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Agenda item 7

### Human rights situation in Palestine and other occupied Arab territories

## Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967\*

### Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on access to natural resources and environmental degradation.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## I. Introduction

1. The present report is submitted by the current Special Rapporteur to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1.
2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur re-emphasizes that an open dialogue with all parties is an essential element of his work in support of the protection and promotion of human rights. He further notes that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. While he does wish to recognize the exemplary work of experienced and competent civil society organizations, which provides an excellent basis for his work, he laments the lack of opportunity to meet with many of these groups due both to his exclusion from the territory and to the barriers many individuals face should they seek exit permits from the Israeli authorities, particularly from Gaza.
3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his annual mission to the region from 25-29 June 2018, when he travelled to Amman, Jordan.
4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel, in accordance with his mandate.<sup>1</sup> The mandate of the Special Rapporteur focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State or non-State actor are deplorable and only hinder the prospects for peace.
5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur further acknowledges the essential work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.
6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing. In the second part of the report, the Special Rapporteur examines access to natural resources and environmental degradation in the OPT.

## II. Current human rights situation

7. Palestinians living under Occupation are increasingly without hope, as the Occupation continues into its second half-century and the human rights situation deteriorates day-by-day. Although not possible to provide a comprehensive review of all human rights concerns in the period since the Rapporteur's last report to the Human Rights Council,<sup>2</sup> the Rapporteur would like to highlight several situations which merit particular attention at this time. In particular, this includes the demonstrations in Gaza and the ongoing humanitarian and human rights crisis for Gaza's residents; the continued advancement of settlements in the West Bank, including East Jerusalem, along with decisions which appear to pave the way for mass evictions of Palestinians in East Jerusalem; and finally the situation of Human Rights Defenders, an issue on which the Rapporteur previously focused in his first report to the Human Rights Council (A/HRC/34/70).

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<sup>1</sup> As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

<sup>2</sup> A/HRC/37/75

## A. Gaza

8. The humanitarian and human rights crisis in Gaza, as well as the security of its population, deteriorated significantly in 2018, reflected in the high loss of life and injury suffered by Palestinians. The majority of the casualties occurred in the context of large-scale demonstrations along Israel's perimeter fence with Gaza, known as the "Great March of Return." The demonstrations, which began on 30 March 2018,<sup>3</sup> called for the right of return for Palestinian refugees and an end to the blockade of Gaza. Although largely peaceful, some demonstrators reportedly burned tires, threw stones and Molotov cocktails, and flew kites bearing incendiary devices over the fence into Israel. While acts of violence must be condemned, grave concerns arise with regard to the excessive use of force by Israel against the demonstrators.<sup>4</sup> Between 30 March 2018 and 31 December 2018, 180 Palestinians were killed by Israeli Security Forces in the context of demonstrations, including over 30 children,<sup>5</sup> while a further 24,000 were injured. Of those injured, it is estimated that 1,200 would require long-term limb reconstruction and extensive rehabilitation.<sup>6</sup> In the same period, 1 Israeli was killed and 3 injured. In total, 260 Palestinians in Gaza were killed by Israeli forces in 2018,<sup>7</sup> the highest death toll since the Gaza conflict in 2014.

### *Access to Healthcare*

9. In response to the demonstrations, Israel tightened the blockade on Gaza. These additional punitive measures have had a detrimental impact on an already untenable situation for Palestinian livelihoods and well-being. Permits for travel outside of Gaza have been severely restricted, as has the import and export of goods, including the passage of essential fuel supplies into Gaza. Medical patients have been particularly affected, either due to the denial of exit permits or on account of the deteriorating conditions in hospitals within Gaza and the lack of needed supplies and electricity. As of October 2018, almost half of essential medicines were completely depleted in Gaza.<sup>8</sup> Israel continued its practice of preventing patients from leaving Gaza for medical treatment – including for life-saving care – where there was a family connection with Hamas.<sup>9</sup> Such a sweeping travel ban, which aims to assert political pressure on Hamas, represents a form of collective punishment prohibited under Article 33 of the Fourth Geneva Convention. In a positive development, the Israeli High Court struck down the practice in its ruling of August 2018.<sup>10</sup>

### *Realization of Economic and Social Rights*

10. As the blockade on Gaza enters its twelfth year, the economy has all but collapsed,<sup>11</sup> compounding the daily suffering of the population. The enjoyment of the most basic socio-economic rights – employment, healthcare, housing, food, water and sanitation – are a

<sup>3</sup> The demonstrations were still ongoing at the time of reporting.

<sup>4</sup> According to the Basic Principles on the Use of Force, law enforcement officials must see an imminent threat to life or of serious injury for the use of lethal force to be permissible. See A/HRC/73/447 para. 12, with references.

<sup>5</sup> <https://www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-march-31-0>

<sup>6</sup> According to the World Health Organization (WHO) pp.2-3 [http://www.emro.who.int/images/stories/palestine/documents/WHO\\_Health\\_Cluster\\_SitRep\\_23\\_Sep\\_-6\\_Oct\\_2018.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/WHO_Health_Cluster_SitRep_23_Sep_-6_Oct_2018.pdf?ua=1)

<sup>7</sup> For the period 1 January to 31 December 2018 <https://www.ochaopt.org/data/casualties?tab=palestinianfatalities&tab=palestinianfatalities>

<sup>8</sup> 44%, according to Gaza's Central Drug Store and reported by Human Rights Watch <https://www.hrw.org/world-report/2019/country-chapters/israel/palestine>

<sup>9</sup> <https://www.timesofisrael.com/government-to-ban-all-humanitarian-visits-to-israel-by-hamas-members/>. The restriction of access for treatment has also been used in instances where the patient has a family member living in the West Bank without a permit <https://www.haaretz.com/israel-news/.premium-gazan-patients-face-new-limitation-on-travel-for-medical-treatment-1.6573119>

<sup>10</sup> <https://www.i24news.tv/en/news/international/middle-east/182789-180827-israel-s-high-court-allows-vital-medical-treatment-to-hamas-relatives>

<sup>11</sup> <https://www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk>

luxury in scarce supply, if at all. The statistics reveal the dire reality of life in Gaza; 95% of the population do not have access to clean water,<sup>12</sup> while the sewage crisis has prompted an imminent threat of an endemic disease outbreak.<sup>13</sup> The unemployment rate across the Occupied Palestinian Territory is the world's highest, according to the International Labour Organization.<sup>14</sup> In Gaza specifically, over half of the workforce is unemployed, with 78% of women without work.<sup>15</sup> The situation for youth in Gaza – who make up almost 30% of the population<sup>16</sup> – is particularly dire; 70% are unemployed according to the World Bank.<sup>17</sup> The bleak economic prospects, coupled with the constant climate of fear and insecurity caused by the hostilities, has had a severe impact on the mental health of the population. According to the Humanitarian Country Team, 210,000 residents of Gaza already suffer from severe or moderate mental health disorders, while in the wake of the violence surrounding the Great March of Return, a further 52,098 people, including 26,049 children, are in need of mental health and psychosocial support (MHPSS) responses.<sup>18</sup>

11. Poverty in Gaza is pervasive; 53% of the population survive on less than 4.6 USD/day, with two thirds subsisting on less than 3.6 USD/day.<sup>19</sup> Access to food is one of the most fundamental challenges facing the population in Gaza, where 68% of households are severely or moderately food insecure.<sup>20</sup> Although residents of Gaza have rich farmland and 40 km of coastline, the Israeli blockade has severely restricted the ability to properly exploit domestic food sources available through agriculture and fishing. The strict limitations on fishable waters – which have been reduced at certain points to as little as three nautical miles<sup>21</sup> – have severely hampered the livelihood of Gaza's fishermen, 95% of whom already live below the poverty line.<sup>22</sup> Fishermen are routinely pursued by Israeli Security Forces where they have allegedly transgressed the permitted fishing zone, resulting in arrests, confiscation of vessels, and in extreme cases the use of lethal force by Israeli Security Forces. In the last two years, Israeli Security Forces have killed two fishermen, and injured dozens with rubber-coated metal bullets.<sup>23</sup> Though the maritime restrictions have been recently extended to twelve nautical miles,<sup>24</sup> they remain subject to frequent change causing uncertainty amongst fishermen, and in any case still fall far short of the 20 nautical miles established under the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.<sup>25</sup>

12. The agricultural potential of the Gaza strip has been equally undermined by the blockade, where some 35% of farmland falls within an Israeli-enforced “buffer zone”.<sup>26</sup>

<sup>12</sup> <https://www.unrwa.org/where-we-work/gaza-strip>

<sup>13</sup> <https://www.ochaopt.org/content/study-warns-water-sanitation-crisis-gaza-may-cause-disease-outbreak-and-possible-epidemic>.

<sup>14</sup> [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_630876/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_630876/lang--en/index.htm).

<sup>15</sup> Report of the World Bank, p. 9 (27 September 2018)

<http://documents.worldbank.org/curated/en/413851537281565349/pdf/129986-REVISED-World-Bank-Sept-2018-AHLC-Report-final.pdf>.

<sup>16</sup> Data by the Palestinian Central Bureau of Statistics, 2017. Youth covers individuals between the ages of 15 to 29 years <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3215>.

<sup>17</sup> <http://www.worldbank.org/en/country/westbankandgaza/overview>

<sup>18</sup> Humanitarian Country Team in the occupied Palestinian territory, “2019 Humanitarian needs Overview” p. 17

[https://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian\\_needs\\_overview\\_2019-%281%29.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_needs_overview_2019-%281%29.pdf).

<sup>19</sup> Ibid, p. 7.

<sup>20</sup> Ibid, p. 24.

<sup>21</sup> Ibid, p. 24.

<sup>22</sup> [https://www.btselem.org/gaza\\_strip/20190211\\_gaza\\_fishermen\\_plight\\_due\\_to\\_israeli\\_restrictions](https://www.btselem.org/gaza_strip/20190211_gaza_fishermen_plight_due_to_israeli_restrictions).

<sup>23</sup> Ibid.

<sup>24</sup> As of January 2019 <https://www.timesofisrael.com/israel-to-reopen-gaza-crossing-extend-fishing-zone-if-quiet-remains/>.

<sup>25</sup> Article XIV of The Israeli-Palestinian interim Agreement Article XIV – Annex I, 28 September 1995 <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20i.aspx>.

<sup>26</sup> Palestinian Centre for Human Rights, “Gaza Strip: Attacks in the border areas and their consequences” <https://reliefweb.int/sites/reliefweb.int/files/resources/ReliefWeb%20Mail%20>

Farmers wishing to use this arable land do so in constant threat of being targeted by Israeli Security Forces, including with live fire. Meanwhile Israel has damaged Palestinian farmland in Gaza by aerielly spraying the land with herbicides. In one such aerial spraying operation by Israel in January 2018, 550 acres of agricultural lands belonging to 212 farmers were affected, with an estimated loss of 1.3 million USD.<sup>27</sup>

13. While Israel's blockade on air, sea and land is a predominant cause of the economic crisis within Gaza, the situation has been exacerbated by other internal and external factors. A significant reduction in international aid – in particular the loss of critical US funding to UNRWA – has had crippling effects.<sup>28</sup> In addition, as the Palestinian Authority continues to withhold salaries of civil servants in Gaza, as part of an ongoing political divide, the livelihoods of thousands of employees hang in the balance.<sup>29</sup> In such a political climate, the economic crisis is set to continue its rapid decline, at the expense of the most fundamental human rights and basic human dignity of the population of Gaza.

## B. The West Bank, including East Jerusalem

### *Settler Violence*

14. Tensions between Israeli settlers and Palestinians in the West Bank have reached a boiling point. Israeli settler violence increased significantly throughout 2018, resulting in the killing of three Palestinians, the injury of 83 others – including 20 children – and numerous cases of vandalism, stone-throwing and intimidation.<sup>30</sup> Over 200 instances of violence by Israeli settlers were recorded in 2018, representing the highest monthly average of incidents since 2014.<sup>31</sup> Meanwhile, 144 attacks by Palestinians against Israeli settlers and other Israeli civilians in the West Bank were reported in 2018, including seven fatalities.<sup>32</sup> As of early 2019, the tension has shown no signs of abating, particularly in the governorates of Nablus, Hebron and Ramallah.

15. Specific concerns arise in the context of Hebron, since the removal of the Temporary International Presence in Hebron (TIPH) – an international observatory task force assigned to monitor the situation in the divided city.<sup>33</sup> The Palestinian population in the H2 sector of the city – an area under the security control of Israel<sup>34</sup> – has been subject to attacks of increasing frequency and severity. Reports of aggression by settlers have been particularly prominent on Al Shuhada Street and in the Tel Rumeidah neighbourhood,<sup>35</sup> where Palestinian residents live in constant fear of attack on their person and property. The few international protective actors who have remained in Hebron have also been subject to harassment, intimidation and threats from settlers. Such incidents have prompted several organisations to pull out of the city due to safety concerns for their staff.<sup>36</sup>

<sup>27</sup> [https://www.ochaopt.org/sites/default/files/h2\\_fs\\_2018\\_v5\\_english11.pdf](https://www.ochaopt.org/sites/default/files/h2_fs_2018_v5_english11.pdf)

<sup>28</sup> OCHA, “The humanitarian impact of restrictions on access to land near the perimeter fence in the Gaza Strip”, 3 August 2018 <https://www.ochaopt.org/content/humanitarian-impact-restrictions-access-land-near-perimeter-fence-gaza-strip>.

<sup>29</sup> <https://www.independent.co.uk/news/world/middle-east/palestine-us-cuts-un-refugee-agency-united-nations-speak-out-a8521396.html>.

<sup>30</sup> Haaretz, “Abbas Suspends Salaries, Allowances to Over 5,000 Gazans”, 15 February 2019 <https://www.ochaopt.org/content/high-level-violence-israeli-settlers-rise-israeli-fatalities>

<sup>31</sup> Ibid. OCHA has recorded 217 incidents attributed to Israeli settlers, including assault and damage to Palestinian property.

<sup>32</sup> Ibid, for the period January–November 2018.

<sup>33</sup> <https://www.haaretz.com/israel-news/.premium-israel-to-expel-international-monitoring-force-in-hebron-after-20-year-presence-1.6883412>

<sup>34</sup> [https://www.ochaopt.org/sites/default/files/h2\\_fs\\_2018\\_v5\\_english11.pdf](https://www.ochaopt.org/sites/default/files/h2_fs_2018_v5_english11.pdf)

<sup>35</sup> <http://www.maannews.com/Content.aspx?id=782539>

<sup>36</sup> <https://www.oikoumene.org/en/press-centre/news/wcc-pulls-accompaniers-from-hebron-due-to-security-concerns>

16. Settler violence continues to go largely unchecked by Israeli security forces;<sup>37</sup> widespread impunity emboldens settlers in their campaign of harassment against Palestinian residents. With the withdrawal of the TIPH, as well as the decreasing presence of international monitors, Palestinians in H2 are left in a grave and precarious situation with little recourse or protection from settler violence.

17. Settler violence is one factor that contributes to the existence of a coercive environment in many parts of the West Bank, including East Jerusalem. In such an environment, Palestinians may feel there is no choice but to leave their homes, which could amount to forcible transfer – a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute.<sup>38</sup>

#### ***Forced Evictions in East Jerusalem***

18. Across the occupied West Bank, home demolitions and forced evictions continue, resulting in the displacement of Palestinians and raising serious concerns of forcible transfer.<sup>39</sup> At the same time that Israel is supporting the expansion of settlements – including those built on private Palestinian land<sup>40</sup> – it continues to order the demolition of Palestinian homes, ostensibly for the lack of planning permission, though Palestinians are systematically denied building permits. These double standards are manifestly discriminatory, while the settlements themselves are illegal under international law.<sup>41</sup>

19. Occupied East Jerusalem is home to 3,500 Israelis living in settlements in the heart of Palestinian communities.<sup>42</sup> The East Jerusalem neighbourhood of Sheikh Jarrah has been particularly affected by settler activity due to its location near the Old City, as well as competing historical legal claims to land rights. In 1956, under an agreement between UNRWA and the Jordanian government – which at the time controlled the West Bank – 28 Palestinian refugee families were resettled in Sheikh Jarrah.<sup>43</sup> The families initially rented the homes, on the understanding that they would eventually receive legal property title.<sup>44</sup> After the 1967 Six-Day War and subsequent occupation by Israel of East Jerusalem, land administration matters came under the control of Israeli authorities. In this context, two Jewish Committees claimed ownership of the land in Sheikh Jarrah on the basis of a historical and religious affiliation. Legal disputes to the land have been ongoing for decades,<sup>45</sup> where today there are more than 200 Palestinians at risk of eviction in Sheikh Jarrah.<sup>46</sup>

20. The Sabbagh family is one such case of those facing imminent forced eviction and heightened risk of forcible transfer. The Sabbaghs are Palestinian refugees originally from Jaffa, who were settled in Sheikh Jarrah under the 1956 UNRWA/Jordanian agreement. Though their original home still stands in Jaffa, they are precluded from reclaiming it under Israeli law.<sup>47</sup> After a protracted legal battle against an Israeli settler organisation over the disputed land ownership – including a failed appeal to the Israeli Supreme Court<sup>48</sup> – the family were given an eviction notice by the Israeli Law Enforcement and Collection

<sup>37</sup> <https://www.timesofisrael.com/leftists-on-tour-of-hebron-confirmed-in-view-that-settlers-already-won/>

<sup>38</sup> A/71/554 para 34 with references.

<sup>39</sup> <https://www.ochaopt.org/theme/displacement>

<sup>40</sup> <https://www.haaretz.com/israel-news/.premium-israel-says-will-legalize-west-bank-homes-built-on-private-palestinian-land-1.6919910>

<sup>41</sup> Security Council Resolution 2334 (23 December 2016).

<sup>42</sup> <https://www.ochaopt.org/content/un-officials-and-ngo-partners-call-halt-plans-displace-palestine-refugees-sheikh-jarrah>

<sup>43</sup> [https://www.adalah.org/uploads/oldfiles/newsletter/eng/feb10/docs/Sheikh\\_Jarrah\\_Report-Final.pdf](https://www.adalah.org/uploads/oldfiles/newsletter/eng/feb10/docs/Sheikh_Jarrah_Report-Final.pdf)

<sup>44</sup> Ibid. In accordance with certain conditions including surrendering their refugee ration card and payment of nominal rent.

<sup>45</sup> Ibid.

<sup>46</sup> <https://www.ochaopt.org/content/un-officials-and-ngo-partners-call-halt-plans-displace-palestine-refugees-sheikh-jarrah>

<sup>47</sup> <http://peacenow.org.il/en/sabagh-family-sheikh-jarrah>

<sup>48</sup> <https://www.haaretz.com/middle-east-news/palestinians/.premium-israel-s-top-court-won-t-rehear-case-on-eviction-of-palestinians-in-east-jerusalem-1.6830318>

Authority on 3 January 2019.<sup>49</sup> Thirty-two members of the Sabbagh family, including six children, now face forced eviction from their home in East Jerusalem, while an additional 19 members will be directly affected by the loss of the family property in the event of the eviction.<sup>50</sup> There are serious concerns that the High Court's decision not to re-hear the case will pave the way for similar evictions across East Jerusalem.

21. This situation of forced eviction in Sheikh Jarrah is mirrored in other Palestinian neighbourhoods across East Jerusalem, including Beit Hanina, Beit Safafa, the Old City, Ras Al'Amud, and Silwan. OCHA estimates that 199 Palestinian households are subject to eviction cases, placing 877 people, almost half of whom are children, at risk of displacement.<sup>51</sup> The eviction cases, the majority of which have been brought by settler organisations, exist within the context of Israel's unilateral annexation of occupied East Jerusalem. UN Security Council resolutions affirm that all legislative and administrative measures taken by Israel to alter the character and status of Jerusalem are null and void.<sup>52</sup>

22. Forced evictions constitute gross violations of human rights law, including civil, cultural, economic, political and social rights.<sup>53</sup> In particular, forced evictions have devastating impacts on the enjoyment of the right to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment, and freedom of movement.<sup>54</sup> In addition, forcible transfer, which may result from forced eviction, is a grave breach of the Fourth Geneva Convention as well as a war crime.<sup>55</sup>

### C. Human Rights Defenders

23. Since the Special Rapporteur's report to the Human Rights Council at its 34<sup>th</sup> session, there has been a rise in intimidation and threats against civil society actors who advocate for the protection of international human rights and humanitarian law in the Occupied Palestinian Territory. Israeli authorities have continued to use a number of measures to obstruct human rights defenders' work and narrow the space for advocacy and litigation. Such measures included movement restrictions in the form of travel bans and visa denials, public stigmatization, arbitrary arrests and prosecutions, and reports of ill-treatment.

24. Of particular concern are the harmful practices employed by political leadership and States authorities in Israel to silence human rights defenders' criticism of certain government policies. This includes verbal attacks, disinformation campaigns and delegitimization efforts, as well as targeting of civil society funding sources. For example, the Money Trail Reports, published by the Israeli Ministry of Strategic Affairs in May 2018 and January 2019, accused the European Union of granting financial aid to organizations that allegedly promote boycotts against Israel. Those accused included respected European and Palestinian organisations such as Al-Haq, the Palestinian Centre for Human Rights and Al-Mezan. Israel. The report also alleges that several of the NGOs have ties to terrorism. The report provides a list of statements or actions allegedly supporting boycotts of Israel purportedly made by each organization, and follows this with a screenshot showing funding provided to that organization by the EU. The European Union strongly rejected the allegations as unsubstantiated.

25. Further legitimization of the harm inflicted on human rights defenders is reflected in recent legal developments. In the words of the Human Rights Defenders Fund in Israel, "the damage to human rights organizations in Israel is being formally imposed and

<sup>49</sup> <https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> *Inter alia* Security Council Resolution 252 (21 May 1968); Resolution 267 (3 July 1969); Resolution 471 (5 June 1980); Resolution 476 (30 June 1980); and Resolution 478 (20 August 1980).

<sup>53</sup> <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>

<sup>54</sup> <https://www.ohchr.org/en/issues/housing/pages/forcedevictions.aspx>

<sup>55</sup> Fourth Geneva Convention, Art. 147; Rome Statute of the ICC, Art. 8.

institutionalized by parliamentary activity.”<sup>56</sup> The organization provides legal counselling and representation to human rights defenders, in an attempt to mitigate the curtailment of the rights to freedom of association, expression and assembly. It cites as examples the Anti-Boycott Law passed in 2011 (which allows the State to withdraw benefits to organisations calling for boycott, and does not distinguish between boycotts of goods produced in illegal Israeli settlements in the Occupied Palestinian Territory); the NGO Transparency Law passed in 2016 (which requires Israeli organizations that receive more than half of foreign public funding to disclose this in all publications, a rule which predominately affects human rights organizations and has the effect of singling them out, while organizations receiving private funding are not affected); and the amendments to the Entry into Israel Law in 2017 (which restricts the entry into Israel for individuals calling for boycotting Israel and its settlements). These initiatives have seriously curtailed the ability of human rights defenders to carry out their legitimate work, provide protection, and call for an end to violations of human rights in the Occupied Palestinian Territory.

### III. The Right to Water, Natural Resources and the Environment

26. A cluster of Palestinian villages in the South Hebron Hills have had their newly-laid water pipes, which had finally brought them clean running water, destroyed by the Israeli Civil Administration, forcing them to buy expensive trucked-in water for their homes and animals.<sup>57</sup> In Gaza, the collapse of the coastal aquifer, the only natural source of drinking water in the Strip and now almost entirely unfit for human consumption, is contributing to a significant health crisis among the two million Palestinians living there.<sup>58</sup> Throughout the West Bank, Israeli quarry companies extract approximately 17 million tons of stone annually, almost all of which is destined for the Israeli local market, notwithstanding strict prohibitions in international law against a military power economically exploiting an occupied territory.<sup>59</sup> The Dead Sea and its plentiful natural resources, part of which lies within the Occupied Palestinian Territory, is off-limits to any Palestinian development while Israeli companies are permitted to harvest the minerals in an apparent act of pillage.<sup>60</sup> Groves of West Bank olive trees – which are both an economic wellspring for thousands of Palestinian farmers and a symbol of Palestinian identity – are routinely destroyed by Israeli settlers with virtual impunity.<sup>61</sup> The transfer of Israeli industrial waste to treatment plants in the West Bank – through the creation of so-called ‘sacrifice zones’ that are less rigorously regulated – contributes to the environmental scarring of the occupied territory, without the involvement or consent of the Palestinians.<sup>62</sup>

27. For the almost five million Palestinians living under occupation, the degradation and alienation of their water supply, the exploitation of their natural resources and the defacing of their environment is symptomatic of the lack of any meaningful control they have over their daily lives as Israel, the occupying power, exercises its military administrative powers in a sovereign-like fashion, with vastly discriminatory consequences. All peoples, including peoples under occupation, enjoy the sovereign right to control their natural wealth,<sup>63</sup> and international law strictly regulates what an occupying power may do with the resources of an occupied territory. Yet the Israeli occupation – with its appetite for territory and settlement-implantation, and its sequestration of natural resources – has become virtually indistinguishable from annexation.<sup>64</sup>

<sup>56</sup> <http://hrdf.org.il/legislative-initiatives/>, 26 February 2019.

<sup>57</sup> <https://www.haaretz.com/israel-news/.premium-why-doesn-t-israel-want-palestinians-to-have-running-water-1.6959524>

<sup>58</sup> S. Efron et al, *The Public Health Impacts of Gaza’s Water Crisis* (Rand Foundation, 2018).

<sup>59</sup> Yesh Din, *The Great Drain: Israeli Quarries in the West Bank* (2017).

<sup>60</sup> Al-Haq, *Pillage of the Dead Sea* (Ramallah, 2012).

<sup>61</sup> <https://www.timesofisrael.com/olive-tree-sabotage-plagues-palestinian-farmers/>

<sup>62</sup> B’Tselem, *Made in Israel: Exploiting Palestinian Land for Treatment of Israeli Waste* (2017).

<sup>63</sup> UNGA Res. 73/255 (20 December 2018): “Reaffirming the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources”.

<sup>64</sup> A/73/45717.

28. Accordingly, this section of the Special Rapporteur's report focuses on whether Israel has respected its solemn duty under international law to protect the right of the Palestinian people to their water, their natural resources and their environment in the context of its five-decade-long occupation.

## A. Sovereignty, Occupation, and the Right to Natural Wealth under International Law

### *International Humanitarian Law*

29. The relevant body of international humanitarian law, including the law of occupation, applies *in toto* to the Palestinian territory: the West Bank, including East Jerusalem, and Gaza.<sup>65</sup> As the occupying power, Israel is restricted by law to acting only as the temporary administrator of the Palestinian territory until it returns the territory in full, in as short and as reasonable a time as possible, back to the inherent sovereign and protected population: the Palestinian people.<sup>66</sup> As such, the occupying power acquires no sovereignty right over any of the territory, and it is prohibited from taking *any* steps towards annexation.<sup>67</sup> It must govern the occupied territory in good faith, and it must act as trustee in the best interests of the protected people throughout the occupation, subject only to its own legitimate security and administrative requirements.<sup>68</sup> In previous reports, the Special Rapporteur has determined that Israel is in breach of these foundational principles of international humanitarian law, and it is now presumed to be the unlawful occupant of the Palestinian Territory.<sup>69</sup>

30. While acting as the temporary occupant, among Israel's most important legal duties is to respect and preserve the fundamental rights of the protected population under international law.<sup>70</sup> Regarding the natural wealth of the occupied territory – which includes its water, its soil and lands, its environment and both its finite and renewable natural resources – the occupying power assumes a number of specific legal responsibilities. Three can be mentioned here.

31. First, the occupying power is entitled only to a limited use of the public natural resources of the occupied territory. Article 55 of the 1907 *Hague Regulations* stipulates that the occupying power is acting “only as administrator and usufructuary” of the public immovable property of the occupied territory.<sup>71</sup> Flowing from this, it must safeguard the capital of these resources according to the principle of conservation.<sup>72</sup> Accordingly, the occupying power has no legal authority to exploit any of the resources and property of the territory for the benefit of its own economy.<sup>73</sup> The purpose of this rule is to remove any incentive for the occupying power to act in a predatory or avaricious manner towards the occupied territory and its wealth, thereby discouraging war and prolonged alien rule.

32. Otherwise, the occupying power may only use the natural wealth of the territory to furnish its armed forces during the occupation, as strictly required by security, military and

<sup>65</sup> UNSC Res. 2334 (23 December 2016): “Reaffirming the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949...”

<sup>66</sup> A. Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge University Press, 2017).

<sup>67</sup> O. Ben-Naftali et al, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge University Press, 2018).

<sup>68</sup> A/72/556.

<sup>69</sup> *Ibid.*, and *supra*, footnote (64).

<sup>70</sup> P. Spoerri, “The Law of Occupation” in A. Clapham & P. Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, (Oxford University Press, 2014), chap. 8.

<sup>71</sup> <https://ihl-databases.icrc.org/ihl/WebART/195-200065>

<sup>72</sup> M. Bothe, “The Administration of Occupied Territory”, in A. Clapham et al (eds.), *The 1949 Geneva Conventions: A Commentary* (Oxford University Press, 2015), chap 69.

<sup>73</sup> I. Scobbie, “Natural Resources and Belligerent Occupation”, in S. Akram et al (eds.) *International Law and the Israeli-Palestinian Conflict* (London: Routledge, 2011), chap. 8.

administrative necessity and without exceeding normal use.<sup>74</sup> It is required to take steps to restore the economy by enabling the extraction of the territory's natural wealth for the benefit of the protected people, as long as these assets are not wasted, neglected or abused, and they are not usurped for the benefit of the occupier's economy.<sup>75</sup> Any use of this wealth beyond these allowances would likely amount to looting and pillage, which are forbidden acts under the laws of occupation.<sup>76</sup> Furthermore, the occupying power is prohibited from destroying or appropriating moveable private property, except for requisitions in kind for the occupying army, and in proportion to the resources of the territory.<sup>77</sup>

33. Second, the occupying power is absolutely forbidden under the 1949 *Fourth Geneva Convention* to transfer any of its civilian population into the occupied territory, and according to the *Rome Statute*, such transfer is considered a war crime.<sup>78</sup> This rule is meant to eliminate the temptation of annexation and colonialism. One of the inevitable consequences of transferring the civilian population is the occupying power's requisition of the territory's natural wealth to sustain this colonializing population; in such circumstances, this wealth is invariably appropriated in a deeply discriminatory fashion to the detriment of the protected population.<sup>79</sup>

34. Third, the occupying power's duty to act as trustee towards the protected population would include the obligation of good governance.<sup>80</sup> Among other things, this obligation would require the occupying power to safeguard, to the extent possible, the ability of the protected population to enjoy at least an adequate standard of living, including all of the necessities for personal and economic life, environmental conservation and the sustainable use of natural resources.<sup>81</sup> These principles of trusteeship and good governance would incorporate the duty to preserve and protect the territory's natural wealth in preparation for the expeditious end of the occupation and the full restoration of sovereignty.<sup>82</sup> The trustee and good governance principle would also include the strict prohibition against discrimination.<sup>83</sup>

#### ***International Human Rights Law***

35. International human rights law applies at all times to all peoples during all occasions, including during armed conflict and military occupation.<sup>84</sup> Notwithstanding their distinct purposes, international human rights law is to be read as being complementary to international humanitarian law in situations of occupation, thereby satisfying the purpose of both of these bodies of law to provide a broad protection of rights to everyone, including to protected peoples under occupation.<sup>85</sup>

36. As such, the full panoply of social, economic, cultural, political and civil rights enshrined in international human rights law is available to peoples living under occupation to protect their sovereignty over their natural wealth. Most importantly, the right to self-determination is expressly affirmed in the opening paragraph of common Article 1(1) in the

<sup>74</sup> 1907 Hague Regulations, Article 52.

<sup>75</sup> B. Saul, "The status of Western Sahara as occupied territory under international humanitarian law and the exploitation of natural resources" (2015), 27:3 *Global Change, Peace & Security* 301.

<sup>76</sup> *DRC v. Uganda* (ICJ, 19 December 2005), paras. 222-250.

<sup>77</sup> *Supra*, note (74).

<sup>78</sup> *Fourth Geneva Convention*, Article 49(6); *Rome Statute*, Article 8(2)(b)(viii).

<sup>79</sup> A/HRC/22/63.

<sup>80</sup> UNSC Res. 1483 (22 May 2003) directed the military coalition occupying Iraq to "...promote the welfare of the Iraqi people through the effective administration of the territory."

<sup>81</sup> Bothe, *supra*, note (72).

<sup>82</sup> UNSC Res. 1483, *supra*, note (24), recognized, with respect to the occupation of Iraq, "...the right of the Iraqi people freely to...control their own natural resources, welcoming the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and expressing resolve that the day when Iraqis govern themselves must come quickly."

<sup>83</sup> *Fourth Geneva Convention*, Article 27.

<sup>84</sup> *Wall Advisory Opinion* (ICJ, 9 July 2004), para. 112.

<sup>85</sup> E/C.12/1/Add.90 (26 June 2003), at para. 31.

two International Covenants on human rights.<sup>86</sup> The right of the Palestinian people to self-determination has been widely and repeatedly recognized by the international community.<sup>87</sup> A fundamental right guaranteed to all peoples in the exercise of their right of self-determination is the ability to:

*“...for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”*<sup>88</sup>

37. The unwarranted exploitation of the natural resources of a country or territory by an alien authority, including an occupying power, would be a breach of the fundamental human right of the people under alien rule to be able to develop, manage, conserve and dispose of their own resources as per their right to self-determination.

38. As well, the international guarantee of human rights is to be enjoyed by people without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>89</sup> This right would include the right to enjoy the natural wealth and resources of the occupied territory without discrimination, including during occupation.

39. The *International Covenant on Economic, Social and Cultural Rights* recognizes the right of everyone to an adequate standard of living and to the continuous improvement of living conditions. In the case of an occupation, the duty bearer – the occupying power – is required to take the appropriate steps to ensure the realization of this right,<sup>90</sup> including the facilitation of the necessary access by the protected people to their natural wealth and resources of the territory to enable an adequate standard of living and the continuous improvement of living conditions to be achieved.

40. An emerging human right is the right to development, first proclaimed by the United Nations General Assembly in 1986.<sup>91</sup> The Declaration on the Right to Development contains a number of recognized human rights which are binding in international law, and which are applicable to the access to, and the protection of, the natural wealth in the Occupied Palestinian Territory, including:

- Full sovereignty over one’s natural resources (art. 1);
- The elimination of foreign domination and occupation (art. 5);
- The prohibition against discrimination and the flagrant abuse of human rights (art. 6); and
- The full enjoyment of all human rights and fundamental freedoms, including socio-economic rights (arts. 6 and 8).

## **B. The Right to Water in the Occupied Palestinian Territory**

41. Water is an indispensable pre-condition for life, a vital public good, an economic cornerstone, a finite resource and a necessary crucible for ensuring human dignity. It distinguishes Earth from the barren planets around us. The United Nations has recognized access to water as both a fundamental human right in itself as well as an integral component for the realization of all other human rights, including the right to a healthy environment

<sup>86</sup> International Covenant on Economic, Social and Cultural Rights, Article 1(1); International Covenant on Political and Civil Rights, Article 1(1). Also see: Portugal v. Australia (ICJ, 30 June 1995), para. 29; and Wall Advisory Opinion, supra, note (28), para. 88.

<sup>87</sup> UNGA Res. 73/158 (17 December 2018).

<sup>88</sup> Supra, note (86), common Article 1(2).

<sup>89</sup> International Covenant on Economic, Social and Cultural Rights, Article 2(2).

<sup>90</sup> Ibid, Article 11.

<sup>91</sup> UNGA res. 41/128. The Special Rapporteur devoted his first report, in October 2016, to the application of the right to development to occupied Palestine: A/71/554.

and the right to development.<sup>92</sup> As Sir Richard Jolly, formerly of the United Nations Development Program, has written:

*To emphasize the human right of access to drinking water does more than emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligations as state parties to ensure access, and it identifies the obligations of state parties to provide support internationally and as well as nationally.*<sup>93</sup>

42. The right to water requires that water supplies should be sufficient, safe, acceptable for consumption, physically accessible and affordable.<sup>94</sup> It also commands that access to safe and clean drinking water and sanitation must be equitable and non-discriminatory, both within societies and among states.<sup>95</sup> Furthermore, states are required to refrain from interfering with the enjoyment of the right to water, including by refraining from any practice that would limit access to, or destroying, water services and infrastructure as a punitive measure or for the purpose of driving out the protected population.<sup>96</sup> Under the laws of occupation, groundwater is considered immovable public property, and its appropriation by the occupying power is restricted to normal use for military and administrative necessity.<sup>97</sup>

43. Water, and its effective control and management, is an essential component for the exercise of sovereignty in the modern world. Yet, as Israel's 51-year-old occupation has become more entrenched, the deeply inequitable distribution of water imposed by Israel illustrates the utter lack of any substantive control Palestinians over their daily lives. With the collapse of the natural sources of drinking water in Gaza and the inability of Palestinians to access most of their water sources in the West Bank, water has become a potent symbol of the systematic violations of human rights occurring in the Occupied Palestinian Territory. While Israelis, including those living in illegal settlements, enjoy unlimited running water year-round, several million Palestinians endure water shortages caused either by contamination or by lack of access.<sup>98</sup> The irony is manifest: while Israel has created world-class hydro technology for the creation and export of desalination plants, advanced irrigation systems and the recovery and productive recycling of wastewater, the Palestinian territory it occupies is water insecure. Indeed, the World Bank stated in 2009 that the Palestinians in the occupied territory have the lowest access to fresh water resources in the region, notwithstanding the fact that the Palestinian territory has ample water resources.<sup>99</sup>

### C. Water in the context of the Israeli occupation

44. There are three primary sources of natural fresh water in the Occupied Palestinian Territory: (i) the Jordan River; (ii) the Coastal Aquifer; and (iii) the Mountain Aquifer, which is divided into three basins: (a) the Western Aquifer Basin; (b) the North-Eastern Aquifer Basin and (c) the Eastern Aquifer Basin. Although the *Jordan River* forms the eastern boundary of the Occupied Palestinian Territory, Israel has prohibited the Palestinians from drawing any of its waters since the occupation began in 1967 by declaring its river banks a closed military zone and by destroying Palestinian pumps and irrigation ditches.<sup>100</sup> The *Coastal Aquifer* lies beneath Gaza and the coastal plain of Israel,

<sup>92</sup> United Nations General Assembly Res. 64/292: "...the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."

<sup>93</sup> Quoted in P.H. Gleick, "The Human Right to Water" (1998), 1 Water Policy 487, at 489.

<sup>94</sup> [http://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml](http://www.un.org/waterforlifedecade/human_right_to_water.shtml)

<sup>95</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, E/C.12/2002/11.

<sup>96</sup> *Ibid.*; and Additional Protocol 1 of the Geneva Convention (1977), Article 54(2).

<sup>97</sup> 1907 Hague Regulations, Article 55, Scobbie, *supra*, note (73).

<sup>98</sup> European Parliament Research Service, *Water in the Israeli-Palestinian Conflict* (January 2016).

<sup>99</sup> World Bank, *Assessment of Restrictions on Palestinian Water Sector Development* (April 2009). Indeed, Ramallah has a higher average annual rainfall than London, England.

<sup>100</sup> Al-Haq, *Water for One People Only* (Ramallah, 2013).

but its availability as a source of drinking water for Gazans has been severely compromised by over-pumping and by the infiltration of seawater and sewage.<sup>101</sup> The *Mountain Aquifer* is primarily located in the West Bank, but also crosses the 1949 Green Line; it is the largest water source in the region. Israel annually extracts far above its population share of the waters from this Aquifer.<sup>102</sup>

45. Following the start of Israel's belligerent occupation in 1967, it placed all Palestinian water usage and development under its military control. Military Order No. 92 (August 1967) transferred authority over all water resources in the occupied territory to the Israeli military, while Military Order No. 157 (November 1967) prohibited Palestinians from constructing new water installations or the maintenance of existing installations without a military permit. These orders remain in force today, and apply only to Palestinians, not to Israeli settlers, who are governed by Israeli law. In 1982, ownership of all West Bank water supply systems was assumed by Mekorot, the Israeli national water company, which is 50 percent owned by the Government of Israel.<sup>103</sup>

### ***The West Bank***

46. Although the Oslo accords which Israel and the Palestine Liberation Organization signed in the early and mid-1990s devolved some governance powers to the Palestinian Authority, Israel did not relinquish its primary domination over the waters of the West Bank. For the purposes of this report, Oslo signified three significant developments.

47. First, the accords created three separate areas of control in the West Bank, with Israel in overall security control over the entire territory, and the Palestinian authority exercising civil control over 40% of the territory of the West Bank, and within that, nominal security control over only 18%. In Area C, consisting of 60% of the West Bank, Israel has exclusive civil and security control. All of Israel's West Bank settlements are in Area C, which also contains the majority of the Occupied Palestinian Territory's agricultural lands, water sources and underground reservoirs, to which the Palestinian Authority does not have access.

48. Second, Article 40 of the 1995 Interim Oslo Accord provided that Israel would recognize "Palestinian water rights" in the West Bank, however these rights were not defined. The allocation of the waters from the Mountain Aquifer under the 1995 Accord was overwhelmingly in Israel's favour - Israel was to receive 80% of the waters and the Palestinians only 20%.<sup>104</sup> Under Oslo, the Palestinian Authority acquired some powers to manage water, but only within Areas A and B; most of the infrastructure for water acquisition and development happens to lie in the Israeli-controlled Area C.<sup>105</sup> While the Oslo accords were designed to last only until 1999, they remain in place to this day, and their inequitable water arrangements have actually widened. In 2014, it was estimated that the share of the Mountain Aquifer waters was 87% for Israel and 13% for the Palestinians.<sup>106</sup>

49. Third, the 1995 Oslo Accord established the Joint Water Committee, made up of an equal number of designated water officials from both Israel and the Palestinian Authority. The Committee is authorized to regulate water and sanitation in the West Bank, including granting permits, drilling wells and extracting water. However, as the World Bank has noted, the Committee created an effective Israeli veto over any management measures and infrastructure projects proposed by the Palestinian Authority. As well, the World Bank observed that: "Israeli territorial jurisdiction in Area C...consolidates this control, which makes integrated planning and management of water resources virtually impossible for the

<sup>101</sup> United Nations Country Team, Gaza: Ten Years Later (2017).

<sup>102</sup> Al-Haq, 2019 Water Report (forthcoming).

<sup>103</sup> Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (2010)

<sup>104</sup> B'Tselem, *Water Crisis* (2017).

<sup>105</sup> Amnesty International, *supra*, note (103), at 17: "[The PA] acquired only the responsibility for managing the supply of the insufficient quantity of water allocated for use by the Palestinian population and for maintaining and repairing a long-neglected water infrastructure that was already in dire need of major repairs."

<sup>106</sup> Al-Haq, *supra*, note (102).

PA.”<sup>107</sup> In 2012, the Committee stopped meeting, because the Palestinian members were no longer willing to accept the Israeli insistence of a *quid pro quo* arrangement which saw the approval of Israeli water projects to service the Israeli settlements in exchange for approving some Palestinian water projects.<sup>108</sup> The Committee resumed its work in 2017, with modified approval procedures: Palestinians can now lay water pipes and networks without Committee approval, but Israel can also develop its separate water system for the Israeli settlements without Committee approval.<sup>109</sup> What remains constant, according to water expert Jan Selby, are the “widening water inequalities [as] the West Bank has become progressively more dependent on Israel for its water supplies...Though Palestinians will now have autonomy to lay pipes, what they won’t have is any additional water to go in them – except with Israeli consent.”<sup>110</sup>

50. Among the many features of the inequitable arrangements for water use and management in the West Bank, two in particular can be identified for the purposes of this report.

51. First, there is a significant disparity between Israelis and West Bank Palestinians in their access to and consumption of water. A recent estimate found that residents of Israel and Israeli settlers consume approximately three times as much water per person per day (250 litres) as do West Bank Palestinians (84 litres).<sup>111</sup> According to B’Tselem, the Palestinians are currently extracting only about 75% of their share of water as specified in the Oslo accords (20% of the total aquifer), notwithstanding the fact that the Palestinian population in the West Bank has nearly doubled since 1995.<sup>112</sup> This is due to several, including the technical failure of new drilling, and administrative obstacles erected by Israel regarding permission for replacing older pipelines and drilling wells in Area C. As a result, the Palestinian Authority has to purchase significant quantities of water from Mekorot, much of which has been extracted from the Mountain Aquifer within the West Bank. When summer droughts occur, Palestinian communities which are connected to the Mekorot network often suffer lengthy water outages while neighbouring settlements are largely spared any significant water reduction.<sup>113</sup>

52. Second, the Israeli settlements have played a significant role in perpetuating the discriminatory extraction and use of water in the West Bank. All Israeli settlements are linked to the Mekorot national water system and receive developed-world levels of water for drinking, sanitation and commercial use. By way of contrast, approximately 180 Palestinian communities in Area C have no connection to a water network, leaving them to either rely on shallow wells or to purchase water from tankers at a considerable price.<sup>114</sup> The disparities are most acute in the Jordan Valley: figures from 2013 reveal that the 10,000 Israeli settlers in the Valley were provided with the lion’s share of the 32 million cubic metres of water drilled that year from the Mountain Aquifer by Mekorot for their domestic and agricultural use. In comparison, the entire 2.7 million Palestinians across the West Bank were allocated only 103 million cubic metres from the Western Aquifer.<sup>115</sup> As well, some Israeli settlements have taken control of Palestinian water springs in the West Bank with the assistance of the Israeli military. The Palestinians who have lost access to their springs often have no connection to water networks, and had relied upon the springs as their main or only source for drinking water and agricultural requirements.<sup>116</sup>

<sup>107</sup> Supra, note (99), p. vii.

<sup>108</sup> J. Selby, “Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee” (2013), 6:1 Water Alternatives 1.

<sup>109</sup> <https://al-shabaka.org/briefs/apolitical-approach-palestines-water-crisis/>

<sup>110</sup> <https://www.opendemocracy.net/en/north-africa-west-asia/what-hope-for-two-state-solution/>

<sup>111</sup> EPRS, supra, note (98). The World Health Organization recommends a minimum of 100 litres of water per person per day for household use.

<sup>112</sup> B’Tselem, supra, note (104)

<sup>113</sup> <https://www.haaretz.com/israel-news/.premium-palestinian-city-parched-after-israel-cuts-water-supply-1.5401178>

<sup>114</sup> B’Tselem, supra, note (104).

<sup>115</sup> <https://www.haaretz.com/israel-news/.premium-no-shortage-of-discrimination-when-it-comes-to-water-in-the-west-bank-1.5404471>

<sup>116</sup> UN OCHA, How Dispossession Happens (March 2012).

Demonstrations by Palestinian villagers against the seizures have led to violence and deaths.<sup>117</sup>

### *Gaza*

53. Gaza's water situation is a crisis verging on a humanitarian catastrophe. The United Nations estimated in 2017 that more than 96% of the Coastal Aquifer groundwater – Gaza's sole source of natural water – had become unfit for human consumption, and the Aquifer would be irreversibly damaged as a drinking source by 2020 without a radical intervention.<sup>118</sup> Gaza has been brought to the brink by multiple factors, including: its increasing population; the resulting over-extraction of the source aquifer; the substantial contamination of the Aquifer by sewage and seawater; a feeble and steeply shrinking economy coupled with extreme poverty; the repeated destruction afflicted on its water, sanitation and energy supply systems by Israel through its various military campaigns since 2006; Israel's suffocating blockade, including the restrictions it imposes on the import of dual-use items (including water pumps, spare parts, pipes and purification chemicals); and a serious intra-Palestinian political split; declining funding from international donors.<sup>119</sup> About 86% of Gaza's water supplies are pumped from the Aquifer. In 2000, the public water network provided over 98% of Gazans with safe drinking water; by 2014, that figure had plunged to 10.5%. Most Gazans – over 60% of whom are food insecure, and more than 55% of whom are unemployed – now rely on low and medium quality trucked water that is 10-30 times more expensive. While the average cost in the West is 0.7% of monthly wages, a third of the monthly wages of Gazans goes towards the purchase of water, for those who can afford it. Given the high levels of poverty, many residents of Gaza must rely on tainted water from the public taps that are operational only a few times a week.<sup>120</sup>

54. Gaza's water crisis is creating a serious public health danger for its inhabitants. The lack of a secure power supply – because of a war-damaged power-plant, a chronic lack of fuel to operate what remains of the plant, and insecure external sources – has meant that Gaza's waste treatment system functions poorly, when it functions at all. This results in the discharge of 110,000 cubic meters of partially or entirely untreated waste daily into the Mediterranean Sea. More raw sewage is collected in unstable lagoons and waste pools, which often leeches into the subsoil and the Aquifer. All of this has resulted in very high levels of nitrates, chemicals and chlorine in Gaza's waters, which contributes to the threat of waterborne diseases. According to a 2018 Rand Corporation report, more than a quarter of all reported diseases in Gaza are the result of poor water quality and remote water supply access. It also noted that water-related diseases are the primary cause of child morbidity.<sup>121</sup> A 2011 UNICEF study cited by Rand found that 12% of deaths among young children and infants in Gaza were caused by diarrhea, an entirely preventable illness.<sup>122</sup> At hospitals in Gaza, the lack of safe water has meant serious problems for the sterilization of equipment and the hands of health workers, elevating the risk of infections.<sup>123</sup> The Rand report raised the epidemiological fear that, with the growing water emergency and the recent loss of international funding for immunization programs, it will only be a matter of time before a serious epidemic occurs.

55. Solutions for Gaza's water crisis are both technological and political. A large desalination plant is planned for central Gaza, but still requires substantial international funding for construction and would only be able to meet a small portion of Gaza's water needs. Rehabilitating Gaza's power network to produce reliable and affordable electricity to enable the desalination plant's construction and operation, to build, repair and operate sewage treatment plants, to revitalize the Gazan economy, and to provide steady power and water to homes and workplaces is essential. Major investments in solar panel farms would be economically beneficial, environmentally sustainable and supportive of a master plan to

<sup>117</sup> B. Ehrenreich, *The Way to the Spring* (Penguin, 2017).

<sup>118</sup> UN Country Team, *supra*, note (101).

<sup>119</sup> Rand Corporation, *supra*, note (58).

<sup>120</sup> UN OCHA, *Gaza Energy Crisis* (10 November 2017); UN Country Team, *supra*, note (101).

<sup>121</sup> *Supra*, note (58).

<sup>122</sup> UNICEF, *Protecting Children from Unsafe Water in Gaza* (2011).

<sup>123</sup> UN OCHA, *Study Warns Water Sanitation Crisis in Gaza* (16 November 2018).

restore Gaza's water sources.<sup>124</sup> But, as a recent medical study in *The Lancet* observed: "Occupation and siege are the primary impediments to the successful promotion of public health in the Gaza Strip."<sup>125</sup> Until Israel completely lifts its blockade of Gaza, and until Palestinians in Gaza can exercise their freedom of movement and their right to development free of occupation, even the most imaginative technological solutions to Gaza's water crisis will always be susceptible to the vagaries of a lopsided power relationship and asymmetrical war.

#### D. Natural resources and the occupation

56. Israel's approach towards the natural resources of the Occupied Palestinian Territory has been to use them as a sovereign country would use its own assets. Rather than obey the repeated entreaties of the international community to respect and apply international law during its occupation, Israel has repeatedly relied on disfigured and fringe interpretations of the law and on raw economic entitlement to justify its exploitation of the natural wealth of the occupied territory. Three examples illustrate the phenomena.

57. Quarrying: Israel has permitted mining concessions to ten Israeli-operated quarries in Area C of the West Bank. According to Yesh Din, the volume of quarrying has increased substantially in recent years, with production reaching 17 million tons in 2015. Approximately 94% of the production – which yields stone, gravel and gypsum – is shipped to Israel for construction and infrastructure purposes. These West Bank operations make up between 20%-30% of Israel's annual quarrying requirements, with royalties paid to the State of Israel.<sup>126</sup> In 2011, Yesh Din challenged the legality of Israel's quarrying operations before the Israeli Supreme Court.<sup>127</sup> In a ruling which reflects the ritual of the Court to provide judicial sanction for many aspects of the occupation,<sup>128</sup> it dismissed the petition. The Court held that the *1907 Hague Regulations* allow for economic development and normal life under occupation, but without distinguishing between the interests of the protected population and the prohibitions against economic exploitation by the occupying power. According to Michael Sfar, an Israeli human rights lawyer, the Supreme Court ruling in the quarry case: "...transforms limitations on the powers of the occupant to exploit the natural resources of an occupied territory into an authorization to advance the very colonial enterprise they were set to eliminate."<sup>129</sup>

58. The Dead Sea: Part of the Dead Sea lies within the Occupied Palestinian Territory. It contains substantial natural and mineral wealth, including groundwater, salt, sand, potash and mud (the latter of which is used for the cosmetics industry). The Sea lies within Area C of the West Bank, and significant portions of the land surrounding it have been declared by Israel as closed military zones and off-limits to Palestinians. According to a 2012 study by Al-Haq, there were approximately 50 Israeli cosmetic factories operating in the Dead Sea area (some of which were operating in occupied Palestine, and others in Israel), extracting the mud and other related raw materials to create finished products for both the domestic and export markets.<sup>130</sup>

59. Oil and Gas Development: Presently, the State of Palestine is almost completely dependent upon Israel for its energy and power supplies. This not only results in large revenue losses because of duties and surcharges imposed by Israel for the import of gas, oil and petroleum through Israel into the Occupied Palestinian Territory, but also contributes to a distorted economy that cannot manage a vital feature of its own development. Yet, there is potential. In the Mediterranean Sea off the coast of Gaza and Israel lie substantial oil, gas

<sup>124</sup> Supra, note (58).

<sup>125</sup> R. J. Smith, "The effects of the Israeli siege on health provision in the Gaza Strip" (2018), 391 *The Lancet* S37.

<sup>126</sup> Yesh Din, supra, note (59).

<sup>127</sup> Yesh Din – Volunteers for Human Rights v. Commander of IDF Forces in the West Bank, HCJ 2164/09 (26 December 2011).

<sup>128</sup> D. Kretzmer, *The Occupation of Justice* (SUNY Press, 2002).

<sup>129</sup> O. Ben-Naftali et al, supra, note (67), chap. U.

<sup>130</sup> Al-Haq, supra, note (60).

and shale oil deposits. Israel has maintained a tight naval blockade of Gaza since 2006, and it has closed the Occupied Palestinian Territory's waters to any resource exploration.<sup>131</sup> Since 2016, Israel has been auctioning marine blocks off its coast for resource exploration by international oil and gas corporations. At least four of the marine blocks apparently lie in waters off the coast of Gaza, and human rights organizations, including al-Haq, have warned potential bidders about the potential jeopardy associated with these blocks.<sup>132</sup> Other oil deposits have been verified near the Green Line between the West Bank and Israel, and similar concerns have been expressed about sovereignty over these natural resources.<sup>133</sup>

## E. Environmental Protection and the Occupation

60. States are obligated to ensure that the enjoyment of human rights is not affected by environmental harm, and to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights.<sup>134</sup> Environmental justice is an integral part of international environmental law. This concept is grounded in the principles of care and prevention, which oblige both states and non-state actors to protect and nurture the environment, and to reduce, limit and control activities that would cause harm to it.<sup>135</sup> Public consultation and transparency are key to upholding these principles. In the Occupied Palestinian Territory, the occupying power exercises substantial control over the fate of the environment, and in some cases its actions have negative human rights consequences, in particular as a result of the environmental impact of these actions. Further, the environmental impact of Israel's practices may be felt not only by Palestinians, but also by Israelis and others in the region. There are two examples of concern that may be highlighted here.

61. Waste Disposal: At least 15 Israeli waste treatment facilities have been created in the West Bank – an area beyond Israel's domestic environmental regulatory regime – to treat such hazardous pollutants as sewage sludge, used oils, solvents, electronic waste, batteries and infectious medical waste. In a recent report, B'Tselem has argued that Israel has sought to transfer the high costs of complying with rigorous domestic environmental regulations by creating so-called 'sacrifice zones' in the West Bank.<sup>136</sup> Israel views the West Bank as a separate legal entity where its environmental laws do not apply, yet it treats the territory as its own in that it does not seek the consent of the Palestinian authority in order to dispose of waste. Israel's actions would appear to violate its trustee obligations as an occupying power, and breach its human rights duties to ensure the provision of quality public health and hygiene for the protected population.<sup>137</sup> In addition, the impact of these "sacrifice zones" on the local water supply, on health of people living in surrounding communities, is unknown.

62. Dead-Red Sea Project: Since 2013, Israel, Jordan and Palestine have been negotiating a water project that would carry water from the Red Sea to the southern part of the Dead Sea, where it would be desalinated. As part of the project, an estimated 32 million cubic metres of water would be sold annually to the Palestinians and transported to the West Bank (22 million cubic metres) and Gaza (10 million cubic metres). Some have heralded the project as a harbinger of prosperity and political cooperation.<sup>138</sup> Others,

<sup>131</sup> Al-Haq, *Annexing Energy* (2015).

<sup>132</sup> <http://www.alhaq.org/advocacy/topics/housing-land-and-natural-resources/1322-al-haq-warns-third-states-and-gas-companies-against-bidding-for-gas-licenses-in-disputed-waters-off-the-israeli-and-palestinian-coast>

<sup>133</sup> Al-Haq, *supra*, note (131).

<sup>134</sup> A/HRC/25/53, para. 79-84.

<sup>135</sup> P. Sands, *Principles of International Environmental Law* (2nd ed.) (Cambridge University Press, 2003).

<sup>136</sup> 'Sacrifice zones' is the term used to describe the phenomena of the waste industry seeking out communities or countries where the regulation of hazardous waste is less stringently regulated and enforced. Often, sacrifice zones are located near poor and disempowered populations, who wind up suffering a disproportionate exposure to environmental harm.

<sup>137</sup> B'Tselem, *supra*, note (62).

<sup>138</sup> <https://www.nytimes.com/2017/07/13/opinion/israelis-and-palestinians-water-deal.html>

particularly human rights experts, have raised concerns about the serious environmental damage already done to the Dead Sea through the significant overexploitation of its resources and waters.<sup>139</sup> An important litmus test to assess the worth of the project will be whether it will enable the State of Palestine to gain any more authority over its waters. If control over the project remains primarily in the hands of the occupying power, with no genuine ability for Palestinians to gain jurisdiction over the parts of the Dead Sea within the occupied territory, then the Dead-Red Sea project may simply result in consolidating more power in the hands of Israel on its road to annexation.

#### IV. Conclusions

63. An occupying power that took its responsibilities under international law seriously would rule in the best interests of the population under occupation, and aim to end its alien rule as soon as reasonably possible. It would recognize that the territory's natural wealth, environment and resources belongs to the protected people. As such, it would encourage them to assume increasing authority and management over this wealth as a necessary precondition for a short and successful occupation, and a peaceful and cooperative future. An occupying power governed by these principles would not pillage. It would respect both public and private property. Any development or use of the natural resources would be conducted strictly within the limits of usufruct. It would seek to conserve and to preserve. Above all, it would not appropriate the occupied territory's natural resources for its own gain or exploitation.

64. Israel has strayed extremely far from these legal responsibilities. Indeed, its temporary-permanent occupation of the Palestinian territory has been the photo negative of what is required of a faithful occupying power. During its five decades as occupant, it has appropriated private and public property without lawful authority. It has regarded the Palestinian territory as its own for acquisitive purposes and someone else's territory with respect to the protection of the people under occupation. Its expropriation of Palestinian hydro resources breaches both international humanitarian and human rights law, and scorns the principles that underlie the right to water. Its usurpation of the territory's natural resources and its disregard for its environment robs the Palestinians of vital assets that it requires should it ever achieve its freedom. The right to development in Palestine has become a dead letter. Can we not do the math to understand that these realities belie any visible path to Palestinian self-determination, and instead lead to a darker future that portends dangers to both peoples?

#### V. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and end its 51 years of occupation of the Palestinian territory. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

(b) **End the blockade of Gaza, lift all restrictions on imports and exports, and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations;**

(c) **Ensure the protection of individuals seeking to exercise their rights to freedom of peaceful assembly and association, and freedom of expression, including human rights defenders;**

<sup>139</sup> Al-Haq, *supra*, note (60).

(d) End forced evictions and home demolitions, which contribute to the existence of a coercive environment and may lead to forcible transfer, a grave breach of the Fourth Geneva Convention.

(e) Create an international Marshall Plan for Gaza and the West Bank, including East Jerusalem, that would – hand in hand with the defined end of the occupation – invest in and modernize the infrastructure of the Palestinian territory, increase its educational and training capacity, improve its legal culture of human rights, and incentivize its economic and social sectors to meet the challenges of self-determination.

66. With respect to natural resources and the environment, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:

(a) To end practices which infringe on Palestinians' access to their natural resources, in violation of Israel's duties as an occupying power, and which have a negative impact of the realization of human rights for the protected Palestinian population;

(b) Ensure equitable access to clean water, which is both a fundamental human right in itself as well as an integral component for the realization of a range of other human rights;

(c) End the extraction of natural resources not undertaken for the benefit of the protected population, but instead for the benefit of the occupying power, a practice which is prohibited by international humanitarian law;

(d) Ensure that hazardous waste is disposed of in compliance with international standards and that waste disposal does not infringe upon the human rights of the protected population, and recognize that disposal of hazardous material is an issue which impacts all surrounding areas given the interconnectedness of the local environment;

(e) Ensure that, during its remaining time as the occupying power, all prior agreements on water between Israel and the Palestinian Authority are renegotiated in order to establish true equity and cooperation in the ownership, exploration, distribution and use of water sources in the region.