Life Restricted
Freedom of Movement and Access Restrictions in the Occupied Palestinian Territory
The Society of St. Yves - Catholic Center for Human Right is working under the patronage of the Latin Patriarchate in Jerusalem. It was founded in 1991 by the Latin Patriarch of Jerusalem and the Holy Land, His Beatitude Emeritus Michel Sabbah, to help the poor and the oppressed, according to the social doctrine of the Catholic Church, and was named after Saint Yves, patron Saint of lawyers, known as “Advocate of the poor”. St. Yves provides gratis legal assistance, counsel, awareness raising and advocacy to the fragmented members of the community. Today St. Yves manages around 2500 cases per year.

St. Yves defends Palestinians’ practice of their freedom of movement and counter different types of arbitrary profiling imposed on them by the Israeli authorities.

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1. INTRODUCTION

To speak of life in Palestine is to speak of life under occupation. It is a determining factor in the daily choices that the Palestinian population are able to make and holds great sway over the manner in which they are able to dictate their own lives. Self-actualization and occupation are at odds with each other but also inseparably linked. The year 2018 marks over fifty years of Israeli occupation of the Occupied Palestinian Territory (oPt). Fifty years of grave violations of international law which greatly affect the lives of Palestinians, governing such fundamental choices as where one can live, where one can travel and even where one “belongs”.
The freedom of movement of Palestinians is confined by a large array of restrictions, both physical and non-physical, imposed by the Israeli Occupying Power, not only through official administration and legislation, but also through an opaque and heavily bureaucratic permit regime, a vast selection of undisclosed verbal commands and an unofficial policy designed to render movement a dangerous and often humiliating ordeal. On the ground, physical obstructions such as checkpoints and roadblocks appear and disappear on a whim, often making travel an unsure possibility, depriving Palestinians of the certainty of actually arriving where they wish to go.

Freedom of movement does not only affect travel from A to B, but also affects a wide range of other rights which are necessary for the peaceful enjoyment of one’s life. As such, freedom of movement is a gateway to a whole set of inseparable rights. The right to remain in one’s home is often endangered, whether actively, through home demolition or land confiscation, or passively, through the creation of coercive circumstances rendering one’s current lifestyle intolerable through the denial of permission to build a home for daughters or sons to live nearby, or through the restriction of access to services. A stifling checkpoint system affects the ability of communities to access healthcare, education or law enforcement services and a restrictive permit system prevents unification of families, access to agricultural land or work, and even in some cases the ability to register a new child. Furthermore, these restrictions are enforced on an ethno-national basis, affecting the lives of long-term native Palestinian residents while leaving new Jewish settlers, for example, untouched, or rather, enjoying full citizenship rights and receiving state-sponsored incentives to reside in illegal settlements.

As Occupying Power, Israel is under an obligation to respect the norms of international law and ensure the rights of those under its occupation. Israel is not only bound to respect the self-determination of the Palestinian people but also to adhere to the rules of international humanitarian law (IHL) and international human rights law (IHRL) and to enforce them across the oPt. Thus far, Israel’s track-record of application of these laws has been rife with violations and justifications in the name of “national security”. The means and measures that Israel has used in order to safeguard its “national security” have been both unnecessary and disproportionate across the board. While it is true that Israel has a right to protect its population and that it does indeed suffer a threat emanating from the oPt, the manner in which this threat has been dealt with has adversely affected the Palestinian population beyond warrant and has had the effect of discriminating against native communities.

This report aims at highlighting the current Israeli restrictions in place on the freedom of movement of Palestinians and to consider these restrictions in light of international law. The report will thus provide a comprehensive overview of the various methods used by Israel to limit the freedom of movement of Palestinians, including the ability to remain in areas where they currently reside, and also demonstrate that many of these restrictions go beyond what is necessary and proportionate in the name of national security and resultantly violate the norms of international law. This piece will therefore first commence with a brief overview of the background of the occupation including the progression of restrictions on freedom of movement in the oPt over the years. Next it will look at the discriminatory dual legal system introduced in the oPt along with the extensive permit system contained therein. The report will continue on to look at the means of restriction on movement in detail, along with the policy of forced transfer undertaken by the Israeli Occupying Power. Finally, the report will look at these restrictions in light of international law, especially regarding IHL and IHRL. The report will conclude with a number of final observations and recommendations with vis-à-vis restrictions on freedom of movement within the oPt.
2. History and Background of Occupation

In 1967, during the Six Day War, Israel occupied the West Bank, including East Jerusalem, and the Gaza strip. This was the area beyond the so-called “Green Line” which had been delineated by the 1949 armistice agreements between Israel and its neighbors1. Through this occupation, Israel exercised control over the movement of Palestinians and took on the administration of Palestinian resources including land, water and cultural heritage. Included in this administration of land was the restriction of access to roughly 20% of the West Bank which was designated as “closed military zones”. On 28 June 1967 the Israeli Parliament amended the Laws of the State of Israel to extend its jurisdiction over the newly declared municipal borders of East Jerusalem2. This amendment of the law was denounced by the United Nations Security Council which reaffirmed the inadmissibility of the acquisition of territory by war3. In 1972 Israel instituted an “open door” policy permitting Palestinian residents entry across Israel and between the West Bank and the Gaza Strip. There were some limitations on this access whereby Palestinian residents were not permitted to remain in Israel or East Jerusalem between 1am and 5am. In the mid-1970s Israel began to transfer parts of its own population to settle on Palestinian lands in contravention of the provisions of the Fourth Geneva Convention (GCIV). This resulted in the appropriation of a number of Palestinian resources such as water supplies and large tracts of arable land in order to facilitate the new settlements. It also put in place a number of restrictions regarding Palestinian access to settlement areas4. In 1980, Israel took steps to complete its annexation proper of East Jerusalem by passing the “Basic Law” on Jerusalem declaring a unified Jerusalem as the capital of Israel5. This declaration was immediately denounced in August of the same year by the Security Council in Resolution 478 stating that the “enactment of the «basic law» by Israel constitutes a violation of international law” and affirming that “all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the [...] «Basic Law» on Jerusalem, are null and void and must be rescinded forthwith”6.

Along with the onset of the first Palestinian Intifada in 1987 came a large array of new sweeping “security” provisions enforced by Israel. Over the course of the Intifada until the start of the 1990s movement restrictions were tightened and entry and exit of the oPt was greatly reduced. Many of these restrictions were never revoked, rather, they were intensified. In 1989 Palestinians in Gaza became required to produce magnetic cards coded with background security information if they wished to leave the Gaza Strip to work in Israel and the flow of workers across the oPt was controlled by a series of military checkpoints. In 1991 the “open door” policy allowing Palestinians to freely come and go from Israeli territory was revoked and replaced with a personal permit system, managed by Israel’s military. At the same time a severe reduction on the freedom of movement in the oPt was introduced under the term “closures”. These “closures” were in effect for a total of 62 days heavily limiting access to Israel or neighboring countries and diminishing freedom of movement within the territories7.

Overall, between 1967 and 1992 some 1,300 numbered military orders were issued in the West Bank (with a similar number in the Gaza Strip), many of which designed to reduce freedom of movement and many of which were illegal8. In 1993 a general closure was imposed on the West Bank and for the first time a permit was required to travel from the West Bank to East Jerusalem. Not only was this another step towards a united annexed Jerusalem but the new permit system introduced serious administrative hurdles to Palestinians in the West Bank for whom East Jerusalem was a hub of commerce, employment, religious worship and social and familial ties9. Both the best hospitals and the best universities in the oPt were situated in East Jerusalem at this time and education and healthcare suffered. In addition, such policy gravely harmed the historic and social fabrics of the Palestinian society.

In 1995 the Oslo interim agreement segmented the West Bank into three areas under varying levels of control of the newly created Palestinian National Authority (PNA) titled Areas A, B and C. Area A, roughly 18% of the West Bank, encompassed all major cities and would be controlled with the exclusive authority of the PNA over security and civil affairs. Area B, 22% of the West Bank, covered most of the other township areas and authority was split with the PNA taking control of civil affairs while powers relating to police, security and army were retained by Israel, allowing them to limit or permit movement as they saw fit. Finally, Area C, comprising the majority (60%) of the West Bank remained under exclusive Israeli control, both civil and military.

The geography of Area C in effect created enclaves of PNA control between vast areas of Israeli administered territory. With Israel maintaining military control of over 80% of the West Bank after the Oslo accords it had robust capacity to effectively restrict movement between major population centers and control the majority of important infrastructural roadways connecting the West Bank. In addition, civil control over Area C meant that Israeli authorities could restrict planning permits for Palestinian construction, while allowing settlement expansion effectively unhindered. The Oslo interim agreement provided that “movement of people, vehicles and goods in the West Bank, between cities, towns, villages and refugee camps, will be free and normal, and shall not need to be effected through checkpoints or roadblocks” but this provision was not given sufficient effect by Israeli authorities. In fact, the physical and administrative restrictions on movement in the oPt actually increased. This is evidenced by the perceived requirement for two more agreements specifically designed to increase freedom of movement in the oPt in 2003 and 200510. Beyond this, even the 2005 “Agreement on Movement and Access” did not attain any efficacy on reducing restrictions on the freedom of movement with physical obstacles actually increasing over 2006 by 44%11.

The second Palestinian Intifada in 2000 was again accompanied by an increased clampdown on movement and Israel implemented a full closure of the Gaza Strip making travel to or from the West Bank and East Jerusalem almost impossible. In 2002 Israel began construction of the Annexation Wall. The stated reason for the

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11 UN OCHA. “The Agreement on Movement and Access One Year On” November 2006, available at https://www.ochaopt.org/documents/ama_one_year_on_nov06_final.pdf accessed 20/16/2016. The Report details that “[t]he number of obstacles as measured by OCHA increased by 164 to 540. The Israeli Army records 501 obstacles (not including gates which are usually left open) which is an increase of 125 or 33%”. 

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construction of the Wall was to protect “national security”, although, when completed, over 85% of the barrier will be constructed on Palestinian territory beyond the demarcated “Green Line” of the armistice agreement. The route significantly deviates into the oPt in order to encompass some 80 West Bank Jewish settlements on the Israeli side of the Wall. The Wall consists of “concrete walls, fences, ditches, razor wire, groomed sand paths, an electronic monitoring system, patrol roads, and a buffer zone”\(^{12}\) and cuts through a large area of extremely fertile Palestinian land separating farmers and workers from their livelihoods. Some residential areas are surrounded on three sides by concrete walls 8 metres high. In a 2004 advisory opinion\(^{13}\) rendered by the International Court of Justice (ICJ) the route of the wall was deemed to be contrary to international law, however construction has continued unabated with no signs on the Israeli side of heeding the opinion.

Over 2006 and 2007 following Hamas’ success in Palestinian parliamentary elections Israel withdrew all of its settlements and soldiers from the Gaza strip and moved towards the implementation of full economic blockade following clashes between Hamas and Fatah which resulted in the effective cessation of PNA authority in the region.

As can be seen from the history detailed above, restrictions on movement have increased in severity with the passing of time. While efforts have been made to ease restrictions on access and movement, they have been ultimately unsuccessful and, in some circumstances, have aggravated obstacles to free movement. Currently, there exists a stratified range of restrictions on movement comprising not only physical obstacles but also administrative, legal and psychological barriers.

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\(^{13}\) “Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, International Court of Justice (ICJ), 9 July 2004.
3. Legal and Administrative Frameworks Surrounding the Freedom of Movement

It is impossible to understand the restrictions of movement imposed upon Palestinians in the oPt without first understanding the discriminatory application of a dual legal system, used to apply oppressive military laws against Palestinians on an ethno-national basis while safeguarding Jewish settlers by treating them under the more favorable Israeli civil law, and the imposition of a strict permit system designed to regulate and limit the movement of Palestinian residents throughout the OPt. Combined, the application of military law and control of the issuance of permits have the effect of segregating and oppressing Palestinian nationals and relegating them to second-class citizens in their native homeland.

3(i). Two Separate Legal Systems

Despite the fact that Israeli settlers reside illegally on Palestinian lands, the laws which govern the actions of Palestinians and settlers differ, both in the source from which they emanate, and in the courts in which they are applied. As a rule, Palestinians are subject to the Jordanian law existing prior to occupation by Israel along with the laws passed by the Military Commander since 1967, while the settler population is subject to Israeli civil law. With the “Proclamation Concerning the Takeover of Administration by the IDF”\(^ {14}\) and the “Proclamation Concerning Administrative and Judiciary Procedures”\(^ {15}\) delivered on the 7 June 1967 the Military Commander declared himself the new sovereign of the area. Competencies in this regard included legislation, governance and choice of administrative personnel of the area.

Article 43 of the Hague Regulations states that the occupying power must respect the laws in force in the territory unless it is absolutely prevented from doing so\(^ {16}\), however new legislation or derogations from existing legislation may be enacted for a number of reasons, such as to maintain orderly government and civil life of the area, to protect the members or property of the occupying power, or to protect the occupying power itself\(^ {17}\). Such legislative changes are permissible when they are considered necessary to achieve these aims\(^ {18}\). Thus, in apparent accordance with international law, from 1967 Jordanian law continued to be applied in the territory subject to, and supplemented by, the rulings of the Military Commander.

Situations of occupation, and similarly the laws applicable during occupation, are not meant to be a long-lasting state of affairs. In fact, the occupation of Palestine has been the longest lasting occupation in the last century, followed by the occupation of Berlin from 1945 to 1990. The laws of occupation under military law are not designed for such circumstances. The vestiges of Jordanian law existing prior to occupation are now outdated, and with almost 50 years of military legislation, military law constitutes the norm when it comes to governing the

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\(^{14}\) Proclamation Concerning the Takeover of Administration by the IDF (No. 1), 5727-1967.

\(^{15}\) Proclamation Concerning Administrative and Judiciary Procedures (West Bank) (No. 2), 5727-1967.


\(^{17}\) Article 64 International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

lives of Palestinians in the oPt today. Although ostensibly all residents in the oPt should be subject to the laws applicable to the territory, it was deemed that the lives of civilians should not be administered by military law in the long run\textsuperscript{19}. According to Israeli authorities, it is assumed that civilians should be subject to civil law to be enforced in civilian courts, however international law forbids the supplanting of the occupying power’s law onto the population of the occupied territories. Israel thus saw fit to extend Israeli civil law, along with the rights and benefits it guarantees, to the Israeli settlement population in the oPt, to be enforced in Israeli civil courts, while leaving Palestinians in the oPt under military jurisdiction, to be given effect in much harsher military courts, with a 99% conviction rate.

In order to extend Israeli civil law to settlers, Israel used a basis of personal extraterritorial jurisdiction and enacted a law to confirm this jurisdiction\textsuperscript{20}. This law has been subject to a number of updates every few years in order to adapt and extend its application\textsuperscript{21}. Settlers are thus effectively exempt from the legislation enacted by the Military Commander, and moreover, the Military Commander himself has favored the application of Israeli law to Israeli settlers\textsuperscript{22}. The policy of application of Israeli law to Israeli settlements is well described by Justice Elyakim Rubinstein where he stated that “The ‘enclaves’ are a sort of ‘islands’[sic] to which Israeli laws were applied by legal means, under the assumption that there is no difference between the law applying in Israel and the one that should apply in these enclaves. It seems that in this context, an appropriate outcome will lead to the forging of uniformity, inasmuch as possible, between the law applying within those enclaves and the law arranging their existence and authorities. The matter at hand concerns Israeli citizens, and the assumption is that the gist of their lives should be as close as possible to that of the rest of Israeli citizens”\textsuperscript{23}. This statement is also a good example of the hypocritical policy judgement that civil law should apply to civilians - when they are Israeli citizens - but not to Palestinians.

Although there are times where Israeli “Basic Rights” are applied in hearings aimed at the decisions and actions of the Military Commander, these rights are not actually extended to the Palestinian population, rather, these rights are applied to the actions of the Military Commander by virtue of his being an agent under Israeli jurisdiction and his being bound to act in accordance with them\textsuperscript{24}. The reality is that under the military legal system the pretext of “necessity” operates to justify the reduction of fair trial guarantees for Palestinians. Pre-trial detention periods are extensive and the system of indefinitely renewable administrative detention for security reasons means that imprisonment without trial is widespread. The basis for detention under the law applicable to settlers is reasonable cause for suspicion that an offence has been committed whereas for Palestinians a much lower “any suspicion” standard exists. Access to legal representation for Palestinians is yet again another hurdle. Military laws prevent detainees from meeting with an attorney during the first 96 hours of detention, but if the offense is security-related, the preclusion might be extended up to 21 days, and may even result a 90-day period without a meeting with an attorney\textsuperscript{25}. Public defenders are rarely granted and because Palestinians are generally held in Israeli territory, lawyers without permits are prevented from travelling to meet with their client. To make matters worse, military trials are conducted in Hebrew which few Palestinian lawyers and even fewer ordinary citizens are able to speak. This often precludes the accused from participating in his own defense and adversely affects the quality of the case he is able to put forward.

Under the dual legal system applied in the oPt, Palestinians suffer adversely when compared to the Jewish settlement population. While the application of military law in the area is generally predicated on “necessity” due to security concerns this is a misnomer as, were that the case, the laws would apply equally to all residents. Instead, the state of affairs is that Palestinians are subjected to heavy restrictions on movement and freedom of expression, draconian detention legislation and unfair search and seizure policies while settlers remain unaffected by such policies. This discriminatory legal system is furthermore meted out in an official and institutionalized manner, which is effectively racially biased and constitutes a situation of segregated systems.

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\textsuperscript{19} “One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank”, The Association for Civil Rights in Israel, October 2014 p. 15.
\textsuperscript{20} Defense Regulations (Judea and Samaria – Adjudication of Offenses and Legal Assistance), 5727-1967.
\textsuperscript{21} Eg. Law for Extending the Validity of the Defense Regulations (Judea and Samaria – Adjudication of Offenses and Legal Assistance), 5772-2012.
\textsuperscript{22} “One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank”, The Association for Civil Rights in Israel, October 2014 p. 1A.
\textsuperscript{24} One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank”, The Association for Civil Rights in Israel, October 2014 p. 28.
3(ii). A Permit System for Palestinians

The dual legal system outlined above serves as the basis for arguably the greatest restriction on movement suffered by Palestinians; the permit system. The permit system has been introduced in layers as greater and greater restrictions on movement were issued through military orders beginning with the introduction of magnetic cards in Gaza in 1989 and the revocation of the open-door policy in 1991. They can be viewed as the administrative arm of movement restriction. The regime allows the Israeli authorities to control the movement of people in and out of the West Bank along with travel within the territory itself. Permits are required whether one wishes to travel for work, healthcare, education, family or religion among a number of other reasons, adversely affecting these fundamental human rights and curtailing Palestinian quality of life. Under the Israeli Law of Return, all Jewish people are permitted to travel freely within Israel and to settle where they wish, including within the oPt, native Palestinians on the other hand must apply for permits and changes of address for even the simplest relocations. The permit system thus turns freedom of movement from the norm to the exception.

The permit system is a highly complicated and nuanced bureaucratic obstacle to freedom of movement comprising varied passes which are issued based on one’s reason for travel, length of stay, region of origin, hours of travel, age, sex and even religion. This stratification of permissions harmfully segregates Palestinian society and decides on such basic day to day life details, from working, and studying, to health care access, to choosing one’s spouse, socializing and worship. In fact, there are estimated to be over 100 different types of permit regulating access to, from and within the oPt. Moreover, access to information on procedures and prerequisites for obtaining permits is limited as requirements are regularly changed and rarely updated on the Coordination of Government Activities in the Territories Unit (COGAT) website. Even at that, only limited information has been translated to Arabic. The permit system is kept deliberately opaque as this creates hesitation in the minds of Palestinians wishing to travel and constitutes a psychological barrier to movement. Often travel permits are rescinded without prior notification to the holders due to “security” or other considerations and holders are only made aware upon their arrival and denial of entry at a checkpoint. Reasons are not given for withdrawal of permits and such withdrawal is often due to a non-transparent procedure of security ‘blacklisting’. Blacklisting may occur for a number of reasons, perhaps over security concerns for a relative of the permit holder, or perhaps punitively due to previous illegal entry into Israel for example. The report of the Secretary-General UN Human Rights Council26 identified figures from the Israeli NGO Machsom Watch (an organization which helps blacklisted Palestinians in lodging appeals against their status) which state that in 2014 the organization succeeded in 59%27 of appeals, raising questions about the overall arbitrariness of the system. If restrictions on movement are justified on grounds of necessity then arbitrariness in the imposition of restrictions undermines such justification.

Areas to which a permit is required for travel from the West Bank include most notably East Jerusalem and the Gaza Strip. Following the revocation of free movement between the West Bank and the Gaza Strip during the second Intifada, Palestinians became required to carry difficult to obtain permits to travel between the two. Despite the fact that these two areas do not physically connect, they do indeed form a single territorial unit as confirmed in the Israeli Supreme Court in Ajuri28. Unfortunately, while this should imply that free movement stemming from territorial unity should be the norm, permits are only handed out on an extremely restrictive basis to certain groups of people. According to Gisha these groups are: “medical and humanitarian cases; students with scholarships to study abroad (who, in order to pass through Israel on their way to a third country need the consulate of the country to which they are traveling to request their exit, and in some cases, escort them); individuals with Israeli citizenship; staff of international organizations, and; diplomats and members of the foreign press”29. In addition to these permits there also exist limited quotas for merchants and religious worship, although even with the stated possibility of obtaining these permits, applications for travel from the Gaza Strip for humanitarian reasons such as medical care are still regularly denied with some one in three applications being rejected30. With the majority of specialist hospitals being located in East Jerusalem, this has extremely harmful effects on the population. Furthermore, restrictions on travel for education mean that doctors and nurses cannot

30 See e.g. http://english.pnn.ps/2015/10/22/gaza-one-in-three-exit-permits-for-medical-care-rejected/ accessed 03/01/2017. In 2015, out of 1,883 applications to leave 527 were rejected. Another 363 patients including 104 children received no response to their application.
gain certain specialist skills as they are prevented from attending training in East Jerusalem hospitals. Travel from the Gaza Strip including to the West Bank occurs only in exceptional circumstances and has devastating repercussions on the quality of life of the people living there, not only through limiting access to medical care but also by preventing the reunification of families, rupturing collective culture and national unity and further isolating the Gaza Strip from the rest of the oPt. Israel uses arbitrary quotas for permits to exit through Erez for medical patients and merchants, instead of granting permits based on needs.

With regards to East Jerusalem, access is restricted to West Bank ID holders holding valid permits for entry through a small number of specified gates. The types of permits allowing access vary in duration from longer term issuances for workers to single day passes for those requiring medical care for example. Again, however, there is no expectation to receive a permit and workers who have travelled to East Jerusalem for years for employment can find themselves suddenly denied entry or refused renewal of their permit without explanation. Restriction of movement between the West Bank and East Jerusalem has severe consequences on the population due to the relationship of East Jerusalem to the West Bank as a cultural, economic and religious ties. Family ties cross the boundary between the two areas, large numbers of workers are reliant on employment opportunities and worshippers venerate the city as containing important holy sites. Even within the West Bank, however, certain movements require permits. Restricted areas within the West Bank generally comprise agricultural land making it difficult for Palestinian farmers to maintain their livelihoods through limitations on the movement of workers, agricultural equipment and produce. Such areas include the so-called “Seam-Zone” - the area that falls between the Green Line and the Annexation Wall - and cultivated lands close to settlements for purposes of security. Permits for these areas are often given out on a seasonal basis depriving the owners the opportunity to enjoy their land year-round, and even then, some entry points are only open during certain hours of the day.

As can be seen, the administrative barriers to free movement introduced by the permit system do not just hamper travel from A to B but have much wider implications affecting Palestinian life in almost every way. Medicine, education, trade, social and familial ties, worship, property rights and agriculture are all harmed by these restrictions and the opacity with which restrictions are applied raises serious questions about the arbitrariness and abuse of the system.

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32 According to the OCHA access for West Bank ID holders is only permitted through 4 out of 14 gates, “Humanitarian Impact of the Barrier”, OCHA, July 2012.
4. Physical Barriers to Movement

In addition to the administrative measures imposed by the permit system to restrict movement to, from and within the West Bank, a series of physical barriers to movement also exist, limiting and controlling movement within the West Bank. These physical barriers to movement include, but are not limited to, checkpoints, roadblocks, trenches, earth mounds, barbed-wire fences, closed or “settler-only” roads, closed military zones and the infamous Annexation Wall. Many of these barriers appear randomly and with no warning making ease of movement unpredictable, prompting Palestinians to take wide detours, extending travel time and cost. Moreover, staffing and searches at checkpoints render much travel a humiliating and dangerous experience. The difference in treatment of Palestinians when compared to that of the settler population is marked with the latter having access to newly-built private roads, being free from checkpoint search or interrogation and having settler specific entrances to Jerusalem and greater Israel. This section will go into detail regarding the types of physical barriers to movement that exist and the effects that they have on Palestinian movement, segregation and daily life.

4(i). Checkpoints and Obstacles

According to B’tselem statistics, as of April 2015 there were 96 fixed checkpoints in the West Bank, 57 of which regulated internal movement (including 17 in the H2 area of Hebron alone) and 39 of which constituted the last inspection point before entering Israel. In addition, hundreds of flying checkpoints (temporary surprise checkpoints) were erected over 2015. The same figures list an average of 358 other physical obstructions to movement per month for the reporting period of 2014. As quoted above, the Oslo Accords provided that the “movement of people and vehicles in the West Bank...Shall not need to be effected through checkpoints or roadblocks”, this has however evidently not come to pass.

Permanent checkpoints are the mainstay of the Israeli physical control of movement. They have existed throughout the OPT since the beginning of the occupation and upon the cancellation of the general-entry permit they were used to control entry of Palestinians into Israel. This system of control was gradually expanded, especially so during the second Intifada where checkpoints were used to restrict entry and exit to certain towns and villages. The traffic permitted to cross varies with each checkpoint; some are vehicles only; some pedestrian; and some

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33 Statistics taken from B’tselem website available at http://www.btselem.org/freedom_of_movement/checkpoints_and_forbidden_roads  accessed 03/01/2017. 361 flying checkpoints were erected in 2015, down from 456 in 2014 but increased from 256 in 2013.
34 “Ground to a Halt - Denial of Palestinians’ Freedom of Movement in the West Bank ” B’tselem, August 2007, p. 12.
are solely for commercial use. Opening hours also vary with some operating of a 24 hour basis while others operating at limited and sometimes erratic times. Even when the checkpoints are open, Palestinians often suffer from long waiting times, for example at Qalandia checkpoint it can take up to 90 minutes to cross 35.

The permanent checkpoint apparatus enables the Israeli Army to apportion the West Bank into territorial segments which can be easily closed off and separated from each other should “military necessity” so require. Contiguiity and access through the West Bank can be frustrated with ease impeding the movement of the Palestinian population with little regard for social necessities. While most internal checkpoints are generally possible to pass without a permit, this can quickly change without notice. Unforeseen closures cost Palestinians time and money, affecting commerce, disrupting work routes and imperiling lives in cases of medical emergencies. While there are procedures in place to permit crossings for medical emergencies 36, Israeli soldiers are often wary of vehicles travelling towards closed checkpoints and have on occasion opened fire 37. Moreover, should a vehicle carrying a passenger in urgent need of medical attention arrive successfully at the checkpoint, the definition of “medical emergency” is effectively left to the discretion of the soldier. Closure of a checkpoint often means long detours through small villages and dirt roads and travel on foot through harsh weather conditions which can adversely affect young children and the elderly who may not be able to walk long distances.

Searches are often conducted at both permanent and flying checkpoints on a seemingly random basis. The frequency, duration and intensity of searches can vary on the day and time of crossing with no basis upon any identifiable criteria and orders are passed down from the commander of the Israeli Security Agency verbally 18. Searches are conducted regardless of sex and there may not always be a female officer available to conduct searches of women. Such searches of women is culturally insensitive and are often a humiliating experience for the those involved. Due to the lack of clarity on the appropriate duration of searches, Palestinians can often suffer considerable delays up to hours at a time while waiting for security clearance to be given. Soldiers are permitted to detain a person for up to three hours, renewable by a high-ranking officer or police officer by up to another three hours 39. Often detention involves exposure to adverse weather conditions of heat or cold, uncomfortable detention positions and at times physical or verbal abuse. In this way travel is rendered a significant ordeal for those wishing to go about their lives in a normal fashion. The random and arbitrary nature of searches means that the practice goes well beyond what is warranted by military “necessity”.

In addition to long-lasting and often humiliating searches of Palestinians undertaken by the Israeli Army, there have also been prominent accounts of physical and sexual abuse occurring at checkpoints. For example, during February 2016 in Hebron alone there were 3 complaints of physical abuse and injury suffered by Palestinian citizens at the Abu Reesh and Rugby checkpoints and another complaint of a humiliating and demeaning body search 40. Information provided to B’tselem by Major-General Baruch Spiegel indeed identified significant misconduct of soldiers at checkpoints noting problems of “behavior, discipline, ethics and immorality” 41. Such instances are not rare occurrences but are rather endemic and symptomatic of a wider scale regime of abuse without impunity committed by soldiers at checkpoints.

The frequency of flying checkpoints and other temporary physical obstacles rises and falls with the security situation on the ground. While the procedure at flying checkpoints is effectively the same as that found at permanent standing checkpoints, roadblocks and other obstacles present a separate difficulty in that they are not staffed. Thus, even in the case of emergencies, no permit, medical urgency or other justifying factor will allow them to be crossed. Roadblocks (taking the form of concrete slabs, trenches, earth mounds etc.) appear suddenly and with no prior warning given to the local population. Resultantly, severe delays in travel can ensue with traffic encountering the road block being forced to back up, turn around and take a different direction to their destination. Not only does this overburden the other routes available for travel, but frequently these other

36 See Military Order “Procedure for Handling of a Resident of Judea and Samaria who Arrives at a Checkpoint in an Urgent Medical Situation”. See also COGAT Order “ – The Situation Regarding Permits for Palestinians Wishing to Enter Israel, Travel Abroad or Cross Between the Area of Judea and Samaria and the Gaza Strip” 14 August 2013.
37 See for example “Death Traps - Israel's Use of Force at Checkpoints in the West Bank”, Al Haq, 2002, p.4.
41 “Ground to a Halt - Denial of Palestinians’ Freedom of Movement in the West Bank “ B’tselem, August 2007, p. 16.
alternative routes are also blocked, especially in circumstances of “security” village closures. Although it is Israeli military policy to leave at least one route out of encircled villages unblocked, the situation on the ground is that this is often unheeded. In addition, even when one route out of encircled villages is left “clear”, the route is heavily backed-up with traffic and generally controlled via military patrol and flying checkpoint. The reality is that often, after an attack or suspected incident, villages are closed not through well founded pretexts of “security”, but as a means of collective punishment imposed on the community as a reprisal and a deterrent for future attacks, a policy which is illegal under IHL. There are difficulties in assessing the actual number of roadblocks imposed at any given time due to their temporary nature. A good example of this is where in 2007 Israel claimed to have removed 44 roadblocks as part of a plan to ease movement. It was later proved that the roadblocks that were claimed to have been removed had never actually existed in the first place.

4(ii). Closed Roads and Traffic Law Enforcement

While checkpoints are used as a method to restrict movement and segment Palestinian territories into discrete enclaves, another more blatant manner of controlling movement is achieved through a network of separated roadways which funnel Palestinian traffic through poorly maintained, checkpoint secured, so-called “fabric-of-life” roads, restricting access to infrastructurally superior highways mainly reserved for Israeli vehicles and settler populations. These restricted “settler roads” have been constructed either by upgrading and re-routing pre-existing roadways to connect Israeli settlements to mainland Israel, thus deviating from the Palestinian communities which they were originally built to serve, or have been built from scratch, resulting in the expropriation of private Palestinian lands and conferring no equivalent benefit, or even access to the local Palestinian population. While often pretexts of infrastructural improvement are given, supposedly benefitting the local population, the majority of these roads are out-of-bounds for Palestinians. The geographer Elisha Efrat views “settler roads” as “…largely incompatible with the Palestinian road network, not compatible with the local topography and needs … [and] built to serve exclusively Israeli needs … inflicting losses on Palestinian communities whose land was confiscated.” IHL permits the temporary seizure of private property to serve military necessity, and thus, under this rhetoric, Palestinian landowners were dispossessed with the ulterior motives of the occupying forces.

The vast majority of restrictions on the Palestinian use of roadways are not grounded in formal written orders from the Military Commander of the West Bank (with the notable exception of the prohibition of travel on Route 443, which, subsequent to a petition to the courts was partially alleviated) but, rather, they are imposed by roadblocks and the permit system detailed above. Further restrictions stem from verbal orders issued by the Israeli Army for closure based on “security reasons”. Such closures became more pronounced since the start of the second Intifada where sweeping restrictions on movement were introduced across the oPt. The growth of the settler population has further affected Palestinian road use as Israeli courts have permitted road closure to protect the security of settlement communities. It is thus that these roads have become de facto Israeli only roadways. These roadways bypass Palestinian communities who have few viable connecting roads to the highways even if travel is permitted and these communities resultantly must take wide detours to travel between towns and villages. A 2007 UN Special Rapporteur report noted that “[c]heckpoints and the poor quality of secondary roads Palestinians are obliged to use, in order to leave the main roads free for settler use, result in journeys that previously took 10 to 20 minutes taking 2 to 3 hours.” The World Bank has also noted that the poor quality, wide deviation and unsure accessibility of secondary Palestinian roads have increased uncertainty, inefficiency and transaction cost for Palestinian traders hindering growth and economic revival.

A good example of a restricted roadway is Route 443 mentioned above. It served as a main roadway for Palestinian travel to the main city of Ramallah until it was banned for Palestinians in 2002. Following a High

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46 UN Special Rapporteur on the human rights situation in the Palestinian territories, January 2007

Court petition by six Palestinian villages along the route in 2007 this ban was partially lifted however the wide margin of discretion afforded to the Military Commander in implementing the judgement rendered it essentially ineffective. Palestinian access to Route 443 was only permitted at 2 entry points and 2 separate exit points while entry to Ramallah was not permitted, depriving the Route of its main previous usage. Lengthy and inefficient checkpoints were deployed to the entry points to the road creating hassle for Palestinians wishing to access it while a separate alternative and inferior roadway was created for Palestinian use.

According to B’tselem in March 2015 there were 60.92 kilometers of restricted roads for the sole, or almost sole use of Israelis, primarily settlers, with an additional 6.72 kilometers of restricted roadways in downtown Hebron. On larger restricted roads, even crossing of Palestinian vehicles is restricted, requiring Palestinians to cross on foot and find alternative transport on the other side. In many instances where Palestinian “fabric-of-life” roads would traverse restricted highways, bridges are put in place, with the faster Israeli only roads travelling over the slower Palestinian roads underneath. There are however much larger swathes of Israeli built roads which are not restricted to Palestinians per se but which were primarily constructed to serve settlement populations and connections between locations in greater Israel, such as Route 90, which have few connection points to Palestinian communities. The Office for the Coordination of Humanitarian Affairs (OCHA) estimates that there are some 1,661 kilometers of such roads built through the West Bank penetrating massive areas of territory. Israeli roads are generally built with a construction free buffer zone of roughly 50-75 meters on either side resulting in severe Palestinian loss of land. It is estimated that for every 100 kilometers of road built roughly 2500 acres of land is used. This, in some estimations, is calculated to approximately 41,525 acres of land in total.

Additional difficulties in using roadways throughout the West Bank arise through often prejudicial traffic law enforcement. These difficulties generally arise travelling through Area C which takes up 60% of the West Bank and is under Israeli civil and military control. While the obvious purpose of traffic law is to allow the safe passage of vehicles which is of course a legitimate concern, the enforcement of these traffic laws affects Palestinian drivers adversely when compared to their Israeli counterparts. Difference in the color of number plates allows Palestinian cars to be distinguished from Israeli cars and makes them easily identifiable and facilitating further limitation on movement. The difference in enforcement of traffic laws is a function of the dual legal system outlined earlier in this piece with Israeli cars being subject to Israeli civil law traffic restrictions while Palestinian vehicles are subjected to the more austere military law jurisdiction.


51 “Apartheid Roads; Promoting Settlements Punishing Palestinians” Ma’an Development Center, December 2008, p. 3.

52 Most of the traffic laws applicable to Palestinians in the OPT are contained in “Order Concerning Traffic (Judea and Samaria) (No. 1310), 5752-1992” and
Differences in traffic laws provide heavy punishments for Palestinian drivers. If a Palestinian car is pulled over and found to have a late payment on a fine the driver’s license and vehicle registration papers may be confiscated. Moreover, if the driver is found to have an unpaid fine the vehicle may even be impounded resulting in harmful effects on the life of the driver and his family. Other military law requirements imposed on Palestinians, but not on Israelis, include the requirement to post a cash bond in order to ensure appearance in court. None of these penalties or requirements apply to Israeli drivers. Failure to pay a fine may also result in the revocation of an entry permit to Israel for a number of months. Fines under military jurisdiction are comparable to those meted out in Israeli civil courts despite the vast difference in wages and financial ability between Israelis and Palestinians with the GDP per Capita of the former being almost ten times greater than the latter, thus they are often very difficult to pay and impose great hardship on the recipient.

The bureaucracy of the military court system itself provides further hurdles in obtaining judgements and paying fines and, as mentioned above, many of the due process rules existing in Israeli civil law are absent from the military law jurisdiction. An estimated 3,000 Palestinians stand trial for traffic offences each year however many find it difficult to discover where and when their trial is occurring and are thus absent from proceedings, harming their ability to mount a defense. This is due to the fact that unlike those issued to Israelis, fines issued to Palestinians do not have the relevant phone numbers printed on their fines creating significant hassle in finding out important information about their hearing. If a Palestinian is absent from the court hearing (a likely probability given the lack of clear obtainable information), judgements and payment vouchers are not sent to their address (a procedure which is a given in the Israeli civil system) and must be obtained in person. Even once the judgements from the proceedings have been received they are generally written in Hebrew.

“Traffic Regulations (Judea and Samaria), 5752-1992”.
54 Doron Israeli, Head of the Traffic Division of the Judea and Samaria Region, from the protocol of session no. 277 of the Knesset’s Committee on Internal Affairs and Environmental Protection (8 November 2010), p. 4, available at http://www.knesset.gov.il/protocols/data/rtf/pnim/2010-11-0801.rtf accessed 27/12/2016, [Hebrew].
58 Ibid.
59 Under Article 71 International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 “[a]ccused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them”. 
Construction of the Annexation Wall began in 2002 during the second Intifada under what Israel termed an action taken in “self-defense”. It is composed of electric fences, barbed wire, trenches and at certain points a 6-8m concrete barrier. The total projected length of the Annexation Wall is 708 km with 62.1% completed, 8% under construction and 29.9% planned for future construction. An estimated 85% of the Wall runs inside the West Bank, departing from the Armistice border (“Green Line”) agreed upon in 1949 and isolating 9.4% of the West Bank including East Jerusalem from the greater territory. Along with the Palestinian land appropriated for the wall itself, an additional buffer zone of 150-200m exists either side of the Wall where Palestinian construction is prohibited, in effect annexing large areas of land. Indeed, the UN Register of Damage has to date collected over 26,000 claims for material damage caused by the construction of the Wall in the West Bank.

The Annexation Wall was declared illegal by the International Court of Justice (ICJ) in an Advisory Opinion rendered in 2004. Although the decision rendered by the Court is not legally binding upon Israel, it mirrors the consensus of legal opinions on the topic and is indicative of the illegality of Israel’s actions. In this ruling it was decided that Israel had violated its obligations both under IHL and IHRL, that the action was unwarranted with regards to self-defense under A. 51 of the UN Charter, and that no state of affairs existed such that would render the construction of the Wall “necessary” under international law. To date, no action has been taken by Israel to give effect to this decision, nor are there any signs that Israel intends to in the future.

The greatest basis for the constructed route of the Wall is the existence of settlements near Israel proper. The route deviates from the Green Line to keep some 80 of the approximately 149 Israeli settlements on the west side of the barrier comprising some 85% of the settler population. Similarly to the closed roadways detailed above, the Wall has also been invoked as necessary to protect the settlement population. The settlements, which are illegal under international law, have a population of roughly 550,000 people and have been built and expanded since the early 1970s. The Wall’s winding path to include these settlements has resulted in a number of Palestinian communities east of the Wall being partially or totally encircled, creating enclaves in which special permits are required to reside. These enclaves account for some 3.4% of Palestinian land east of the Wall. Many of these communities rely on access to East Jerusalem for medical and educational needs and maintain significant familial ties there. These communities have been cut off by the Wall, altering their way of life.

Of the communities which have been seriously affected by the Annexation Wall, few have faced greater adversity than those situated in the so-called “Seam-Zone”, the area contained within the boundaries of the OPT but west of the Annexation Wall. The construction of the Wall was accompanied by a new administrative and permit regime for the areas located between the Wall and the Green Line. Those affected not only include residents whose homes are located on the west side of the barrier, but also landowners whose agricultural land exists within the Seam-Zone, workers who work on this agricultural land, families who now require permits to visit relatives within the Seam-Zone and students who go to school there. Movement to and from the Seam-Zone is heavily restricted with special permits required for residence and entry, and limited access points with varying and often limited opening hours. Based on the forecasted route, a total of 9.4% of the West-Bank (including East Jerusalem) will lie west of the Annexation Wall with some 33,000 West Bank ID holders in 36 communities’ residents in the Seam-Zone. West Bank ID holders will require permits to remain living in their homes and entry and exit will only be possible through designated gates in the Wall.

60 Figures taken from “Humanitarian Impact of the Barrier”, OCHA, July 2012.
61 Ibid.
64 “Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, International Court of Justice (ICJ), 9 July 2004, para. 143.
68 Some 11,000 are currently affected, See “Report to the Ad Hoc Liaison Committee” Office of the United Nations Special Coordinator for the Middle East Peace Process, September 2015, para. 38.
The Seam-Zone area has been declared a closed zone since 2003. As stated above, this has the effect that residents who have lived in the area all of their lives now require special permits to remain there. In addition, permits are also required to cultivate land and to work in the area. These permits are contingent on the ability to demonstrate sufficient connection to the land. For Palestinians without a permit, entering or residing within the Seam-Zone can result in a five-year prison sentence or a heavy fine. It is effectively impossible to relocate to the Seam-Zone, with the exclusive justification being family reunification, and, with the slow reduction of residency permits, the local population is gradually reducing inside. Permits, both for residence and agriculture, are issued for a limited period and must be renewed. Each time renewal is requested applicants must prove connection to the land under a number of headings such as residence, commerce or agriculture and there is no specified list of documentation required to prove this. The renewal procedure often takes a number of months without possibility to follow the request and comprises a number of bureaucratic hurdles. Often applications do not even reach the intended recipient. The decision to grant a permit is under the exclusive discretion of the Israeli Civil Administration and does not include a hearing or right of appeal violating due process, raising concerns over the arbitrariness and transparency of the process. Unlike the procedure for Palestinians, Israelis and tourists do not require permits to enter or exit the Seam-Zone.

The number of approved applications for entry or residence in the Seam-Zone is in steady decline. According to the Association for Civil Rights in Israel, between 2007 and 2009 there was more than an 80% decline in the number of farmers entitled to a permanent permit for the Seam-Zone and a 65% overall decline in the total number of permanent and temporary permits issued. The High Court in 2011 ruled these restrictions on the Seam-Zone to be proportional, while the ICJ in the Wall opinion was inclined to disagree. The OCHA estimates that only 18% of Palestinians who used to be able to cultivate their land in the Seam-Zone were issued permits to continue doing so. While many of these farmers ceased to cultivate their land based on the refusal of a permit, more still ceased cultivation due to excessive restrictions and impediments to access. Restrictions on movement into the Seam-Zone result in a number of additional difficulties for farmers such as access to labor, use of heavy machinery (vehicles which require a separate permit), seasonal access restrictions, reduced irrigation and unreliable opening times of access gates. These special conditions can render cultivation impossible for some farmers resulting in their choice to abandon their agricultural lands as their labor/profit balance becomes unsustainable.

For those residents, laborers and landowners who do have access to the Seam-Zone, this access is far from unlimited. Movement is controlled through a series of 85 gates, of which only nine are open daily. Access for residents and farmers is generally limited to just one gate whose opening is often confined to certain times or

70 “Proclamation Concerning the Closure of Area No. 03/2/O (Seam Zone)(Judea and Samaria)”, 5764-2003.
74 Ibid. p. 114.
75 HCJ 639/04 Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria, 05/04/2011.
seasons\textsuperscript{79} and is generally closed at night. Gates are sporadically placed along the Annexation Wall and those who pass through often have to travel long distances along poor roads to access their specified entry gate, where before access to this land required just minutes of travel. Many Palestinians often arrive at their entry gate only to find it closed without notice. Opening hours are often not heeded and the Israeli Army may close gates for security or other unspecified reasons. They are often closed for public holidays in Israel\textsuperscript{80}.

The restriction of access to the Seam-Zone has many destructive effects on the lives of Palestinians who use or reside within the area, an area whose use was unhindered and which constituted part of a lifestyle before the construction of the barrier. The temporary nature of permits and difficulties in renewal mean that many laborers who work there are unable to support their families while waiting for their next permit. Even at that, many often worry that their permit will not be renewed and they will be forced to find work elsewhere. Similarly, the closest schools to many communities are located within the Seam-Zone and the erratic access times and habitual closures of gates can have harmful effects on students’ access to education. In the event of a problem with a student’s application for permit renewal many children experience long periods without access to schools. Healthcare is affected due to the obstacles faced by ambulance services in travelling into the Seam-Zone in cases of emergency and, because gates are closed at night, residents have difficulty in leaving to bring the sick to hospitals should someone fall ill outside of daylight hours. Access to other everyday services such as plumbers and electricians is difficult as workmen must acquire permits to travel to residents’ homes and permit restrictions on commerce affect the types of everyday goods residents are able to purchase without crossing the Wall. Considering all these difficulties, it is clear that the Annexation Wall and the Seam-Zone have resultantly created extremely damaging consequences on the lives of Palestinians, not only those residing within the Seam-Zone area, but also those residing outside. With this, the Annexation Wall constitutes one of the most severe impediments to movement found in the West Bank.

\textbf{4(iv). Closed Areas Outside of the Seam-Zone}

In addition to East Jerusalem, the Seam-Zone and closed and restricted roadways, Palestinians are also denied access to other large areas of the West Bank due to the imposition of closed military zones. Estimates state that roughly 50\% of the West Bank is restricted to Palestinians\textsuperscript{81} including up to 18\% designated as “closed military zones” or “firing zones”\textsuperscript{82}, roughly the same area as that which falls under the full control of the Palestinian Authority. Under a 1997 amendment to an existing military order from 1970\textsuperscript{83}, the Israeli Army commander in the West Bank declared all municipal areas of settlements as “closed military zones”, forbidding access to Palestinians without a permit (generally reserved for laborers within the settlements themselves). Access to Israelis and tourists on the other hand is permitted without impediment. These closed areas around settlements were expanded during the second Intifada to include “Special Security Areas” surrounding the settlements where access was further restricted. As of 2008 such “Special Security Areas” covered approximately 5000 dunams of land, roughly half of which was privately owned by Palestinians, who subsequently were required to undergo a special procedure proving ownership of the land and coordinating access with the Civil Administration and Israeli Army for cultivation\textsuperscript{84}. Proof of ownership and the connected permit system result in similar access and loss of permit problems for farmers as those experienced by landowners in the Seam-Zone. Failure to cultivate land for a period of 3 years results in the land becoming state property, thus, for those farmers who had difficulty obtaining permits or proving ownership (often the ownership of Palestinian owned land is rooted in historical borders, which often do not include extensive documentation) land was expropriated by Israel once sufficient time had elapsed. “Special Security Areas” were implemented to leave space between settlements and Palestinian communities reducing friction, yet in practice these security areas are freely accessible to the settler population\textsuperscript{85}.

\textsuperscript{79} Usually the olive harvesting season from October to December.


\textsuperscript{81} Ibid.

\textsuperscript{82} “The Humanitarian Impact of Israeli-Declared ‘Firing Zones’ in the West Bank” OCHA, August 2012.


\textsuperscript{84} “One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank”, The Association for Civil Rights in Israel, October 2014 p. 109.

\textsuperscript{85} Ibid.
Beyond the closed military zones connected to settlements and the areas surrounding them, a number of other closed military zones exist as training or firing zones. According to the OCHA some 5,000 Palestinians reside within firing zones, over 80% of which are located in the Jordan Valley and Dead Sea area or in the south Hebron hills\textsuperscript{86}. These firing zones have been established since the 1970s with few changes to their boundaries, despite notable changes in their usage and military necessity. In fact, it is estimated that approximately 78% of the areas designated for military training are not used\textsuperscript{87}. Palestinian presence is formally prohibited without permission from Israeli authorities\textsuperscript{88}. Those Palestinians who are permitted to remain in these areas - usually indigenous Bedouins - experience a coercive environment due to a number of factors. Access to water for consumption\textsuperscript{89} and agriculture is greatly reduced, law enforcement is seriously lacking leaving residents open to settler violence and harassment by soldiers, movement is severely limited and property is routinely confiscated or demolished\textsuperscript{90}. While settler construction in firing zones is prohibited, this prohibition is almost never enforced, while Palestinian residents routinely face demolition of their homes and community facilities. According to Kerem Navot, an Israeli NGO, Israeli settlers built houses and public structures in ten locations inside closed training areas and while demolition orders have been issued against 170 such Israeli structures (the construction of which are illegal) almost no demolitions have taken place\textsuperscript{91}. By contrast, according to the OCHA 45% of demolitions of Palestinian-owned structures in Area C between 2010 and 2012 have occurred within firing zones, displacing some 820 civilians and at the time of writing of the report in 2012 two schools and one kindergarten had demolition orders against them\textsuperscript{92}.

The disproportionate use of demolitions against Palestinian communities compared with settlement communities is evidence of a systematic policy of forced relocation and demographic alteration. Indeed closed firing zones have been used as an effective means of Palestinian dispossession. The same Kerem Navot report mentioned above lists two instances where Israel downsized training areas with the intention of transferring the land to settlements for their continued expansion. In addition, the flimsy justification for military firing zones is highlighted where the report states that “in January 2015, the Commanding Officer of the Central Command signed an order that completely cancelled Training Area 911 north of Jericho, with the goal of advancing plans that it accommodate the forcible transfer to it of Bedouin currently living in the space east of Jerusalem and Ramallah”\textsuperscript{93}. Here, it seems that the firing zone was never in fact necessary and could be cancelled once needed for forcible indigenous transfer aimed at the expansion of settlement communities. Military necessity obviously, in this case, did not merit the restrictions on movement that the Israeli Army applied.

Closed military zones may be imposed by the Area Commander for reasons of security or for the maintenance of public order\textsuperscript{94}. Due to these wide-reaching justifications, the Area Military Commander has significant discretion in imposing closed military zones. The closed zones are often imposed temporarily to prevent demonstrations and protests, limiting the freedom of movement of Palestinians to freely express themselves and protest against the occupation. While this is understandable if protests turn into violent clashes, military zones are often imposed despite the peaceful nature of the demonstration. Often soldiers on the ground will close an area despite lacking the necessary paperwork to do so, and, when questioned on the closure, may retract the decision or falsify documents to justify it. An example of this comes in a letter sent by the Association for Civil Rights in Israel (ACRI)\textsuperscript{95} as quoted in an ACRI piece on the split legal regime in the West Bank\textsuperscript{96}. The letter highlights an instance where a closed military zone was declared and paperwork was produced, despite the fact that the document was unsigned, lacked commencement and expiry times and highlighted a different area on the map to the one being closed. This is a clear instance where the arbitrary use of closed military zones has been used to limit the freedom of movement of Palestinian locals along with resulting effects on their freedom of expression.

\textsuperscript{86} “The Humanitarian Impact of Israeli-Declared ‘Firing Zones’ in the West Bank” OCHA, August 2012.
\textsuperscript{87} “A Locked Garden - Declaration of Closed Areas in the West Bank” Kerem Navot, March 2015.
\textsuperscript{88} “The Humanitarian Impact of Israeli-Declared ‘Firing Zones’ in the West Bank” OCHA, August 2012
\textsuperscript{90} Ibid.
\textsuperscript{91} “A Locked Garden - Declaration of Closed Areas in the West Bank” Kerem Navot, March 2015.
\textsuperscript{92} “The Humanitarian Impact of Israeli-Declared ‘Firing Zones’ in the West Bank” OCHA, August 2012.
\textsuperscript{93} “A Locked Garden - Declaration of Closed Areas in the West Bank” Kerem Navot, March 2015.
\textsuperscript{94} “Main Highlights - Closing an Area”, [Hebrew] sent to ACRI on 8 March 2010 by the Legal Advisor of the Judea and Samaria Division.
\textsuperscript{95} ACRI’s letter to the Commander of the Judea and Samaria Division and the Commander of the Judea and Samaria Border Police, dated 8 September 2011.
\textsuperscript{96} “One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank”, The Association for Civil Rights in Israel, October 2014 p. 86.
5. Forced Transfer and Demographic Alteration

The right to freedom of movement does not only mean the right to move freely within one’s country of nationality but also implies the right to remain in one’s home, free from unjust interference and forced transfer\(^{97}\). The desire of Israel to continue its establishment of a “Jewish State” has been accompanied by methods to displace Palestinians and confine their residence in a number of ways, especially in East Jerusalem. Freezes on family reunifications prevent Palestinians from moving to East Jerusalem or Seam-Zone areas to prevent the growth of the Palestinian communities in these areas and deprive them of availing of their social and familial rights. Revocations of East Jerusalem resident status further reduce the Palestinian population balance in these areas, given the difficulty of relocating, and control of the population register hinders attempts of Palestinians to change their address, often relegating those who have moved from, say, the Gaza Strip to the West Bank to so-called “infiltrator” status. Accompanying these administrative policies, the withholding of planning permissions, home demolitions (including those conducted punitively), lack of law-enforcement and basic services and impunity regarding settler violence inflict intolerable conditions of life on Palestinians such that relocation is the only valid option and contribute to the demographic alteration and effective forced transfer of Palestinians. Forced transfer and demographic alteration of Palestinians can be separated into two categories; those policies which are carried out by law to directly displace Palestinians, and those policies which, through the results that they produce, render intolerable circumstances of life upon Palestinians so as to constitute a coercive environment of forced transfer.

5(i). Control of Residency and Revocation of Permits

Control of residency by the Government of Israel (GOI) is an important consideration for all those Palestinians who wish to live in areas which require a residency permit. The most notable areas in which a permit is required to reside are East Jerusalem, Seam-Zone areas and closed military or training zones. In order to gain such permits, which are often required to be renewed, one must display sufficient connection to the land and proof of residency. The levels of proof required are generally vague with little to no information being provided on the documents necessary to assert one’s claim. Failure to prove residency will result in the loss of a residency permit. Those who move out of these areas often lose their rights to residency, and resultanty, lose access to their families, a harmful prospect considering the desire to attend events such as weddings and funerals of loved ones.

One of the most restrictive regimes of residency is the regime applicable in East Jerusalem. Following the Six-Day War in 1967, Israel conducted a census of the oPt, including East Jerusalem. Those resident in East Jerusalem were issued East Jerusalem residence IDs permitting them to travel through and remain in Israel and the West Bank. Those who were not present in the territory at the time of the census did not receive IDs, thus losing their right to reside in and in many cases travel to East Jerusalem regardless of the period of their absence, social or family ties or origin. This had the obvious effect of breaking up families and the loss of homes of former residents not present at the time of the census. The permanent residence IDs issued to East Jerusalemites are, however, not permanent. Under the regulations issued by the Minister of Interior in 1974, provided by article 14 of the “Entry into Israel Law 1952” the holder of an East Jerusalem permanent resident ID may have their ID revoked if the person has been absent from their “Israelil” address for a period of seven years, or, if the holder has acquired another nationality or permanent residency in another country.

In the 1988 ‘Awad case, the Court affirmed the 1974 regulations of the Minister of Interior however Justice Barak went further than the explicit provisions of the law, stating that “a permit for permanent residency, when granted, is based on a reality of permanent residency. Once this reality no longer exists, the permit expires of itself”99. The result of this judgement was that it was no longer necessary for seven years to pass in order to revoke permanent residency status, in fact all that needed to be proven was that the applicant was no longer permanently resident in the area. The Judgement did not set out or attempt to show what documentation would be required to prove permanent residency and thus introduced a discretionary and arbitrary competence of residency revocation in a manner falling outside of the letter of the law. Perhaps the vague nature of the judgement contributed to its lack of strict enforcement insofar as few changes were felt by East Jerusalemites. Those who left rarely had their residency permits revoked provided that they returned once every three years to have their exit permits renewed.

The ‘Awad judgement was followed in 1994 by the Shiqaqi judgement. In this case Shiqaqi had not remained outside of the country for more than seven years, and also unlike the ‘Awad case, she had not received any new nationality or permanent residency, however the Court stated that the reality of permanent residence went beyond the provisions of the Entry into Israel Regulations and that, even though none of the conditions for permanent residency revocation under these regulations were met, residency could still be revoked if the facts displayed that the ID holder was no longer permanently resident. Thus, in 1995, the GOI began an unprecedented policy of residence revocation under what the Ministry of Interior termed the “center of life” policy. By the end of 1996, 739 East Jerusalem residency permits had been revoked and in 2008, a particularly active year, 4,577 were revoked. To date, since 1995 there have been estimated over 11,500 residency permits revoked.

As mentioned above, the documents required to show “center of life” are not listed in an enumerative manner and can comprise a large range of documents. The burden of proof to show “center of life” rests with the Palestinian resident rather than on the Ministry of Interior, meaning in effect that one is not a permanent resident unless proven otherwise. As a result of the vague requirements of proving residency, many Palestinian families have an extremely difficult time collecting and meticulously recording past years’ bills, rental agreements, marriage licenses, school registration records, national insurance payments and any other documents which may support their claim. The decision to revoke a residency permit is arbitrary as the conditions are not specifically prescribed by law and instead lie at the discretion of the Ministry of Interior. There is no possibility to appeal a decision taken by the Ministry of Interior to revoke residency meaning that the policy fails to meet due-process standards, especially with regards to the severe consequences such a decision may have on a person’s way of life, and in certain cases the Ministry of Interior has issued revocations without even first requesting documentation, depriving individuals of the opportunity to present their case. This policy violates human rights instruments

104 Ibid. Figures as of 27 May 2015.
such as the ICCPR106 as it deprives Palestinians from entering their own country and is applied in a discriminatory and arbitrary manner. It treats freedom to reside in one’s home as a “revocable privilege, instead of an inherent right”107. It is also worth noting that the “center of life” policy does not only harm the freedom of movement of Palestinians who lose their residency and are prevented from returning to their homes, but also harms their freedom of movement to leave their homes through the justifiable fear of not being able to return.

In addition to cases where Palestinian East Jerusalemites have their residency revoked for failure to demonstrate that East Jerusalem constitutes their “center of life”, recent Israeli policy has surfaced since 2006 which permits punitive residency revocation for certain illegal acts which constitute a “breach of allegiance” to Israel. Due to the unique resident status of East Jerusalem Palestinians the law does not apply to Israeli citizens and is thus applied on an ethno-nationalistic basis. Under IHL it is illegal to require a “duty of allegiance” from the local population108. The first controversial instance where residency revocations occurred on such a basis was in 2006 where the residencies of three elected members of the Palestinian legislative council and the Minister for Jerusalem affairs were revoked109. Most recently, revocation is threatened to be implemented against 13 members of the extended family of Fadi al-Qunbar, a Palestinian who carried out a deadly truck attack against Israeli soldiers in Jerusalem on 8 January 2017. Here, punitive residency revocations are being used as a form of collective punishment against the family of the attacker and presumably being justified as a deterrent from future attacks in flagrant violation of IHL, IHRL and international criminal law. Minister of Interior Aryeh Deri is quoted stating “[l]et this be known to all who are plotting, planning or considering carrying out an attack, that their families will pay a heavy price for their actions and the consequences will be severe and far-reaching”110. If these actions are carried out it will bring the figure to some 25 punitive residency revocations since 2006.

In March 2018, the Israeli Parliament passed an amendment to the Entry into Israel Law which allows the Israeli Minister of Interior to revoke the permanent residency status from Palestinian residents of Jerusalem, who the Minister deems have ‘breached allegiance’ to Israel111. The bill (Amendment 30 to the Entry into Israel Law) was introduced following the Israeli Supreme Court judgment of 13 September 2017 on petition HCJ 7803/06. The judgment acknowledged the absence of legal grounds permitting the residency revocation of three Palestinian parliamentarians and a Minister based on “breach of allegiance”. However, the Court upheld the revocation of residencies for six months – permitting the illegality to continue – and giving the Israeli Parliament this period needed to change the law in order to legalize residency revocation based on “breach of allegiance”. In this regard, breach of allegiance was defined to include committing, or participating, or incitement to commit a terrorist act, or belonging to a terrorist organization, as well as committing acts of treason specified in the Israeli Penal Code 1977112. The expansion of residency revocation to include “breaches of allegiance” cements another tool into the Israeli forced transfer arsenal.

112 This is based on the unofficial translation of the proposed Amendment No. 30 to the Entry into Israel Law 2018 in its second and third readings at the Israeli Parliament.
5(ii). Freezes on Family Unification

Another method of demographic alteration and creation of coercive circumstances to induce transfer used by Israel is the exertion of pressure on the familial ties of Palestinians through controls on family unification. For those living in East Jerusalem, parts of the Jordan Valley and the Seam-Zone, familial ties can be severely strained if family members such as spouses and children do not hold valid residency permits for those areas. Often spouses and children must live apart from the residency holder for extended periods of time while family unification applications are processed. If the residency holder leaves to the greater West Bank to be with their family they risk losing their residency rights through the “center of life” policy outlined above. Those who wish to apply for family unification to live in one of the areas mentioned above must apply to the GOI, however the GOI does not see the process as the fulfillment of a right to family, but instead as a “special benevolent act of the Israeli authorities”\(^{113}\). This disregard of the Palestinian right to family demonstrates their position in the view of Israeli authorities as second-class persons, not permitted to avail of the rights which Israeli citizens are guaranteed. This distinction is most obviously seen with regards to unification in East Jerusalem.

While Palestinian West Bank ID holders have always been required to apply for unification in order to reside lawfully within East Jerusalem since 1967, until 1991 circumstances were easier due to the general entry permit. Following the revocation of this permit in 1991, residing with one’s family in East Jerusalem with a West Bank ID became significantly harder. During the period 1991-2000 family unification was a lengthy process which often took up to ten years\(^{114}\) to complete, during which the non-resident family member would not have access to social benefits such as medical care. If an applicant or spouse had any sort of criminal record they would not pass the security clearance and the application would be denied. The process was characterized by an extremely opaque decision-making procedure where petitioners were not able to follow their application. Aside from administrative constipation, residency permits took a long time to acquire due to the many different steps involved in the process. First, residency of the applicant (the spouse already holding an East Jerusalem ID) had to be proven. This was followed by the granting of a temporary permit for one year. After the end of one year the permit had to be extended to a total of 27 months, this would allow a grant of temporary residency which would

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114 Experience reported by the St. Yves lawyers; see also Yael Stein “Forbidden Families, Family Unification and Child Registration in East Jerusalem”, Report from B’Tselem and Hamoked, 2004, p. 8.
be held for 3 years until permanent residency status was given. Applications for temporary permit renewal had to be made months in advance of expiry, still though, they were often not renewed in time, rendering the status of the non-resident spouse as illegal. If found to be illegally residing in East Jerusalem during this time it could affect the non-resident’s security clearance and criminal record, endangering the entire unification process.

During the second Intifada in September 2000, family unification for West Bank ID holders was unofficially suspended. This suspension officially entered into law in July 2003 with the “Nationality and Entry into Israel Law (Temporary Order)”. While nominally this was a “temporary” order, in fact, it still remains in place, and was extended in 2007 to include a wider range of restrictions. With the entry of this law all new applications were halted along with already pending applications whose progress was suspended. The current status of the law forbids family unification for male and female spouses under the ages of 35 and 25 respectively. Thus, for spouses of those ages (a considerable amount considering the average age of marriage in Palestinian communities), a Palestinian in the West Bank does not have the opportunity to legally live with his or her spouse unless they are a resident of the same area. With regards to children born to parents with differing IDs (one West Bank ID, the other East Jerusalem ID), even if they are born in East Jerusalem they must be registered in order to receive residency status. This procedure however is far from simple as the application of registration of the child ID, the other East Jerusalem ID), even if they are born in East Jerusalem they must be registered in order to receive residency status. This procedure however is far from simple as the application of registration of the child is tied to the application for family unification when they are living with the parent in the West Bank, as both the registration and the unification files need proof of center of life for the family cell. This means that they cannot realistically receive permanent residency status until both parents hold East Jerusalem IDs. To put this in perspective, if a 28-year-old man holding a West Bank ID marries a woman from East Jerusalem and wishes to move there with their newborn child, they must wait 7 years until they are entitled to apply for family unification. After this period of time they must wait another number of years until the application is processed. As the child’s registration is tied to the request for family unification, the child may be 13 or 14 years old by the time that they eventually receive permanent residency status. In these circumstances there are three options; the spouses may remain separate until the opportunity for family unification arises; the non-resident spouse may move with the child and live illegally in East Jerusalem risking the possibility of eventual family unification if caught; or the East Jerusalem ID holding spouse may move to the West Bank to join the family with the risk of losing their permanent residency status through the center of life policy. It becomes quite clear that none of these options are preferable or make for a decent quality of familial life.

Humanitarian concerns permit family unification in certain very limited circumstances. A Humanitarian Committee was created in 2007 to deal with these humanitarian requests as a result of a petition to review the constitutionality of the 2003 law and in cases of Palestinian requests it is entitled to grant a temporary residence permit. The Humanitarian Committee generally takes roughly 100 cases a year (though that is not to say that these appeals are granted) but suffers from a number of faults with regards to the procedure. There is no publicly accessible definition of what the Committee views as a humanitarian case, it does not render detailed decisions on the bases of success or rejection of the application, it does not conduct any sort of hearings of the applicants, there is no possibility of contacting the Committee with regards to the decisions given and it has the possibility to impose a quota on the number of cases considered per annum. All these points combined mean that the Committee has great scope for arbitrary decisions and does not permit any sort of due-process for the hearings. Applications may be rejected out of hand with no recourse of appeal and no justification for refusal. Applications may be rejected on the sole basis that the annual quota for consideration has been reached. As mentioned above, this procedure shows adequate proof that the Israeli administration considers family unification as a “benevolent” kindness rather than any sort of right for Palestinians.

The above analysis shows how restrictions on permits and family unification may be used as a tool to limit the freedom of movement of Palestinians and alter ethnic demographics in areas such as East Jerusalem. These restrictions on movement do not only affect the liberty of Palestinians to choose where they would like to live, but resultantly also affect their ability to maintain normal and healthy family ties. In some circumstances Palestinians are forced to live illegally in order to live with stay families and often children in East Jerusalem remain unregistered for years, unable to access social benefits such as medical care or education, affecting their abilities to succeed and prosper later in life. It is estimated that over 10,000 unregistered children live in East Jerusalem without legal status due to the excessive restrictions placed on their rights to familial life and

117 46 HCJ 7052/03, Adalah The Legal Center for Arab Minority Rights in Israel v. the Minister of the Interior (2006).
118 “Palestinian Families Under Threat - 10 Years of Family Unification Freeze in Jerusalem” St. Yves, December 2013.
movement. Untold more spouses leave East Jerusalem and move to the West Bank to join their families, losing their residency through the center of life policy and further skewing the demographics. In the local Master Plan for Jerusalem in 2000 it was stated that the demographic target for Jerusalem was 60% Jews and 40% Arabs. Restrictions on family unification are policies designed to achieve that target. As stated by the Ministry of Interior in a presentation to the cabinet, the family unification process is a “general burden, mainly demographic for the future State of Israel”.

5(iii). Planning Laws and Home Demolitions

Planning laws affect the freedom of movement of people in both direct and coercive ways. The main ways that restrictive planning laws affect Palestinians are; first, through demolitions of homes, the most direct form of forced relocation through planning laws; second, through the demolition of services such as water pipes, schools and agricultural equipment; and finally, through the restriction on planning permits preventing expansion of Palestinian villages and towns and forcing the young to relocate to find work, homes and education. The majority of difficulties with regards to planning laws occur in Area C and East Jerusalem which are under full Israeli security and civil control with Area C comprising over 60% of the West Bank. 70% of Area C furthermore is closed for military training and firing zones where building is prohibited. The OCHA states that out of the 30% of Area C which is not closed to construction due to military zones, construction is only permitted within the areas covered by the Israeli Civil Authority (ICA) plan, which covers less than 1% of Area C and is already heavily built up.


121 “Displacement and Insecurity in Area C of the West Bank” OCHA, August 2011.
Area C planning restrictions do not only affect those living in the area but also the residents of Areas A and B and the Palestinian population as a whole. Due to the fact that Area C is the only large contiguous area of the West Bank, it is needed for almost all large scale infrastructural projects such as connecting roads, industrial factories and water and electricity plants. The restrictive planning regime in Area C hinders the growth of Palestinian infrastructure and economy creating a stagnant environment for the future.

Applications for building permits must be made to the ICA and are granted only under extremely rare circumstances. For example, in 2014 only one Palestinian building permit was issued in Area C while, conversely, 493 demolitions were carried out displacing 969 people. ICA control over the area also makes it effectively impossible for the Palestinian government, municipality or local residents to develop the area, preventing the independent implementation of basic water or waste collection services. Instead these services are affected by the ICA on a discretionary basis and are often inadequate. The resulting effect is that residents are forced to leave their homes and migrate towards larger towns and locations in Areas A and B, leaving their agrarian lifestyle and homeland in order to avail of basic services and quality of life. This migration out of Area C is complementary to the Israeli settlement policy, permitting a greater Jewish demographic in areas under Israeli civil control in the oPt, including East Jerusalem. As noted earlier in the piece, while Israeli settlers are subject to the same planning laws in Area C as Palestinians, demolition enforcement against illegal Israeli structures is rarely carried out. Indeed, often, Israeli structures built illegally as settlements or outposts may be retroactively approved by the Israeli authority, for example the recent retroactive legitimization of 179 homes in Ofarim in the West Bank.

As stated above, ICA building permits are extremely difficult to obtain and are subject to high application fees and long bureaucratic processes. The almost complete rejection rate of applications leaves Palestinians in Area C and East Jerusalem with little choice but to build without a permit, thus endangering their new homes and structures with a high risk of demolition. Demolitions are carried out without regard to where the residents will stay afterwards, are often carried out in winter when temperatures drop creating a health risk for residents. Residents are often not permitted to collect their belongings from within before the structure is demolished. On 8 January 2016 the UN Relief Works Agency noted, with regards to the destruction of homes of the indigenous Bedouin community in Area C that “[d]emolishing residential structures exacerbates an already coercive environment, driving Bedouin communities off land they have inhabited for decades.” According to an OCHA report in 2011 the “single most common reason causing people to move stems from the restrictive planning regime applied by Israeli authorities in Area C, which makes it virtually impossible for Palestinians to obtain permission to build.” Area C is particularly vulnerable as its population (some 150,000 people) comprises approximately 36,000 people living in small sedentary villages and Bedouins in small herding communities, mostly in remote areas.

The outflux of people from these areas creates a real and worrying possibility that these communities will cease to exist in the coming decades. Israel, as the occupying power, is bound under international law to act in a way which benefits the local population and Bedouin communities, as indigenous peoples are particularly protected under IHL.

In addition to the destruction of homes, many structures built for resource management, education and healthcare are also demolished through lack of planning permission. While communities are in dire need of these services, they are often undersupplied by the Israeli authority and thus communities must construct them themselves in the knowledge that they may be subject to demolition. Along with the destruction of resource structures that have been built by the communities themselves, the Israeli authorities have also carried out a number of worrying demolitions of structures which have been built by humanitarian aid agencies. According to a Report of the Special Rapporteur for Palestine in 2016, in May 2016 the Israeli authority demolished seven homes and confiscated the materials for three more which had been provided through humanitarian aid agencies, leaving 49 Palestinian refugees without shelter, of which 22 were children. The same report states that in 2016, 122

122 Ibid.
123 Figures as reported by Ma’an available at https://www.maannews.com/Content.aspx?id=765222 accessed 17/01/17.
124 “The Last Nail in Bethlehem’s Coffin - The Annexation Wall in Cremisan” St. Yves, August 2015.
127 “Displacement and Insecurity in Area C of the West Bank” OCHA, August 2011.
128 Ibid.
187 of the structures demolished or confiscated were provided for by donor assistance, up on 108 from the previous year\textsuperscript{130}. Finally, the report states with regards to international law that “[d]estruction of much-needed infrastructure provided through humanitarian aid is in direct violation of Israel’s obligations under international law. Article 59 of the Fourth Geneva Convention requires an Occupying Power to facilitate relief for a population in need “by all means at its disposal”. If the Occupying Power is not in a position to fulfil relief requirements, it has an unconditional obligation to agree to humanitarian relief schemes”\textsuperscript{131}.

Finally, home demolitions are carried out outside of the planning regime as a result of punitive actions taken by Israel. The policy of punitive home demolitions was stopped in 2005 after an Israeli Army panel concluded that it was not an effective practice and turned the local community against Israel, however in 2014 it was reinstated\textsuperscript{132}. Punitive home demolitions are generally carried out in response to attacks on Israelis by Palestinians, however, due to the fact that homes in Palestine often accommodate extended Palestinian families, the practice can be seen as a form of collective punishment inflicted on the families of the attacker in violation of IHL. In addition, the practice violates IHL as it relates to the prohibition on the destruction of civilian property under Article 53 of the Fourth Geneva Convention. While punitive home demolitions are mainly viewed as violations of international law under the two above-mentioned rules, they can also be viewed as violating IHL considering the effective forced transfer of the families of attackers.

\textit{5(iv). Other Coercive Measures Leading to Forced Transfer}

These forms of forced transfer and demographic alteration comprise the acts and omissions of the Israeli authorities which bring about intolerable conditions of life for Palestinians and contribute to an atmosphere of coercion, forcing Palestinians to move from the places in which they reside. Under IHL and international criminal law, forced transfer does not only include the direct forcible movement of persons but also the creation of insufferable conditions such that residents are left with no real choice to remain. Examples of coercion include restriction or denial of access to resources such as water or food for farmers, denial of accesses to services such as education and healthcare, and infliction of violence and harassment, either by military or law enforcement personnel or through failure to punish acts of violence committed by settlers. The majority of times that coercion of these types plays a factor in forced transfer is in Area C where services are already limited.

Access to water in Area C is generally scarce. Little rainfall and poor infrastructure in the area certainly play a part in this, however access to water has continuously reduced with the expansion of the settler movement in the area, leaving many people vying for their share of the water supply, but with Palestinians often coming in second. In settlements in the Jordan Valley for example, allocation of water resources stood at 487 liters a day per capita, rising to 727 in the northern dead sea area. By contrast, the built-up area of Jericho city had access to 225 liters per capita per day, going down to less than 100 liters in other areas of the Jordan Valley and reaching lows of just 20 liters per day in the Bedouin villages of al-Hadidya, al-Farsiya and Ras al-Akhmar in the northern Jordan Valley. These villages are cut off from water supplies and water must be purchased from water tank operators\textsuperscript{133}. The WHO deems 20 liters as that necessary for “short-term survival” in humanitarian disasters\textsuperscript{134}. For Bedouin villages which rely on agriculture for survival, lack of access to sufficient water resources destroys their livelihood and forces residents to either move or to leave their agrarian lifestyles and take up work in cities. In 2000, according to an OCHA report, at least 15 families left their homes due to restrictions on access to water imposed by the Israeli Army\textsuperscript{135}. Equipment such as water tankers and rain collection cisterns are often demolished for lack of permits and in cases where families have gone to “forbidden zones” in search of water, equipment used to extract resources has been confiscated.


130 Ibid.


134 See Guy Howard & Jamie Bartram, “Domestic Water Quantity, Service Level and Health – Executive Summary” WHO, 2003, as cited Ibid.

135 “Displacement and Insecurity in Area C of the West Bank” OCHA, August 2011.
Violence and harassment suffered by families in Area C is also an important factor in residents leaving their homes due to the lack of protection afforded to them by the Israeli civil and military authorities. Violence and harassment are inflicted upon residents by both soldiers who operate in the areas and settlers who move to settlements near Area C communities. Both military and settlers alike enjoy effective impunity from illegal acts carried out against the local population. For example, according to statistics provided by the Israeli human rights organization Yesh-Din, in 2014 only 3.5% of complaints investigated by the Military Police Criminal Investigations Division lead to indictments, 85% of investigations into ideologically motivated offences against Palestinians are closed due to police failures and 95.6% of investigations into damages caused to olive trees are closed due to police failures\textsuperscript{136}. An OCHA report identified 22 communities with a combined population of almost 76,000 people as being highly vulnerable to settler violence with an additional 61 communities constituting 173,000 people as being moderately vulnerable\textsuperscript{137}. There have been reports of soldiers “standing idly by” as settler violence is committed in front of them\textsuperscript{138} and peaceful protests are often broken up with forceful measures such as the use of tear gas, rubber bullets and, in certain instances, live fire. Beyond these figures, many crimes still go unreported as for many communities the closest police stations are located within settlements. For those wishing to make a complaint, not only is their access restricted due to permit policies, but also many face harassments travelling through the settlement communities and are not taken seriously in settler police stations.

\textsuperscript{137} “Displacement and Insecurity in Area C of the West Bank” OCHA, August 2011.
\textsuperscript{138} “Standing Idly By - IDF Soldiers’ Inaction in the Face of Offenses Perpetrated by Israelis Against Palestinians in the West Bank” Yesh-Din, May 2015.
6. Freedom of Movement Under International Law

“In Israel, freedom of movement is guaranteed as a basic right [...] It also encompasses a person’s freedom to move freely throughout and across the State of Israel [...] This right is essential to individual self-actualization.” Justice Theodor Or.139

This section intends to review the policies of movement and access restrictions imposed upon Palestinians in the oPt, as detailed above, in light of international law. First, this section will deal with the applicability of human rights and humanitarian law conventions on the oPt and their binding nature on Israel. This section will continue on to go through the provisions of IHL, IHRL and international criminal law to identify violations by Israel which occur in the oPt regarding freedom of movement. Finally, this section will consider the effects that restrictions on movement have overall with regards to the right of self-determination belonging to the Palestinian people and the role of third States.

6(i). Applicability of Humanitarian Law and Human Rights Law Instruments

Israel has frequently maintained that the Fourth Geneva Convention (GCIV) governing situations of occupation under IHL is not applicable to the oPt as its application is limited to situations of armed conflict between two High Contracting Parties. Article 2 GCIV states that “the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”140 Israel argues that as Palestine is not a party to GCIV, Israel should not be bound to apply the provisions of the Convention in the oPt. This argument was however authoritatively settled by the ICJ in the

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139 HCJ 5016/96 Horev v. Minister of Transportation, PD 51(4) 1, 95. (2007).
Wall advisory opinion rendered in 2004\textsuperscript{141}. The ICJ here stated that the drafters of the Convention, when writing Article 2, had no intention of restricting the scope of application of the Article when writing it, but instead were seeking to provide protection for cases of occupation without combat\textsuperscript{142}. The Court found that the Palestinian territories were occupied when war broke out in 1967 between Israel and Jordan (two High Contracting Parties) and thus the Convention is applicable on the oPt without any need to resolve the status of the area before the start of hostilities\textsuperscript{143}. Finally, the Court quoted a decision of the Supreme Court of Israel rendered 30 May 2004 which stated that “The military operations of the [Israeli Army] in Rafah, to the extent that they affect civilians, are governed by Hague Convention IV Respecting the Laws and Customs of War on Land 1907...and the Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949”\textsuperscript{144}. While Israel is not a signatory to the 1907 Hague Regulations, they are widely regarded as customary international law, as acknowledged by Israeli Courts which have stated that the rules contained in the Convention are customary in nature and as such are applicable on the oPt\textsuperscript{145}. It is thus without question that both the Hague Regulations and the Fourth Geneva Convention are applicable on the oPt and that Israel is bound to comply with them.

Israel also argues that IHRL is not applicable on the oPt as IHL is lex specialis in the circumstances. This means that because IHL is specifically designed for armed conflict and occupation, its provisions have primacy over IHRL and, as such, supervene the latter, making it inapplicable. Israel thus disagrees with the application of the ICCPR\textsuperscript{146}, ICESCR\textsuperscript{147} and CRC\textsuperscript{148} on the oPt. The Nuclear Weapons advisory opinion given by the ICJ in 1996 disagrees with such reasoning\textsuperscript{149}. With regards to the ICCPR the Court stated that “the protection of the International Covenant on Civil and Political Rights does not cease in times of War”\textsuperscript{150}. This opinion was recalled in the Wall case where the Court stated that “the protection offered by human rights conventions does not cease in case of armed conflict”\textsuperscript{151}. The Court outlined three possibilities regarding the relationship between IHL and IHRL; first, some rights may be exclusively matters of IHL; second, other rights may be exclusively matters of IHRL; and finally, some rights may be matters of both, whereby the Court must consider the outcome with regards to IHL as lex specialis\textsuperscript{152}. Human rights law thus complements humanitarian law in safeguarding the rights of those present in the oPt.

Israel also argues that it is not bound by human rights conventions in the oPt as States are only responsible for the application of human rights on their own territories. The Court in the Wall case decided however that while responsibility for human rights is primarily territorial, responsibility may occur where States exercise jurisdiction over foreign territory\textsuperscript{153}, in line with decisions of the Human Rights Committee (HRC) such as Lopez Burgos v. Uruguay\textsuperscript{154} and Lilian Celiberti de Casariego v. Uruguay\textsuperscript{155}. The Court continued on to cite observations of the HRC given in 2003 stating that “in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party’s authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law”\textsuperscript{156}. The Court thus found that the ICCPR is applicable on the oPt and that Israel is bound to act in conformity with its provisions. Based on the same

\textsuperscript{141} “Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, International Court of Justice (ICJ), 9 July 2004.
\textsuperscript{142} Ibid. para. 95.
\textsuperscript{143} Ibid. para. 101.
\textsuperscript{144} Ibid. para. 100.
\textsuperscript{145} See Ayyub v. Minister of Defense, (Beth El case) excerpted in English in Israel Yearbook of Human Rights, 1979, 337 et seq.; Affo v. Commander Israel Defence Force in the West Bank (HC 785/87) (Affo case), 83 International Law Reports, 163.
\textsuperscript{149} Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, International Court of Justice (ICJ), 8 July 1996.
\textsuperscript{150} Ibid. para. 25.
\textsuperscript{151} Wall para. 106.
\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid. para. 109.
\textsuperscript{154} Lopez Burgos v Uruguay, Saldivias de Lopez (on behalf of Lopez Burgos) v Uruguay, CCPR/C/13/D/52/1979, UN Human Rights Committee (HRC), 29th July 1981.
\textsuperscript{156} Wall para. 110, citing UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations: Israel, 21 August 2003, CCPR/CO/78/ISR, para. 11.
reasoning as above, the Court further found that the ICESCR and CRC are also both applicable on the oPt, recalling the view of the HRC that the “State party’s obligations under the Covenant apply to all territories and populations under its effective control”. It is thus clear that the ICCPR, ICESCR and CRC are all applicable on the oPt and Israel as occupying power is bound by their provisions.

6(ii). International Humanitarian Law

As occupying power in the oPt, Israel is bound to act in accordance with the provisions of IHL contained in the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, both of which are widely viewed to reflect international customary law. Israel is bound by Article 43 of the Hague Regulations and Article 64 of GCIV to administer the territories in a way which benefits the local population. Article 43 of the Hague Regulations requires Israel to “ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”. Article 64 GCIV states that “[t]he penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention”. It has been argued that the term “penal” here should not be read restrictively, but rather should be read alongside Article 43 of the Hague Regulations to include “laws in general – decrees, ordinances, and court precedents, as well as administrative regulations and executive orders”. There are some exceptions to allow changes in laws where they are necessary to maintain orderly government on the territory and ensure the security of the Occupying power.

Israel has breached these provisions by going beyond the scope of the Articles in order to change laws for its own benefit, outside of the exceptions mentioned above. A number of these laws affect freedom of movement in the oPt. While certain laws such as permit systems and closed roads and zones are flimsily justified on the grounds of

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157 Wall paras. 112 & 113.
159 Tristan Ferraro, “Expert Meeting - Occupation and Other Forms of Administration of Foreign Territory” ICRC, March 2012, p. 56.
160 Ibid. p. 58.
security, other laws such as those to do with planning regulations are unjustifiable with regards to Article 64 GCIV. As mentioned above, extreme restrictions exist with regards to planning laws in East Jerusalem and Area C which result in the displacement of large numbers of Palestinians through lack of available housing and lack of access to resources. Although under the Oslo II agreement Israel was to retain control of planning and zoning in Area C, Article 47 GCIV states that protected persons may not be deprived of the benefits conferred upon them by the Convention by any agreement concluded between the authorities of the occupied territories and the occupying power. Thus, despite the agreements concluded, Israel is acting in contravention of international law through the application of a planning regime which is not necessary or proportionate for government functioning or security reasons.

Israel is also in violation of Article 43 of the Hague Regulations which oblige it to “take all measures...to ensure as far as possible, public order and safety”. Israel’s failure to act and sufficiently prosecute settler violence against Palestinians has created an atmosphere of impunity of these violent acts to take place and have contributed to circumstances resulting in the forcible transfer of civilians. Figures, as mentioned above, demonstrate that there is no will on the part of Israel to effectively punish settler violence and thus it has failed in its obligation to uphold public order and safety. Beyond this, Israel has administered areas of the oPt in its own national economic and social interests without regards to the security or interests of the local population through the construction of public order and safety. Israel’s failure to act and sufficiently prosecute settler violence against the Palestinian population in contravention of international humanitarian law. Finally, the home demolitions carried out by Israel, combined with the excessively restrictive permit and family unification systems in place violate the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention. That construction, the establishment of a closed area between the Green Line and the wall itself and the creation of enclaves have moreover imposed substantial restrictions on the freedom of movement of the inhabitants of the Occupied Palestinian Territory.

Article 46 of the Hague regulations and Article 53 GCIV deal with the confiscation and destruction of private property. Article 46 of the Hague Regulations states that “[f]amily honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated” and Article 53 GCIV states that “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”. As mentioned above, the ICJ in the Wall case found Israel to be in violation of these rules through the requisition of land and demolition of property in the construction of the Annexation Wall. Beyond this, Israel’s policies of punitive home demolition and confiscation of equipment through planning regimes also both violate these rules. These policies have contributed to the forced displacement of large numbers of the Palestinian population in contravention of international humanitarian law. Finally, the home demolitions carried out by Israel, combined with the excessively restrictive permit and family unification systems in place violate Article 46 of the Hague Regulations in so far as they affect “family honor and rights” and “religious practice” by displacing and separating families and restricting access to holy sites.

162 See e.g. Hcj 393/82, Jamit Askaan v. The Commander of the IDF Forces in the Area, 28 December 1983.
163 Wall paras. 132 & 133.
164 Ibid.
The punitive demolition of homes, freezes on family unification, blockading of villages, revocation of residencies and withholding of access permits in response to attacks and unrest all amount to collective punishment, and all of these punishments affect freedom of movement. It is a central tenet of the rule of law that no-one can be held responsible for a crime which they did not commit as this abandons the connection of crime and punishment and disregards causality and responsibility. Article 50 of the Hague Regulations and Article 33 GCIV both forbid collective punishment and the prohibition of collective punishment is also viewed as customary international law. Article 33 GCIV also specifically mentions that “[r]eprisals against protected persons and their property are prohibited”, a statement that specifically denotes as illegal the policy of punitive home demolitions. The Article also states with regards to collective punishments that “all measures of intimidation... are prohibited”. It is well known that the policy of punitive home demolition is used to deter future attacks, with the Israeli authorities stating that they send “a severe message of deterrence to terrorists and their accomplices – that they will pay a price if they continue their terrorist activities and harm innocent people”\(^\text{166}\). Such measures, carried out in the name of deterrence, are intimidatory to the Palestinian population. This serves as further confirmation that this form of collective punishment is illegal under Article 33 GCIV. A recent instance which highlights the nature of Israel's collective punishment regime as it affects freedom of movement is the response taken following an attack killing four Israelis in a Tel-Aviv shopping area on 8 June 2016. Two Palestinian gunmen from Hebron were behind the attack, yet in reaction, the “Israeli Government revoked all 83,000 permits it had granted to residents of the West Bank and Gaza to travel during Ramadan, suspended 204 work permits of individuals in the alleged attackers' extended families and sealed off the suspected attackers' entire hometown”\(^\text{167}\).

The direct and indirect means which Israel has used to forcibly transfer civilians are prohibited by Article 49 GCIV and under customary law\textsuperscript{168} and constitute a severe infringement on freedom of movement and the right to remain in one’s home. Residency revocations, denial of family unification, harassment and violence, restrictive planning laws, and restrictions access to resources, education and healthcare all result either directly or indirectly in the forcible transfer of Palestinians. Article 49 GCIV states that “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive”. As mentioned above, it is understood that indirect means calculated to make life in a particular place so unbearable that residents have no genuine choice but to leave are also considered as forced transfer\textsuperscript{169}. Although the Supreme Court of Israel has argued on numerous occasions that deportation of selected individuals for reasons of public order and security was not a violation of Article 49\textsuperscript{170}, this view is not widely held. Moreover, most of the forced transfer violations committed by Israel do not fall within this category.

In addition, Israel has violated Article 49(6) of GCIV by transferring members of its own population onto the occupied territories as confirmed in the ICJ’s advisory opinion\textsuperscript{171}. According to the ICRC commentaries on GCIV, “[Article 49(6)] is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race”. These considerations and the practice of Israeli settlement in the oPt are in line with Israeli policies of colonization and demographic alteration, with a view to eventual annexation. Settlement policies have created large areas of land which Palestinians are prohibited from entering and have applied Israeli law to the settlements in Palestinian territories creating a situation of de facto annexation of these areas. Speaking on a 2016 Security Council resolution declaring the illegality of settlements\textsuperscript{172} (which later passed), Israeli Education Minister Naftali Bennett stated that “our answer to a UNSC resolution must be annexation of settlements”\textsuperscript{173}, and indeed, at the time of writing, there are talks underway to annex the Ma’aleh Adumim settlement\textsuperscript{174}. It is thus clear, not only that Israel has transferred its population onto the occupied territories in violation of Article 49(6) GCIV, but also that its basis for doing so aligned exactly with the bases on which the drafters of the Article sought to prohibit it.

Israel has also failed in its obligations under Article 59 GCIV not facilitating relief schemes by “all the means at its disposal” and by not permitting “the free passage of these consignments” and “guarantee[ing] their protection”. In 2003 the International Committee of the Red Cross stated that “humanitarian aid is no longer the best way to help” and that Israeli closures and military operations lead to a “long term collapse of the local economy”\textsuperscript{175}. Lack of humanitarian access to the West Bank has resulted in grave effects on communities which rely on them and have forced many from their homes in order to improve access to resources, most significantly Bedouin herding communities in Area C.

Finally, it is worthy of note that Article 147 GCIV considers unlawful transfer and “extensive destruction and appropriation of property, not justified by military necessity [which is] carried out unlawfully and wantonly” as grave breaches of the Convention.

\textsuperscript{169} Prosecutor v Stakić, (IT-97-24-A), ICTY Appeals Chamber Judgement, 22 March 2006, paras. 279-281.
\textsuperscript{171} Wall case para. 135.
\textsuperscript{174} See http://www.haaretz.com/opinion/editorial/1.766562 accessed 29/01/2017.
Along with IHL, international human rights conventions play an active and complementary role in the oPt. The most authoritative provision regarding freedom of movement binding on Israel is Article 12 ICCPR, the first paragraph of which states “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”. This provision also includes protection against all forms of internal displacement\(^{176}\). The third paragraph of the Article provides an exception to this rule where restrictions are permitted if they are “provided by law” and “are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others”. This paragraph thus requires that restrictions on movement not be arbitrary (“provided by law”) and that restrictions are necessary to protect certain values. Finally, the fourth paragraph of the Article states that “no one shall be arbitrarily deprived of the right to enter his own country”. While under Article 4 of the Convention Israel is permitted to derogate from these rules in a situation of emergency, it has not done so. Indeed, the ICJ in the Wall case noted that as Israel has only derogated from Article 9 of the convention (concerning detention) “[t]he other Articles of the Covenant therefore remain applicable not only on Israeli territory, but also on the Occupied Palestinian Territory”\(^{177}\).

Israel has violated Article 12(1) ICCPR through imposing restrictions on movement in the oPt in an arbitrary manner. The bases for denial of permits to Palestinians who, for example, wish to travel to the Seam-Zone, are enforced without transparency, and the “center of life” policy of residency revocation created by Israeli Courts outside of the provisions of the law is arbitrary in nature. Furthermore, military orders restricting movement are often communicated verbally without being incorporated into military law and are not given definite limits on scope, duration or purpose\(^{178}\). These policies constitute arbitrary infringements on the right to freedom of movement and the choice to choose one’s residence as they are not based on law, but rather on a discretionary power of the Israeli Courts, Israeli Army and the ICA. The arbitrary nature of the decisions made by these bodies is highlighted by the fact that many decisions refusing access are subsequently overturned after the intervention

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176 UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9 para. 7.
177 Wall case para. 127.
178 “Ground to a Halt - Denial of Palestinians’ Freedom of Movement in the West Bank ” B’tselem, August 2007, p. 98.
of various human rights bodies which take up the cases. Security blacklisting, punitive residency revocation and punitive revocation of permits are all concrete examples of how restrictions on freedom of movement are applied in an arbitrary and discretionary manner.

Israel has also violated Article 12(1) by imposing restrictions which are unnecessary and disproportionate in achieving the aims set out in Article 12(3). A 1999 General Comment made by the UN Human Rights Committee regarding freedom of movement in the oPt stated that “restrictions must not impair the essence of the right [...] the relation between right and restriction, between norm and exception, must not be reversed”. Moreover, the General Comment states that the means used “must conform to the principle of proportionality» and “must be the least intrusive instrument amongst those which might achieve the desired result”. The permit system in the oPt reverses this situation making free movement the exception rather than the norm. The Wall case noted that the restrictions on movement in the oPt do not conform with these conditions and are thus in violation of Article 12. The Court here stated, regarding the Annexation Wall, that “[t]he wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order”179. The creation of Israeli only roads, the construction of the Annexation Wall, and the military closure of vast areas of land are disproportionate to the aims desired, and efficiency is prized over the consequential harm occasioned to the lives of the individuals which are affected by these policies. The reasons given for these restrictions do not serve a legitimate aim as permitted by Article 12(3) but rather serve a greater political agenda of settlement, demographic alteration and annexation of Palestinian land and are thus in violation of Israel’s human rights obligations.

The final paragraph of Article 12 states that “no one shall be arbitrarily deprived of the right to enter his own country”. Deprivation of this right is only permitted in accordance with the law. The use of a “center of life” policy as a basis for revocation of the residency rights of permanent residents is a violation of both the first and fourth paragraph of Article 12. The 1999 General Comment states that “[f]reedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country”180, thus, while the law permitting residency revocation after seven years may in itself be incompatible with the requirements of Article 12, the arbitrary “center of life” policy, and similarly the policy of punitive residency revocation are both certainly in violation of Article 12. There have been arguments made with regards to the application of these policies in East Jerusalem that Article 12(4) in the circumstances only applies to citizens and nationals of Israel, however decisions of the Human Rights Committee (HRC) disagree with this interpretation. In a number of cases181 the HRC have gone beyond the terminological definitions of citizens and nationals to include “length of residence, language capacity, education in the territory, and family and community relations”182 along with the “establishment of close and enduring connections between a person and a country,”183, considering sociological aspects of life regarding the definition of one’s “own country”. Based on this interpretation, Palestinian “permanent residents” cannot be deprived of their rights under Article 12 due to their status as non-citizens. Indeed, in the 1999 General Comment the HRC stated that “The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable184”.

Restrictions on freedom of movement, according to Article 12(3) must be consistent with the other rights contained in the ICCPR, for example those rights safeguarding non-discrimination185 and family and home life186. The discriminatory nature of the application of movement restrictions and the disastrous effects that these restrictions have on the family and home lives of Palestinians mean that Israel is not only in violation of Article 12 ICCPR but also breaching Articles 17 and 26 through the implementation of its policies. Furthermore, restrictions

179 Wall case para. 137.
180 UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 8.
183 UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 20.
184 Ibid. para. 21.
185 Article 26 ICCPR.
186 Article 17 ICCPR.
on residency and family unification violate Articles 23 and 24 of the Convention protecting the right to marriage and to found a family and the right of children to be protected and to acquire a nationality.

As noted above, movement and access restrictions have consequences which affect a multitude of other rights protected by ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC), such as the right to health, the right to education, the right to family and home life, the right to non-discrimination, the right to work, the right to demonstrate and the right to religion. Restrictions on movement prevent people from arriving at hospitals and accessing specialist care, schoolchildren and teachers alike are prevented from going to schools through road closures and checkpoints, families are prevented from joining each other and homes are demolished, Palestinians are denied access to holy sites in annexed areas of their lands, and similarly denied access to areas when they wish to peacefully demonstrate, opportunities for work are reduced through a stagnating economy and all of these restrictions are applied on an ethno-national basis. It is thus clear that movement and access restrictions severely damage the opportunities for Palestinians to avail of their most basic rights and that Israel is in breach of its obligations under these Conventions. Indeed, “[l]iberty of movement is an indispensable condition for the free development of a person.”

189 Article 12 ICESCR, Article 24 CRC.
190 Articles 13 & 14 ICESCR, Articles 27 & 28 CRC.
191 Articles 10 & 11 ICESCR, Article 16 CRC.
192 Articles 6 & 7 ICESCR.
193 Article 19 ICCPR.
194 Article 18 ICCPR.
195 UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 1.
International criminal law serves as the basis for prosecution of individuals who have committed international crimes such as war crimes and crimes against humanity. It would thus not be Israel itself which would be found guilty of these crimes but rather the individuals who committed them. On 2 January 2015 Palestine acceded to the Rome Statute\(^\text{196}\) of the ICC\(^\text{197}\), meaning that the ICC has jurisdiction to adjudicate crimes committed on the oPt from that date onwards. On 16 January 2015, the Prosecutor opened a preliminary examination into Palestine\(^\text{198}\). Forcible transfer, destruction of property and the crime of apartheid are all crimes listed by the Rome Statute relevant to freedom of movement. While collective punishment was not specifically included in the Rome Statute, its status as an international crime is of a customary nature and is contained in the statutes of the International Criminal Tribunal for the Former Yugoslavia\(^\text{199}\) (ICTY), International Criminal Tribunal for Rwanda\(^\text{200}\) and the Special Court for Sierra Leone\(^\text{201}\).

Both collective punishment and excessive destruction of property\(^\text{202}\) (both crimes in their own right) in this instance fall into a greater regime of forcible transfer which is prohibited by Article 8(2)(a)(vii) of the Rome Statute. As noted a number of times in this piece, forcible transfer is not only considered as the direct methods used to forcibly remove populations from an area, but also as the indirect coercive measures designed to effect transfer. A number of judgements of the ICTY support this view. The Krstić case stated that transfer

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201 Article 3(b), UN Security Council, Statute of the Special Court for Sierra Leone, 16 January 2002.
both beyond the borders of a State and within a State amount to grave breaches of the Geneva Conventions\textsuperscript{203}. The Stakić case states that the term forcible can imply the absence of a “genuine choice” through a coercive environment\textsuperscript{204}. The existence of a “genuine choice” depends on the prevailing situation, general atmosphere and the victim's vulnerability\textsuperscript{205}. Finally, the promotion of such a coercive environment which makes it practically impossible to remain in an area, forcing populations to resettle in a different area in the same territory amounts to indirect forcible transfer\textsuperscript{206}. It is clear from the jurisprudence of previous international criminal tribunals that the circumstances inflicted on Palestinians in certain areas of the oPt have been promoted to create an environment where it is impossible for them to remain in their homes, thus leading to the direct and indirect forcible transfer of civilians in breach of Articles 7(1)(d) and 8(2)(a)(vii) of the Rome Statute. These actions thus amount to a crime against humanity and a war crime respectively due to the involuntary nature of the displacement of the Palestinian population.

Furthermore, the institutional nature of the discrimination suffered by Palestinians in the oPt with regards to freedom of movement is indicative of the crime of apartheid which is prohibited by Article 7(1)(j) of the Rome Statute as a crime against humanity. The Statute states that the crime of apartheid relates to the commission of inhumane acts (such as forcible transfer) “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”\textsuperscript{207}. Racially imposed restrictions on movement which do not apply to settlement populations such as the construction of settler-only roads, separation of applicable laws and planning permissions, and the Palestinian-only permit system make clear the existence of an institutionalized regime of systematic oppression and domination designed to maintain a lower status for the Palestinian people in their home territories.

\textsuperscript{203} Prosecutor v. Krstić, IT-98-33-T, International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Chamber Judgement, 2 August 2001, para. 521.
\textsuperscript{205} Prosecutor v. Blagojević and Jokić, IT-02-60-T, International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Chamber Judgement, 15 March 2002, para. 475.
\textsuperscript{207} Article 7(2)(h) Rome Statute.
6(v). The Right to Self-Determination

Article 1 common to both the ICCPR and ICESCR states that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Furthermore Article 1(2) of the UN Charter states that one of the purposes of the UN is to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”\textsuperscript{208}. Furthermore, the right of the Palestinian people to self-determination has been reaffirmed by the international community\textsuperscript{209} and the ICJ in the Wall advisory opinion\textsuperscript{210}.

The excessive movement and access restrictions imposed upon the Palestinian population harmfully affects the economic, social and cultural development of the people. These restrictions not only affect the day to day lives of Palestinians with regards to work and social ties but also have had the effect of fragmenting the territory into discrete areas, unconnected from each other, creating serious obstacles to the ability of Palestinians to realize their right of self-determination. Indeed, the World Bank has accurately noted this stating that the “policy of closure, which broadly consists of comprehensive restrictions on the movement of people and goods within the West Bank, highly constricted movement of goods across the border with Israel, and a near total separation of economic and social interaction between the territories of Gaza and the West Bank, has resulted in a highly fragmented Palestinian economy”\textsuperscript{211}. With regards to the construction of the Annexation Wall and Israeli settlements in the oPt, the ICJ has stated that a fait accompli has been established on the ground amounting to de facto annexation with severe results on the right of self-determination of the Palestinian people\textsuperscript{212}. Moreover, the resulting demographic alteration from the construction of the Wall and settlements further affects this right\textsuperscript{213},

\textsuperscript{208} Article 1(2) United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
\textsuperscript{209} UN General Assembly, The right of the Palestinian people to self-determination : resolution / adopted by the General Assembly, 5 February 2016, A/RES/70/141.
\textsuperscript{210} Wall case para. 149.
\textsuperscript{211} “Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy”, World Bank Technical Team, 9 May 2007, para. 36.
\textsuperscript{212} Wall case para. 121.
\textsuperscript{213} Ibid. para. 122.
and thus Israel is in breach of this right. The Court stated that the right to self-determination is erga omnes and thus is not just owed to the Palestinian people but is owed to the international community as a whole. Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter.

6(vi). Obligations of Third States

Article 1 of the four Geneva Conventions requires all States party to the Conventions to “respect and ensure respect” for the provisions contained within. This includes the obligation not to encourage or assist in the violation of international humanitarian law. States should thus engage in negotiation, diplomatic pressure, legal countermeasures and withdrawal of aid and take steps not to recognize situations of illegality. In addition, States should refer such matters, when necessary, to the existing mechanisms of implementation of international law including international tribunals and fact-finding committees. A 1990 Security Council resolution called on “the High Contracting Parties to the Fourth Geneva Convention of 1949 to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with article 1 thereof” further showing the binding nature of the law to ensure respect for humanitarian law. In the Nicaragua case, the ICJ referred to the obligation as not only being found in the Geneva Conventions, but rather referred to its status as coming “from the general principles of humanitarian law to which the Conventions merely give specific expression”, showing that Article 1 GCIV is not merely symbolic in nature but contains a legal obligation even beyond the Convention. Similarly, the norms of IHL are considered erga omnes meaning that all States have a legal interest in their observation and implementation.

In addition to this, the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), held largely to be reflective of international customary law, state in Article 16 that any State that aids or assists another State in the commission of a wrongful act is internationally responsible for doing so. Thus, aid and military equipment given to Israel which assist in maintaining violations of IHL and IHRL may make a third State internationally responsible under Article 16. It should however be pointed out here that Article 16 would not make the third State responsible for the violations of humanitarian law themselves but rather the State would be responsible for the assistance given.

Finally, States may be under an obligation to prosecute individuals for war crimes where possible. Article 146 GCIV requires State parties to prosecute individuals for grave breaches of the convention as contained in Article 147 such as property destruction and forced transfer. Similarly, universal jurisdiction may be used for crimes against humanity and war crimes due to the erga omnes character of the norms of humanitarian law and the legal interest of all States in their implementation.

214 Ibid. para. 155. See also Case Concerning East Timor (Portugal v. Australia), International Court of Justice (ICJ), 30 June 1995, para. 29.
218 Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986, para. 220.
7. Conclusion

Freedom of movement is a basic requirement for the realization of even the most fundamental rights. Movement and access restrictions affect every aspect of the lives of Palestinians in the oPt, harming their ability to avail of the rights which they are guaranteed. Aside from the basic right to freedom of movement, the rights to health, education and family, among others, are severely compromised and prevent the prosperity of the Palestinian people. The permit system and the separation of the territories into distinct areas of control has created enclaves which have fractured the connection of Palestinian society. The areas in which Palestinians are free to move are becoming increasingly smaller as restricted areas in the oPt expand. Physical barriers to movement appear and disappear with no notice making every day travel an uncertain, lengthy and indeed sometimes worrisome ordeal.

In the application of movement restrictions across the oPt, Israel has acted in total disregard of its obligations under international law, disregarding Security Council resolutions and the opinion of the ICJ along with the rules of IHL and IHRL. Through the implementation of its policies Israel has reversed freedom of movement for Palestinians in the oPt from the rule to the exception. Moreover, these restrictions are not justifiable through necessity, not implemented for the benefit of the occupied population and are extremely disproportionate to any justifying aims. Rather, the restrictions have been imposed to the benefit of settlement populations in the oPt through discriminatory infrastructural projects, zoning regulations and resource requisitions resulting in the forced transfer of many Palestinians from their homes. The discrimination of civilians in this aspect has been institutionalized through the implementation of an ethno-nationally based military legal system and the control of the Israeli Civil authority over some 60% of the West Bank.

The future prosperity and self-determination of the oPt relies on the freedom of movement of its population not only for economic reasons but also for the preservation of its culture, the maintenance of its social cohesion and the disposal of the basic rights of Palestinians. The continuation and expansion of movement restrictions through Israeli policies has a real and damaging effect on the Palestinian population, and, should such policies continue to be applied in the same manner as they currently are, there is genuine cause for concern about the future.
8. Recommendations

• That Israel abide by its obligations under international law especially regarding the Fourth Geneva Convention, the Hague Regulations and the International Covenant on Civic and Political Rights.

• That Israel reduce and remove the movement and access restrictions in place throughout the oPt in conformity with its obligations, including the dismantlement of the Annexation Wall.

• That Israel cease in the construction and expansion of settlements in the oPt in accordance with Security Council resolutions and cease its regime of apartheid, discrimination and demographic alteration, including the forced transfer of civilians.

• That third States cease in the provision of material assistance to Israel which contribute to violations of IHL and IHRL and undertake discussions and negotiations with Israel to promote conformity with its obligations under international law. In cases where such negotiations prove unsuccessful, to withdraw diplomatic ties and aid and introduce legal countermeasures and sanctions against the Israeli regime.

• That third States further act in accordance with their international obligations to ensure respect for the Geneva Conventions. That third States also refuse to recognize situations of illegality.

• That third states continue in the support of NGOs both national and international, and international organizations in their quest to highlight breaches of international law in the oPt.

• That the UN continue to highlight and address illegal actions carried out by Israel, both through the General Assembly and Security Council and that the UN call upon all member states to act with regards to violations of international law in the oPt.

• That the UN Human Rights Council continue in its fact-finding missions in the oPt and follow up on previously published reports to highlight situations of illegality.