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# Advanced Unedited Version

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## **Human Rights Council**

**Twenty-second session**

Agenda item 7

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

## **Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem**

### *Summary*

The present report is submitted pursuant to resolution 19/17 in which the Human Rights Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.

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## I. Introduction

### A. Establishment and mandate of the fact-finding mission

1. At its nineteenth session, in resolution 19/17, the Human Rights Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (OPT).

2. On 6 July 2012, the President of the Human Rights Council appointed three high-level experts as members of the fact-finding mission: Christine Chanet as Chair, Asma Jahangir and Unity Dow.

### B. Terms of reference and methods of work

3. The Mission convened for the first time in Geneva in August 2012 and held meetings with concerned representatives of Permanent Missions and other relevant stakeholders. The Mission adopted its terms of reference in light of the mandate conferred by the Human Rights Council and considered that the resolution clearly instructed it to investigate all the human rights implications of the Israeli settlements for the Palestinians in the OPT. The Mission interpreted its mandate to require it to carry out its investigation within the legal framework provided by international human rights law together with other bodies of international law as relevant. The Mission notes that the Israeli settlements also have other implications, including for the rights of those residing inside the settlements and in Israel.

4. For the purpose of its work, the Mission understands “Israeli settlements”, hereinafter “settlements”, to encompass all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the 1949 Green Line in the OPT.<sup>1</sup> The Mission does not differentiate between “settlements”, “settlement blocks”, “outposts”, or any other structures that have been erected, established, expanded and/or appropriated or any land or natural resources appropriated.

5. Guided by the principles of “do no harm”, independence, impartiality, objectivity, discretion, transparency, confidentiality, integrity and professionalism, the Mission carefully analysed all available information that it considered relevant and credible.

6. To ensure the greatest availability of such information, the Mission issued a public call for written submissions, which it also directly shared with representatives of Israeli settler communities. In response to the call, it received 62 submissions. The Mission has analysed information from governments, inter-governmental organisations, international and national NGOs, professional bodies, academics, victims, witnesses and the media. The Mission did not receive any testimony or submission on an anonymous basis. All information received has been treated with appropriate confidentiality.

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<sup>1</sup> These include *inter alia* the Wall; checkpoints, closure obstacles, bypass roads, tunnels and permit system; legal systems; commercial and industrial infrastructure; planning and zoning regimes. Note that the term “Wall” denotes the physical barrier constructed by Israel since 2002. See Annex II, Map.

7. The Mission had expected to undertake field visits to Israel and the OPT in order to directly observe the situation on the ground. It addressed five requests for cooperation to the Israeli government through the Israeli Permanent Mission in Geneva. The Government of Israel did not respond to the Mission's requests. The Mission regrets that the Israeli government did not respond and that it did not have access to Israel and the OPT. Alternative arrangements were made to obtain direct and first-hand information by holding a series of meetings with a wide range of interlocutors between 3 and 8 November 2012 in Jordan.

8. During its visit to Jordan, the Mission listened to and collected information on a wide range of relevant issues from more than 50 people affected by the settlements and/or working in the OPT and Israel. It met with victims of human rights violations, Jordanian Foreign Ministry officials, Palestinian Authority officials, international organisations, NGOs and UN agencies. The Mission has a record of all the testimony given to it.

9. This report is the product of the Mission's consideration and analysis of all the submissions and information it has received and gathered.<sup>2</sup> The Mission wishes to note that a number of interlocutors explicitly requested that their identities not be disclosed. The Mission is grateful to all those who extended their cooperation to it.

## II. Applicable Law

10. The international legal framework applicable to the issue before the Mission is primarily provided for in international human rights law and international humanitarian law.

11. Israel is bound to respect, protect, promote and fulfil the full range of the social, economic, cultural, civil and political human rights of all persons within its jurisdiction as a result of its being party to the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Israel is also bound by relevant international human rights rules which form a part of customary international law.

12. The rights protected by the human rights treaties must be available to all individuals who are in the territory or subject to the jurisdiction of Israel, except where the State has lawfully derogated from them. The UN treaty bodies which monitor the implementation of the applicable human rights treaties have consistently concluded that the treaties to which Israel is a party are applicable in respect of acts carried out by Israel in the OPT.<sup>3</sup> This has been confirmed by the International Court of Justice (ICJ).<sup>4</sup> Furthermore, Israel's human rights obligations apply both in peace and times of armed conflict. In the latter situation,

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<sup>2</sup> For a selected list of sources consulted by the Mission in the course of its work, see <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/IsraeliSettlementsInTheOPT.aspx>

<sup>3</sup> For a compilation of selected Conclusions and Recommendations from Human Rights mechanisms, see <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/IsraeliSettlementsInTheOPT.aspx>

<sup>4</sup> 2004 ICJ Advisory Opinion, paras. 109-113.

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they continue to apply alongside international humanitarian law to provide complementary and mutually-reinforcing protection.

13. A situation of military occupation prevails in the OPT. As the occupying Power, Israel is bound under international humanitarian law by a set of obligations which are provided for in the Hague Regulations 1907, annexed to the Hague Convention IV respecting the Laws and Customs of War on Land 1907, which are recognised as forming part of customary international law, and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War 1949 (“Fourth Geneva Convention”), to which Israel is a High Contracting Party.

14. The applicability of the Fourth Geneva Convention to the OPT has been decisively established by the International Court of Justice,<sup>5</sup> and has been recognised and consistently reaffirmed *inter alia* by the Commission on Human Rights, Human Rights Council, Security Council, and General Assembly.<sup>6</sup> Under the Fourth Geneva Convention, Palestinians living under occupation are “protected persons”, and thus the focus of Israel’s obligations under humanitarian law therein.

15. International humanitarian law establishes obligations on Israel *inter alia* concerning humane treatment and physical integrity of the Palestinians as protected persons; respect of their basic rights to education, fair trial, family, health, religion, and work; maintenance of public order and safety; respect of existing laws; respect and protection of real and personal property; and, the management of public property, including natural resources.

16. Article 49(6) of the Fourth Geneva Convention also prohibits an occupying Power from transferring parts of its own civilian population into the territory that it occupies. This prohibition has attained the status of customary international law. The Mission notes that the Israeli settlements in the OPT, including East Jerusalem, violate this provision and are, thus, illegal under international law.<sup>7</sup>

17. The Mission has also considered where necessary other international law frameworks and principles. In a situation of prevailing impunity, the law on state responsibility for internationally-wrongful acts, including third state responsibility, is relevant. International criminal law enables the pursuit of individual criminal responsibility for conduct that amounts to international crimes. In this respect, on 3 December 2012, Palestine sent identical letters to the Secretary-General and the Security Council. Citing article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court, it stated that “Israeli settlement activities” constitute war crimes, and that Israel must be held accountable for such acts.<sup>8</sup>

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<sup>5</sup> 2004 ICJ Advisory Opinion, para. 101.

<sup>6</sup> E.g.: Commission on Human Rights resolutions 6 (XXIV), 6 (XXV), 2001/7; Human Rights Council resolutions 7/18, 10/18, 19/17; Security Council resolutions (1969) 271, (1979) 446, (1989) 641, (1990) 681, (1992) 799; General Assembly resolutions 2546, ES-10/2, 36/147 C, 54/78, 58/97, ES-10/18, 66/225.

<sup>7</sup> E.g., 2004 ICJ Advisory Opinion, para. 120; Security Council resolution (1980) 471; General Assembly resolutions 3092, 47/172, 66/225; Commission on Human Rights resolution 2000/8; Human Rights Council resolutions 13/7, 16/31; Council of the European Union, Conclusions on the Middle East Peace Process, 3166th Foreign Affairs Council Meeting, 14 May 2012.

<sup>8</sup> A/ES-10/573-S/2012/899.

### III. Context<sup>9</sup>

18. 'Israeli settlements' are located beyond the 1949 Green Line and include structures in East Jerusalem and in Area "C" of the West Bank. The Oslo Accords established Area "A" comprising approximately 18 per cent of the West Bank and encompassing urban Palestinian areas under full control of the Palestinian Authority; Area "B" representing about 22 per cent of the vast majority of Palestinian rural areas, under Palestinian civil control while the Israeli army has security control; and Area "C" comprising an estimated 60 per cent of the territory, under full Israeli control for security, planning and construction purposes. Settlements are generally located amongst the more vulnerable sections of Palestinian society, predominantly agrarian villages.

19. The Mission heard that settlers can broadly be divided into three categories. Those who have moved on quality of life grounds and live in settlements close to Jerusalem and Tel Aviv. Ultra-Orthodox Jews, who constitute over 25 per cent<sup>10</sup> of the settler population, live in settlements largely isolated from other Israelis. Ultra-Orthodox Jews seem also to be motivated by economic incentives and cheaper housing and are generally found in settlements closer to the Green Line. A third group seems to be motivated by political and religious ideologies; they live in the central part of the West Bank, often very close to Palestinian communities.

20. Since 1967, Israeli Governments have openly led and directly participated in the planning, construction, development, consolidation and/or encouragement of settlements by including explicit provisions in the fundamental policy instrument (Basic policy guidelines), establishing governmental structures and implementing specific measures. These specific measures include: i) building infrastructure; ii) encouraging Jewish migrants to Israel to move to settlements; iii) sponsoring economic activities; iv) supporting settlements through public services delivery and development projects; and v) seizing Palestinian land, some privately owned, requisitioning land for "military needs", declaring or registering land as "State Land" and expropriating land for "public needs".

21. Government investment in the settlements has not been made explicit in the Public Budget, but allocated through hidden provisions in a process that has been described as "partially secretive"<sup>11</sup> and "a political tool."<sup>12</sup> Government investment, excluding military expenses, has fluctuated over the years with an estimated peak of 795.8 million US dollars in 2005<sup>13</sup>. Quasi-Governmental organizations, funded by the Government, including the World Zionist Organization (WZO), also provide funds to the settlements.

22. A governmental scheme of subsidies and incentives has been put in place to encourage Jewish migrants to Israel to move to settlements and to boost settlements' economic development. Settlements have been defined as "National Priority Areas" and benefit from housing and education subsidies and direct incentives to the industrial, agricultural and tourism sectors.

23. Various sources refer to Settlement Master Plans, including the *Allon Plan* (1967), the *Drobles Plan* (1978) later expanded as the *Sharon Plan* (1981), and the *Hundred Thousand Plan* (1983). Despite these plans not having been officially approved they have largely been acted upon by successive Israeli Governments. The Mission notes a pattern

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<sup>9</sup> See Annex I for Timeline of the key events in relation to the Israeli settlements in the OPT.

<sup>10</sup> Dror Etkes and Lara Friedman, "Report for Peace Now", October 2005.

<sup>11</sup> Former Head of the Israeli Civil Service Commission (1994-1996), Itzhak Galnoor, Nov 2007.

<sup>12</sup> Galnoor, 2011.

<sup>13</sup> US Congressional Research Service Report 7-5700 RL33222 "U.S. Foreign Aid to Israel" by Jeremy M. Sharp, 12 March 2012.

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where plans that were developed regarding the settlements were mirrored in Government policy instruments and implemented on the ground.

24. The first settlement established was *Kefar Ezyon* in September 1967. In the early years the establishment of settlements followed a typical pattern. The settlers had access to the highest ranking Government officials, played on their emotional ties to the land and encouraged these officials to lead and participate in establishing and expanding settlements through, *inter alia*, the seizure of land for “military purposes”.

25. In June 1967, Israel illegally annexed 70 km<sup>2</sup> of land incorporating East Jerusalem and a number of nearby Palestinian villages into the expanded boundaries of Israel’s Jerusalem municipality. It promptly built twelve Israeli “neighbourhoods” which enveloped nearby Palestinian quarters and villages. An outer layer of settlements beyond the Municipal boundaries were then built severing the geographical continuity of the city from the rest of the West Bank. Since the 1970s, Israel’s Jerusalem municipality has openly pursued a policy of “demographic balance” most recently seen in the city master-plan also known as “Jerusalem 2000”. The master-plan calls for a 60/40 demographic balance in favour of Jewish residents.

26. Studies on settlements commissioned by the Office of the Prime Minister in 2005 (Sason report) and 2012 (Levy report) document the Government’s authorization in the establishment and expansion of settlements up to 1992 and indicate that settlements built afterwards with no Government authorization (“outposts”) were established with the “full knowledge of all [authorities], starting with the government ministers and prime minister, and until the lowest enforcing agencies (...) the denial had but one goal only: to withstand criticism by various factors, mostly international”.<sup>14</sup> Sason concluded that “unauthorized outposts violate[s] standard procedure, good governing rules (...) endanger the principal of the rule of law [and thus] urgent measures must be taken to change [this] reality”<sup>15</sup>. In contrast the findings of the Levy report suggested the retroactive authorization of “outposts”.

27. In September 2005, through the “disengagement plan”, Israel dismantled 21 settlements in the Gaza Strip (and four in the West Bank), evacuated the settlers residing there and withdrew the army, while maintaining exclusive control of the air space of Gaza and continued to conduct military activities in the territorial waters of the Gaza Strip. The “disengagement plan” was presented in Israel as an essential step to preserve its control on the settlements in the West Bank. As Prime Minister Sharon said “in the framework of the ‘disengagement plan’ Israel would strengthen its control of those parts of the land that will constitute an inalienable part of the State of Israel in any future agreement.”<sup>16</sup>

28. About 250 settlements in the West Bank, including East Jerusalem have been established since 1967 either with or without Government authorization. The number of settlers is estimated at 520,000<sup>17</sup> (200,000<sup>18</sup> in East Jerusalem and 320,000 in the rest of the West Bank). Over the past decade the settler population has grown at a much higher rate than the population in Israel itself with a yearly average growth of 5.3 per cent (excluding East Jerusalem), compared to 1.8 per cent in Israel.<sup>19</sup>

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<sup>14</sup> *Haaretz* “A Harsh Indictment”, 21 November 2012.

<sup>15</sup> Talya Sason, “Summary of the Opinion Concerning Unauthorized Outposts”, 8 March 2005.

<sup>16</sup> Idith Zertal and Akiva Eldar, “Lords of the Land”, 2005.

<sup>17</sup> Office for the Coordination of Humanitarian Affairs (OCHA), “The Humanitarian Impact of Israeli Settlement Policies, Update”, December 2012.

<sup>18</sup> OCHA, “East Jerusalem: Key Humanitarian Concerns, Update, December 2012.

<sup>19</sup> Israeli Central Bureau of Statistics.

29. After years of court orders, evacuations of the *Migron* and *Ulpana* “outposts” took place in 2012. However, settlers responsible for appropriating private Palestinian land without Government authorization were provided after the evacuation with new homes in nearby settlements. The Government paid for the transfer of their property and the rental on the new homes.

30. The Government in place since April 2009 has contributed to the consolidation and expansion of settlements. Government spending on the settlements during 2011 was 38 per cent more than in 2010<sup>20</sup>. On 14 November 2012, the Finance Minister, Yuval Steinitz, said “we’ve doubled the budget for Judea and Samaria [the West Bank]. We did this in a low-profile manner, because we didn’t want parties either in Israel or abroad to thwart the move.”<sup>21</sup>

## IV. Implications of Israeli Settlements on Rights of Palestinians

31. The Mission notes that the impact of settlements on the human rights of the Palestinians is manifested in various forms and ways. These are interrelated, forming part of an overall pattern. The structure of the report is intended to reflect this reality.

### A. The Right to Self-Determination

32. The Mission notes that in its Resolution 67/19, the General Assembly “reaffirms the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian Territory occupied since 1967”.

33. The Secretary General warned that “(t)he demographic and territorial presence of the Palestinian people in the Occupied Palestinian Territory is put at risk by the continued transfer by Israel, the occupying Power, of its population into the occupied territory”, observing that Israel has transferred approximately 8 per cent of its citizens into the OPT since the 1970s. The Secretary General recalled that “the International Court of Justice concluded that the construction of the wall, coupled with the establishment of Israeli settlements, was altering the demographic composition of the Occupied Palestinian Territory, and thus was severely impeding the exercise by the Palestinian people of their right to self-determination”.<sup>22</sup>

34. The establishment of the settlements, and the creation of dozens of enclaves, has also caused fragmentation of the West Bank. The Mission heard that the establishment of *Ma’ale Adummim* and its expansion has had a much wider significance than the local impact of most settlements by severing territorial continuity between Palestinian communities.<sup>23</sup> The Wall “where it is built or planned, truncates and chops up Palestinian space with ‘fingers’ extending deep into the West Bank. (...) Its “route threatens to divide the West Bank into two separate areas and cut off East Jerusalem from the rest of the West Bank”.<sup>24</sup>

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<sup>20</sup> *Haaretz* “Israeli government spent NIS 1.1 billion on settlements in 2011, reports show”, 31 July 2012.

<sup>21</sup> *Haaretz* “Like a thief in the night” *Haaretz* editorial, 14 November 2012.

<sup>22</sup> A/67/375.

<sup>23</sup> *B’Tselem*, “The Establishment and Expansion Plans of *Ma’ale Adummim* and their Human Rights Ramifications”, December 2009.

<sup>24</sup> *B’Tselem*, “The Long Term Impact of Israel’s Separation Barrier in the West Bank”, October 2012; “Israeli Settlement Policy in the West Bank”, July 2010.



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35. The Israeli government has full security and administrative control over the settlement areas, and effectively controls the external borders of the OPT. Regional councils composed exclusively of representatives of Israeli settlers exercise planning functions in settlement areas. Neither the Palestinian Authority nor local Palestinian communities have any control over the governance, administration and planning of these areas.

36. The settlements, including the associated restrictions, impede Palestinian access to and control over their natural resources. The Secretary General has noted that “Palestinians have virtually no control over the water resources in the West Bank”. Eighty-six per cent of the Jordan Valley and the Dead Sea is under the *de facto* jurisdiction of the settlement regional councils. Settlements exploit mineral extraction and fertile agricultural lands, denying Palestinians access to their natural resources.

37. In December 2012, OCHA reported that while the fenced areas of settlements cover only three per cent of the West Bank, in reality 43 per cent of the territory is allocated to settlement local and regional councils. There are approximately 150,000 Palestinians living in Area C in close proximity to over 320,000 Israeli settlers. In East Jerusalem, about 200,000 settlers have been inserted into Palestinian areas with a Palestinian population of about 390,000. The negative impact of Israeli settlements on the right of self-determination of the Palestinian people, however, extends to the Palestinian people as a whole.

38. The Mission considers that the right to self-determination of the Palestinian people, including the right to determine how to implement self-determination, the right to have a demographic and territorial presence in the OPT and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the existence and on-going expansion of the settlements. The transfer of Israeli citizens into the OPT, prohibited under international humanitarian law and international criminal law, is a central feature of Israel’s practices and policies.

## **B. Equality and the Right to Non-Discrimination**

### **1. Inequality and Discrimination in the Application of the Law**

39. Information presented to the Mission demonstrates that distinct legal systems exist in the OPT and are applied separately to Israeli settlers and Palestinians. Broadly, Israelis in Area C are subject to Israeli domestic law enforced by the police and courts in Israel. A patchwork of Israeli military orders and Ottoman, British and Jordanian legislation is applied to Palestinians, who are also subject to a military court system with a wide jurisdictional reach.

40. Through “channelling” Israeli civil law into the territory of settlements, “legal zones” have been established within the West Bank where Israeli laws apply to settlers in order, for example, to regulate the status and authority of governmental institutions within settlements. These laws do not apply to Palestinians. Other Israeli laws are applied personally to Israelis in the West Bank, giving them preferential legal status over Palestinians. A matrix of military orders applies personally, by law or by practice, only to Palestinians to regulate and control most aspects of daily life, including by restricting an extensive range of rights. Israelis and Palestinians are also treated differently by the same laws. For instance, some military orders designate areas in the OPT as “closed military zones/areas”. With the exception of military training or firing zones, only Palestinians are prohibited from entering such areas unless they have a permit, even if the area encompasses Palestinian land, thereby denying Palestinians access to or ownership of land. The so-called “seam zone” is closed to Palestinians, while Israelis and foreign visitors have unrestricted access. Certain other Israeli laws expressly discriminate against Palestinians. In 2012, the

Committee on Elimination of Racial Discrimination reiterated its concern about the Citizenship and Entry into Israel Law (Temporary Provision) that suspends, with rare exceptions, family reunification between an Israeli citizen and a person residing in the OPT, with a severe impact on family rights.

41. The Mission notes that the extraterritorial personal application of Israeli legislation also occurs with the application of Israeli criminal law to Israelis in the West Bank with respect to offences they allegedly committed there.

42. The Secretary-General has stated that the “lack of accountability permeates all types of acts of violence committed by Israeli settlers against property and persons.”<sup>25</sup> The situation today closely resembles that described by the 1984 inquiry into action taken with regard to settler violence headed by the then Israeli Deputy Attorney General, Yehudit Karp. According to the Israeli NGO *Yesh Din*, which has monitored 869 cases between 2005 and 2012, over 91 per cent of all concluded investigations into complaints of criminal offences against Palestinian persons and property in the OPT are closed without an indictment being served, mostly due to investigative failures.<sup>26</sup> This is despite the fact that attacks and intimidation by settlers against Palestinians often are carried out in daytime and in the presence of Israeli army or police personnel, who frequently do not stop the violence or are ineffective.

43. The Mission has been informed that when acts of violence are committed by Palestinians against settlers, these are appropriately addressed, indicating that the lack of law enforcement experienced by Palestinians is largely a matter of political will. Between 90 to 95 per cent of cases against Palestinians are investigated and go to court.

44. The failure to carry out effective investigations and prosecutions of settler violence impedes the Palestinians’ access to an effective remedy. This is exacerbated by the multiple barriers presented to Palestinians by the court system, including time, cost, language, and procedural barriers, coupled with inadequate notification of relevant orders and declarations. Fear and lack of confidence in the courts also act as deterrents to seeking redress. Palestinians are also significantly limited from seeking compensation from the Israeli state for certain conduct by its agents pursuant to the Civil Torts (Liability of the State) Law 2005, as amended in 2012.

45. The Israeli Supreme Court sitting as the High Court of Justice does not offer Palestinians a clear avenue for recourse. The High Court has consistently deferred to the Israeli government on matters relating to the settlements, and has rendered the question of the legality of the settlements non-justiciable. While on occasion the Court has found in favour of Palestinian petitioners, it has both substantially limited its oversight role and provided a legal space in which the settlements have been developed. Additionally, where judicial rulings have favoured the Palestinian petitioners, there is a consistent lack of enforcement of them.

46. Palestinians in the OPT suffer discriminatory application of a military court system that does not comply with international standards of fair trial and administration of justice.<sup>27</sup> As explained to the Mission, “two individuals in the West Bank may commit the same offence. One is investigated by the police in the West Bank and brought before a military court, and can be detained up to eight days without seeing a judge. The Israeli who

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<sup>25</sup> A/67/375, para. 39.

<sup>26</sup> *Yesh Din*, “Position paper submitted to the international fact finding mission appointed to investigate the impact of the settlements on Palestinian rights in the West Bank”, November 2012.

<sup>27</sup> Regarding Israel’s derogation to article 9, see CCPR/CO/78/ISR (21 August 2003), para. 12 CCPR/C/ISR/CO/3 (3 September 2010), para. 7.

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has done the same, is investigated and brought before a civilian judge, and enjoys all the safeguards of a modern criminal process. Both face different penalties (...).”<sup>28</sup> The prevailing legal systems in OPT translate into stark inequality before the law.

47. Palestinians are routinely subject to arbitrary arrest and detention, including administrative detention and mass arrests and incarceration. It is estimated that over 700,000 Palestinians, including children, have been held in Israeli military detention since the beginning of the occupation, many in prisons located within Israel.<sup>29</sup> In 2012, approximately 4,100 Palestinians were in Israeli military detention, of which 143 were aged between 16 and 18 years, and 21 were below 16 years old.<sup>30</sup> It is well-documented that the military court system does not ensure Palestinians their basic fair trial guarantees, including minimum standards of independence, clear evidentiary or procedural rules, the presumption of innocence, or the duty to hear witnesses or examine all material evidence.

48. Most children are arrested at friction points, such as a village near a settlement or a road used by the army or settlers which runs close to a Palestinian village. From point of arrest, they face multiple violations of their rights to liberty and security and fair trial through interrogation, arbitrary detention and abuse, trial and sentencing. Approximately 90 per cent of children plead guilty and are given custodial sentences. The Mission heard that “in short, pleading guilty is the quickest way out of the system whether the offence was committed or not.”<sup>31</sup> Approximately 60 per cent of Palestinian children serve their sentences inside Israel.<sup>32</sup>

49. The legal regime of segregation operating in the OPT has enabled the establishment and the consolidation of the settlements through the creation of the privileged legal space for settlements and settlers. It results in daily violations of a multitude of the human rights of the Palestinians in the OPT, including incontrovertibly violating their rights to non-discrimination, equality before the law and equal protection of the law.

## **2. Settlers violence and intimidation**

50. All spheres of Palestinian life are being significantly affected by a minority of settlers who are engaged in violence and intimidation with the aim of forcing Palestinians off their land. There is a consistency in the testimonies as to the following facts: the attacks and intimidation regularly take place during daylight hours; the identity of perpetrators are well known or could easily be identified; the frequent presence of police and army at the scene; the involvement and presence of settlement security officers; the frequent existence of video and photographic footage of the incidents; the lack of accountability for the violence.

51. The Mission heard testimonies on incidents of settler violence and intimidation dating to 1973. A 1979 report on the settlements<sup>33</sup> brought attention to settler attacks on property and intimidation which restricted access to water and obstructed children’s schooling. The report noted the intent of these attacks was to pressurise Palestinians to

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<sup>28</sup> Testimony to the Fact-finding Mission, November 2012.

<sup>29</sup> A/HRC/7/17, para. 45; *B’Tselem*, “Statistics on Palestinians in the custody of Israeli security forces” (2012).

<sup>30</sup> *B’Tselem*, “Statistics on Palestinians in the custody of Israeli security forces (2012)”.

<sup>31</sup> Submission to the Fact-finding Mission, October 2012.

<sup>32</sup> See Defense for the Children International-Palestine Section, “Children Prosecuted in Israeli military courts – update”, 2 October 2012.

<sup>33</sup> S/13679.

leave the land.<sup>34</sup> Palestinian deaths and injuries as a result of settler attacks have been recorded since 1980 and the mission notes that between 1 July 2011 and 30 June 2012, Israeli settlers injured 147 Palestinians, including 34 children.<sup>35</sup>

52. The Mission heard numerous testimonies on violent attacks by settlers, including physical assaults on the person, the use of knives, axes, clubs and other improvised weapons, as well as shootings and throwing Molotov cocktails. The testimonies also recounted the psychological impact of the intimidation from armed settlers trespassing on Palestinian land, at Palestinian water springs or in the midst of Palestinian neighbourhoods in Hebron and East Jerusalem. In some cases, testimonies described years of violence and intimidation directed at the same Palestinian family living in proximity to settlements which have pushed it to abandon its properties.

53. The Mission heard testimony on the impact of settler violence on children and notes an increasing trend in their death and injuries. Defence of Children International -Palestine has documented 127 cases in the West Bank, including East Jerusalem, including four fatalities, since 2008.<sup>36</sup> Settler attacks on schools and harassment of children on their way to school is showing an upward trend since 2010. Testimonies to the Mission from residents of *Al Twany* village describe how children must have Israeli army escorts on their way to and from school to protect them from settlers' attacks. These escorts are not always provided by the Israeli army or, when provided, are often erratic.

54. The Mission also notes the impact of violence and intimidation on the lives and livelihoods of Palestinian farmers: preventing Palestinians accessing their land close to settlements through violence and intimidation; burning, uprooting and attacking Palestinian crops; settlers taking over the land and planting their own crops; fencing off and constructing on Palestinian agricultural lands. The olive industry is a primary source of income for Palestinian farmers and the olive harvest in particular has been a vulnerable period of the year for Palestinian farmers and their crops.<sup>37</sup> From 2005 to 2012 *Yesh Din* monitored 162 investigations into vandalism against Palestinian trees (predominantly Olive trees) with only one investigation leading to an indictment.<sup>38</sup> Figures for 2012 (until mid-October) show that during this period over 7,500 trees were damaged or destroyed by settlers.<sup>39</sup>

55. The Mission heard testimonies on the "price-tag" attacks, a phenomenon which is considered distinct from other forms of settler violence. The attacks aim at exacting a price on the Palestinian population living close to settlements for any political or legal move that the settlers interpret as being contrary to their interests. The Mission understands that the intention is to deter Israeli authorities from taking any action perceived to be against settlers' interests while at the same time to provoke Palestinians into a response. *An-Najah* University has identified 119 price-tag incidents from 2008 to September 2012.<sup>40</sup> The attacks most commonly involve vandalism and burning of property, cars and houses and are

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<sup>34</sup> Security Council Resolution 446 established a Commission "To examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem" paragraph 95, 195.

<sup>35</sup> Statistics compiled by OCHA.

<sup>36</sup> Submission to the Fact-finding Mission, October, 2012.

<sup>37</sup> The Palestinian Ministry of Agriculture estimates 3.5 million olive trees have been destroyed since the second *intifada*.

<sup>38</sup> *Yesh Din*, "Police Investigation of Vandalisation of Palestinian Trees in the West Bank", October 2012.

<sup>39</sup> OCHA, "Olive Harvest Factsheet", October 2012.

<sup>40</sup> *An-Najah* University, "Outposts and Price Tag Violence", September 2012.

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often accompanied by racist graffiti. The US State Department categorised three price-tag attacks on mosques and a Muslim cemetery as terrorist incidents.<sup>41</sup>

56. The Mission is concerned that specific programmes to deal with the impact of settler violence on physical and mental health had to be developed by non-governmental organizations as a result of the failure of Israeli authorities to stop the settler violence and the persistence of impunity in this regard. The Mission notes with particular concern the situation of children and the impact on their development.

57. Violence, verbal and physical abuses, inhumane and degrading treatments, forced evictions, land and property grabbing, destruction of property and housing and many of the issues for which testimonies and information was gathered gravely affect the right to the enjoyment of the highest attainable standard of physical and mental health. Depression, anxiety, symptomatic stress, mood disorder and behaviour problem, and Post Traumatic Stress Disorders are some of the most current conditions reported by specialists. Impunity, the feeling of injustice, recurrence of events and the anticipation of renewed abuses, especially on relatives and children, lead to worsening of these conditions.

### 3. Restrictions on Religious Freedom and Related Intolerance

58. In the OPT, Jerusalem, Hebron, Bethlehem and Nablus all hold places of considerable religious significance for Christianity, Judaism and Islam. While the impacts of settlements manifest in various forms throughout the West Bank, the Mission notes that both Jerusalem and Hebron have been targeted by particularly aggressive settlement policies and practices due to their religious significance. Settlements have been established in the heart of both cities, disrupting the lives and the development of hundreds of thousands of Palestinians. In addition, major settlement infrastructure has been built around Jerusalem and, to a lesser extent, Hebron, enveloping them and severing social and economic ties with the rest of the Palestinian society, while linking the various settlements and the territory of the State of Israel.

59. The Mission was also informed about archaeological excavations being conducted in and around the Old City of Jerusalem and the building there of a network of underground tunnels, including those connecting settlement installations in the Palestinian neighbourhood of *Silwan* with the Old City. It has been alleged that these archaeological excavations intend to emphasise the Jewish cultural heritage while disregarding – or worse undermining – the rich heritage of other cultures that have contributed to the millenary history of the city.

60. The Mission has received numerous reports of Palestinians being denied access to places of worship. Limited entry through checkpoints and area closures during holy days prevents Palestinians from attending holy rituals at appointed times at places of worship. The Mission has also learned that since 2008, mosques and Christian churches have been targeted in price-tag attacks with at least nine price-tag arson attacks against Palestinian mosques and 21 incidents where graffiti was used to desecrate mosques, churches and burial grounds with slogans of a racist or a sacrilegious bent intended to inflame a situation.<sup>42</sup>

61. The Mission is concerned that policies and acts aiming at altering the composition of Jerusalem and Hebron by erasing cultural heritage on the basis of religious affiliation, together with redrawing municipal boundaries, are being carried out with the involvement

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<sup>41</sup> US State Department, “Country Reports on Terrorism 2011”.

<sup>42</sup> *An-Najah* University, “Outposts and Price Tag Violence”, September 2012.

of the Israeli government with pernicious effects. It is further concerned that the Palestinians' right to freedom of religion is being restricted due to the settlements.

#### 4. Dispossession and Displacement

62. Dispossession and displacement featured in most of the submissions, reports and testimony put before the Mission. The information brought to light a number of different mechanisms exploited to seize Palestinian land, as well as the discriminatory planning and zoning policy which favours the development of settlements and, as the Committee on the Elimination of Racial Discrimination concluded, breaches a range of fundamental rights of Palestinians.<sup>43</sup>

63. Since the beginning of the occupation, Palestinians have seen over a million *dunums*<sup>44</sup> of their land seized, enabled by a combination of military orders and selective interpretation of the Ottoman Land Code that ruled land tenure throughout the Ottoman, Mandatory and Jordanian periods. In particular, land has been lost through seizure for military needs, absentee property laws, and declarations of State lands.

64. Seized lands are placed within the jurisdictional boundaries of local and regional settlement councils, used not only for urbanization, but also as buffer zones surrounding settlements or turned into recreational and nature areas which cannot be accessed by Palestinians.

65. While the issue is critical throughout the West Bank, the Mission notes the high number of demolitions, demolition orders, forced evictions and "relocation" plans in zones identified for the consolidation of settlements, including around Bethlehem and the E1 project, aimed at creating an urban continuum between East Jerusalem and *Ma'ale Adummim*. In this area, the *Jahalin* Bedouin community in *Khan Al-Akhmar*, which in the past has experienced several demolitions, lives under the threat of forcible displacement. "Relocation" plans are currently under discussion, including to a location near a landfill where in 1996 Bedouins had already been relocated to in connection with earlier settlement expansions.

66. Bedouin communities in general are particularly vulnerable to displacement and dispossession. Eighty per cent of them live in the Jordan Valley, the Dead Sea area and around Hebron, constituting the majority of the population in closed military training and firing zones. Many of these communities have already experienced multiple displacements. Many are food insecure, do not have access to basic services, and are connected neither to the electricity grid, the road network or water systems. Over 90 per cent face water scarcity, living with less than one-quarter of the World Health Organization (WHO) minimum standards.<sup>45</sup> The Israeli army demolishes routinely their shelters and property, including those provided by or built with the assistance of aid agencies and international donors. In the South Hebron hills, eight villages are at risk of eviction to make way for a new firing zone.

67. The processes of dispossession and displacement in the vicinity of settlements and the seam zone include preventing Palestinians from accessing their agricultural lands, the takeover and demolition of springs and wells, and movement restrictions. Settler violence and intimidation also play a significant role.

68. In East Jerusalem, multiple factors such as the discriminatory building regulations, high number of demolition orders, residence permit restrictions, the acute housing shortage

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<sup>43</sup> CERD/C/ISR/CO/14-16. para. 25.

<sup>44</sup> One *dunum* equals 1000 m<sup>2</sup>.

<sup>45</sup> OCHA, "Firing Zones in the West Bank Factsheet", August 2012.

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and violence and intimidation from settlers place enormous pressures on the city's Palestinian population. Cases of forced eviction in East Jerusalem, such as in *Sheikh Jarrah* neighbourhood were also reported to the Mission, including following successful appeals by settler organizations, some of which linked to Jewish property claims based on their pre-1948 ownership. Numerous testimonies speak of settlers taking over individual houses within the Old City.

69. Absence of proof of registration- land registration was discontinued by military order in 1968 - makes it extremely difficult for Palestinians to obtain recognition of tenure or permits. Besides, Palestinians are excluded from consultative decision-making processes and are not represented in the Special Planning Committees, which consist of settlers and are enabled to issue and enforce building permits.

70. Testimonies confirmed that building permits are rarely if ever granted; in the last 20 years, 94 per cent of permit applications were denied. Building without a permit is an offence under military orders, and the execution of a demolition order is accompanied by a high fine. The mission heard in this regard about "self-demolitions"- i.e., residents demolishing their own houses to avoid paying fines. Self-demolitions are not recorded in statistics on demolitions.

71. As corroborated by testimonies, many Palestinians have to resort to build without permits thus living under the constant threat that their homes and property may be demolished. Many families and entire communities are at risk of displacement. In East Jerusalem alone, where 33 per cent of Palestinian homes lack building permits, at least 93,100 residents are potentially at risk of being displaced.<sup>46</sup>

## **5. Restrictions on the Freedom of Movement**

72. The Mission received information that the vast majority of restrictions on the freedom of movement of Palestinians seem to be directly linked to the settlements and include "restrictions aimed at protecting the settlements, securing areas for their expansion, and improving the connectivity between settlements and with Israel itself."<sup>47</sup> The restrictions themselves come in many forms including settler-only roads, a regime of checkpoints and crossings (closure obstacles), impediments created by the Wall and its gate and permit regime as well as administrative restrictions. OCHA reports that in 2012 over 540 closure obstacles existed<sup>48</sup> and though there have been significant easing measures in recent years - which have improved connectivity between the main Palestinian cities and towns - reportedly the movement restrictions remain in place in areas around settlements.

73. The Mission notes that restrictions on freedom of movement have a detrimental impact on Palestinian access to their land with direct consequences for their ability to work and earn their livelihood. The outer expanses of many of the settlements incorporate Palestinian private property and access to this land is regulated through the "prior coordination" regime whereby the Palestinian landowners are granted permits to access their land for a limited number of days per year, normally coinciding with harvest time and based on prior coordination with the Israeli authorities. This regime is in place for Palestinian landowners in some 90 communities with land in the environs of some 55 settlements.<sup>49</sup> In some cases the prior coordination regime is applied to Palestinian private land which has been unilaterally fenced off by settlers without authorisation by Israeli authorities. The widespread access restrictions in and around the Wall in the form of gate

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<sup>46</sup> OCHA, "East Jerusalem: Key Humanitarian Concerns", December 2012.

<sup>47</sup> OCHA, "West Bank Movement and Access Update", September 2012, p2.

<sup>48</sup> OCHA, "The Humanitarian Impact of Israeli Settlement Policies, Update", December 2012.

<sup>49</sup> OCHA, "West Bank Movement and Access Update", September 2012.

and permit regimes particularly impact access to agricultural land in the seam zone and, as noted in paragraph 41, these restrictions only apply to the Palestinian population.

74. Israel has extended the prior coordination regime to situations where Palestinians face potential settler violence and intimidation. This response has been ineffective in terms of preventing settler violence, while it places the burden of restricting access to land on the victims of settler violence.

75. The Mission notes that discrimination is particularly evident in the movement restrictions in Hebron and the Jordan Valley where large Palestinian populations are subjected to permit regimes and areas off limit to traffic and in some cases to even walk through. In the H2 area of Hebron there are 123 movement obstacles which are in place to facilitate the movement of approximately 550 Israeli settlers in Hebron and 7,000 in the nearby settlement of *Kiryat Arba* at the expense of the Palestinian population (170,000).<sup>50</sup> The Mission notes the presence of these settlements directly impacts on Palestinian livelihoods as military orders have led to the closure of 512 Palestinian businesses, and at least 1,100 others closed due to the restricted access of customers and suppliers.<sup>51</sup>

76. The human rights treaty bodies have expressed their deep concern at restrictions on freedom of movement describing them as being targeted at a particular national or ethnic group and amounting to gross violations of economic, social and cultural rights.<sup>52</sup>

## 6. Restrictions on Freedom of Expression and Peaceful Assembly

77. The Mission notes that the settlements, including the Wall, are the subject of Palestinian demonstrations in places such as *Bili'in* and *Nabi Saleh*, where the vast majority of demonstrators are reported to be acting in a non-violent manner. The Israeli authorities often respond to these demonstrations with restrictions on assembly, declaring areas closed military zones, as well as employing violent means to suppress demonstrations by firing tear gas, rubber bullets and, on occasion, live rounds. As with the closure obstacles which restrict freedom of movement, the restrictions on expression and assembly have at their core the aim of ensuring the daily life of Israeli settlers continues without interruption.<sup>53</sup>

78. The Mission heard testimony that since 2009, residents of *Nabi Saleh*, a village of 600 people, have protested every Friday against the takeover by nearby settlers of the village's water spring. The witness described a litany of violent attacks by the Israeli army on peaceful demonstrators which have resulted in one person being killed and over 400 people injured, including 195 children. On some occasions the army has reportedly stopped demonstrations before they have begun by firing tear gas inside the village forcing all villagers to flee.<sup>54</sup>

79. The Mission was informed that Israeli politicians, academics and civil society actors voicing criticism of the settlements are discredited in public discourse. An example of this includes the targeting of veteran combatants who have served in the Israeli military in the OPT and who voice dissent with the official line of the establishment. The Mission acknowledges the valuable contribution made by members of Israeli civil society in highlighting the denial of human rights to the Palestinians due to the presence of the settlements.

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> CERD/C/ISR/CO/13 and E/C.12/1/ADD.69.

<sup>53</sup> A/67/375, para40.

<sup>54</sup> *B'Tselem*, "Human Rights on Occupied Territories Annual Report", 2011, page 50.



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## 7. Restrictions on the Right to Water

80. Information and testimonies corroborate the impact of settlement expansion on the right to water of Palestinians, including as pointed out *inter alia* by the Committee on Economic, Social and Cultural Rights, the high discrepancy between water allocation for Palestinians and settlers, and inequitable access.

81. The capacity of the Palestinian Water Authority (PWA) to develop new water resources is hampered by the water management arrangements governed by the Interim Agreement and the Joint Water Commission (JWC) that it established, in which “fundamental asymmetries – of power, of capacity, of information” give Israel predominance in the allocation of West Bank water resources, of which it withdraws 90 per cent.<sup>55</sup> The Mission learnt that a large number of Palestinian projects are rejected by the JWC. In Area C, approval is further required from the Israeli Civil Administration, even for small-scale projects such as a well or rainwater collection cistern.

82. The PWA’s ability to transfer water to areas facing water shortages is severely inhibited by the territorial fragmentation, since almost every project implies movement through Area C. The Mission heard testimony about water resources damaged or destroyed by the construction of the Wall or lost to the seam zone, cutting off villages from their wells, springs and cisterns. In the Jordan Valley, deep water drillings by the Israeli national water company *Mekorot* and the agro-industrial company *Mehadrin* have caused Palestinian wells and springs to dry up. Eighty per cent of the total water resources drilled in the area is consumed by Israel and the settlements.

83. The lack of availability of Palestinian water resources has led to chronic shortages among Palestinian communities in Area C and a dependence on *Mekorot*, to whom authority over the West Bank water resources was transferred from the military in 1982.

84. *Mekorot* supplies almost half the water consumed by Palestinian communities. The Mission heard that Palestinians do not have access to Israeli recycled water available to settlements, and have to use water from the more expensive drinking water supply for irrigation purposes. In the event of a water shortage, valves supplying Palestinian communities are turned off; this does not happen for settlements.

85. The Mission heard of situations where villagers must travel several kilometres to get water when closer water resources serve neighbouring settlements. Settlements benefit from enough water to run farms and orchards, and for swimming pools and spas, while Palestinians often struggle to access the minimum water requirements. The Mission heard that some settlements consume around 400 l/c/d<sup>56</sup>, whereas Palestinian consumption is 73 l/c/d, and as little as 10-20 l/c/d<sup>57</sup> for Bedouin communities which depend on expensive and low quality tanker water. In East Jerusalem houses built without a permit cannot connect to the water network.

86. Water shortages are further exacerbated by restrictions on movement, destruction of infrastructure, expropriations, forced evictions and settler violence, which also largely contributes to diminishing access to water for Palestinians.

87. Forcible takeovers and vandalism by settlers increasingly impair access to water. In March 2012, according to OCHA, 30 springs in the vicinity of settlements had been

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<sup>55</sup> World Bank, “West Bank and Gaza Assessment of Restrictions on Palestinian Water Sector Development”, April 2009, para. 130.

<sup>56</sup> Litres per capita per day. Minimum recommended by WHO, 100 l/c/d.

<sup>57</sup> OCHA Factsheet - The Humanitarian Impact of Israeli-declared “Firing Zones” in the West Bank, (August 2012).

completely taken over by settlers and 26 were at risk, with settlers fencing them off and threatening villagers. Some of the seized springs are turned into “tourist attractions” or recreational sites, which receive Israeli government support.

88. Destruction of water infrastructure, including rainwater cisterns, by Israeli authorities has increased since the beginning of 2010; double in 2012 compared to 2011<sup>58</sup>. The denial of water is used to trigger displacement, particularly in areas slated for settlement expansion, especially since these communities are mostly farmers and herders who depend on water for their livelihoods. A number of testimonies highlighted that the cutting off from water resources often precedes dispossession of lands for new settlement projects.

## **8. Impact on Economic Rights**

89. The agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets. This has led to a continuous decline in the share of agricultural production in GDP and employment since 1967.

90. Settlement expansion and its related infrastructure have eroded Palestinian agricultural assets. Dwindling water resources, high transaction and transport costs and shrinking markets have led to a decline in the size of agricultural holdings. It has also resulted in a shift from irrigated to less profitable rain-dependent crops, and a decrease in productivity since the import of fertilizers into the West Bank is banned for Palestinians. Besides demolitions carried out by the authorities, villagers suffer recurrent attacks from nearby settlements – especially during the olive harvest season – the destruction of trees, water installations and livestock, creating additional pressure to relinquish agricultural activities.

91. The Wall has divided villages, cut off farmers from their lands and water and curtailed trade with traditional markets, stifling the local economy. This is illustrated by the example of the village of *Nazelt Issa*, where half of the businesses existing before were destroyed to build the Wall while other activities closed down, given that most of their trade was with neighbouring villages now cut off by the Wall. With few income-generating prospects left in the village, unemployment is high, and young people leave to seek work.

92. The Mission was informed that “Israeli settlement agriculture is blooming”<sup>59</sup>. In the Jordan valley settlements set up in the 1960s-1970s as farming communities on land formerly cultivated by Palestinians, have developed into a high-tech irrigation agricultural zone and become major contributors to the Israeli export of date palm fruits. In the central West Bank many agricultural settlements have been developed in the last ten years, cultivating olives and grapes for wine making in Israel. Many Israeli cultivated areas correspond to lands which were cultivated by Palestinians until the second intifada (2000-2005).

93. The inability for the Palestinian economy to expand and offer opportunities, high unemployment rates and falling wages in the Palestinian labour market, inflation and increasing poverty are factors that drive Palestinians to seek employment in the settlements and in Israel, where wages are about twice as high as in the Palestinian private sector. A stringent system of permits and quotas continues to determine employment in Israel and the settlements, which lends itself to abuse by contractors and middlemen.

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<sup>58</sup> Testimony to the Fact-Finding Mission, November 2012.

<sup>59</sup> Ibid.

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Palestinians employed in the settlements work primarily in manufacturing industry and the construction sectors. Women are mostly engaged in domestic work and agriculture.<sup>60</sup>

94. While wages might be higher, employment conditions in the settlements remain precarious. Workers claiming their rights are easily dismissed, and supervision of employers by the Israeli authorities in the settlements remains largely absent. In an audit conducted in June 2011, the State Comptroller noted the “lack of substantial supervision and enforcement in the field of safety and hygiene”, also in factories holding and using dangerous materials. It was noted that between 2006 and 2010 only four audits were conducted in the 20 industrial zones/settlements operating in the West Bank.<sup>61</sup>

95. Employment conditions of Palestinian workers in settlements are subject to a system characterised by legal uncertainties. Palestinians are contracted under the far less favourable pre-1967 Jordanian labour laws while Israeli citizens in the West Bank are employed under Israeli labour laws. In 2007, the Israeli High Court ruled that Israeli labour laws also apply to Palestinian workers, but the ruling – which left open the possibility for the parties to agree otherwise – is often not enforced. Numerous interlocutors told the Mission that this “cheap labour” from the numerous Palestinian villages in convenient commuting distance represents an additional incentive for enterprises to move to the settlements.

### **C. Impact of Businesses**

96. Information gathered by the mission shows that business enterprises have enabled, facilitated and profited, directly and indirectly, from the construction and growth of the settlements. In addition to the previously mentioned violations of Palestinian workers rights, the Mission identified a number of business activities and related issues that raise particular human rights violations concerns. They include:

- The supply of equipment and materials facilitating the construction and the expansion of settlements and the Wall and associated infrastructures;
- The supply of surveillance and identification equipment for settlements, the Wall and checkpoints directly linked with settlements;
- The supply of equipment for demolition of housing and property, destruction of agricultural farms, greenhouses, olives groves and crops,;
- The supply of security services, equipment and materials to businesses operating in settlements;
- The provision of services and utilities supporting the maintenance and existence of settlements, including transport;
- Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and development of businesses;
- The use of natural resources, in particular water and land, for business purposes;
- Pollution, dumping and transfer of waste to Palestinian villages;

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<sup>60</sup> International Labour Organization, “The Situation of Workers of the Occupied Arab Territories, June 2012, para. 87.

<sup>61</sup> Audit by the State Controller, Israel, 2011.

- Captivity of the Palestinian financial and economic markets as well as practices that disadvantage Palestinian businesses, including through restrictions on movement, administrative and legal constraints; and
- Use of benefits and reinvestments of businesses owned totally or partially by settlers for developing, expanding and maintaining the settlements.

97. It is with the full knowledge of the current situation and the related liability risks that businesses unfold their activities in the settlements and contribute to their maintenance, development and consolidation. Industrial parks in settlements, such as *Barkan* and *Mishor Adumim*, offer numerous incentives including tax breaks; low rents, and low cost of labour. Economic activities in these zones are growing. A number of banks provide mortgage loans for homebuyers and special loans for building projects in settlements. They also provide financial services to businesses in settlements and, in some cases, are physically present there.

98. The Mission notes that some businesses have pulled out of settlements because it harms their image and might entail legal consequences.

99. It also notes that Israel labels all its export products as originating from “Israel”, including those wholly or partially produced in settlements. Some companies operating in settlements have been accused of hiding the original place of production of their products. This situation poses an issue of traceability of products for other states wishing to align themselves with their international and regional obligations. It also poses an issue in relation to consumers’ right to information. The Mission notes that these issues are increasingly being addressed by states, regional organizations and some private businesses.

## V. Conclusions

100. **The facts brought to the attention of the Mission indicate that the State of Israel has had full control of the settlements in the OPT since 1967 and continues to promote and sustain them through infrastructure and security measures. The Mission notes that despite all the pertinent United Nations resolutions declaring that the existence of the settlements is illegal and calling for their cessation, the planning and growth of the settlements continues both of existing as well as new structures.**

101. **The establishment of the settlements in the West Bank including East Jerusalem<sup>62</sup> is a mesh of construction and infrastructure leading to a creeping annexation that prevents the establishment of a contiguous and viable Palestinian State and undermines the right of the Palestinian people to self-determination.**

102. **The settlements have been established and developed at the expense of violating international human rights laws and international humanitarian law, as applicable in the OPT as notably recognised by the 2004 ICJ Advisory Opinion.**

103. **The settlements are established for the exclusive benefit of Israeli Jews; settlements are being maintained and developed through a system of total segregation between the settlers and the rest of the population living in the OPT. This system of segregation is supported and facilitated by a strict military and law enforcement control to the detriment of the rights of the Palestinian population.**

104. **The Mission considers that in relation to the settlements Israel is committing serious breaches of its obligations under the right to self-determination and “certain**

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<sup>62</sup> See Annex II, Map.

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obligations under international humanitarian law”, including the obligation not to transfer its population into the OPT. The Rome Statute establishes the International Criminal Court’s jurisdiction over the deportation or transfer, directly or indirectly, by the occupying Power of parts of its own population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory. Ratification of the Statute by Palestine may lead to accountability for gross violations of human rights law and serious violations of international humanitarian law and justice for victims.

105. The existence of the settlements has had a heavy toll on the rights of the Palestinians. Their rights to freedom of self-determination, non-discrimination, freedom of movement, equality, due process, fair trial, not to be arbitrarily detained, liberty and security of person, freedom of expression, freedom to access places of worship, education, water, housing, adequate standard of living, property, access to natural resources and effective remedy are being violated consistently and on a daily basis.

106. The volume of information received on dispossession, evictions, demolitions and displacement points to the magnitude of these practices. These are particularly widespread in certain areas and acute in East Jerusalem.

107. The Mission has noted that the identities of settlers who are responsible for violence and intimidation are known to the Israeli authorities, yet these acts continue with impunity. The Mission is led to the clear conclusion that there is institutionalised discrimination against the Palestinian people when it comes to addressing violence. The Mission believes that the motivation behind this violence and the intimidation against the Palestinians as well as their properties is to drive the local populations away from their lands and allow the settlements to expand.

108. The Mission is gravely concerned at the high number of children who are apprehended or detained, including for minor offences. They are invariably mistreated, denied due process and fair trial. In violation of international law they are transferred to detention centres in Israel.

109. Children suffer harassment, violence and encounter significant obstacles in attending educational institutions, which limits their right to access education. Israel, the occupying Power is failing in its duty to protect the right to access education of the Palestinian children and failing to facilitate the proper working of educational institutions.

110. Information gathered by the Mission show that some private entities have enabled, facilitated and profited, from the construction and growth of the settlements, either directly or indirectly.

111. Women alone in their homes, the Bedouins and other vulnerable groups are easy targets for settler violence, creating a sense of insecurity amongst the wider Palestinian society.

## **VI. Recommendations**

112. Israel must, in compliance with article 49 of the Fourth Geneva Convention, cease all settlement activities without preconditions. In addition it must immediately initiate a process of withdrawal of all settlers from the OPT. The Mission further urges Israel to ensure adequate, effective and prompt remedy to all Palestinian victims for the harm suffered as a consequence of human rights violations that are a result of the settlements in accordance with Israel’s international obligation to provide

effective remedy. Where necessary, steps must to be taken to provide such remedy in concurrence with the representatives of the Palestinian people and with the assistance of the international community.

113. Israel must put an end to the human rights violations that are linked to the presence of settlements.

114. The Mission calls upon the government of Israel to ensure full accountability for all violations, including for all acts of settler violence, in a non-discriminatory manner and to put an end to the policy of impunity.

115. The Mission urges Israel to put an end to arbitrary arrest and detention of the Palestinian people, especially children, and observe the prohibition of the transfer of prisoners from the OPT to the territory of Israel, according to Article 76 of the Fourth Geneva Convention.

116. The Mission calls upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relationship to a State breaching peremptory norms of international law – specifically not to recognise an unlawful situation resulting from Israel’s violations.

117. Private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure they are not adversely impacting the human rights of the Palestinian People in conformity with international law as well as the Guiding Principles on Business and Human Rights. The Mission calls upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations. The Mission recommends that the Human Rights Council Working Group on Business and Human Rights be seized of this matter.

## Annexes

### Annex I

#### Timeline – Israeli Settlements in the Occupied Palestinian Territory

##### 1948

- The “Declaration of the Establishment of the State of Israel” is issued. It equates *Eretz-Israel* (in Hebrew “the Land of Israel”) to the territory of British Mandate Palestine<sup>1</sup>, in contrast to the provisions of 1947 United Nations General Assembly Resolution 181 on the partition of the British Mandate of Palestine into two Independent Arab and Jewish States with a special international regime for the City of Jerusalem<sup>2</sup>.
- The “Israeli Proclamation” is issued. It creates a legislative authority: the Provisional Council of State, which unilaterally revokes the British Parliament Decision 6019 (the White Paper of 1939)<sup>3</sup>. The White Paper of 1939 indicates that “the terms of the (Balfour) Declaration [sic] (...) do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded IN PALESTINE.[sic] (...) His Majesty's Government (...) now declare unequivocally that it is not part of their policy that Palestine should become a Jewish State (...) Jewish immigration during the next five years will be at a rate which, if economic absorptive capacity permits, will bring the Jewish population up to (...) one third of the total population (...) some 75,000 immigrants (...) After the period of five years, no further Jewish immigration will be permitted unless the Arabs of Palestine are prepared to acquiesce in it. (...) there is now in certain areas no room for further transfers of Arab land, whilst in some other areas such transfers of land must be restricted.”<sup>4</sup>
- The Law and Administration Ordinance 5708-1948 is enacted. Article 15 indicates that: “(a) ‘Palestine’, wherever appearing in the law, shall henceforth be read as ‘Israel’”<sup>5</sup> disregarding 1947 UN Resolution 181 partitioning British Palestine into two States, Arab and Jewish<sup>6</sup>.

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<sup>1</sup> The document is found on the Israeli MFA website:

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm>

<sup>2</sup> A/RES/181(II)[A-B]

<sup>3</sup> David M. Sassoon, “*The Israel Legal System*” in *The American Journal of Comparative Law*, Vol. 16, No. 3, Summer, 1968. Pages 405-415 (<http://www.jstor.org/stable/838665>) and Yvonne Schmidt “*Foundations of civil and political rights in Israel and the occupied territories*” Doctoral Thesis / Dissertation, 2001

<sup>4</sup> Parliament Decision 6019 was considered a British policy paper. Full original text consulted on [http://avalon.law.yale.edu/20th\\_century/brwh1939.asp](http://avalon.law.yale.edu/20th_century/brwh1939.asp)

<sup>5</sup> Law and Administration Ordinance No. 1 of 5708-1948, Full text and amendments consulted on: <http://www.geocities.com/savepalestinenow/israellaws/fulltext/lawandadministrationord.htm>

<sup>6</sup> A/RES/181(II)[A-B]

## 1950

- The “Absentee Property Law” 1950 enables the Israeli Government to transfer the property left behind by Palestinians after the 1948 War for the exclusive use by Israel. The Law defines any Palestinian who ‘left his ordinary place of residence’ for a place outside the nascent state as an ‘absentee’. The definition is broadly interpreted and includes Palestinians who are deemed to have been absent, even though they are present within the territory of Israel. Such persons are termed “present absentees”.

## 1965

- Planning and Building Law No. 5725 is enacted by the Knesset.<sup>7</sup> It establishes a hierarchy of planning bodies (national, regional and local) responsible for land-use planning. The law requires development plans to be prepared, approved, and kept up to date. A permit may be refused if the development conflicts with a plan; penalties for unpermitted development may include, in extreme cases, demolition<sup>8</sup> (Article 212 allows the State to demolish homes considered “a public nuisance”<sup>9</sup>). The Law is used by Israeli Governments to justify a large amount of demolitions of Palestinian houses, notably in Jerusalem after the Six-Day War.<sup>10</sup>

## 1967

- The Six-Day War. (5-10 June)
- Military Order No 59 Regarding Government Property (Judea and Samaria [West Bank]) 5727-1967 defines “State Lands” as any land belonging to an “enemy state”, or registered in its name. It authorizes the person delegated by the Commander of Israeli Defence Forces (IDF) in the Region to take possession of “enemy state’s” properties and to manage these at his discretion. The Order is used through 1979 to seize control of land registered in the name of the Jordanian Government.<sup>11</sup> (7 June)
- Article 11 of the Law and Administration Ordinance is amended to indicate that: “The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order.”<sup>12</sup> (27 June)
- Israel illegally annexes 70 km<sup>2</sup> of land, incorporating Palestinians living in East Jerusalem and a number of villages in the West Bank.<sup>13</sup> (27 June)

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<sup>7</sup> Planning and Building Law, 5725—1965, Full text and amendments consulted on <http://www.israellawresourcecenter.org/israellaws/fulltext/planningbuildinglaw.htm>

<sup>8</sup> Amnesty International, “*Israel/Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes*”. 8 December 1999

<sup>9</sup> Human Rights Watch, “Sample Judicial Demolition Order” [Translated by HRW from the Hebrew original Beer Sheva Magistrate Court BS 008759/05], March 2008 <http://www.hrw.org/reports/2008/iopt0308/15.htm>

<sup>10</sup> ICAHD submission to the Fact-Finding Mission <http://icahd.org/node/429>

<sup>11</sup> *B’Tselem*, Land Grab, 2002.

<sup>12</sup> Amendment of 1967 to article 11 of the Law and Administration Ordinance No. 1 of 5708-1948 also available at:

<http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/13+Law+and+Administration+Ordinance+-+Amendment+No.htm?WBCMODE=PresentationUnp?DisplayMode=print>

<sup>13</sup> *B’Tselem*, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, May 1995.



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- Yigal Allon, Israeli Defence Minister and chair of the Ministerial Committee on Settlements, presents a plan to Prime Minister Levi Eshkol for the creation of “security” borders by establishing Israeli settlements on unpopulated Arab areas of the West Bank (along the Jordan Rift Valley, the expanded Jerusalem and parts of the Judean Desert). The plan is not officially approved but is subsequently implemented.<sup>14</sup> (26 July)
  - Theodor Meron, legal counsel of the Foreign Ministry, provides a legal opinion on the legality of civilian settlement in the West Bank and the Gaza Strip at the request of the PM’s Office: “civilian settlement in the administered territories contravenes the explicit provisions of the Fourth Geneva Convention.”<sup>15</sup> (18 September)
  - The first Israeli settlement in the OPT is established, *Kefar Ezyon*.<sup>16</sup> (September)
  - The UN Security Council adopts Resolution 242 and calls for Israeli withdrawal from the Gaza Strip, the Sinai Peninsula, the Golan Heights, and the West Bank, including East Jerusalem. The Resolution emphasises the “inadmissibility of the acquisition of territory by war.”<sup>17</sup> (22 November)

## 1968

- The Jerusalem 1968 Master Plan, and subsequent plans provides for the building of a belt of 12 Israeli ‘neighbourhoods’ enveloping and bisecting the Palestinian neighbourhoods in the city.<sup>18</sup>
- The first of a series of expropriations of private land in Jerusalem takes place. The land is used to build the settlements such as *French Hill*, *Gilo*, *Pisgat Ze’ev* and *Ramot Allon*. In the great majority of known cases the owners of the expropriated land are Palestinians.<sup>19</sup>
- *Kiryat Arba* settlement (the first in Hebron) is established. Ninety *dunums*<sup>20</sup> of Palestinian land are seized for “military purposes”; Palestinians are evicted, vineyards uprooted and 250 housing units for the settlement are built in their place.<sup>21</sup>
- Military Order No. 291 concerning Land and Water Settlement (Judea and Samaria) provides the basis for the suspension of land registration in the West Bank and enables tens of thousands of hectares of the West Bank to be declared “State land” making it difficult for Palestinians to obtain security of tenure or pursue land development (as proof of registration is often a first requirement), while at the same time increasing the amount of land available to build settlements.<sup>22</sup> (19 December)

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<sup>14</sup> Senior Foreign Policy Analyst, Dan Diker “*Israel’s return to Security-Based Diplomacy*”, Jerusalem Center for Public Affairs, <http://www.jcpa.org/text/security/diker.pdf>

<sup>15</sup> Israel State Archives, 153.8/7921/3A. Legal opinion numbered as document 289-291, with unnumbered cover notes <http://southjerusalem.com/settlement-and-occupation-historical-documents/>

<sup>16</sup> Idith Zertal and Akiva Eldar, “Lords of the Land”, 2005..

<sup>17</sup> S/RES/242

<sup>18</sup> Eyal Weizman, *Hollow Land*. 2007

<sup>19</sup> *B’Tselem*, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, May 1995.

<sup>20</sup> One *dunum* equals 1000 m2.

<sup>21</sup> Idith Zertal and Akiva Eldar, “Lords of the Land”, 2005.

<sup>22</sup> Order Regarding Government Property (Judea and Samaria)(No. 59)

## 1969

- Israeli Prime Minister Golda Meir (1969-1974) presents her basic policy guidelines to the Knesset, mirroring the 1967 *Allon Plan*'s main objective by referring to "security" civilian borders on strategic areas in the occupied territories.(15 December)

## 1971

- Military Order No 418 is issued. The order "amends" Jordanian Law No 79 of 1966 as it creates High Planning Councils (HPC) appointed by the Israeli Army Commander, dissolving the Palestinian planning committees and later establishing six regional and village HPCs in the West Bank and two in the Gaza Strip. The order transfers the authority to make all significant decisions on permits and plans in the OPT from the district level to the HPC, a body of the Israeli Army. It allows the HPCs to prepare, amend, cancel, disregard, or dispense any plan or permit and to exempt persons from obtaining the necessary license. The Military Order restricts Palestinian urban growth and limits Palestinian construction by refusing building permits and reducing the land earmarked for industrial and economic projects, thereby depriving a functioning Palestinian economy. It also allows to set aside for future use vast areas of land for settlements in the OPT.<sup>23</sup> (March)
- The UN General Assembly mandated Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories refers in 1971 to the Israeli Ministerial Committee for Settlement of the Territories and notes that "the very existence of such a committee headed by a person of ministerial rank shows, beyond doubt, that it is a policy of the Government to settle the territories occupied as a result of the hostilities of June 1967."<sup>24</sup> (5 October)

## 1974

- A group of prominent settler activists form the *Gush Emunim* movement (in Hebrew the "Bloc of the Faithful") to advance the cause of establishing settlements throughout the West Bank.<sup>25</sup>
- Israeli Prime Minister Yitzhak Rabin's (1974-1977) in a Cabinet Communiqué confirms the existence of a settlement policy: "Settlements in the Administered territories are established solely in accordance with the government's decisions (...) The Prime Minister and the Minister of Defence are authorized to implement this policy."<sup>26</sup> (26 July)

## 1977

- Thirty-one settlements have been established in the West Bank (excluding East Jerusalem), most of them within the outlines of the *Allon Plan* including in the Jordan Valley (the prime agricultural land of the West Bank), in the *Ezyon* bloc, in the southern Hebron hills and the

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<sup>23</sup> Amnesty International, "*Israel/Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes*". 8 December 1999

<sup>24</sup> A/8389

<sup>25</sup> Idith Zertal and Akiva Eldar, "Lords of the Land", 2005.

<sup>26</sup> Israeli Ministry of Foreign Affairs "17 Cabinet communiqué on settlements in the West Bank- 26 July 1974- and statement in the Knesset by Prime Minister Rabin- 31 July 1974, 26 Jul 1974, VOLUME 3: 1974-1977" [www.mfa.gov.il](http://www.mfa.gov.il)

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Judean Desert. The settler population in the West Bank (excluding East Jerusalem) reaches about 4,500.<sup>27</sup> Some 50,000 Israelis live in settlements in East Jerusalem.<sup>28</sup>

- Israeli Prime Minister Menachem Begin (1977-1981) presents his basic policy guidelines to the Knesset. Paragraph 9 indicates the Government's support for the development of Israeli settlements throughout a land that goes beyond the green line: "Settlement in Eretz Yisrael is a right as well as an integral part of the nation's security. The Government will act to achieve the strengthening, the widening and the development of Jewish settlement..."<sup>29</sup> (20 June).
- Israeli Prime Minister Begin's Government statement anticipates the *Droblets Plan*. It outlines the mixed high-ranking structure, involving the Government and World Zionist Organization (WZO), responsible for granting legal status to new settlements. "[N]o part of Judea and Samaria [the West Bank] should be handed over to foreign rule (...) the Ministerial Committee on Settlements, conferred legal status on three settlements in the West Bank established during the previous government's term of office (...) The joint Government-World Zionist Organization Settlement Affairs Committee today decided to recognize *Ma'aleh Adumim*, *Ofra* and *Elon Moreh* as full-fledged settlements, and charged the settlement institutions with granting them commensurate treatment."<sup>30</sup> (26 July)

## 1978

- The WZO, co-member of the Ministerial Committee on Settlements, publishes the *Droblets Plan* to build settlements on the central mountain ridge around Palestinian population centres. The plan shifts away from the *Allon Plan* in that the later had focused on agricultural settlements in unpopulated Arab areas, whereas the former focuses on urban settlements which are relatively easy to set up, market and populate in the midst of populated Arab areas. (October)

## 1979

- By 1979 there are 43 settlements and 10,000 settlers in the West Bank, excluding East Jerusalem.<sup>31</sup>
- The UN Security Council adopts Resolution 446 affirming "that the Fourth Geneva (...) is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem" and determining that "the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."<sup>32</sup> The resolution also provides for the establishment of a commission to

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<sup>27</sup> *B'Tselem's* report, Land Grab, May 2002

<sup>28</sup> *B'Tselem's* report, Land Grab, May 2002

<sup>29</sup> Israeli Ministry of Foreign Affairs "Basic guidelines of the government- 20 June 1977, 20 Jun 1977, Volume 4-5: 1977-1979" [www.mfa.gov.il](http://www.mfa.gov.il) The 9<sup>th</sup> paragraph of policy guidelines presented in 1977 is quoted to in the presentation of Begin's policy guidelines in his second tenure in office on 5 August 1981.

<sup>30</sup> Israeli Ministry of Foreign Affairs "23 Government statement on recognition of three settlements- 26 July 1977, Volumes 4-5: 1977-1979" [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>31</sup> Figures from Israeli Central Bureau of Statistics, *B'Tselem* Land Grab May 2002

<sup>32</sup> S/RES/446

examine the situation in relation to the settlements in the occupied territories including Jerusalem, which submits a report<sup>33</sup> to the Security Council. (22 March)

- Military Order 783 5739 “Concerning the Administration of Regional Councils” is issued. The order establishes the actual area controlled by settlements which can be modified at the discretion of the Israeli Military Regional Commander “‘Area of a settlement’ – the area bearing the settlement’s name is circumscribed by a line on the map of the regional council which is signed by the regional commander (...) The regional commander has the right to alter (...) the boundaries on the map (...)”<sup>34</sup> (25 March)
- Israeli Defence Ministry, Ezer Weizman, declares that some 61,000 *dunums* had been seized for military needs since 1967, with more than 40,000 *dunums* of private land given to the establishment of settlements.<sup>35</sup>
- The High Court decision on the *Elon Moreh* case rules against the temporary seizure of land for military purposes. The testimony of retired military personnel that the land seized for the *Elon Moreh* settlement served no military purposes in addition to the testimony of the settlers themselves that they, along with the Israeli Prime Minister, saw the *Elon Moreh* settlement as a permanent settlement served to convince the High Court that the land was not legitimately seized for military purposes.<sup>36</sup> (22 October)
- Israeli Prime Minister Begin, in a Cabinet communiqué on settlements which mirrors the *Drobles Plan*, confirms that the Government has been implementing settlement activities in the OPT. It also indicates the new basis (declarations of “State Land”) to continue with this endeavour after the ruling in the *Elon Moreh* case: “Settlement activities were carried out in Judea, Samaria and the Gaza region (...) the allotment of land for existing settlements or those settlements whose establishment was previously decided upon in Judea and Samaria [the West Bank] (...) *Givon* will be established partly on land belonging to state and partly on land owned by Jews, which will be purchased from its owners for this purpose (...) *Beit Horon* will be established on state lands (...) *Efrat* will be established on state lands (...) *Elkana* and *Kedumim* will be expanded by additional of state land (...) An inter-ministerial committee will be established which will examine the situation in the settlements of *Ophra* and *Kedumim*, and which will recommend solutions for their problems in the framework of government policy.”<sup>37</sup> (14 October)

## 1980

- Military Order 892 Concerning the Administration of Local Councils is issued. The order regulates the issue of larger settlements which have been awarded the status of “local councils”, and defines the manner in which the area of the council is defined at the discretion of the Israeli Army Regional Commander: (1 March)
- The UN Security Council adopts Resolution 465 which follows Resolutions 446 and 452, determining “that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal

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<sup>33</sup> S/13450; S/13679

<sup>34</sup> Quoted by Hagit Ofran and Dror Etkes “And Thou Shalt Spread ...” Construction and development of settlements beyond the official limits of jurisdiction A special report presented by the “Peace Now” Settlement Watch. Jerusalem, June 2007

<sup>35</sup> Idith Zertal and Akiva Eldar, “Lords of the Land”, 2005

<sup>36</sup> *Duweikat v. Government of Israel*, H CJ 390/79, 22 October 1979 (*Elon Moreh* case)

<sup>37</sup> Israeli Ministry of Foreign Affairs “50 Cabinet communiqué on settlements- 14 October 1979 VOLUME 6: 1979-1980” [www.mfa.gov.il](http://www.mfa.gov.il)

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validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention (...) and a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.”<sup>38</sup> (1 March)

- Between 1980 and 1984 over 800,000 *dunums* of land is confiscated through the selective use of the Ottoman Land Law of 1858. The method is largely devised by the director of the Civil Department at the State Prosecutors Office, Plia Albek, with the backing of her superiors: Attorneys General Aharon Barak and Yitzhak Zamir (both later Supreme Court Justices)<sup>39</sup>. The West Bank was surveyed by air and on the ground to identify uncultivated land. This would then be cross checked with land records and any lands not under private ownership would be declared as State Land. The onus is placed on those liable to be injured by the declaration to appeal to a military committee within 45 days.<sup>40</sup>

## 1981

- The Defence Minister (1981-1983) Ariel Sharon prepares a plan (the *Sharon Plan*) covering areas he believes are vital for Israel's security and which should be annexed. Only a small number of enclaves densely populated by Palestinians are not considered. While the plan is not officially adopted by the government, it provides the basis for future settlements.<sup>41</sup>
- Israeli Deputy Attorney General Yehudit Karp is appointed to head a team looking at investigations and legal actions taken with regards to Israeli settler violence and intimidation in OPT. The report's findings identified: an unusually high number of files closed for reasons of “perpetrators unknown”; an indulgent and forgiving attitude from the police towards the settlers; in some cases no sincere efforts to find culprits; no questioning of witnesses; unreasonable lengths of time and a lack of sensitivity in investigations. The report observes that, “Israeli residents of the territories are given to understand that they are soldiers to all intents and purposes. [...] Israeli residents of Judea and Samaria [West Bank], explicitly relying on this assurance, refuse to cooperate with the police or provide information; they reject any contact with the police, basing themselves on ‘high-level policy’ and declaring that they are under no obligation to cooperate in this matter.”<sup>42</sup> The report is not released by the Government of the day, only appearing in truncated form in 1984, 20 months after its submission by the Karp team.

## 1982

- Prime Minister Menachem Begin (1981-1983) presents the basic policy guidelines of his second tenure in the Government. The document largely mirrors the *Sharon Plan* and the plan to confer a permanent nature to settlements in the OPT: “any suggestion for the

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<sup>38</sup> S/RES/465

<sup>39</sup> Idith Zertal and Akiva Eldar, “Lords of the Land”, 2005

<sup>40</sup> *B'Tselem*'s report, Land Grab, May 2002

<sup>41</sup> *B'Tselem*'s report, Land Grab, May 2002

<sup>42</sup> The Karp Commission, Report on Investigations of Suspicions Against Israelis in Judea and Samaria: Conclusions (25 May 1982)

dismantlement or removal of any settlement in which Israeli citizens and members of the Jewish people have settled and reside, will be rejected.”<sup>43</sup> (3 May)

## 1983

- The Israeli Ministry of Agriculture publishes the *Hundred Thousand Plan* aiming at building settlements in the West Bank through 2010. It includes an implementation plan 1983-1986. The plan aims at attracting 80,000 Israelis to live in 43 new Israeli settlements which would bring the total settler population to 100,000. Along with the construction of settlements, up to 450 km of new roads for settlers are to be paved.<sup>44</sup>

## 1984

- Israeli Prime Minister Shimon Peres (1984 - 1986) presents his basic policy guidelines to the Knesset in line with the *Hundred Thousand Plan*. The fourth point of the document establishes that “there will be no change in the sovereignty over Judea, Samaria [West Bank] and the Gaza District except with the consent of the Alignment and the Likud”. Other points include: “(A) The existence and development of settlements set up by the governments of Israel will be ensured, and the extent of their development will be determined by the government; (B) 5-6 settlements will be established within a year (...); (D) The establishment of new settlements will require approval by a majority of the cabinet ministers.”<sup>45</sup> (13 September)

## 1986

- Prime Minister Designate Yitzhak Shamir (1986 - 1988) addresses the Knesset to present the national unity Government in its second period and confirms the economic support to settlements: “the government will seek to forge a ‘Zionist Economy.’ An economy that will not be based only on solid economic principles, but also on the Zionist values which must be our guide, and among them the supreme value of settlement throughout *Eretz-Israel*.”<sup>46</sup> (20 October)

## 1988

- During the period 1988-1992, settlement activities accelerate rapidly and the number of settlements increase by more than 60% in line with the *Hundred Thousand Plan*.<sup>47</sup>

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<sup>43</sup> Israeli Ministry of Foreign Affairs “44 Statement in the Knesset by Prime Minister Begin upon the Presentation of his Second Government- 5 August 1981, 5 Aug 1981, VOLUME 7: 1981-1982” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>44</sup> Ministry of Agriculture and the Settlement Division of the World Zionist Organization, “Master Plan for Settlement for Judea and Samaria, Development Plan for the Region for 1983-1986” (Jerusalem, April 1983)

<sup>45</sup> Israeli Ministry of Foreign Affairs “Basic Policy Guidelines of the Government's Program, 13 September 1984. Volume 9-10: 1984-1988” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>46</sup> Israeli Ministry of Foreign Affairs “196 Statement in the Knesset by Prime Minister Designate Shamir- 20 October 1986, Volume 9-10: 1984-1988” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>47</sup> Applied Research Institute, Jerusalem (ARIJ) “Undermining Peace: ‘Israel’s Unilateral Segregation Plans in the Occupied Palestinian Territory”” 2003.

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- Israeli Prime Minister Yitzhak Shamir (1988 - 1990) presents to the Knesset his basic policy guidelines, mirroring provisions of the *Hundred Thousand Plan*. Point 15 elaborates on the settlement policy as follows “The existence and development of settlements set up by the governments of Israel will be ensured. An attached appendix ... elaborates on various issues, whose execution will be agreed upon together with other issues in this framework. b. Between five and eight settlements will be established within a year. ... c. The settlements elaborated on in attached appendix will be established in subsequent years as per a timetable to be determined in an agreement between the prime minister and the vice premier, toward the conclusion of the first year. Point 20 refers to settlements as “national preferential areas” for Government support “20: The Government will assist sectors of national-social preference, including the settlement sector (within the framework of the Recovery Plan), and [will assist] the populace of development areas.”<sup>48</sup> (22 December)

## 1992

- By 1992, following wide-scale confiscation of Palestinian land, the number of settlements had risen sharply to 120 inhabited by 100,500 settlers.<sup>49</sup>
- Israeli Prime Minister Yitzhak Rabin (1992-1995) presents to the Knesset his basic policy guidelines, revisiting the previous policy to establish new settlements in the OPT while at the same time guaranteeing the existence of settlements already established through public services’ delivery, promoting the consolidation of the settlements. The revision in the establishment of new settlements is perceived in Israel as a virtual freeze on settlement expansion (13 July)
- As a result of Prime Minister Rabin’s virtual freeze on settlement construction, there is a reduction in the frequency and the amount of declarations of “State Land”<sup>50</sup>
- A Committee led by Haim Klugman, director-general of the Israeli Ministry of Justice, examines the transfer of expropriated Palestinian property in East Jerusalem from the State to settler organisations like *Elad* and *Ateret Cohanim*. The report found that the Custodian for Abandoned Properties effectively served as an institution to dispossess Palestinians of their land and property.

## 1993

- The Oslo I Accords are signed. Permanent issues including Israeli settlements are deliberately left to future negotiations.<sup>51</sup> (13 September)

## 1994

- The *Shamgar* Commission report into the killing of twenty-nine Palestinian worshippers praying inside the Ibrahim Mosque (or Mosque of Abraham) at the Cave of the Patriarchs

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<sup>48</sup> Israeli Ministry of Foreign Affairs “Basic Policy Guidelines of the Government's Program- 22 December 1988, Volume 11-12: 1988-1992” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>49</sup> Figures from Israeli Central Bureau of Statistics, *B'Tselem* Land Grab May 2002

<sup>50</sup> *B'Tselem*, By Hook and By Crook: Israeli Settlement Policy in the West Bank, 2010

<sup>51</sup> Declaration of Principles on Interim Self-Government Arrangements, The Oslo Accords Between Israel and Palestine, 13 September 1993

site in Hebron also reviews in general law enforcement on Israeli citizens in OPT and describes actions in this regard as “too slow, too little and too late.”

## 1995

- The Oslo II Accords are signed. They divide the West Bank and Gaza into three areas, allow Palestinian election and for Israel to legally close crossing points into Israel if deemed necessary.<sup>52</sup> (28 September)
- Israeli Prime Minister Yitzhak Rabin is assassinated by a militant Israeli allegedly in retaliation for undermining the pace of Jewish settlement expansion in the OPT.<sup>53</sup> (4 November)

## 1996

- Prime Minister Benjamin Netanyahu (1996-1999) presents to the Knesset the basic policy guidelines of his first tenure in Government. The sixth strategic goal (out of ten) is entitled “Settlement”. Whether inside or outside Israel, settlements are identified as a national priority and, as such, recipients of preferential Government support. The document puts particular emphasis on supporting settlements beyond the green line: “1. Settlement in the Negev, the Galilee, the Golan Heights, the Jordan Valley, and in Judea, Samaria [West Bank] and Gaza is of national importance, to Israel's defense and an expression of of [sic] Zionist fulfillment. 2. The Government will alter the settlement policy, act to consolidate and develop the settlement enterprise in these areas, and allocate the resources necessary for this. The Government of Israel will safeguard its vital water supplies, from water sources on the Golan Heights and in Judea and Samaria.” (18 June)
- Settlements with no Government authorization (“outposts”) begin to be established on the hills east of *Itamar*, in *Amona* east of *Ofra* and on *Givat Hadagan* north of the settlement of *Efrat*.<sup>54</sup>

## 1998

- The Israeli Government approves Decision No, 3292, which defines certain towns and villages as National Priority Areas (NPA) “A” and “B”. Many settlements are defined as NPA “A”, which entitles them to a number of benefits in housing, a wide-ranging benefits in education as well as for industry and agriculture, grants and subsidies, indemnification for the taxes imposed on their produce by the European Union; tax levels significantly lower than those established for communities inside the Green Line, and larger balancing grants to the settlements to cover deficits.<sup>55</sup> (15 February)

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<sup>52</sup> The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, “Oslo 2” 28 September 1995

<sup>53</sup> *Haaretz*, “Settler rabbi: Time has come to apologize for Rabin assassination. In memorial evening in West Bank, Tekoa's Menachem Froman says: We vow not to repeat the dance of hatred. By Chaim Levinson, 7 Nov 2012

<sup>54</sup> Peace Now, First petitions against the outposts. <http://peacenow.org.il/eng/content/first-petitions-against-outposts>

<sup>55</sup> Adalah Position Paper “On the Israeli Government’s New Decision Classifying Communities as National Priority Areas”, February 2010, Adalah - The Legal Center for the Arab Minority Rights in Israel, See also B’Tselem “By Hook and By Crook: Israeli Settlement Policy in the West Bank.” July 2010, Summary



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## 1999

- More than 50 new settlements without Government authorization (“outposts”) are reported to have been established by the end of Prime Minister Netanyahu first tenure in Government (May).<sup>56</sup>
- Israeli Prime Minister Ehud Barak (1999-2001) presents to the Knesset his basic policy guidelines. The third strategic line (out of twelve) is entitled “Settlement” and indicates the Government support to continue developing settlements already established in the West Bank and Gaza, while indicating that no new settlements will be built: “4.1 The Government views all forms of settlement as a valued social and national enterprise (...); 4.2 Until the status of the Jewish communities in Judea, Samaria [West Bank] and Gaza is determined (...) no new communities will be built and no existing communities will be detrimentally affected; 4.3 The Government will work to ensure the security of the Jewish residents in Judea, Samaria [West Bank] and Gaza, and to provide regular Government and municipal services -- equal to those offered to residents of all other communities in Israel. The Government will offer a response to the on-going development needs of existing communities. Socio-economic standards will be equally applied to all communities everywhere.”<sup>57</sup> (6 July)

## 2001

- Israeli Prime Minister Ariel Sharon (2001-2006) presents to the Knesset his basic policy guidelines. The eighth national goal (out of ten) is: “To strengthen, expand, and promote settlement throughout the country.” The settlement policy follows the same line of the prior Government: “2.9 During its term of office, the Government will not establish new settlements. The Government will provide for ongoing needs in the development of existing settlements.”<sup>58</sup> (7 March).
- Fifty one new settlements with no Government authorization (“outposts”) are reported to have been built between March 2001 and June 2004.<sup>59</sup>
- The US led Sharm El-Sheikh Fact-Finding Committee Report, known as the “Mitchell Report”, is presented. It says that “[d]uring our last visit, we observed the impact of 6,400 settlers on 140,000 Palestinians in Hebron and 6,500 settlers on over 1,100,000 Palestinians in the Gaza Strip (...) we note that many of the confrontations (...) occurred at points where Palestinians, settlers, and security forces protecting the settlers, meet (...) restrictions on the movement of people and goods in the West Bank and Gaza Strip (closures) [have resulted in the] destruction by Israeli security forces and settlers of tens of thousands of olive and fruit trees and other agricultural property. The closures have had other adverse effects, such as preventing civilians from access to urgent medical treatment and preventing students from attending school.
- The report recommends that the Government of Israel “freeze all settlement activity, including the “natural growth” of existing settlements (...); lift closures, transfer to the PA

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<sup>56</sup> Peace Now, “Hayovel and Haresha - Illegal construction” HCJ 9051/05 - September 2005 <http://peacenow.org.il/eng/content/hayovel-and-haresha-illegal-construction>

<sup>57</sup> Israeli Ministry of Foreign Affairs “Guidelines of the Government of Israel, Basic Guidelines of the Government of Israel, Jerusalem, July 6, 1999” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>58</sup> Israeli Ministry of Foreign Affairs “Guidelines of the Government of Israel, Basic Guidelines of the Government of Israel, Jerusalem, March 7, 2001” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>59</sup> Foundation for Middle East Peace, “Settlement Outposts Continue to Thrive under Sharon Administration”, Settlement Report, Vol. 14 No. 4, July-August 2004

all tax revenues owed, and permit Palestinians who had been employed in Israel to return to their jobs; and should ensure that security forces and settlers refrain from the destruction of homes and roads, as well as trees and other agricultural property in Palestinian areas, [and that it] take all necessary steps to prevent acts of violence by settlers.”<sup>60</sup> (30 April)

## 2002

- The total reported number of settlements built with no Government authorization (“outposts”) increases to 93.<sup>61</sup> (July).

## 2003

- The basic policy guidelines in the second tenure of Prime Minister Ariel Sharon (2003-2006) remain the same. The eighth national goal (out of ten) continues to refer to the strengthening, expansion and promotion of settlements throughout the country, with the Government support to continue developing established settlements and its aim of not establishing new settlements.<sup>62</sup> (28 February)

## 2004

- International Court of Justice issues its Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory. (9 July)

## 2005

- The Office of the Prime Minister’s report (Sason report) on “unauthorized outposts” describes them as a “continuation of the settlement enterprise in the territories.” The report documents the active participation of the Government in the promotion and expansion of settlements up to 1992 and accounts for the “unofficial” continuation of such involvement between 1992 and 2005, including land confiscation and illegal construction with the “unauthorized aid” of the Ministry of Housing and the WZO, as well as “overlooking” and “actual encouragement and support” by the political echelon. The report concludes that “unauthorized outposts violate[s] standard procedure, good governing rules (...) endanger the principal of the rule of law [and thus] urgent measures must be taken to change [this] reality”.<sup>63</sup> (8 March)
- In accordance with the “Disengagement Plan”, 9,480 Jewish settlers from 21 settlements in Gaza and four settlements in the northern West Bank are evacuated. (16 – 30 August)

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<sup>60</sup> Sharm El-Sheikh Fact-Finding Committee Report “Mitchell Report” April 30, 2001. By Suleyman Demirel, Thorbjørn Jagland, Warren B. Rudman, Javier Solana and George J Mitchell (Chairman).

<sup>61</sup> Peace Now, First petitions against the outposts. <http://peacenow.org.il/eng/content/first-petitions-against-outposts>

<sup>62</sup> Israeli Ministry of Foreign Affairs “Basic Guidelines of the 30th Government of Israel, 28 Feb 2003” [www.mfa.gov.il](http://www.mfa.gov.il)

<sup>63</sup> Talya Sason, *Summary of the Opinion Concerning Unauthorized Outposts*, Israeli Prime Minister’s Office, Communications Department, 8 March 2005.

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## 2009

- Israeli media unveils the Baruch Spiegel “secret database” of Israeli settlements in the OPT, a project developed by the Israeli Ministry of Defence. The database provides details on location and population size of the settlements; status of ownership of the land including details on over 30 settlements that were to some extent built on private Palestinian land; construction violating planning regimes and building permit requirements; details on authorisation agreements between the State and those building settlements. (February)
- The Knesset enacts the “Economic Arrangements Law” with an additional section entitled the “National Priority Areas” to apply to settlements in the OPT. (14 July)
- Israel announces a ten-month moratorium on settlement activity (up to September 2010). The moratorium is in effect a partial freeze on approval of new construction. It excludes East Jerusalem and “natural growth” in existing settlements, which grow three times as fast as “natural growth” in Israel. (November)
- The Government approves Decision No. 1060 “Defining Towns and Areas with National Priority”, following request of additional time to implement the Supreme Court rulings H CJ 2773/98 and H CJ 11163/0 on 1998 decision on National Priority Areas (NPAs). The new decision falls under the new “Economic Arrangements Law” and classifies various settlements in the OPT as NPAs further designating settlements under the criterion of “level of security threat.” In addition, every settlement in the OPT defined as a NPA is also entitled to receive on an individual basis the associated additional budgetary grants and benefits in fields to be defined by ministers. In contrast, towns and villages located within the Green Line and also defined as NPAs receive smaller benefits at the district and regional level only.<sup>64</sup> (13 December)

## 2010

- Israel joins the Organisation for Economic Co-operation and Development (OECD). During the discussions of accession, Israel indicates that the Government applies the investment incentives under 1984 Law of Encouragement of Capital Investment (which is also reported as not covering the OPT) to certain industrial areas in the West Bank. Israel indicates that foreign-owned enterprises may be established in those areas of the West Bank and are eligible for grants under that Law.<sup>65</sup> (10 May)

## 2011

- A letter signed by 38 members of the Knesset (out of 120 members) is addressed to Israeli Prime Minister Netanyahu. The letter refers to orders to “demolish tens or hundreds of (...) outposts in Judea and Samaria [the West Bank]” and indicates that “[t]his directive must be changed”. The letter further stresses that “we should openly declare that Judea and Samaria are ours”.<sup>66</sup> (11 October)

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<sup>64</sup> Adalah Position Paper “On the Israeli Government’s New Decision Classifying Communities as National Priority Areas”, February 2010, Adalah - The Legal Center for the Arab Minority Rights in Israel

<sup>65</sup> OECD “Accession of Israel to the OECD: Review of international investment policies” <http://www.oecd.org/israel/49864025.pdf>

<sup>66</sup> Foundation for Middle East Peace “MKs to Bibi - Keep the Outposts” Settlement Report, Vol. 21 No. 6, November-December 2011

## 2012

- Israeli Government retroactively legalises three outposts. (April)
- The findings of the Levy Committee, established to investigate the legal status of the unauthorized settlements in the West Bank (“outposts”), are published. The report documents that settlements built with no formal Government authorization were established with the knowledge, encouragement and tacit agreement of Government Ministers, including the Prime Minister, public authorities, the Civil Administration and the regional councils. It goes on to recommend, that given the real true will of the Israeli Government was to establish outposts, it should therefore legalise them. No in-depth analysis is made on the methods used to establish the so-called unauthorized outposts and no reference to the 2.5 million Palestinian living in the West Bank is included.<sup>67</sup> (9 July)
- The Judea and Samaria Council for Higher Education grants for the first time a full-fledged University recognition to a Centre located beyond the green line, Ariel University Centre, despite opposition by the planning and budget committee of the State's Council for Higher Education<sup>68</sup>. The University is open to all Israeli citizens, including Arab-Israelis but closed to Palestinians residing in the West Bank.<sup>69</sup> (17 July)
- The UN General Assembly votes for Palestine to become a non-member state with observer status. (29 November)
- PM Netanyahu authorises the building of 3,000 new housing units in East Jerusalem and the West Bank. (30 November)
- In analysis of building in settlements for the year 2012, it was revealed that plans for 6,676 residential units were approved in 2012<sup>70</sup>. This represents an increase from 1,607 housing units approved for construction in 2011 and the several hundred housing units approved in 2010. Among the housing construction plans approved were 3,500 residential units intended for the E-1 corridor, 523 for the new settlement of *Gevaot* and more than 500 in *Itamar*. Construction began on 1,747 housing units in West Bank settlements last year, the Peace Now report also says. More than a third of the construction in the settlements was east of the West Bank separation fence, according to the report. Four new outposts went up in 2012: *Nahlei Tal* near the Palestinian city of Ramallah, *Tzofin Tzafon (Tzofin North)* near the Palestinian city of Qalqilyah, *Nahalat Yosef* near Nablus and Hill 573 as part of an expansion of the *Itamar* settlement. Altogether, 317 new housing units were built in settlement outposts without building permits, which is against the law.<sup>71</sup>

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<sup>67</sup> *B'Tselem*, “Levy Committee Report: Where are the Palestinians?” 11 July 2012.

<sup>68</sup> *Haaretz*, “Ariel academic center recognized as first Israeli university beyond Green Line. Decision on West Bank campus made despite opposition by Israel's Council for Higher Education.” By Talila Neshet, 17 July 2012

<sup>69</sup> <http://digitaljournal.com/article/328824#ixzz2DhMH1Jcf> and <http://www.bbc.co.uk/news/world-middle-east-18879786>

<sup>70</sup> Peace Now “Summary of Year 2012 in Settlements” report.

<sup>71</sup> *Haaretz*, “Approval for settlement plans jumped 300% in 2012, says Peace Now.” By Chaim Levinson, 16 January 2013

## Annex II

