁰⁵ However, when measures are taken against the civilian population as part of oppression whose purpose is unrelated to the occupier's military needs, but as part of the system that institutionalizes domination of the occupied population by the occupier's population, the law of occupation cannot serve as justification for such discrimination.¹⁰⁶ As noted, Israeli policy in the occupied OPT is designed mainly to advance Jewish dominance in the West Bank, and while some of the harmful measures used against the Palestinian population are predicated on legitimate military needs, the basic motive for many of them is protecting and preserving the Jewish hegemony created by Israel.

(a) The presence of two distinct groups -

70. The definition of racial discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination goes beyond the traditional, narrow scope of a racial group, which focuses on a **biological-genetic** classification of humans, and towards a **social** approach that looks at the political and identity classifications of groups of people and includes these as well in the definition of race. Over the years, the conceptualization of race as a social construct has taken hold, and today, the prevailing approach includes subjective concepts of national or ethnic origin.¹⁰⁷ It follows that this element is clearly satisfied in the matter at hand, as there are two groups in the West Bank - Palestinian and Jewish-Israeli.¹⁰⁸

(b) Institutionalized regime of systematic oppression and domination (as a constitutive feature of the regime)

71. The crime of apartheid is committed, as noted, in the context of a regime that imposes and enforces collective inferiority, mainly through systemic, institutionalized

¹⁰⁵ The Wall Advisory opinion, supra note 72, para. 106.

¹⁰⁶ As mentioned, this important assertion is found in Article 85(4)(c) of Additional Protocol (I) to the Geneva Conventions, which states that apartheid constitutes a serious violation of its provisions. See also: Ahmed Abofoul, [Sound but Insufficient: The Mainstream Discussion on the Question of the Applicability of Apartheid in the Occupied Palestinian Territory](#), *Opinio Juris*, (March 21, 2022).

¹⁰⁷ In Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, the term "racial discrimination: is defined as follows: "[A]ny 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." For an analysis in the context of international criminal law, see: Carola Lingaas, "[Jewish Israeli and Palestinians as distinct 'racial groups' within the meaning of the crime of apartheid?](#)," *EJIL Talk!* (6 July 2021).

¹⁰⁸ John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory," *The European Journal of International Law* Vol. 24 (2013) 867, 889-891.

discrimination regarding rights and resources **as a central, constitutive feature of the regime.**¹⁰⁹

72. Military occupation is, by definition, a belligerent, coercive regime imposed on the occupied population. In the case of the West Bank, the element of domination and oppression that is inherent to the nature of every military occupation is compounded by a concrete group context - the presence of the Israeli settler population. The Israeli citizens of the occupying power enjoy the full range of civil rights and political influence available to citizens of a civilian-parliamentary system, while the Palestinian population has no influence on the design of the substantive norms that apply to it. This reality inevitably leads to systematic, institutionalized discrimination between the two groups through practice, policy and legislation, as has indeed occurred in the case of the OPT.
73. Israeli law was applied to settlements by various techniques, and Israeli government ministries were given powers to operate within them as well. The Israeli residents of the occupied territory enjoy full constitutional protections of their human rights, including the right to vote and run for office, meaning they can influence their own lives, whether through their elected parliament members or their impact on the appointment of ministers responsible for Israeli policies on the ground. Palestinians, on the other hand, are ruled by a military regime and are governed by oppressive, rigid military law, and generally live under economic and political conditions characterizing developing countries.
74. The settlers' built-in advantage has been enshrined in law, policy and practice. As part of a system that institutionalizes discrimination towards one group, deprived of their rights, by another, privileged, group, resources in the area have been consistently and dramatically diverted towards the Israeli population at the expense of the occupied Palestinian population. This trend can be seen in every area and with respect to every resource, most notably - land.
75. In addition to discrimination in rights and resources, the occupation regime also uses a variety of measures, some of them draconian, to suppress any form, including non-violent, of resistance. As mentioned, military orders limit non-violent protest and prohibit demonstrations, rallies and marches. The military regime further relies heavily on administrative detention and criminalization of political associations in order to prevent dissent.¹¹⁰

109 Dugard and Reynolds, *Ibid*, 881. The adoption of a discriminatory legal system or discriminatory administrative, economic and judicial practices can establish the existence of the criminal element of an institutionalized regime of oppression and control. Guénaël Mettraux, **International Crimes: Law and Practice** (Vol.2) (2020) 742.

110 For statistics on administrative detentions as published by the military and the Israel Prison Service, see [here](#).

(c) Intent to maintain domination

76. The singularity of the crime of apartheid lies, as noted, in the fact that it is designed to preserve a regime of domination and oppression of one group over another. For years, Israel relied on the definition of occupations as a mere “temporary suspension” of sovereignty and (Palestinians’) civil rights as an alibi when confronted with accusations of apartheid. The international community took the “peace process” as evidence that Israel did, in fact, accept that its rule over this territory was temporary, that final status would be determined in an agreement, and that it had no intention of perpetuating its control over the Palestinians.
77. However, that Israel intends to cement its control and its regime of supremacy is the obvious conclusion emerging from an analysis of both the actions taken by the State of Israel in the West Bank over the years and its official positions. All of this is compounded by the structural changes made to the administration of the territory by the current Israeli government, including the transfer of many of the powers held by the Civil Administration Unit to the minister within the Ministry of Defense (the Governor) while circumventing the military regime.
78. As outlined in the first section of this opinion, the policies and practices implemented by successive Israeli governments in the West Bank, their actions which have affected far-reaching and long-term changes in the area (some meant to be irreversible) in relation to every aspect of life - land, infrastructure, legislation and demographics - all evince intent to cement and perpetuate control over the area and, consequently, over the occupied population. One policy that has had an **unparalleled long-term, profound** impact is Israel’s settlement enterprise, which has altered the demographic makeup of the occupied territory. It is a breach of an absolute prohibition under the law of occupation and the most telling sign of Israel’s intent to perpetuate its control.
79. As for the official positions of Israeli governments, the dramatic shift noted above, which has materialized over the past few years and has seen the current Government move away from an official approach that sees the West Bank as a “disputed territory” whose future will be determined in negotiations, towards an **official policy of gradual annexation**, is indicative of an intent to maintain control.
80. The inevitable conclusion is that Israel is steering a consistent process not only of de facto annexation, but also of legal, de jure, annexation demonstrating an **intent to cement the existing regime, including all the features described above**. The following are all clear expressions of sovereignty that testify to that effect: applying Israeli legislation to the West Bank ex-territorially, as well as personally to settlers personally, and administratively by pipelining legislation through military orders to Israeli municipal authorities in the West Bank; fully annexing East Jerusalem; expanding the administrative powers of Israeli government authorities beyond the Green Line and into the West Bank.

(d) Widespread practices constituting inhuman acts

81. Both the Rome Statute and the Apartheid Convention contain lists of acts defined as inhuman acts. The most relevant for the West Bank are the inhuman acts of **persecution** (Rome Statute) and **denial of rights** (Apartheid Convention).¹¹¹
82. The Rome Statute defines persecution as the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”¹¹² There is a great deal of overlap between this crime and several of the inhuman acts listed in the Apartheid Convention, chiefly denial of rights by “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.”
83. Several policies/practices Israeli authorities employ in the West Bank, which are central to the nature of the regime, meet the definition of persecution and/or denial of rights and/or other inhuman acts listed in the conventions: “separation of racial groups” and “persecution for resistance to apartheid.” They most notable are:
- 1) **Denial of civil rights** - Palestinian residents of the West Bank have had no representation in governing institutions since 1967. They have no right to vote or run for office in the bodies that set the norms that apply to them or for the administrative body that rules over them.¹¹³ At the same time, military legislation has severely curtailed most political rights of the Palestinians (to the point where they can be said to have been suspended), including the right to form associations, as well as freedom of expression and protest. This denial might have been acceptable under international law had Israel complied with the requirement of the

111 Article 7(2)(h) defines inhumane acts with reference to the crimes mentioned in Article 7(1) or crimes of a similar nature, including deportation, imprisonment, torture, persecution, and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” The acts in question must, therefore, meet a high threshold of severity, suffering or harm. Christopher Hall, ‘The Crime of Apartheid’ in Otto Triffterer (ed), **Commentary on the Rome Statute of the International Criminal Court** (2nd edn, Verlag CH Beck 2008) 228, 264. The acts listed in the Apartheid Convention can be included as examples of acts that meet the requirement of severity. Carola Lingaas The Crime against Humanity of Apartheid in a Post-Apartheid World, 2 **Oslo Law Review** (2015) 86, 96-97.

112 Article 7(2)(g) of the Rome Statute.

113 The access Palestinians living in the West Bank have to involvement in the activities of the Palestinian Authority does not have the same substance civil rights are meant to satisfy. Palestinian Authority institutions are not where the main decisions governing Palestinians’ lives are made. Those decisions are made by the Israeli army and government, over which Palestinians have absolutely no influence and in which they have no representation. Palestinians have extremely limited self-rule and do not have civil rights in the sense of participating in the political processes in which the most significant decisions for their lives are made. See: [The Occupation of the West Bank and the Crime of Apartheid Common Questions & Answers](#).

law of occupation to maintain the temporary nature of the occupation and, accordingly, seek to end it. Given the intent to perpetuate Israeli control indefinitely, the denial of civil rights is unlawful.

Additionally, the denial of Palestinians' civil rights forms part of the denial of their collective right to self-determination and independence. This is a fundamental right that lies at the core of international human rights law. It is also a foundational principle of international relations as shaped over the second half of the 20th Century.

- 2) **The dual legal system** - As noted above, the Israeli legislature applied extensive sections of **Israeli law** to Israelis living in the West Bank, and in some cases, also to individuals covered by Israel's law of return (i.e., Jews who are not citizens of Israel) personally and ex-territorially. Concurrently, the military commander subjected Israeli municipal authorities in the West Bank (Israeli regional and local councils and their residents) to a string of **Israeli** administrative laws in various fields, giving the local Israeli bureaucracy parallel powers it would have had within Israel.

This has produced two separate legal systems - one for Palestinians, who are ruled by the Jordanian law that was in place in 1967 as altered by military orders issued since, and the other for Israeli Jews, who are mainly governed by Israeli law and administration. This has led to systematic discrimination enshrined in law, which affects many aspects of Palestinians' lives in the West Bank, in a manner that violates the right to equality in its most fundamental sense - equality before the law. Additionally, the dual legal system denies Palestinians, and Palestinians only, many rights such as due process, freedom of movement, privacy and family rights, the right to form associations and freedom of expression and protest. Granting rights to one group (the settlers) is, at the same time, withholding them from the Palestinians, and as such, constitutes "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."

This dual legal system serves the purpose of preventing "participation **in the political, social, economic and cultural life**" in that it extends the opportunity to participate to one group and withholds it from the other. It also contributes to creating "**conditions preventing the full development**" of members of the group that is subjected to discrimination and produces "**severe deprivation of fundamental**

rights contrary to international law by reason of the identity of the group or collectivity.”

- 3) **Denial of development** - With the occupation of the West Bank, planning powers in the area were transferred to the military commander. A military order issued in 1971 expropriated the powers given to existing regional and local planning committees and stipulated planning committees would have representatives of the Israeli regime only (the Civil Administration Unit, the military). In contrast, in the settlements, military legislation gave planning authority to the municipal authorities. This discrepancy has resulted in a policy that has encouraged construction in settlements and frozen it in Palestinian communities almost completely for decades. In addition, the military regime employs extreme discriminatory land allocation policies, with more than 99% of all public land allocations benefitting Israelis and less than 0.25% to Palestinians.

The statutory planning system in the West Bank, as well as planning policy and the allocation of public lands in practice, are meant to prevent Palestinians “from **participation in the political, social, economic and cultural life of the country**” or creating “**conditions preventing their “full development,**” while at the same time, encouraging massive development in the Israeli sector only. This violation of fundamental rights recognized in international law on a collective basis also constitutes persecution under the Rome Statute.

- 4) **The policy of segregation between Israelis and Palestinians** - Separation in the West Bank is effected primarily through a permit regime - no Palestinians may enter areas with Israeli presence unless they have “cause” the Israeli authorities recognize as legitimate to issue a permit. The policy began with a prohibition on entry by Palestinians to settlement areas and later, areas surrounding them (SSAs). Then came the separation wall and the creation of the seam zone (where hundreds of thousands of dunams of Palestinian land are trapped), which Israelis, tourists, or any Jew (!) can freely access, but Palestinians need a permit to enter. Israelis were barred entry into Area A (i.e., to Palestinian cities) pursuant to military orders.

The policy of separation is a classic case of “... **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,**” according to the definition of the inhuman act of separating racial groups set out in Article

II(d) of the Apartheid Convention. This segregation is also a violation of freedom of movement deprived on a collective basis and as such, constitutes persecution under the Rome Statute.

- 5) **Land expropriation and dispossession** - As detailed in the first section of this report, several policies employed by Israel in the West Bank have, over the years, resulted in the expropriation and dispossession of hundreds of thousands of dunams from Palestinians and Palestinian communities. Relying on a controversial interpretation of the Ottoman Land Law of 1858, throughout the 1980s and early 1990s, the Civil Administration Unit declared more than a million dunams of land as “state land” (public land). The policy regarding the allocation of public land is patently discriminatory - more than 99% of allocated land was designated for Israeli use. Additionally, Palestinians are dispossessed of their land both through official expropriations (for instance, in the Ma’ale Adumim area) and through Israeli settler violence. While this violence is not perpetrated by the regime directly, the consistent willful blindness to it, lack of enforcement against the perpetrators and retroactive legitimization of settler presence on land seized through criminal acts requires to attaching responsibility for these acts to the military regime. The declaration policy of state land and the retroactive approval of illegal construction on private Palestinian land constitute **“the expropriation of land and property belonging to a racial group or groups or to members thereof.”** Some of the lands were expropriated in the ordinary sense of the term - the expropriation of proprietary rights from their owners - while others were expropriated collectively, in the sense that members of the group were deprived of their collective rights to benefit from this land.
- 6) **Persecution of regime opponents and critics** - For decades, until the 1990s, Israel routinely deported Palestinian political leaders who resisted the occupation and acted in pursuit of Palestinian independence.¹¹⁴ The Israeli authorities in the West Bank established an oppressive system designed to stifle Palestinian political activism to resist the occupation and advance independence. Palestinian leaders at every level were arrested, incarcerated, expelled, and some even killed by Israel as part of its targeted killings policy.¹¹⁵ The military regime has also instituted prohibitions on political expression and protest in the West

114 See: Ben-Naftali, Sfard, and Viterbo, **The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory** (CUP, 2018), D: Deportations p. 78.

115 Michael Sfard, **The Wall and the Gate: Israel, Palestine and the Legal Battle for Human Rights** (Metropolitan books, 2018), chapter 7, p. 379.

Bank, enforcing them against Palestinians only.¹¹⁶ In addition, the offense of “incitement” under the Security Provisions has been interpreted broadly to outlaw non-violent, distinctly political associations.¹¹⁷ While some of the Israeli actions were designed to protect Israelis from violent, sometimes murderous, attacks, a significant portion of them were designed to suppress non-violent opposition, effectively constituting the inhuman act of **“Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”**

- 7) **Forcible transfer of the population** - In recent decades, Israel has engaged in efforts to forcibly transfer Palestinians from the West Bank to the Gaza Strip.¹¹⁸ This is achieved by way of suspending of the population registry in the beginning of the second intifada (“resistance”) and treating residents of the West Bank without updated addresses as “illegal aliens.” Israel also practices a policy of forcible displacing entire indigenous communities within the West Bank by refusing to recognize the legality of their settlements, such the Jahalin community in the Adumim area,¹¹⁹ in Firing Zone 918 and in communities in the Jordan Valley and South Hebron Hills.¹²⁰

The forcible transfer and threats of mass forcible transfer from the West Bank to the Gaza Strip, as well as forcible transfer and threats of forcible transfer of communities from their lands within the West Bank throughout the years, are part of the demographic engineering of the West Bank and constitute the inhuman act of **forcible transfer** under Article 7(1)(d) of the Rome Statute. They also amount to denial of fundamental rights under the Apartheid convention.

84. The meaning of the aforesaid is that many policies employed by Israel in the West Bank amount to “inhuman acts” pursuant to the meaning of this term in international criminal law.

116 Order Regarding the Prohibition of Acts of Incitement and Hostile Propaganda (No. 101) 5727-1967. In practice, protests are routinely prevented or dispersed by declaring a closed military zone, which includes a prohibition on presence within the declared zone. This power is enshrined in Section 318 of Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651) - 2009.

117 According to its definition in Section 251(b)(1) of the Order regarding Security Provisions, even an attempt to “influence public opinion in the Area in a manner that may harm public order and safety” amounts to incitement.

118 Gisha, [One-Way Ticket](#), December 25, 2022.

119 Israel’s proposed demolition of Palestine village Khan al-Ahmar could result in war crime, warns UN rights expert, **OCHA** July 24, 2018.

120 B’Tselem website, **Palestinian Communities Facing Expulsion**.

85. **It follows that all the elements of the crime of apartheid as defined in international criminal law are present in the West Bank.**

H. Annexation

86. For the reasons detailed in previous sections (see section 5 above), our conclusion is that in addition to East Jerusalem, the West Bank is also undergoing a process of legal annexation on top of de facto annexation. Once the structural changes announced by the Israeli government are completed, and the agreement between Minister of Defense and the Minister within the Ministry of Defense is fully implemented along with the plans for establishment of the settlement administration - legal annexation will have been completed.

I. Conclusion

87. Throughout the 56 years of occupation, Israel has pursued a policy aimed at demographically altering the West Bank and East Jerusalem and physically and legally separating between the protected Palestinian civilians and Jewish-Israeli settlers, all of this while belligerently and unilaterally asserting Israeli sovereignty over the territory. The cumulative effect of these policies is **the perpetuation of Israeli control and the subversion of its temporary nature.**
88. **At the same time and in addition to** the occupation, Israeli control over the OPT meets additional legal definitions.
89. The fact that successive Israeli governments and authorities have abused the powers granted to them by the law of occupation to violate the rights of the protected persons and exploit the occupied territory while attaching it to sovereign Israel with the tentacles of annexation renders the Israeli occupation of the West Bank **an illegal occupation.** As a result the occupier must immediately end its control over the area, and the international community must take steps to ensure its immediately termination.
90. The nature of the regime in the West Bank, as described above - an “institutionalized regime of systematic oppression and domination by one racial group over any other racial group” - and many actions taken by the Israeli authorities, which constitute inhumane acts according to the meaning of the term in international criminal law, that are taken with the aim of maintaining the aforementioned regime, lead to the conclusion that the crime of apartheid is being committed in the West Bank.

91. Finally, the total of Israeli actions and official statements over the years shows that it is not just East Jerusalem that has been annexed, but the West Bank is also in the process of accelerated legal annexation.