

## **Submitting Party**

1. Al-Haq is a Palestinian human rights organisation established in West Bank in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT). Al-Haq has special consultative status with the United Nations (UN) Economic and Social Council.

## **The right to self-determination and permanent sovereignty over natural resources**

2. Al-Haq notes that State recommendations made to Israel during its first cycle review in 2008 did not address Israel's obligations in relation to natural resources located in the occupied territory. Yet, access to and use of natural resources plays an integral role in the realisation of the right to self-determination. In this regard, the UN General Assembly has stipulated that the fundamental customary international law principle of 'permanent sovereignty over natural resources' is a basic ingredient of the right to self-determination.<sup>i</sup> However, in flagrant disregard for its international legal obligations, Israel has implemented a range of policies and practices that enable it to illegally exercise sovereign rights over Palestinian natural resources, with the aim of permanently denying Palestinians their right to self-determination.

## **Israel's non-recognition of its obligations to the occupied Palestinian population under the international humanitarian and human rights law**

3. Along with countless resolutions of the UN General Assembly and UN Security Council and ICJ jurisprudence,<sup>ii</sup> various UN treaty bodies have "noted that obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party and have stressed the applicability of the State party's obligations under international human rights conventions to the Occupied Territories."<sup>iii</sup>
4. Yet, notwithstanding recurring State recommendations to Israel during its first cycle review to respect and comply with its obligations vis-à-vis the occupied Palestinian population under international human rights and international humanitarian law (IHL), consecutive Israeli governments refuse to recognise these obligations. Notably, however, Israel does adhere to its obligations under international human rights law to Israeli settlers living in the OPT.

### Proposed Recommendations to Israel:

1. Recognise, accept and implement immediately the 2004 International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT.
2. Immediately recognise, implement and adhere to its obligations in the OPT incumbent on it under all human rights treaties to which it is a party.

## **Israeli policies of illegal appropriation of Palestinian public and private land**

5. Since 1967, Israel has systematically appropriated hundreds of thousands of *dunums* (1,000 square meters) of land throughout the West Bank, including East Jerusalem, for the establishment and expansion of Israeli settlements. Currently, Israeli settlements control 42 per cent of the land of the West Bank. Israel actively supports and facilitates the transfer of its own civilian population into the OPT in contravention of IHL through financial incentives, subsidies for agricultural and tourism development, and construction of infrastructure. According to the Special Rapporteur on the situation of human rights on Palestinian territories occupied since 1967, 6,676 residential units were approved in 2012 alone. This amounts to an increase of five times in comparison to 2011.<sup>iv</sup>
6. Furthermore, a restrictive planning regime, implemented by the Israeli authorities in 62 per cent of the West Bank earmarked Area C, prevents Palestinians from constructing any infrastructure or implementing development projects without first obtaining permits from the Israeli Civil Administration (ICA) in accordance with master zoning and planning schemes. However, less

than 1 per cent of Area C has been planned for Palestinian development by the ICA.<sup>v</sup> Because permits are virtually impossible to obtain, Palestinians have been forced to build without the required permits in order to meet their needs, despite the ever-present risk of demolition. The number of structures demolished since 2009 has been steadily on the rise, with 191 structures demolished in 2009, displacing 319 Palestinians, 357 during 2010, displacing 478 Palestinians, 571 during 2011, displacing 1006 Palestinians, and 540 during 2012, displacing 809 Palestinians.<sup>vi</sup> Between January and September 2013, Israeli forces have demolished 524 Palestinian-owned structures in the West Bank, including East Jerusalem, displacing 862 Palestinians.<sup>vii</sup>

7. Israel's policies in Area C force the transfer of the protected population to different locations, either in the region, in other areas of the OPT or abroad. This transfer occurs both through physical intimidation or the threat of force and coercion. Given the unbearable living conditions created by the Israeli practices in Area C, it cannot be asserted that Palestinian residents of this area exercise a genuine choice when they move away from their land.

#### Proposed Recommendations to Israel:

3. Cease at once the transfer of its civilian population into the occupied territory and immediately and unconditionally withdraw from and end the construction of settlements in the West Bank, including East Jerusalem.
4. Immediately cease all financial support, subsidies and incentives to settlements and settlers in the OPT.
5. Immediately cease demolitions and destruction of private and public civilian property in breach of Article 53 of the Fourth Geneva Convention and Articles 46, 53 and 55 of the Hague Regulations.
6. Afford all victims of the settlement enterprise effective legal remedy and reparations, in accordance with international law standards.

#### **Israeli Policies of Illegal Appropriation of Palestinian Water Resources**

8. In addition to the illegal appropriation of land and the establishment of settlements therein, Israel has consistently exploited the Palestinian share of the region's transboundary water resources for the benefit of both settlers and Israelis residing in Israel proper. At present, Israeli *per capita* consumption of water for domestic use is four to five times higher than that of the Palestinian population of the OPT. In the West Bank, the Israeli settler population, numbering more than half a million, consume approximately six times the amount of water used by the Palestinian population of 2.6 million; this discrepancy is ever greater when water used for agricultural purposes is taken into account.
9. Because water does not follow territorial boundaries, Israel and Palestine share the region's three main sources of natural fresh water. As such, water-sharing States must utilise international water resources in accordance with the principle of equitable and reasonable utilisation enshrined in international water law. However, since 1967, Israel has introduced a series of military orders – still in force and applicable only to Palestinians – which integrated the water system of the OPT into the Israeli system, while at the same time denying Palestinian control over this vital resource.<sup>viii</sup> This integration was significantly advanced in 1982 by the transfer of ownership of Palestinian water infrastructure in the West Bank to Israel's national water company 'Mekorot.' This has forced Palestinians to purchase water from the company to meet their annual needs, while this water should have been allocated to the Palestinians by virtue of their riparian share in the West Bank's aquifer system. In its January 2013 report, the UN Fact-Finding Mission on Settlements estimated that "Mekorot supplies almost half the water consumed by Palestinian communities."<sup>ix</sup> Moreover, Israel has allowed 'Mekorot' to develop

wells, mainly located in the Jordan Valley, that supply (agricultural) settlements in the West Bank. As such, Israel facilitates ‘*Mekorot*’s’ inequitable extraction of water from the Palestinian share of the transboundary water resources.

10. Since 1967, Israel has denied Palestinians physical access to the riverbanks of the Jordan River and prevented them from accessing their share of its water resources. In addition, Israel annually extracts 89 per cent of the water from the Mountain Aquifer, which is divided into the three basins. The Western Aquifer Basin is the largest and most productive, yielding more water than the Northeastern and Eastern Aquifer Basins combined. Yet, Palestinian access to the Western Aquifer Basin is limited to 6 per cent, though 80 per cent of the basin’s recharge area is located in the West Bank. While the Coastal Aquifer is the only source of natural fresh water available to the Gaza Strip, Palestinians only enjoy one quarter of the water that is extracted per year.<sup>x</sup> Moreover, 90 to 95 per cent of the water in the Gaza Strip is unfit for human consumption, forcing the majority of the already disenfranchised residents to purchase water.<sup>xi</sup>
11. Israel further aims to paralyse Palestinian water infrastructure development by vetoing the majority of Palestinian projects in the Joint Water Committee – a mechanism established under the Oslo Accords for joint development of all West Bank water resources.<sup>xii</sup> While Israel has agreed to 85 per cent of applications for projects that draw water from the small Eastern Aquifer Basin, it does not allow Palestinians to exploit up to the additional amounts allocated to them under Oslo for “future needs”.<sup>xiii</sup> In fact, Palestinian water supplies have dropped from 118 million cubic meters (mcm) per year pre-Oslo to 98 mcm in 2010.<sup>xiv</sup> In addition, Israel has vetoed all applications for Palestinian production wells in the large Western basin.<sup>xv</sup> If at all granted, approval for major Palestinian water projects is often conditional upon Palestinian agreement to Israeli demands for new and enlarged water supply systems that would benefit Israeli settlements in the West Bank.
12. Water, sanitation and hygiene (WASH) structures built or rehabilitated in Area C without the necessary permits are equally at risk of demolition. Demolitions, particularly of wells and cisterns, have been sharply on the rise since 2009, which saw 10 WASH-related demolitions; by 2011 this number had increased to 89 and affected 977 Palestinians.<sup>xvi</sup> In the Gaza Strip, destruction of water infrastructure frequently occurs during Israeli military operations: since the imposition of the illegal regime of closures in 2005, more than 300 water wells have been destroyed in the buffer zone at an estimated total replacement cost of 9 million USD. During the Israeli offensive code-named ‘Operation Cast Lead’ in 2008-2009, 6 agricultural water reservoirs were destroyed in the buffer zone, all of which remain unrepaired largely because Israel’s illegal regime of closures obstructs access to essential construction materials.<sup>xvii</sup>

#### Proposed Recommendations to Israel:

7. Immediately grant Palestinians use and access to their rightful share of their water resources in accordance with the principle of equitable and reasonable utilisation and adhere to the obligations of an Occupying Power under international humanitarian law to provide water to the occupied population without discrimination.
8. Prevent Israel's national water company '*Mekorot*,' from inequitably extracting water from the Palestinian share of the transboundary water resources.
9. Allow Palestinians access to and use of its rightful share of the Jordan River in accordance with the customary principle of 'equitable and reasonable utilisation' as codified in international water law.
10. Refrain from using its veto in the Joint Water Committee approval process to hamper Palestinian development of their water sector.
11. Grant approval for all Palestinian projects that draw from the Eastern Aquifer, allowing them to extract up to the levels agreed upon under the Oslo Accords as a minimum.
12. Grant approval for Palestinian projects that would draw from the major Western Aquifer and the North-Eastern Aquifer, allowing them access to and use of their rightful share of this water resource in accordance with the international legal principle of equitable and reasonable utilisation.
13. Allow for the development of water infrastructure, which includes the acquisition of the necessary tools for Palestinians to construct or rehabilitate wells and wastewater treatment facilities in the Gaza Strip, in accordance with its duty under international human rights law.

#### **Israel's Mineral Extraction and Quarrying Activities in the OPT**

13. The 42 per cent of Palestinian land under control of Israeli settlements also includes the occupied mineral-rich Dead Sea area, which is renowned for its unique geographical, mineral, climatic and archaeological features. The area is rich in natural resources, such as groundwater, surface water, springs system and mineral deposits.<sup>xviii</sup> Its potential for economic development is significant. Presently, Israeli settlements located in the occupied Dead Sea area are primarily involved in the extraction of raw materials for the cosmetic industry, in fruit harvesting and in the packaging of such products. In 2004, the Israeli government granted the Israeli cosmetic company, Ahava Dead Sea Laboratories Ltd. – 44.5 per cent of whose shares are owned by the settlements of '*Mitzpe Shalem*' and '*Kalia*' – permission to extract mud from the occupied Dead Sea area.
14. At present there are ten Israeli and internationally-owned quarries in operation in the OPT (Area C). Approximately 75 per cent of their yielded product is transferred to the Israeli construction market. The rest is being sold within the OPT, both to Palestinians and Israeli settlers. In some cases, the percentage of output transferred to the private market in Israel reaches 94 per cent.
15. The Israeli quarrying companies and the Israeli Civil Administration, who sporadically collect royalties and leasing fees, remain the sole beneficiaries of these resources. Israel continues to allow its own companies to freely exploit Palestinian land and natural resources, while Palestinians have been excluded from any meaningful form of utilisation of their natural resources. The Israeli High Court of Justice's conclusions of November 2011, which stipulate that Israel's quarrying activities in the OPT do not violate international law and that banning their activities would likely harm the occupied population, continue to legitimise Israel's widespread exploitation of the occupied territory's natural resources for the sole benefit of the Israeli economy, including continued illegal settlement expansion, and they implicitly condone the pillage of such resources.<sup>xix</sup>

### Proposed Recommendations to Israel:

14. Immediately withdraw the mud mining permission granted in 2004 to Ahava Dead Sea Laboratory Ltd.
15. Immediately withdraw all operating permissions granted to quarrying companies in the OPT, which do not guarantee activities carried out in line with the rule of usufruct and Israel's obligations under Article 43 of the Hague Regulations.

<sup>i</sup> UNGA, Res 3175 (XXVIII) (17 December 1973) UN Doc. A/RES/3175(XXVIII); UNGA, Res 1803 (XVII) (14 December 1962) UN Doc. A/RES/1803(XVII).

<sup>ii</sup> *The Legality of Threat or Use of Nuclear Weapons* (Advisory Opinion) ICJ Rep 1996, paragraph 25; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* ICJ Rep 2005, paragraph 175; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) ICJ Rep 2004, paragraph 102-133.

<sup>iii</sup> Committee on the Elimination of Discrimination against Women, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women on the Occasion of its Consideration of the Fourth and Fifth Reports of Israel (CEDAW/C/ISR/4 and CEDAW/C/ISR/5)' UN Doc. CEDAW/C/ISR/CO/5 (4 February 2011).

<sup>iv</sup> R Falk, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967' 23<sup>rd</sup> session of the UN Human Rights Council, UN Doc. A/HRC/23/21 (3 June 2013), paragraph 42.

<sup>v</sup> UN OCHA, 'Fragmented Lives: Humanitarian Overview 2012' (May 2013) 26-27.

<sup>vi</sup> UN OCHA, 'Areas C of the West Bank: Key Humanitarian Concerns (January 2013) 2.

<sup>vii</sup> UN OCHA, 'Protection of Civilians: Weekly Report 10-16 September 2013 (September 2013) 2.

<sup>viii</sup> On 7 June 1967, Israel issued Military Proclamation No. 2, declaring all water resources in the region State property. Military orders 92, 158, and 291 followed in the first 18 months of the occupation, and, respectively, transfer complete authority over all water resources and water-related issues in the OPT to the Israeli military authorities, require a permit for construction of any new water installation without which any water structure could be subject to confiscation, and declare all prior settlements of disputes concerning water invalid.

<sup>ix</sup> International Fact-Finding Mission on Settlements, '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' Advanced Unedited Version (January 2013) UNHRC 22<sup>nd</sup> session paragraph 84.

<sup>x</sup> C Messerschmid, 'Water in Gaza – Problems & Prospects' in M Larudee (ed.) *Gaza – Palestine: Out of the Margins* (Ibrahim Abu-Lughod Institute of International Studies – Birzeit University, Birzeit, 2011) 141, 175.

<sup>xi</sup> UNICEF and Palestinian Hydrology Group (PHG), 'Water, Sanitation and Hygiene Household Survey – Gaza (April 2010).

<sup>xii</sup> Israel has vetoed all applications for Palestinian production wells in the large Western basin, and while agreeing to the majority of applications that draw water from the small Eastern Aquifer Basin, its approval is often conditional upon Palestinian agreement to Israeli demands for new and enlarged water supply systems that would benefit Israeli settlements in the West Bank.

<sup>xiii</sup> Oslo II, Annex III, Appendix 1, Article 40.6. See also, Al-Haq, 'Water for One People Only' (n 13) 40.

<sup>xiv</sup> PWA, 'Water Supply Report 2010' (March 2012) 15, 23.

<sup>xv</sup> Palestinian National Authority (PNA), PWA, 'Palestinian Water Sector: Status Summary Report September 2012' (In preparation for the Meeting of the Ad Hoc Liaison Committee (AHLIC), 23<sup>rd</sup> September 2012, New York (September 2012) 4. See also, J Selby, 'Cooperation, Domination and Colonialism: The Israeli-Palestinian Joint Water Committee' (2013) 6 *Water Alternatives*, 13.

<sup>xvi</sup> WASH, 'WASH Cluster oPt Monthly Situation Report: December 2011' (December 2011) 6; EWASH, "'Down the Drain": Israeli restrictions on the WASH sector in the Occupied Palestinian Territory and their impact on vulnerable communities (March 2012) 16.

<sup>xvii</sup> UN OCHA, 'Between the Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed restrictions on Access to Land and Sea in the Gaza Strip', Special Focus (August 2010) 19; EWASH, "'Down the Drain'" (n 18) 17; EWASH, 'Factsheet 13: Water & Sanitation in the Access Restricted Areas of the Gaza Strip' 1.

<sup>xviii</sup> SC McCaffrey, 'The Shrinking Dead Sea and the Red-Dead Canal: A Sisyphean Tale?' (2006) 264 *Global Business and Development Law Journal*, 260.

<sup>xix</sup> Al-Haq, 'Pillage of the Dead Sea: Israel's Unlawful Appropriation of the Natural Resources of the Occupied Palestinian Territory' (September 2012) 30; Yesh Din, 'Legality of Quarry Activity in the West Bank' and related links at <<http://www.yesh-din.org/infoitem.asp?infocatid=15>> accessed 30 September 2013.