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**Consideration of communications submitted
under article 11 of the Convention**

**Report of the ad hoc conciliation commission
on the inter-State communication submitted by the State of
Palestine against Israel under article 11 of the International
Convention on the Elimination of All Forms of Racial
Discrimination*^a ****

Summary of the facts

Summary

The present document has been prepared pursuant to articles 12.4 and 12.8 of the International Convention on the Elimination of All Forms of Racial Discrimination. It summarizes the allegations submitted by the State of Palestine and responses provided by Israel.***

* The present document is being issued without formal editing.

** Established under article 12(1)(b) of the International Convention on the Elimination of All Form of Racial Discrimination.

*** The present document should be read in conjunction with the findings and recommendations of the ad hoc commission (CERD/C/113/3) and its assessment of the facts (CERD/C/113/Add.2).

Contents

	<i>Page</i>
I. Introduction	3
II. Submissions from the States parties	3
A. General obligation of States parties to combat racial discrimination (article 2)	3
B. Prohibition of segregation and apartheid (article 3).....	4
C. Right to equal treatment before tribunals (article 5(a)).....	5
D. Right to freedom of movement and residence (article 5(d)(i))	8
E. Right to leave any country, including one's own, and to return to one's country (article 5(d)(ii))	10
F. Right to marriage and choice of spouse (article 5 (d) (iv))	10
G. The right to own property alone as well as in association with others (article 5(d)(v))	11
H. Right to freedom of thought, conscience and religion (article 5 (d)(vii))	12
I. Labour-related rights (article 5 (e)(i))	13
J. Right to housing (article 5(e)(iii)).....	13
K. Right to public health, medical care, social security, and social services (article 5(e)(iv)) ..	14
L. Right to education and training (article 5 (e)(v))	15

I. Introduction

1. This annex complements the report¹ submitted by the ad hoc conciliation commission established by the Committee on the Elimination of All Forms of Racial Discrimination under article 12 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention), following the inter-State communication submitted by the State of Palestine against Israel under article 11 of the Convention. It includes the allegations submitted by the State of Palestine concerning the violation of the Convention by Israel as well as replies provided by Israel and the assessment made by several United Nations entities, including the Committee. Further, the annex includes the assessment made by the commission based on available information.

II. Submissions from the States parties

2. This section contains the summary of allegations submitted by the State of Palestine and the responses provided by Israel as collated by the commission from sources at its disposal.

3. In its communication to the Committee, the State of Palestine submitted allegations on the violation of articles 2, 3, 5(a), 5(d)(i)), 5(d)(ii)), 5(d)(iv)), 5(d)(v)), 5(e)(i)), 5(e)(iii)), 5(e)(iv)) and 5(e)(v)) of the Convention.

A. General obligation of States parties to combat racial discrimination (article 2)

4. The State of Palestine claims that Israel has violated its obligations under article 2 of the Convention by failing to bring to an end acts of racial discrimination inherent in the law and practice of the regime of occupation, racial segregation, colonialism and apartheid that prevails in the Occupied Palestinian Territory.² Those acts comprise establishing settlements and “outposts” in the West Bank, including East Jerusalem,³ which are contrary to international law.⁴ Several groups of settlers motivated by religious and political ideologies, engage in racist violence against Palestinians. The State of Palestine alleges that Israeli settlers are also responsible for the aggressive conduct of civilian guards employed to protect settlements, in particular, in Hebron. This city, among others, registered almost daily acts of physical violence and property damage. Israeli authorities have made little efforts to curb settler violence.⁵ The Nationalistic Crimes Unit established to investigate settler crimes has done little to address the problem of impunity enjoyed by settlers. Furthermore, the results of the investigations triggered by this body are characterized by negligence and an absence of professionalism⁶. There is evidence of collusion on the part of the occupying forces, who have stood idly by observing settler violence without making any attempt to stop it.⁷

5. Israel argues that its legislation prohibits racial discrimination as required under article 2 (1)(a) of the Convention. It contends that several legislations and court rulings prohibit public authority or public institutions from engaging in acts and practices of racial discrimination. Israel also contends that “these prohibitions apply with equal force at the

¹ CERD/C/113/R.1.

² Communication submitted by the State of Palestine, paras. 570- 571.

³ United Nations, Human Rights Council Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/22/63 (7 February 2013), para. 28.

⁴ See UNSC, Res. 245 (2 1968); UNSC, Res. 452 (1979) and UNSC, Res. 2334 (2016), para. 1. See also ICJ, Case Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Rep. 2004, pp. 136 et. seq. (120-121), para. 120.

⁵ See, United Nations, Human Rights Council, *Report of the UN Fact-Finding Mission on the Gaza Conflict*, UN Doc. A/HRC/12/48 (25 September 2009), para. 85.

⁶ Communication submitted by the State of Palestine para. 576.

⁷ United Nations, Human Rights Council, UN Doc. A/HRC/28/44 (10 February 2015).

national and local levels, and all public authorities and institutions are required to comply with their directives.”⁸ Israel argues that its independent judiciary, guided by the Supreme Court, rendered a number of landmark decisions “against certain discriminatory practices of both government entities and private individuals”.⁹ Israel has taken the position that it has no obligation to report on any territory other than the State of Israel, given its position that the Convention does not apply to the Occupied Palestinian Territory.¹⁰ Concerning settler violence, Israel contends that the High Court of Justice (HCJ) held, in the case *Rashad Morar v. The IDF Commander for Judea and Samaria*,¹¹ that it is the duty of the Israel Defense Forces (IDF) to protect Palestinian farmers from settlers. In this regard, Israel pointed out several cases in which the HCJ examined operations conducted by the IDF and revised military orders¹². Israel further submits that the HCJ prohibited the use of a military procedure in the West Bank to protect civilians from military activities.¹³ The HCJ also evaluated the legality of the IDF's pre-emptive targeted killing of terrorists under international law and established criteria for such actions under international law in the context of armed conflict.¹⁴

B. Prohibition of segregation and apartheid (article 3)

6. The State of Palestine contends that like the apartheid regime in South Africa, Israel's occupation of the Occupied Palestinian Territory is likewise characterized by racial discrimination, repression and territorial fragmentation.¹⁵ It asserts that Israeli law and practice in the OPT is in breach of article 3 of the Convention. The State of Palestine bases its assertion on the prohibition of racial segregation and apartheid also contained in article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) as a primary interpretive tool for the content of the international legal definition of apartheid.¹⁶

7. The State of Palestine argues that “Jewish Israelis and Palestinian Arabs are constructed and perceived both by themselves and by external actors as stable and permanent groups distinct from each other and, therefore, can be considered as different racial groups

⁸ CERD, 17th to 19th periodic reports submitted by Israel under article 9 of the Convention, (CERD/C/ISR/17-19, 14 March 2017), para. 23.

⁹ Ibid. para. 28.

¹⁰ CERD, Concluding observations, Israel, (CERD/C/ISR/CO/17-19, 27 January 2020), para. 9; CERD, concluding observations, Israel, (CERD/C/ISR/CO/14-16, 9 March 2012), para 10.

¹¹ HCJ 9593/04, *Rashad Morar v. The IDF Commander for Judea and Samaria*. Available at: https://web.archive.org/web/20230401161629/https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts/04/930/095/n21&fileName=04095930_n21.txt&type=4 (accessed 2 April 2023).

¹² “According to the jurisprudence and practice of the High Court of Justice, any interested party (including non-governmental organizations) – or any person (including those who are neither citizens nor residents of Israel) who is affected or potentially affected by the actions of a government authority (including the IDF or the Attorney General) – is entitled to petition the High Court of Justice, as a court of first instance, on any claim that a government action or an action of the IDF is ultra vires, unlawful, or substantially unreasonable”. Source: The IDF Military Justice System: <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/the-idf-military-justice-system/>. See for example, HCJ 3239/02 *Mar'ab v. The Military Commander of the West Bank* (5 February 2003), as referred to in Israeli Submission in relation to the Palestinian communication of 20 March 2019, para. 129.

¹³ HCJ 3799/02 *Adalah v. The Military Commander* (06 October 2005), available in English at: http://elyon1.court.gov.il/Files_ENG/02/990/037/A32/02037990.a32.pdf, as referred to in Israeli Submission of 20 March 2019, para. 130.

¹⁴ HCJ 769/02 *PCATI v. State of Israel* [2006] (14 December 2006), as referred to in Israeli Submission of 20 March 2019, para. 131.

¹⁵ The State of Palestine assesses that “it is much wiser to measure apartheid in the OPT against the yardstick of the comprehensive definition contained in the Convention on the Suppression and Punishment of the Crime of Apartheid, as repeated in shorter form in the Rome Statute. This provides an objective, clear and legal description of the principal elements and characteristics of apartheid against which to measure and judge the question whether Israel applies apartheid in the OPT”. See Palestine's communication, para. 593.

¹⁶ Ibid., para. 594

for the purposes of the definition of apartheid”.¹⁷ The State of Palestine also argues that it is clear from the wording of the definition of apartheid and from the South African precedent that the existence of an apartheid regime does not require all of the inhuman acts envisaged in article 2 of the Apartheid Convention to be prevalent. An apartheid regime is defined by the commission of such acts in a manner sufficiently extensive to be qualified as institutionalised and systematic domination. The State of Palestine contends that as a ‘composite wrongful act’ of international law, apartheid involves ‘a series of acts or omissions defined in aggregate as wrongful’ and ‘give[s] rise to continuing breaches, which extend in time from the first of the actions or omissions in the series of acts making up the wrongful conduct.’¹⁸ The State of Palestine asserts that on the basis of the systemic and institutionalised nature of the racial domination that exists, there are strong grounds to conclude that a system of apartheid has developed in the Occupied Palestinian Territory.¹⁹

8. In its periodic reports to the Committee under article 9 of the Convention, in 2011 and 2017, Israel stated that apartheid has never been practised in its territory. It contended that there are no restrictions on places of residence of any kind, nor is there any segregation of any kind.²⁰ In a decision of the Israeli High Court of Justice dated 5 March 2008, the Court rejected the use of the word apartheid by the petitioners.²¹ According to the Court, there is no comparison between the use of separate roads for security reasons and the apartheid policy formerly implemented in South Africa, which is a grave crime under the basic principles of Israeli law, international human rights law, and the provisions of international criminal law.²² The judge contended that improper discrimination does not necessarily amount to the crime of apartheid, which is characterized by its extreme severity.²³

C. Right to equal treatment before tribunals (article 5(a))

9. The State of Palestine submits that the Israeli military court system, including two military courts of first instance in the West Bank inside Israeli military bases, results in the application of a special regime in the Occupied Palestinian Territory.²⁴ Israelis are not tried before military courts in the Occupied Palestinian Territory even when the act was committed there. They are instead charged and tried in Israeli courts, even if both the Israeli citizen and the Palestinian committed the same crime, in the same spot in the Occupied Palestinian Territory, which leads to a violation of article 5 (a) of the Convention.²⁵ Furthermore, the judges and prosecutors in those military courts are all military personnel, often lacking judicial training and practice.²⁶

10. To refute the allegations of unequal treatment before tribunals raised by the State of Palestine, Israel explained the functioning of its military criminal justice system,²⁷ which

¹⁷ *Ibid.*, para. 587.

¹⁸ *Ibid.*, para. 623.

¹⁹ See para. 623 of the Palestine’s communication.

²⁰ CERD, 17th to 19th periodic reports submitted by Israel under article 9 of the Convention, (CERD/C/ISR/17-19, 14 March 2017), para. 54; CERD, 14th to 16th periodic reports submitted by Israel under article 9 of the Convention, (CERD/C/ISR/14-16, 13 January 2011), para. 154.

²¹ Israel’s submission of 20 March 2019, para. 63, note 54.

²² HCJ 2150/07 Ali Hussein Mahmoud Abu Safiyeh, Beit Sira Village Council Head, and 24 others vs. Minister of Defense, IDF Commander in the Judeaea and Samaria Area, Commander of the Benjamin Brigade, Shurat Hadin Israel Law Center and 119 others, Fence for Life, (5 March 2008) President D. Beinisch, p. 48, para. 6. Available at: https://web.archive.org/web/20230401161143/https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts/07/500/021/m19&fileName=07021500_m19.txt&type=4

²³ *Ibid.*

²⁴ S. Weill, “The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories”, in 89 International Review of the Red Cross (2007), No. 866, pp. 395-419 (402).

²⁵ See Palestine’s communication, para. 148.

²⁶ Addameer Prisoner Support and Human Rights Association (Addameer), Presumed Guilty: Failures of the Israeli Military Court System - An International Law Perspective (2009), pp. 7-8. See Palestine’s communication, para. 144.

²⁷ See para. 49- 50 of the decision on the admissibility of the communication submitted by the State of Palestine before the CERD.

offers the necessary guarantees of independence and equity. Israel clarified that its military court system includes regional courts of first instance, as well as the Military Court of Appeals, whose decisions are subject to review by the High Court of Justice. Israel underlined that the primary entity for investigating allegations of criminal offences is the Military Police Criminal Investigation Division, which is a unit entirely separate from the Military Advocate General's Corps and enjoys complete professional independence.²⁸

11. The State of Palestine asserts that although the relevant Israeli law governing military justice in the West Bank²⁹ provides that the military courts have jurisdiction over all persons who commit crimes in the West Bank regardless of their nationality or racial group, Israeli settlers, in practice, have been exempted from the military courts of the West Bank by the Extension of Emergency Regulations Law (Judea and Samaria and Gaza – Adjudication of Offences and Legal Aid) of 1977.³⁰ The discriminatory nature of this differentiation is emphasized by the fact that Palestinians carrying Israeli IDs (especially those from East Jerusalem) who commit offences in the Occupied Palestinian Territory are nevertheless tried there by Israeli military courts.³¹

12. The State of Palestine claims that the criminal legal system applied and enforced by Israel in the Occupied Palestinian Territory discriminates between Palestinians and Israelis living in this territory, both *de jure* and *de facto*, in many ways and therefore violates article 5 (a) of the Convention. There are differences in the treatment given to Palestinians and Israelis in many ways, particularly, the time-limit of meeting with an attorney, the duration of pre-trial detention,³² and the discriminatory use of Hebrew in the trial due to inadequate translation of documents into Arabic.³³ There is also discrimination between Palestinians and Israelis (a) in the definition of offenses (b) the penalty policy and (c) the possibility of release prior to the end of the sentence.³⁴

13. Concerning allegations that Palestinians seeking legal redress in Israeli courts must first secure a permit to enter Israel, thus creating unequal access to justice, Israel states that the West Bank and the Gaza Strip constitute Palestinian territory and that Palestinians willing to conduct legal proceedings before Israeli courts are required to receive a permit to enter Israel. Israel contends that since the HCJ generally does not hear testimony, representation by counsel suffices in the event a permit to enter is denied due to security reasons.³⁵ Israel contends that the right to access a court does not entail a right to be physically present in court in civil proceedings. Israel also contends that applicants duly represented by counsel enjoyed the right to access to a court.³⁶ Israel further states that it is still possible for Palestinian claimants and witnesses living in the Gaza Strip to enter Israel for legal proceedings as per criteria for the entry to ensure equal access to courts and legal proceedings established by the Israeli government.³⁷ In the case of *The Palestinian Center for Human Rights (PCHR) v. The Attorney General*, the HCJ ruled that “while it is clear to us that the security situation is a central factor that requires consideration, nevertheless, even against this complex framework, we ask, and there is no doubt that this also the position of the State, that maximum procedural fairness is achieved.”³⁸

²⁸ Israel, Ministry of Foreign Affairs, *The 2014 Gaza Conflict*, 7 July–26 August 2014: Factual and Legal Aspects (2015), p. 222.

²⁹ contained in Security Provisions Order No. 378, replacing military proclamations on this subject of 1967.

³⁰ Replacing an earlier law to the same effect of 1967.

³¹ *Zrari v. Israeli Police*, HCJ 6743/97, unpublished 1997 (reported by S. Weill, *supra* note 116); *The Israeli Police v. Nabulsi*, TSJMC (1990) pp. 189 *et seq.* (398).

³² Art. 34 Detentions Law and Art. 56 lit. e Order Concerning Security Provisions, ACRI (2014), *supra* note 119, p. 54.

³³ See Palestine's communication, paras. 203- 205.

³⁴ *Ibid.*, paras. 207- 217.

³⁵ Israeli Submission of 20 March 2019, para. 67.

³⁶ *Ibid.*, para. 73. Israel referred to *Gillow v. The United Kingdom*, E.C.t.H.R., 9063/80 (1986), para. 69.

³⁷ *Ibid.*, para. 69, footnotes 57; para. 72, footnotes 62.

³⁸ HCJ 9408/10 *The Palestinian Center for Human Rights (PCHR) v. The Attorney General*, Supplementary Response for the State, para. 58, as referred to in Referred to in Israeli Submission of 20 March 2019, para. 70.

14. Regarding the application of Israeli criminal law in the West Bank³⁹, Israel argues that its Criminal courts have jurisdiction over crimes committed by Israelis in the West Bank. In this regard, the Israeli criminal courts have prosecuted and convicted Israelis for crimes committed against or with respect to Palestinians,⁴⁰ in particular, the criminal courts have decided on several cases concerning racially motivated or discriminatory crimes.⁴¹

15. The State of Palestine submits that there is a discriminatory legal system with regard to young Palestinian offenders who are generally subjected to military juvenile courts established in the Occupied Palestinian Territory whereas Israeli minor suspects and offenders are tried before Israeli civilian courts. The discriminatory treatment of Palestinians in comparison to Israeli under-aged takes place in all phases of criminal proceedings, including age determination, during arrest and detention. There is also discriminatory treatment in the due process rights of Palestinian minors, whose courts are generally not sufficiently separated from the military courts for adults, since both use the same facilities.⁴² While according to the Israeli Youth Law, proceedings in which Israeli minors are charged are held in camera and it is prohibited to publish their names,⁴³ this prescription is absent in the military orders governing proceedings of military juvenile courts,⁴⁴ unless specifically ordered by the military court.⁴⁵ In addition, the State of Palestine asserts that young Palestinian offenders are sentenced more severely in comparison with young Israeli offenders.

16. Israel argues that there is no discriminatory legal system with regard to Palestinian offenders under the age of 16. Israel states that minors are treated differently than adults in the Occupied Palestinian Territory. Military Order 1651 established the minimum age for criminal accountability at the age of 12, while Military Order 1676 raised the definition of minors from persons under the age of 16 years to persons under 18 years.⁴⁶ In addition, Military Order 1644 established juvenile military courts adjudicating any offence a minor is charged with notwithstanding the provisions of any law and security legislation.⁴⁷ On 7 March 2017, when responding to the report of several Special Procedures' mandate holders, the Legal Advisor to the Permanent Representative of Israel to the United Nations in Geneva stated that "Israel attaches great importance to strengthening the protection granted to children and makes significant efforts to ensure due process and fair trials. Recently, particular focus has been placed on the issue of juvenile detainees, and significant reforms have been adopted."⁴⁸

17. The State of Palestine submits that very few Jewish settlers have been detained administratively compared to Palestinians.⁴⁹ Military Order 1651 empowers military commanders in the West Bank to detain a person for a maximum period of six months for

³⁹ See Decision on admissibility, para 48.

⁴⁰ Jerusalem District Court, *State of Israel v. S.T. and other*, Cr.C. 4001-05-15, 22 July 2015; and Jerusalem District Court, *State of Israel v. Ben David et al.*, S.Cr.C. 34700-07-14, 19 April 2016.

⁴¹ See: *State of Israel v. Cohen*, Cr.C. 41705-08-14, 19 September 2017; and *The State of Israel v. Avraham Gafni et al.*, Cr.C. 55372-08-15.

⁴² UNICEF, *Children in Israeli Military Detention, Observations and Recommendations* (2013), p. 6; Defence for Children International/Palestine Section (2013), p. 4. Cited by the State of Palestine, in its communication, para. 241.

⁴³ ACRI (2014), *supra* note 119, p. 72.

⁴⁴ *Ibid.*, *supra* note 119, p. 73.

⁴⁵ Military Order 1651, Art. D, Section 88 lit. b.

⁴⁶ Military Order No. 1676 in Defense for Children International Palestine, *No Way to Treat a Child*, April 2016, p. 13. Available at: https://assets.nationbuilder.com/dcipalestine/pages/1527/attachments/original/1460665378/DCIP_NW TTAC_Report_Final_April_2016.pdf?1460665378 (accessed 2 April 2023).

⁴⁷ See Israeli Defence Forces Order No. 1644

⁴⁸ Response of 7 March 2017 to the Human Rights Council 34th Session, Statement by the Permanent Mission of Israel to UN in Geneva. Available at: https://web.archive.org/web/20230326191544/https://embassies.gov.il/UnGeneva/HumanRightsCouncil/RegularSessions/Documents/HRC34/HRC34_Item3_VaChildren_Israel%20Statement.pdf (accessed 2 April 2023).

⁴⁹ Palestine's communication, para. 258.

security reasons⁵⁰ Frequently, Palestinian prisoners, including administrative detainees, are subjected to ill-treatment, such as isolation, solitary confinement, deliberate medical negligence, denial of family visits and access to education, as well as torture and inhuman treatment.⁵¹ Palestinian detainees are detained for longer periods of time than settlers. They are unable to be visited by family or their lawyers, who are routinely denied permits to enter Israel, and this results in them not receiving food, clothing, or books from their families.⁵² While the Israeli Supreme Court strictly reviews appeals against detention orders from Jewish citizens, including settlers,⁵³ such a strict standard is not applied to the detention of Palestinians. The State of Palestine added that complaints of torture or abuse during interrogation are largely ignored.⁵⁴

18. Regarding the alleged discriminatory character of administrative detention for Palestinians, in a reply to the letter of several United Nations mandate holders dated 19 August 2016,⁵⁵ the Ministry of Justice of Israel stated that administrative detention is used as a tool to fight against continuous terrorist attacks. The Minister also held that this last resort measure allows the deprivation of a person's liberty for a limited period of time to prevent terrorist acts in the West Bank is in conformity with international law, including article 78 of the Fourth Geneva Convention of 1949.⁵⁶ A similar summary of Israel's position was made on a response dated 14 August 2015 made by the Permanent Representative to the United Nations in Geneva in his response to a communication two United Nations Special Rapporteurs.⁵⁷

19. Concerning the allegations made by the State of Palestine about the inhumane treatment of Palestinian prisoners and detainees, the Israeli Permanent Representative in Geneva, in his response dated 14 August 2015 to two United Nations Special Procedures mandate holders in relation to the amendment to the Prison Ordinance 5731-1971,⁵⁸ indicated that the free will and autonomy of detainees needed to be balanced with the healthcare of the people in custody, including the administration of non-consensual medical treatment in "certain and highly limited circumstances, and only in accordance with a judicial decision". Moreover, the Israeli High Court of Justice recognized that certain of the techniques used by the Israel Security Agency were exceptional, but did not amount to torture, as they did not cause severe pain and suffering in accordance with article 1 of the Convention Against Torture.⁵⁹

D. Right to freedom of movement and residence (article 5(d)(i))

20. The State of Palestine submits that there is serious discrimination between settlers and Palestinians in the exercise of freedom of movement in the Occupied Palestinian Territory in

⁵⁰ Under the Military Order 1651, Arts. 284-294. See further, Addameer Prisoner Support and Human Rights Association, *Administrative Detention in the Occupied Palestinian Territory. A Legal Analysis* (4th ed. 2016).

⁵¹ *Ibid.*, pp. 3, 12, 26-27.

⁵² Addameer (2009), *supra* note 117, pp. 23-24, 27-28.

⁵³ D. Kretzmer, *The Occupation of Justice. The Supreme Court of Israel and the Occupied Territories*, p. 130.

⁵⁴ See communication submitted by Palestine, para. 188.

⁵⁵ Response to a letter dated 19 August 2016 of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

⁵⁶ *Ibid.*

⁵⁷ Response of 14 August 2015 to Special Rapporteurs Puras/Méndez by Permanent Representative to the UN at Geneva, p. 4. Available at: <https://web.archive.org/web/20230326134901/https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32536> (accessed 25 March 2023).

⁵⁸ *Ibid.*

⁵⁹ Response of 4 May 2018 to individual communication by Permanent Mission to the UN at Geneva, citing (HCJ 5722/12 *As'ad Abu Gosh v. the Attorney General* (12 December 2017), p. 2. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34042> (accessed 2 April 2023).

violation of article 5 (d)(i) of the Convention. While no restrictions are placed on Israeli settlers' freedom of movement as they drive to work, schools, universities, hospitals and friends in the West Bank and East Jerusalem, including within the 'seam zone',⁶⁰ Palestinians are subject to severe limitations on their movement within this area. Separate roads, enforced by checkpoints and roadblocks, are available to settlers to facilitate their freedom of movement. Other roads, which provide the only access to Palestinian villages, may be used by Palestinians who have obtained a permit for this purpose.⁶¹ Palestine asserts that movements within the West Bank are most seriously curtailed in the vicinity of the "Annexation and Separation Wall" which is still under construction,⁶² despite having been declared to be illegal by the International Court of Justice in its 2004 Advisory Opinion.⁶³ Many settlements are situated within the seam zone. Access to Palestinians, including farmers, living in the twelve villages of the seam zone is regulated by a vigorous permit system.⁶⁴ All Palestinians are required to carry identity cards issued by the Ministry of the Interior of the State of Palestine, subject to the oversight of Israel. Numerous permits are necessary to perform several activities in life. Physical obstacles and bureaucratic procedures severely impact these activities.⁶⁵

21. Concerning the right to freedom of movement and residence of Palestinians, in its preliminary response to Palestine's communication dated 20 March 2019, Israel argues that the High Court of Justice has dealt with a number of cases concerning the right to move freely. As a result, changes were implemented to simplify the delivery of such permits.⁶⁶ In the case of *The Parents Circle-Families Forum v. The Minister of Defence*, the High Court of Justice overturned the decision of the Ministry of Interior, which denied Palestinian permit to enter a private memorial due to security concerns.⁶⁷ Israel also submits that in the case of *Morar v. The Military Commander*, the High Court of Justice ruled that restrictions on Palestinian's rights to access agricultural lands intended to ensure their safety and avoid potential violent altercations with Israeli extremists was not rational "since it is an extremely unfair act that results in serious harm to basic rights while giving in to violence and criminal acts".⁶⁸ Israel also emphasizes that restrictions of movement imposed to Palestinians are justified by the necessity to protect its citizens from the threat of Hamas attacks and the humanitarian needs of the Palestinian leaving under Hamas control inside the Gaza Strip.⁶⁹ Israel contends that there is no requirement that persons who are lawfully present within Israel proper register in particular districts, and movement within Israel proper is generally unrestricted.⁷⁰ Israel further holds that on 14 December 2006, the Israeli High Court of Justice ruled that a mini-wall in the South Hebron district in Palestinian territory be dismantled, as

⁶⁰ The area between the Separation Wall in Palestine and the Green Line

⁶¹ Palestine's communication, para. 261.

⁶² About 60 % has been completed, while a further 10 % is currently under construction. See Palestine's communication, para. 265, Footnote n°254.

⁶³ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Rep. 2004, p. 136. See further on the Wall, M.Sfard, *The Wall and the Gate. Israel, Palestine and the Legal Battle for Human Rights*, Metropolitan Book, New York, 2018, pp.256-334.

⁶⁴ See, HaMoked Centre for Defence of the Individual, *The Permit Regime. Human Rights Violations in the West Bank Area Known as the Seam Zone* (March 2013), available at: http://www.hamoked.org/files/2013/1157660_eng.pdf.

⁶⁵ Palestine's communication, para. 263.

⁶⁶ Israeli Submission of 20 March 2019, para. 106.

⁶⁷ HCJ 2964/18 *The Parents Circle-Families Forum v. The Minister of Defence* (17 April 2018), as cited in Israeli Submission of 20 March 2019, para. 107.

⁶⁸ HCJ 9593/04 *Morar v. The Military Commander* (26 June 2006), available in English at: http://elyon1.court.gov.il/files_eng/04/930/095/n21/04095930.n21.pdf., as cited by Israeli Submission of 20 March 2019, para. 112.

⁶⁹ Response of 13 December 2017 to individual communication by the Deputy Permanent Representative of Israel to the UN in Geneva, para. 1. Available at: <https://web.archive.org/web/20230401165800/https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33853> (accessed 2 April 2023).

⁷⁰ CERD, 14th to 16th periodic reports submitted by Israel under article 9 of the Convention, (CERD/C/ISR/14-16, 13 January 2011), para. 368.

“it interfered disproportionately with the freedom of movement of Palestinian residents and their livestock”.⁷¹

E. Right to leave any country, including one’s own, and to return to one’s country (article 5(d)(ii))

22. The State of Palestine contends that the right of Palestinians living in the West Bank, Gaza and East Jerusalem to leave their country and return to it is governed by a complex system of Israeli law and administrative discretion, which is a breach of article 5 (d)(ii) of the Convention. While Israeli settlers are free to leave and return to their homes in settlements in the Occupied Palestinian Territory without restriction, Palestinian residents, who were forced to flee their country in 1948 and 1967 due to Israel’s military action, have no right to return to their homes.⁷² Conversely, under the Israeli Law of Return of 1950⁷³, every Jew has the right to enter Israel, live there and become an Israeli citizen. In 1970, this Right of Return was extended to apply to any person with a Jewish grandparent and to non-Jews married to a Jew.⁷⁴ The Palestinian communities whose parents fled following the 1948 conflict and the 1967 war have grown to a refugee community of some five million, living mainly in refugee camps in the West Bank and Gaza, in Syria, Lebanon and Jordan.⁷⁵

23. No official Israeli responses in relation to the allegations made by the State of Palestine on the violation of the right to leave any country, including one’s own, and to return to one’s country, have been found to date.

F. Right to marriage and choice of spouse (article 5 (d) (iv))

24. The State of Palestine claims that the right of Palestinians to marriage and free choice of spouse, as protected by article 5(d)(vii) of the Convention, is severely curtailed by institutionalised separations and legalised restrictions imposed by Israel. Israel’s citizenship and residency laws are the foundation of an administrative system that separates and bars (re)unification for large numbers of Palestinian spouses and families, based on their residency status⁷⁶. A legislative ban on family unification has been upheld by the Israeli Supreme Court. The impact of Israel’s closure and blockade of Gaza on family life and marriage rights has also been particularly severe.⁷⁷ The State of Palestine further claims that the Israeli family unification policy is entirely discriminatory in its operation, with no such restrictions placed on Jewish couples, regardless of whether they are residents of Israel or settlers in the Occupied Palestinian Territory, and regardless of whether they are citizens of Israel or non-citizens entitled to claim citizenship by virtue of their Jewish ancestry/nationality.

25. Israel contends that as regards the restrictions on the right to marriage and choice of spouse of Palestinians, “[t]he security officials pointed to a number of elements that make this population a heightened risk.”⁷⁸ Israel considers that “status given for the purpose of

⁷¹ United Nations, Human Rights Council, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard. (A/HRC/4/17, 29 January 2007), para 31. The commission is not in a position to verify the implementation of the decision of 14 December 2006, of the HCJ regarding the mini wall in Hebron.

⁷² Palestine’s communication, para. 283.

⁷³ Law 5710-1950.

⁷⁴ *Ibid.*

⁷⁵ The present complaint is not concerned with the right of Palestinians to return to their homes in Israel, but with a comparison of the right to leave and return to the territory of occupied Palestine – that is, East Jerusalem, the West Bank and Gaza - by Jewish settlers and Palestinians.

⁷⁶ Palestine’s communication, para. 301.

⁷⁷ See, B’Tselem & HaMoked, *So Near and Yet So Far: Implications of Israeli-imposed Seclusion of Gaza Strip on Palestinians’ Right to Family Life* (January 2014).

⁷⁸ Knesset, Knesset Plenum passes Citizenship and Entry into Israel Bill into law. Available at: <https://m.knesset.gov.il/en/news/pressreleases/pages/press10322w.aspx> (accessed 2 April 2023).

family unification is still misused in order to engage in and facilitate terrorist activity”.⁷⁹ Nevertheless, the Israeli Government notified holders of temporary permits for stay in Israel, whose family reunification applications were made before the end of 2003 and who “have therefore been screened by the security services for many years, would be upgraded”.⁸⁰

G. The right to own property alone as well as in association with others (article 5(d)(v))

26. The State of Palestine claims that Israel violates the right to property protected under article 5 (d)(v) of the Convention. Israel has capitalised on the administrative division of the West Bank into Areas A, B and C⁸¹ to entrench this policy. While the vast majority of West Bank Palestinians live in Areas A and B, almost all the land reserves required for developing their communities remain in Area C, including lands that used to be within the municipal jurisdiction of their communities, some of them in private Palestinian ownership. Tens of thousands of hectares of land have been seized from Palestinians and allocated to settlements. Significant portions of these lands have been declared ‘state land’ for exclusive Israeli ownership and use⁸². Any Palestinian use of this land is subject to Israeli approval, which is only granted in extremely rare situations.⁸³ Throughout Area C of the West Bank, Israel has unilaterally assigned 70 % of all land for its settlements and their related infrastructure and military and security networks, all of which is off-limits to Palestinian ownership and development.⁸⁴ Although the Israeli Supreme Court has reviewed and, in some cases, prohibited the requisition of private Palestinian land where the state failed to show an overriding military necessity,⁸⁵ it refused to hear disputes over ownership status.⁸⁶ For Palestinians whose private land holdings have been categorised by Israel as “public”, the only recourse is to address the military-appointed administrative tribunals tasked to advise the military commander. The State of Palestine holds that Israel continues to use declarations of ‘state land’ to negate the right of Palestinians to maintain or establish ownership of property in the Occupied Palestinian Territory.⁸⁷

27. Israel indicates several decisions adopted to address the issue of the right of Palestinians to own property alone as well as in association with others. Israel submits that on 9 June 2020, the HCJ overturned the Regularization Law⁸⁸, ruling that such law violated the rights of the Palestinians to property, equality and dignity.⁸⁹ On 27 August 2020, the Supreme Court of Israel decided to overturn a decision of the Jerusalem District Court by ordering the Government to vacate the occupied land within three years and return it to its Palestinian owners once the State had found appropriate alternative residences for the settlers.⁹⁰

⁷⁹ CERD, 17th to 19th periodic reports submitted by Israel under article 9 of the Convention, (CERD/C/ISR/17-19, 14 March 2017), para. 149.

⁸⁰ Ibid., para. 151.

⁸¹ See: “What are areas A, B, and C of the occupied West Bank?”

<https://www.aljazeera.com/news/2019/9/11/what-are-areas-a-b-and-c-of-the-occupied-west-bank>

⁸² Palestine’s communication, para. 409

⁸³ B’Tselem, *Reality check: almost fifty years of occupation* (5 June 2016).

⁸⁴ United Nations, General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/71/554 (19 October 2016), para. 52.

⁸⁵ *Dweikat v. Government of Israel*, HCJ 390/79, judgment of 22 October 1979 (the *ElonMoreh* case).

⁸⁶ I. Lustick, “Israel and the West Bank after ElonMoreh: The Mechanics of De Facto Annexation”, in: 35:4 *Middle East Journal* (1981), pp. 557, 568.

⁸⁷ B’Tselem, *Under the Guise of Legality: Israel’s Declarations of State Land in the West Bank* (February 2012).

[⁸⁸ specify the Law]

⁸⁹ United Nations, Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights (A/HRC/46/65, 15 February 2021)*, para. 16 and FN 28 citing HCJ 1308/17 *Silwad Municipality et al. v. Knesset et al.*, (9 June 2020).

⁹⁰ However, despite this decision, “Israeli media reported that the Prime Minister of Israel had stated that ‘all avenues will be explored to keep the residents where they are.’” Human Rights Council Report (A/HRC/46/65, 15 February 2021), para 17.

28. Israel justifies expropriation of land in the public interest and underlines its efforts to engage in dialogue with and pay compensation to affected landowners.⁹¹ Israel contends that the HCJ reviewed more than 170 petitions challenging the Security Fence, filed by Palestinian residents, NGOs, village councils, and Israeli citizens.⁹² In the case of *Ziada v. The Military Commander in the West Bank*, the HCJ overturned a decision of the Military Commander, “as it failed to meet the various requirements of proportionality”.⁹³

29. Regarding the demolition of Palestinian homes, the Permanent Representative of Israel to the United Nations in Geneva justified the demolitions in a Palestinian Bedouin community in the central-northern part of the Jordan Valley⁹⁴ by the fact that this area was declared Firing Zone since 1972.⁹⁵ In several cases, the HCJ also addressed alleged violations of the right to property raised by Palestinian petitioners, ordering the removal of illegally established construction.⁹⁶ Israel further submits that its civil courts are equally available to Palestinian residents of the West Bank with respect to property rights. For example, in two cases, Palestinian plaintiffs brought civil suits claiming ownership of disputed land against Israeli defendants. In both cases, the Jerusalem District Court ruled in favour of the Palestinian plaintiffs, with the Jerusalem District Court finding that the defendants failed to prove ownership.⁹⁷

H. Right to freedom of thought, conscience, and religion (article 5 (d)(vii))

30. The State of Palestine claims that Israel continues to discriminate against Palestinians’ rights to freedom of religion in breach of article 5 (d)(vii) of the Convention. Through a complex and restrictive system established by Israel, hundreds of thousands of Palestinians – Muslims and Christians – have regularly been impeded from worshipping at sites that are among the most significant to their faiths, particularly in Jerusalem. Palestinians are routinely prevented from attending religious services at the Al-Aqsa Mosque and the Church of the Holy Sepulchre in occupied East Jerusalem. Palestinians are also widely prevented by Israeli restrictions from accessing the Ibrahimi Mosque and Tomb of the Patriarchs in Hebron and the Church of the Nativity in Bethlehem. Palestinian applicants do not receive travel permits from Israeli authorities for the celebration of religious festivals, marriages or funeral ceremonies with family members who live in different parts of the Occupied Palestinian Territory. The closure regime causes particular difficulties during the holy month of Ramadan. After the designation of Gaza as a “hostile entity” in 2007, Israel banned all travel from Gaza to East Jerusalem and other parts of the West Bank, except for very limited categories of people who are eligible to apply for a travel permit. On the contrary, on Jewish holidays, such as Yom Kippur, for example, access to East Jerusalem is typically entirely

⁹¹ Response of 20 March 2019 to individual communication by the Permanent Representative of Israel to the UN in Geneva. Available at: <https://web.archive.org/web/20230402113212/https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35203> (accessed on 2 April 2023).

⁹² Israeli Submission of 20 March 2019, para. 125.

⁹³ Israeli Submission of 20 March 2019, para. 126, referring to HCJ 794/17 *Ziada v. The Military Commander in the West Bank* (31 October 2017).

⁹⁴ Response of 21 January 2021 to individual communication by the Permanent Representative of Israel to the UN in Geneva. Available at: <https://web.archive.org/web/20230402115405/https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35917> (accessed on 2 April 2023).

⁹⁵ *Ibid.*

⁹⁶ HCJ 8887/06 *Al-Naboot v. The Minister of Defense* (02.07.11), HCJ 9060/08 *Abdallah v. The Minister of Defense* (07.05.14), HCJ 9669/10 *Kassem v. The Minister of Defense* (08.09.14), HCJ 9949/08 *Hamed v. The Minister of Defense* (14.11.16), HCJ 9496/11 *Muhamad v. The Minister of Defense* (04.11.15), HCJ 5023/08 *Shchade v. The Minister of Defense* (27.02.17), HCJ 4292/14 *Musa v. The Minister of Defense* (14.11.14), HCJ 2297/15 *Ahmed v. The Minister of Defense* (07.02.17), as cited in Submission of Israel, 20 March 2019, paras. 120-122.

⁹⁷ C.C. (Jer.) 3329/09 *Baakri v. Tal Construction Co.* (18 April 2012), Ci.Ap.Rq. (Jerusalem District Court) 37000-06-17 *The State of Israel v. Na'alwa* (30 January 2018), as referred to in Israeli Submission of 20 March 2019, paras. 136-137.

blocked off to Palestinians from other parts of the West Bank and all checkpoints are closed to them to facilitate settlers coming from the West Bank to East Jerusalem.⁹⁸

31. Regarding Palestine's claims on the rights to freedom of thought, conscience and religion, Israel referred to the case of *Anonymous v. The Minister of Defence* (19 March 2018), before the High Court of Justice in which the State party expressed its commitment to reducing the time taken to process entry requests submitted by Christian Palestinians to enter the West Bank for Christmas and Easter.⁹⁹ Israel contends that its law "grants freedom of worship and ensures the safekeeping of and access to holy places to members of all faiths. Sites are guarded by the Police to protect public order in sensitive places."¹⁰⁰ Israel reiterates that it only reported on the human rights conditions within the territory of the State of Israel in its State report to the Committee; thus, this statement would appear to only apply to Palestinian Muslims and Christians while on the territory of the State of Israel.

I. Labour-related rights (article 5 (e)(i))

32. The State of Palestine submits that the right to work for Palestinians in the Occupied Palestinian Territory has been impacted by restrictions imposed on labour and harmful measures taken by Israel against the Palestinian economy. Such measures include direct damage to Palestinian land, resources and property, and restrictions of movements imposed under Israel's effective control of the economy in the Occupied Palestinian Territory. Furthermore, those measures have a direct impact on Palestinian labour flow into East Jerusalem and Israel, access to jobs and livelihood, conditions of work, and on the imports and exports of goods. Such restrictions on movement and transportation of goods do not apply to Israeli settlers living in the Occupied Palestinian Territory, who have free access to all goods and uninhibited freedom of movement between the West Bank and Israel.¹⁰¹ There is also discriminatory treatment between Palestinian and Israeli workers doing the same job.¹⁰²

33. Regarding the allegations made by the State of Palestine of Israeli discriminatory practices relating to labour rights,¹⁰³ Israel holds that the Israeli High Court of Justice considered in the case 5666/03 *Kav La'Oved Association v. The National Labor Court* that Palestinian employees are granted "rights similar to those afforded by Israeli law",¹⁰⁴ and that "applying different set of laws to Israeli workers and to Palestinian workers who work in the same place would necessarily result in discrimination".¹⁰⁵ Israel also argues that since the adoption of the above decision, several additional developments have occurred, such as the application of Israeli law under certain circumstances, "in the interest of public policy and the principle of equality," even where the parties agreed otherwise.¹⁰⁶ Israel also adds that an amendment to the *Order Regarding Employment of Workers in Certain Areas (Judea and Samaria) (No. 967) 5742-1982*, "provides an entitlement to minimum wage and cost-of-living allowance to Palestinian employees [...] so that it would apply to workers employed by Israeli employers outside local councils (for example, in industrial zones) and to contract workers".¹⁰⁷

⁹⁸ Cf. United Nations, Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor* No. 17 (September 2007), p. 11.

⁹⁹ Israeli Submission of 20 March 2019, para. 133, referring to HCJ 9815/17 *Anonymous v. The Minister of Defence* (19 March 2018).

¹⁰⁰ CERD, 17th to 19th periodic reports submitted by Israel under article 9 of the Convention, (CERD/C/ISR/17-19, 14 March 2017), para. 162.

¹⁰¹ Palestine's communication, para. 547.

¹⁰² *Ibid.*, para. 559.

¹⁰³ *Ibid.*, para. 535.

¹⁰⁴ Israeli Submission of 20 March 2019, para. 114.

¹⁰⁵ *Ibid.*

¹⁰⁶ Israeli Submission of 20 March 2019, para. 116, referring to La.Ap. 48803-10-14, *Tareq Sa'adat Mehsain v. The Civil Administration in the West Bank* (22 October 2017).

¹⁰⁷ Israeli Submission of 20 March 2019, para. 118.

J. Right to housing (article 5(e)(iii))

34. The State of Palestine holds that as a consequence of the structural discrimination between Israeli settlers and Palestinians in the Occupied Palestinian Territory when it comes to access to land and property, Palestinians' right to housing is infringed. Periodic incursions of Israel in the Occupied Palestinian Territory, bombardments, and house demolitions in the Gaza Strip, coupled with the blockade imposed on Gaza and the restrictions that Israel places on building supplies entering the territory, entail mass violations of the right to housing of Palestinians.¹⁰⁸ Moreover, the practice of punitive demolitions of houses belonging to Palestinians who have or are suspected of having been involved in acts prejudicial to Israeli state security¹⁰⁹ has led to serious consequences for family members or neighbours. Administrative house demolitions are carried out in the context of unauthorised house construction by Palestinians who rarely obtain permits for residential constructions.¹¹⁰ Many of the demolitions in recent years have been carried out in isolated and vulnerable communities in the Jordan Valley, the South Hebron Hills, and the East of Jerusalem. While between 2000 and 2007, for example, the Israeli authorities rejected more than 94 % of Palestinian building permit requests in Area C, permitted Israeli construction in the West Bank has continued at a rate of approximately 1,500 new homes per year.¹¹¹

35. With regard to the allegations made by the State of Palestine that Palestinian houses are regularly destroyed or demolished by Israeli authorities and military forces in Gaza, through a statement of its Permanent Mission to the United Nations in Geneva issued in June 2021, Israel justified such destructions by the right to defend its citizens following Hamas attacks "around religious and national events in Jerusalem".¹¹² Concerning the demolitions in East Jerusalem, Israel, in its State report under article 9 of the Convention, submitted that all demolitions conducted in the eastern neighbourhoods of Jerusalem are in line "with due process guarantees, following a fair hearing which is subject to judicial review, and where the individuals concerned have the right to appeal without distinction on the basis of race or ethnic origin".¹¹³

K. Right to public health, medical care, social security, and social services (article 5(e)(iv))

36. The State of Palestine contends that the accessibility and quality of health care in the Occupied Palestinian Territory are seriously affected by the restrictions placed on the movement of patients, doctors and medical staff. Patients from the West Bank or Gaza requiring treatment in East Jerusalem, Israel or abroad must obtain a permit for this purpose. Permits are frequently refused for "security reasons", particularly in respect of patients from Gaza.¹¹⁴

37. The State of Palestine submits that by allocating more water to Israeli settlers in the Occupied Palestinian Territory than to the local Palestinian population and placing obstacles in the way of access to water for Palestinians, but not to Israeli settlers, constitutes discrimination within the meaning of article 1 and accordingly violates article 5 (e) (iv) of

¹⁰⁸ Palestine's communication, para. 419.

¹⁰⁹ Under Regulation 119(1) of the Defence (Emergency) Regulations 1945

¹¹⁰ Palestine's communication, para. 434.

¹¹¹ *Ibid.*

¹¹² Press Release Mission of Israel to the UN in Geneva - "Statement Following HCHR's Press Release - Hamas.". Available at: <https://webcache.googleusercontent.com/search?q=cache:Xdt6r0ohKYJ:https://embassies.gov.il/UnGeneva/NewsAndEvents/MediaStatements/Pages/20210516-Statement-Following-HCHR-Press-Release.aspx&cd=1&hl=en&ct=clnk&gl=nl> (accessed on 2 April 2023).

¹¹³ Report of Israel, CERD, Consideration of reports submitted by States parties under article 9 of the Convention, Fourteenth to sixteenth periodic reports of States parties due in 2010, Israel, (CERD/C/ISR/14-16, 13 January 2011), para. 545.

¹¹⁴ WHO, *Right to health: Crossing Barriers to Access Health in the Occupied Palestinian Territory 2014-2015* (2016), available at: http://applications.emro.who.int/dsaf/EMROPUB_2016_EN_19231.pdf.

the Convention. The State of Palestine asserts that there is also inequality in the authorisation to build water projects by Palestinians.

38. Regarding the allegations made by the State of Palestine that restrictions on the movement of Palestinians seriously affect the accessibility and quality of health in the Occupied Palestinian Territory,¹¹⁵ the Permanent Representative of Israel to the United Nations in Geneva reiterated that Israel “manifestly does not have control, authority or responsibility of an occupying power in Gaza”. The Permanent Representative claims that Israel has remained committed to “facilitating the passage of goods and humanitarian aid to the residents of Gaza”.¹¹⁶ Moreover, the Permanent Representative stated that despite “a decade-long rule of the Hamas terror organization” [using Gaza] as a launching pad for an exceedingly high number of attacks against Israel civilians” and “this ongoing aggression”, Israel committed to “facilitating the passage of goods and humanitarian aid to the residents of Gaza”.¹¹⁷

39. Israel submits that the reduction of the number of patients seeking to cross the border was caused by a decision of the Palestinian Authority to stop covering the medication within [Gaza] and referrals of Palestinians from Gaza to medical treatments in Israel or the Palestinian Authority.¹¹⁸ Israel also indicated that approval was denied based on a lack of medical justification, namely that the medical treatment was available in Gaza, and on the basis of substantial security concerns.¹¹⁹

40. Israel contends that the lack of electricity provision to medical facilities in Gaza is due to decisions and responsibility of Hamas, which has the full control of this territory.¹²⁰ The Representative stated that Israel had previously provided Gaza with electricity, but that the Palestinian Authority has decided to stop subsidizing the cost of fuel that was used to generate power in the Gaza power plant, which led to its shutdown.¹²¹ The Permanent Representative further stated that the Palestinian Authority then publicly requested Israel to reduce its electricity supply by 35% and that, in any event, Israel does not have control over the internal distribution of electric power within Gaza, rather Hamas does.¹²²

L. Right to education and training (article 5 (e)(v))

41. The State of Palestine holds that the discriminatory policies imposed by Israel severely affect the access of Palestinians to education. Israeli occupation forces and settlers are responsible for attacks on schools, home and school demolitions, restriction of movement, and the widespread detention of children. In East Jerusalem, there is a disproportionate allocation of funds to education between Palestinian and Israeli communities. This situation has resulted in ‘a shortage of classrooms and striking discrepancies in resources allotted to Palestinians’ compared to Jewish Israeli citizens.¹²³

42. Concerning the right to education and training of Palestinians, on 23 May 2012, Israel’s High Court of Justice ordered that the Israeli Military reconsider its refusal to allow female students pursuing master’s degrees in gender studies and democracy and human rights

¹¹⁵ Inter-State Communication, paras. 263 ff.

¹¹⁶ Response of 7 September 2018 to individual communication by the Permanent Representative of Israel to the UN in Geneva. Available at: <https://web.archive.org/web/20230402121043/https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34323> (accessed on 2 April 2023).

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, para. 2.

¹¹⁹ *Ibid.*

¹²⁰ Response of 13 December 2017 to individual communication by the Permanent Representative of Israel to the UN in Geneva. Available at: <https://web.archive.org/web/20230402123330/https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33853> (accessed on 2 April 2023).

¹²¹ *Ibid.*, para. 3.

¹²² *Ibid.*

¹²³ ACRI, Right to Education, <https://www.acri.org.il/en/category/east-jerusalem/right-to-education/>

from Gaza to reach their university in the West Bank.¹²⁴ At the hearing, the State Attorney acknowledged that the refusal was part of a comprehensive ban and was not the result of a security claim against any of the students seeking passage.¹²⁵

Advance version

¹²⁴ “For the first time in 12 years: Israeli Supreme Court orders military to reconsider application of Gaza-West Bank student ban”, ReliefWeb, 23 May 2012. Available at: <https://web.archive.org/web/20230402123859/https://reliefweb.int/report/occupied-palestinianterritory/first-time-12-years-israeli-supreme-court-orders-military>; Al Mezan Centre for Human Rights, 43rd Session of the UPR Working Group. Joint Submission for the 4th Cycle of Israel’s UPR. Available at: <https://web.archive.org/web/20230402124032/https://www.mezan.org/uploads/files/16662584611706.pdf> (accessed on 2 April 2023)

¹²⁵ Ibid.