



**Analytical Report on Impact of House Demolitions on
Jerusalemite Women and the Health Status of Refugee
Women in Jerusalem**

The Palestinian Initiative for the Promotion of Global Dialogue
and Democracy “MIFTAH”

December 2023

Analytical Report on Impact of House Demolitions on Jerusalemite Women and the Health Status of Refugee Women in Jerusalem.

“Implementing CEDAW in Jerusalem” Project

December 2023

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This study was supported by the European Union

This Project is Funded by



EUROPEAN UNION

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Executive Summary

This human rights documentation report seeks to analyse documented human rights violations against Palestinian women in Jerusalem, focusing on the disproportionate impact of home demolitions on women and the health status of Jerusalemite refugee women. The report relies on documentations by MIFTAH; specifically, it utilises 113 questionnaires covering home demolitions in Jerusalem, and 15 testimonies and 2 field reports focusing on the health status of Jerusalemite refugee women in Shu'fat and Qalandiya refugee camps.

The report qualifies the status of Jerusalem as part of the occupied Palestinian territory since 1967, in accordance with International Law and the Geneva Conventions. Within this framework, the report qualifies the applicability of international humanitarian law, international human rights law, international criminal law, and international refugee law. All of the bodies mandated with the interpretation and enforcement of these branches of law have confirmed several times the “occupied” status of Jerusalem, including the 2004 Advisory Opinion of the International Court of Justice entitled “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”. On another level, the accession of the State of Palestine to the Rome Statute of the International Criminal Court provides for the applicability of international criminal law. Regarding international refugee law, its applicability is qualified due to the examination of the situation of Palestinian refugees recognised by the UN and serviced through the United Nations Relief and Work Agency for Palestinian Refugees.

Home demolitions, which takes place in Jerusalem under both administrative pretexts and as a punitive measures, are intrinsically linked to Israel's settler colonial policy across the West Bank, including East Jerusalem. Israel's settler colonial policy seeks to maximise the acquisition of land with the least percentage of Palestinians on it, through three mutually reinforcing strategies; land confiscation and denial of use, increasing number of settlers through settlement expansion, and decreasing the number of Palestinians through forcible displacement. Force displacement includes a myriad of measures, such as home demolitions, home evictions, revocation of residency, and imposition of restrictions on the registration of newborns. In this sense, according to UN documentation, Israeli occupation authorities have demolished between 2009 and 2023 a total of 10,152 Palestinian structures, rendering 15,064 Palestinians displaced.

Several actors are involved in home demolitions in Jerusalem, which could be carried out by the Municipality, security forces associated with the Israeli occupation, namely the civil police and border police, a combination of municipality and security forces, or a combination of municipality and self-demolition. Self-demolition has become widespread in order to avoid the hefty costs and fines associated with demolitions when carried out

by an Israeli official side. Similarly, several tools are utilised for the demolition, ranging from manual and electronic demolition equipment to bulldozers, or a combination bulldozers and manual equipment.

While home demolitions are targeted against the entirety of Palestinians, they have a disproportionate impact on women due to several factors, including traditional gender roles, as women shoulder household and caregiving responsibilities for the most part. The impact of home demolitions is wide-ranging. MIFTAH documented the impact within four main categories: living conditions, economic situation, psychosocial wellbeing of the family, and psychosocial wellbeing of women. In terms of living conditions 65.5% of the total respondents explained that when they were forced to relocate, that they moved to inadequate houses and resided under difficult living conditions, including small house sizes, prevalence of humidity, lack of sunlight, and inadequate ventilation. On the level of economic situation, 28.1% of the total respondents explained that their economic situation severely deteriorated after the demolition and moving to a rented house. In terms of impact on children, 28.4% of the respondent women confirmed that their children missed their homes, games, and bedrooms, while 31.3% of the respondents confirmed that the house is too small for the children and does not have any form of privacy. Last, regarding the impact on women, 50% of the respondents highlighted the dire psychological status, spread of illnesses, and the difficult economic situation.

Home demolitions violate a myriad of provisions under the different applicable branches of international law, including international humanitarian law, international human rights law, and international criminal law. Apart from these violations, and as this report focuses on the disproportionate impact of home demolitions on women, the report highlights the inadequacy of protection provided under Women, Peace, and Security agenda, which is tailored to situations of conventional armed conflict, and fails to address security and key considerations of women under protracted colonial occupation.

Refugees are among the social groups that are considered vulnerable and marginalised. Generally there are significant gaps in the enjoyment of refugees of their rights compared to residents and citizens, particularly in times of austerity and increasing poverty. This is despite the Convention Relating to the Status of Refugees clearly stating that refugees should enjoy human rights apart from those included in the Convention, and are observed particularly at the level of economic and social rights. This report focuses on the right to healthcare, a social right, in Shu'fat and Qalandiya refugee camps, in terms of availability, accessibility, and quality.

In both refugee camps there is only one healthcare centre administered by the UNRWA. These healthcare centres lack the very basic of services needed, including availability of an emergency room, availability of specialised doctors, availability of specialised tests and necessary medication, and availability of ambulances to transfer patients to better equipped facilities. This includes neonatal services to pregnant women at all stages of pregnancy. At the level of accessibility, movement restrictions attributed to both checkpoints and the annexation Wall, give rise to traffic jams that significantly delay access to Jerusalem and to better equipped facilities, emergency rooms, and hospitals. In

the case of Shu'fat refugee camp, reaching East Jerusalem takes 45-90 minutes to cover a distance less than 5 kilometres. At the level of quality of services, the lack of specialised doctors and adequate equipment and machinery leads to frequent misdiagnosis of women and children, including in cancer and chronic diseases.

The health status of refugee Jerusalemite women, where the occupying power has a direct responsibility to ensure enjoyment of rights, including the right of healthcare, we see that Israeli measures do not fulfil its obligations vis-à-vis the right to health. This is clearly seen in the lack of fulfilment of availability, accessibility, and quality criteria for the enjoyment of the right to health.

In reference to home demolitions and the abysmal healthcare status of refugee women in Jerusalem, the report provides several recommendations tailored to the international community with a focus on the donor community, Palestinian civil society, Palestinian Authority, and the United Nations. The recommendations focus on reframing the Palestinian discourse, considering alternative and innovative advocacy strategies, continuously tying individual violations to Israeli policy of control, segregation, and domination, and mobilisation of solidarity.

Methodology and Content of the Report

This report is based on 113 questionnaires and 2 field reports based on 15 testimonies filled by MIFTAH human rights defenders and documenting violations against Palestinian women in Jerusalem. Specifically, the 113 questionnaires cover impact of home demolitions on Palestinian women in Jerusalem, and the 2 field reports focus on the health status of Jerusalemite refugee women, taking Qalandiya refugee camp and Shu'fat refugee camp as case studies.

The research team analysed the questionnaires and organised primary data from them to highlight key aspects of home demolitions in Jerusalem, both administrative and punitive demolitions. This report seeks to present these findings and provide an analysis of the international law provisions that these measures violate. The report covers relevant provisions under international humanitarian law, international human rights law, and international criminal law, in addition to highlighting gaps in the Women, Peace, and Security agenda, as relevant.

The research team has also analysed the field reports on the health situation of Palestinian refugee women, identifying trends in the denial of enjoyment of right to healthcare. This report seeks to present these findings and provide an analysis of the international law provisions that these measures violate. The report covers relevant provisions under international humanitarian law, international human rights law, and international refugee law.

The report commences with a historical background and legal overview of the status of Jerusalem as part of the occupied Palestinian territory, which is followed by two additional substantive sections. In the first section, the report covers home demolitions in Jerusalem, and (i) provides an overview of the legal framework regulating home demolitions, (ii) presents the primary research findings, and (iii) provides an analysis of the legal provisions that home demolitions violate within the framework of international humanitarian law, international criminal law, and international human rights law. The second section covers health status of refugee women in Jerusalem, and (i) provides an overview of the health system in Jerusalem, (ii) conceptualises the right to health, (iii) presents the primary research findings, and (iv) provides an analysis of the legal provisions within the framework of international human rights law, international humanitarian law, and international refugee law. Based on the primary research and legal analysis, the report presents evidence-based recommendations to relevant national and international duty bearers, as relevant. The last section is the conclusion, which provides a summary of the substantive parts of the report. Annex I follows the conclusion, which includes a comprehensive qualification of the applicability of International Humanitarian Law, International Human Rights Law, and International Criminal Law to Jerusalem.

Historical Background and Legal Overview of Occupation and Annexation of Jerusalem

The State of Israel was established in 1948 over 78% of the land of historical Palestine, and was admitted to the United Nations via Security Council Resolution 69 on March 4, 1949,¹ followed by General Assembly Resolution 273 on May 11, 1949.² Israel's admission to the UN was based on the borders demarcated in the Armistice agreements between Israel and Egypt, Lebanon, Jordan, and Syria. One of the results of the armistice agreements was the placement of the West Bank, including East Jerusalem, under Jordanian control.³ In the 1967 war, Israel expanded the territory it controls significantly, including the remainder of the land of historical Palestine (West Bank, including East Jerusalem, and Gaza Strip), the Sinai Peninsula seized from Egypt, and Golan Heights seized from Syria.

Almost immediately after the occupation of the remainder of the land of historical Palestine, the Knesset adopted, on June 22, 1967, amendments to the "Laws and Administration" Ordinance.⁴ The amendment provided that the "law, jurisdiction and administration of Israel should apply to any area of Eretz Yisrael designated by the government by order,"⁵ including Jerusalem, constituting the initial step in "legalising" the annexation of the eastern part of Jerusalem.

The *de facto* annexation of East Jerusalem was completed on June 28, 1967 when the Knesset amended the 1950 Basic Law on Jerusalem⁶ to reflect the newly defined municipal boundaries and extend Israeli {civil} law officially to the eastern part of the city.⁷ Immediately after, the Israeli government issued orders that united both parts of the city under the jurisdiction of the existing Jerusalem Municipality.⁸ This annexation was thereafter judicially authorised by the Supreme Court, which held that both parts of Jerusalem had become an integral part of Israel.⁹

Within the aforementioned framework, the control of East Jerusalem (alongside the remainder of the West Bank, as well as the Gaza Strip) amounts to a military occupation. Codified into Article 2(4) of the UN Charter,¹⁰ international law prohibits the acquisition of territory by force. Furthermore, Article 43 of the Hague Regulations requires the occupying powers to respect and refrain from amending the laws already in place, unless truly necessary.¹¹ Accordingly, the annexation of East Jerusalem was declared several times null and void by both the UN General Assembly and Security Council, including in

¹ United Nations Security Council Resolution 69 (4 March 1949).

² United Nations General Assembly Resolution 273 (11 May 1949).

³ PASSIA, 'Fragmenting Palestine: Formulas for Partition since the British Mandate' (May 2013) http://www.passia.org/publications/bulletins/Partition/Partition_Plan1792013.pdf 7.

⁴ Laws and Administration Ordinance 1948.

⁵ Ibid Amendment 11 Section 11B.

⁶ Basic Law: Jerusalem 1950.

⁷ PASSIA, *100 Years of Palestinian History: A 20th Century Chronology* (PASSIA 2011) 121.

⁸ Ibid.

⁹ *Hanazalis v Court of Greek Orthodox Patriarchate* [1968] HCJ, 171/68(HCJ) 269.

¹⁰ UN, *Charter of the UN*, 24 October 1945, 1 UNTS XVI art 2(4).

¹¹ Convention Concerning the Laws and Customs of War at Land (Hague, IV) with Annex of Regulations (signed 18 October 1907) article 43.

UN Security Council Resolution 242,¹² and UN General Assembly Resolution 2253.¹³ These and many other resolutions emphasised the inadmissibility of acquisition of territory through force. They called upon Israel to withdraw from the recent occupied territories, and rescind all measures and refrain from taking any further measures to change the status of East Jerusalem in light of their invalidity.

Despite these many resolutions, the Knesset passed in 1980 “Basic Law: Jerusalem, Capital of Israel,”¹⁴ stating in Article 1 “Jerusalem, completed and united, is the capital of Israel.” In response, UN Security Council Resolution 478 affirmed that its enactment constitutes a violation of international law, declared its enactment null and void, and decided not to recognise it.¹⁵

Nonetheless, Israel claims that East Jerusalem (alongside the remainder of the West Bank, as well as the Gaza Strip) is not occupied based on the argument of gaps in sovereignty (see section below on applicability of international humanitarian law). However, the international community has persistently and continuously rejected these Israeli claims and asserted that the West Bank, including East Jerusalem, and Gaza remain occupied territory and reject imposition of facts on the ground by Israel. This is evidenced in numerous UN resolutions, most recently Security Council Resolution 2334, adopted on December 23, 2016,¹⁶ and General Assembly Resolution 77/247, adopted on January 9, 2023.¹⁷

Accordingly, given the “occupied” status of Jerusalem, International Humanitarian Law automatically applies due to the *Lex Specialis* principle. Additionally, International Human Rights Law applies to fill in gaps and complement International Humanitarian Law. The applicability of International Criminal Law stems from the accession of the State of Palestine to the Rome Statute of the International Criminal Court. For a complete and comprehensive analysis of the applicability of these branches of law, please refer to annex I.

¹² United Nations Security Council Resolution 242 (22 November 1967).

¹³ United Nations General Assembly Resolution 2253 (4 July 1967).

¹⁴ Basic Law: Jerusalem, Capital of Israel 1980, art 1.

¹⁵ United Nations Security Council Resolution 478 (20 August 1980).

¹⁶ United Nations Security Council Resolution 2334 (23 December 2016).

¹⁷ United Nations General Assembly Resolution 77/247 (9 January 2023).

Home Demolitions in Jerusalem

Political and Legal Overview of Zoning and Planning and Home Demolitions in East Jerusalem

Under the current Israeli United Jerusalem Town Planning Scheme,¹⁸ 35 percent of land in East Jerusalem has been confiscated for “public purposes,” mostly for the construction of Israeli settlements. Another 35 percent has master plans approved by the Jerusalem Israeli District Committee; yet construction is not allowed on 22 percent of the land, due to it being designated as “green land” for public use. A further 30 percent remains unplanned, thereby leaving only 13 percent of the land for Palestinian construction,¹⁹ much of which is already built up.²⁰

The application process to acquire building permits is complicated, expensive, and often delayed. The process can take five to ten years, simply to learn later that the application has been denied.²¹ The requirements to obtain building permits include an adequate road system, parking spaces, sanitation and sewage networks and public buildings and institutions –elements over which Palestinians do not have control.²² Furthermore, the process costs approximately \$30,000, which is an onerous cost for the majority of Palestinians in East Jerusalem, 80 percent of which live below the poverty line.²³ In this context, only seven percent of the building permits issued in the past few years were granted to Palestinians²⁴ and only five percent of Palestinian applications were granted.²⁵ Consequently, Palestinians are forced to build or expand their houses ‘illegally’. As such, it is estimated that at least 33 percent of all Palestinian homes in East Jerusalem lack building permits,²⁶ placing over 90,000 individuals at risk of displacement, including being rendered homeless.²⁷

Within this framework, hundreds of Palestinian houses have been demolished in East Jerusalem, often with very little warning and in the presence of armed forces. This usually takes place through either of two methods. The house is either demolished by the Municipality itself, where the owners of the house are required to cover the cost of the house demolition, or the owner of the house can “choose” to demolish the house on his own to avoid incurring an additional cost. Additionally, to further exacerbate the situation, house owners are not allowed to build their house in the same location. According to UN documentations, Israeli occupation authorities have demolished

¹⁸ Israeli Jerusalem Municipality, *United Jerusalem Town Planning Scheme* (Jerusalem Municipality, 2004).

¹⁹ BADIL Resource Centre for Palestinian Residency and Refugee Rights, ‘Forced Population Transfer: The Case of Palestine: Discriminatory Zoning and Planning’ (2014) A Series of Working Papers, 38-39.

²⁰ Munir Nuseibah, ‘Decades of Displacing Palestinians: How Israel Does It’ (2013) Al-Shabakah: The Palestinian Policy Network <<https://al-shabaka.org/briefs/decades-displacing-palestinians-how-israel-does-it/>>, 6.

²¹ Civic Coalition for Palestinian Rights in Jerusalem, ‘Urban Planning in Jerusalem’ (2012) http://www.civiccoalition-jerusalem.org/system/files/urban_planning_in_jerusalem_final.pdf 2.

²² Nur Arafah, ‘Which Jerusalem? Israel’s Little-Known Master Plans’ (2016) Al-Shabakah: The Palestinian Policy Network <<https://al-shabaka.org/briefs/jerusalem-israels-little-known-master-plans>> 8.

²³ Centre for Continuing Education, *Reality of Palestinian Children’s Wellbeing in Occupied East Jerusalem: A Participatory Community Case Study Analysis of Five Marginalised Neighbourhoods* (CCE, 2014) 14.

²⁴ Arafah (n 22).

²⁵ Society of St. Yves, ‘Housing Issues in Jerusalem’ (2014) Society of St. Yves <<http://www.saintyves.org/?MenuId=0&Lang=1&TemplateId=projects&catId=7&full=1&id=35>> 1.

²⁶ BADIL (n 19) 41.

²⁷ Al-Haq, *East Jerusalem: Exploiting Instability to Deepen the Occupation* (Al-Haq 2016) 4.

between 2009 and 2023 a total of 9,743 Palestinian structures, rendering 13,000 Palestinians displaced.²⁸

On another level, between 1967 and 2005, Israel has employed house demolitions as a punitive measure against the families of perpetrators of military operations as a deterrence measure, such that at least 672 homes were demolished during that period. In February 2005, the Ministry of Interior MoI and Jerusalem Municipality in East Jerusalem ceased to utilise this procedure in light of the findings of the report of the Shani committee, which stated that their deterrence efficiency was questionable. However, the policy has resumed in East Jerusalem since June 2014.²⁹ In this sense, since 2009, a total of 147 Palestinian structures have been demolished, rendering 756 Palestinians displaced.³⁰

The impact of both administrative and punitive house demolitions extends beyond its economic and financial dimensions to include psychological harm. Naturally, these measures have a disproportionate impact on vulnerable and marginalised social groups, including both women and children, as will be demonstrated in this report.

Raghad H is a 32-year old mother of six from Silwan, aged 8 to 14 . Her story demonstrates a pattern of Israeli practice, whereby demolitions take place during very late hours at night or in the very early hours of the morning; the family is given very little time to evacuate the house, such that the vast majority of their belongings are left behind. This story, similar to numerous other stories, also reflects the high financial cost incurred in the attempt to reverse demolition orders, reaching 10,000 USD in this case. This is further exacerbated by the limited legal remedies available or guarantees of fair legal proceedings, as demolitions proceed in virtually the vast majority (if not all) of the cases. The story further reveals the psychological harm sustained by the family as a result of the demolition and the demolition's subsequent impact on women's human rights, including the right to residency and right to private life.³¹

Primary Research Findings

This section covers responses in 113 questionnaires filled with women in Jerusalem covering several dimensions of home demolitions in Jerusalem. The survey questionnaires covered a wide range of locations, and specifically 14 neighbourhoods and villages in Jerusalem, with the vast majority of them conducted in Silwan (24.8% of the sample), Jabal Al-Mukaber (23.9% of the sample), and Sur Baher (11.5% of the sample).

The survey provided details about the composition of the sample, as follows:

- With regards to the educational attainment of respondent women, 32.7% of the respondents had finished secondary school, 20.4% had finished high school,

²⁸ United Nations Office of Coordination of Humanitarian Affairs, *Data on Demolition and Displacement in the West Bank* (OCHA 2023).

²⁹ B'Tselem, *Background on the Demolition of Houses as Punishment* (B'Tselem 2014) 1.

³⁰ UN OCHA (n 28).

³¹ Tamara Tamimi, *Protection of Women from Violence in Times of Armed Conflict: Palestinian Women as a Case Study* (MIFTAH 2020) <http://www.miftah.org/Doc/SpecialStudies/2020/Protection_of_Women_from_Violence_in_Times_of_Armed_Conflict_Palestinian_Women_Case%20Study.pdf> 19.

19.5% had completed their high school matriculation exam, 18.6% had finished undergraduate study or higher, and 8.8% had finished only primary school.

- On employment, 15.9% of the respondent women reported that they worked, while the vast majority (84.1%) said that they did not work.
- Regarding disability, only 7 out of 113 women reported to have a disability and/or chronic diseases, distributed as follows:
 - One reported having platinum in her foot
 - One reported suffering from strokes and chronic illnesses
 - One reported suffering from strokes and a physical disability
 - One reported to have chronic respiratory illnesses
 - Two reported to have hypertension and diabetes

The parties who undertook the demolition varied between the Jerusalem municipality (45.1%), security forces associated with the Israeli occupation, namely the civil police and border police (6.2%), self-demolition (46%), a combination of municipality and security forces (1.8%), or a combination of municipality and self-demolition (2.9%).

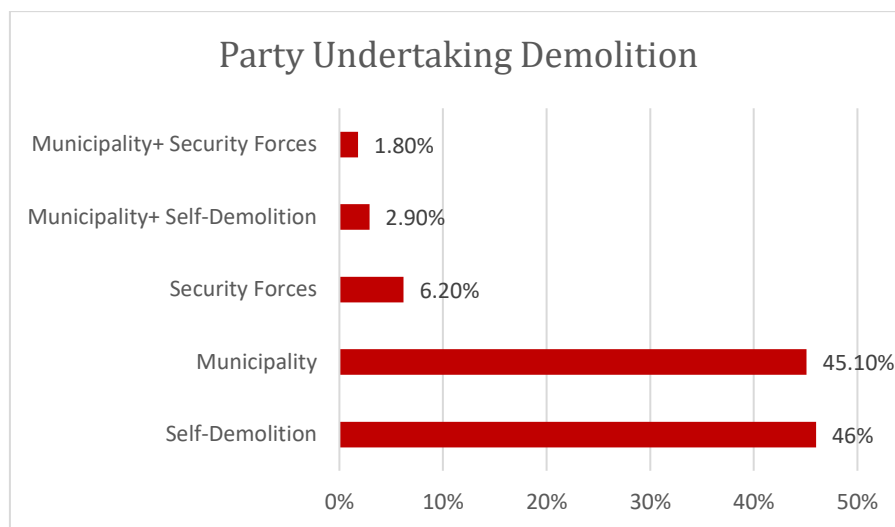


Figure 1: Party Undertaking Demolition

Similarly, the tools that were utilised for the demolition varied between manual demolition equipment (20.4%), bulldozers (63.7%), bulldozers and manual equipment (8.8%), and electronic demolition equipment (7.1%).

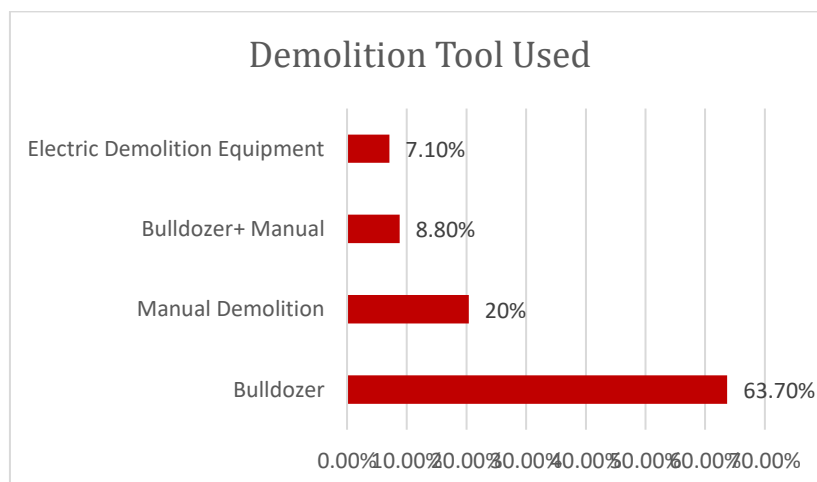


Figure 2: Tool used in Demolition

In keeping with an existing pattern, in many cases, the owners of the house were not allowed to remove their belongings from inside the house. Specifically, 31% of the respondents said that they were not allowed to take out the furniture. Of the total respondents, 58.4% expressed that they were not given sufficient time to take out their furniture and belongings. Further, 18.6% of the respondents confirmed that they have lost identification papers and important documents, while 20.4% of the respondents confirmed that they have lost valuable collectibles. Specifically, 6.2% of the total respondents reported loss of money, 4.4% reported loss of money and gold, 3.5% both furniture and electrical appliances, 0.9% lost horses, and 0.9% lost only gold.

The family size of the vast majority of the respondents, including both parents, ranges between 5-7 members, standing at 46.9% of the sample. The place of residency of the family following the demolition and displacement varied between the brother of the husband (2.7%), old house (31.9%), the family rented a house (37.2%), house of one the children (5.3%), house of the husband's family (18.6%), and house of the wife's family (4.4%). The vast majority of displaced people expressed that the place they relocated to was not considered a temporary dwelling (38.1%), while the others lived in their temporary dwellings for extended periods of time. Specifically, 19.5% of respondents lived in the dwelling less than 1 year, 18.6% between 1-2 years, 12.4% between 2-4 years, and 11.5% more than 4 years.

The survey identified four main categories of impact of demolition, displacement, and relocation: living conditions, economic situation, psychosocial wellbeing of the family, and psychosocial wellbeing of women. In terms of living conditions 65.5% of the total respondents explained that when they were forced to relocate, that they moved to inadequate houses and resided under difficult living conditions. Some women cited the small size of the house and how it does not fit their belongings, while others talked about humidity in the house, lack of sunlight, and lack of ventilation. On the level of economic situation, 28.1% of the total respondents explained that their economic situation severely deteriorated after the demolition and moving to a rented house. The impact of demolitions extends to the entirety of families, such that 5.3% of the respondents explained that because of the demolition, their family was divided and scattered over several relatives' houses, which led to immense instability. The same applies to women, who are disproportionately impacted by demolitions, whereby 1.8% of the respondent women explained how they did not have relatives and were not able to dispel their sadness and pain.

The survey also determined the impact of demolitions and displacement on children within several broad categories. For example, 28.4% of the respondents confirmed that their children missed their homes, games, and bedrooms, while 31.3% of the respondents confirmed that the house is too small for the children and does not have any form of privacy. Additionally, 4.5% of the respondents reported that their children suffer from diseases, involuntary urination, and constantly feel afraid. Also, 7.5% of the respondents confirmed that their children had to dropout from schools to work to be able to cover the living costs, and 19.4% of the respondents confirmed that their children's school performance declined, and that they became more stressed and aggressive. Moreover, 1.5% of the respondents confirmed that their children were afraid of the neighbourhood and the settlers.

The survey zoomed-in at the impact of the demolition and displacement on women specifically, focusing on their psychological and physical wellbeing. In this sense, 50% of the respondents highlighted the dire psychological status, spread of illnesses, and the difficult economic situation. Specifically, the fines imposed on 'illegal' building exacerbate the economic hardship. Additionally, 39.7% of the respondents reported difficult psychological conditions, pain, and anxiety. Also, 5.2% of the respondents said that their psychological situation has severely deteriorated and that the children want their bedrooms, clothes, and toys, and 5.2% of respondents talked about how the psychological situation led to miscarriage and/or filing for divorce.

There is consensus that demolitions exacerbate the economic hardship of families. These are attributed to the additional expenses associated with finding and renting a new home, high cost of the demolition, and the fines imposed by the courts on 'illegal' construction. The economic hardship and loss of the home directly relates to the decline in psychological wellbeing, particularly among children.

On legal proceedings following demolitions, of the total respondents, 44.2% decided not to appeal the demolition decision. Additionally, of the total respondents who appealed the decision, the appeal was rejected in 78.125% of the cases. In the case of 7.8125%, the appeal was rejected but the plaintiffs were given a grace period before the demolition, and in 14.1% of the cases, the appeal led to the postponement of the demolition before ultimately rejecting the appeal.

Legal Analysis: Violations of International Humanitarian Law, International Human Rights Law, and International Criminal Law as a Result of Israeli Policies

Home demolitions demonstrate a violation on the part of Israel of its obligations as an occupying power under both international humanitarian law and international human rights law. They also amount to war crimes and crimes against humanity as codified in the Rome Statute of the International Criminal Court.

International Humanitarian Law:

As an occupying power, Israel, has an obligation under Article 46 of the 1907 Hague Regulation to respect private property, stating:

“Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.”

Further, home demolitions violate a myriad of provisions under the Fourth Geneva Convention. Specifically, they violate the right of civilians to be treated humanely at all times without distinction on multiple protected grounds. Article 27 of the Fourth Geneva Convention states:

“...They Shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof...

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the

Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion, or political opinion”

Punitive home demolitions constitute an act of collective punishment, which is prohibited by Rule 103 of customary international law and by Article 33 of the Fourth Geneva Convention, stating:

“No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited...”

Home demolitions, both administrative and punitive, are giving rise to the forced displacement of the local population, which is prohibited under Article 49(1) of the Fourth Geneva Convention, stating:

“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.”

Destruction of private property, through both administrative and punitive home demolitions, is also prohibited under the Fourth Geneva Convention, unless rendered absolutely necessary in military operations, which does not apply to home demolitions in Jerusalem. Article 53 of the Fourth Geneva Convention states:

“Any 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.”

Unlawful transfer and deportation are identified as one of several ‘grave breaches’ of international humanitarian law. Article 147 states:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer of unlawful confinement of a protection person...”

International Human Rights Law:

Home demolitions and displacement violate the right to non-discrimination, as contained in treaties ratified by Israel, including International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), International Convention on the Elimination of Racial Discrimination (CERD), and the Convention on the Rights of the Child (CRC), as follows:

Article 2(1) ICCPR “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction

of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Article 2(2) ICESCR “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Article 1(1) CERD “In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Article 2(1) CRC “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Home demolitions also violate Article 17 of ICCPR on unlawful and arbitrary interference with the home, which states:

- “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.”

Several consequences arise from home demolitions that are in violation of the ICESCR, as follows:

Article 11 on the right of everyone to an adequate standard of living, including housing. Home demolitions and displacement violate the elaboration by the Committee on Economic, Social, and Cultural rights that housing means living in security, peace, and dignity. Article 11(1) states: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Article 12 on the right to highest attainable standard of physical and mental health, which states as part of the consequences of demolitions and associated toll on both psychological and physical wellbeing. Article 12(1) states “The

States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Article 13 of the ICESCR on the right to education, as part of the consequences of demolitions and associated economic hardships, whereby children are forced to discontinue their education to support the family in times of economic hardship. Article 13 states “The States Parties to the present Covenant recognize the right of everyone to education.”

International Criminal Law:

The gravity of home demolitions and associated displacement have led to the codification of these acts into both war crimes and crimes against humanity, as follows:

Article 8(2)(a)(iv) prohibits “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”, and designates it as a war crime.

Article 8(2)(a)(vii) prohibits “unlawful deportation or transfer or unlawful confinement”, and designates it as a war crime.

Article 7(1)(d) prohibits “deportation or forcible transfer of population”, and designates it as a crime against humanity. Article 7(2)(d) elaborates that “deportation or forcible transfer of population” refers to forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

Women, Peace and Security Agenda:

The women, peace and security agenda refers to ten resolutions adopted by the UN Security Council, starting with Resolution 1325, adopted in October 2000. Nine subsequent resolutions were adopted as follows: 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019), and 2493 (2019).³² The adoption of resolution 1325, which was further elaborated in the subsequent resolutions came in recognition of the disproportionate impact of war and armed conflict on women and girls, and following concerted efforts on the global level in response to the atrocities committed during the Yugoslav and other wars, in terms of sexual violence against women. The women, peace, and security agenda applies on all states automatically given that the resolutions were adopted by the security council, effectively making them legally binding.³³

However, the women, peace and security agenda resolutions are designed to provide protection to women in times of direct hostilities based on the atrocities witnessed in the Yugoslav and Rwanda wars, and thus fail to address the protection needs and gaps of

³² Peace Now- Women’s International League for Peace and Freedom, *The Resolutions* (accessed June 27, 2020) <<http://www.peacewomen.org/why-WPS/solutions/resolutions>>

³³ Charter of the United Nations, Articles 24+ 25

women under prolonged colonial occupation, and the structural violence that is associated with this occupation. This liberal approach of women protection echoes that witnessed within the Convention on the Elimination of all forms of Discrimination Against Women, which restricts the obligations of States parties to ensuring equality between men and women, as codified in Article 3 of the Convention. In doing so, the Convention fails to account for the disproportionate impact of exceptional circumstances, such as wars or natural disasters, on women and provide due protection beyond formal equality to include substantive equality, transformative equality, equality of opportunity, and/or equality of outcome. This approach persists, and is witnessed in General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations, which remain focused on violence perpetrated in direct hostilities and sexual violence, again, failing to account for women's protection under colonial military occupation.

Notwithstanding, Article 11 of UN Security Council Resolution 1325 provides for accountability and ending impunity, stating:

“Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions.”

Health Status of Refugee Women in Jerusalem

Overview of Healthcare System in Jerusalem

The healthcare system in Jerusalem includes 5 main service providers, all of which fall under the direct control of Israel. First, the United Nations Relief and Work Agency for Palestinian Refugees (UNRWA) provides healthcare services to refugees in Jerusalem. Second, private healthcare providers, which include clinics, private centres, laboratories, and maternity hospitals. Third, charitable and religious entities such as Makased Hospital, Augusta Victoria Hospital, St. John Hospital, St. Joseph Hospital, and Red Crescent Society. Fourth, other non-governmental organisations active in primary healthcare services, such as the Health Work Committees. Fifth, Israeli Health Ministry Patients Funds, who provide healthcare centres, pharmacies, and tests through private providers.³⁴

Primary healthcare service providers in Jerusalem face multiple challenges. First, the persistence of the Israeli occupation and its associated policy of fragmentation of Palestinians imposes challenges on the healthcare sector in Jerusalem. Specifically, threat of denial of permits to staff to access Jerusalem gives rise to the loss of key competent and specialised medical staff. In this sense, since 2007 doctors from Gaza working in Jerusalem hospitals have been unable to get to Jerusalem, thereby losing their jobs and depriving Jerusalem hospitals from crucial specialised doctors. Additionally, from 2019-2021, a total of 34 permits submitted for healthcare workers by Makased Hospital, Augusta Victoria Hospital, St. John Hospital, St. Joseph Hospital, Red Crescent Society Hospital, and Princess Basma Hospital were refused, while a total of 39 permits were approved for only 3 months and the vast majority for 6 months. Israel's discriminatory system distinguishes between doctors and other healthcare personnel, whereby there are two types of permits, one is issued to the 'medical doctor on duty', and the other is issued to 'hospital health staff'. In the permit for medical doctors, doctors are able to cross the checkpoint using their cars, while all other permits have to cross on foot. This creates significant delays for other workers to reach hospitals.³⁵

On accessibility obstacles relating to the occupation, 93% of the ambulances entering Jerusalem have to carry back-to-back procedures, where patients have to be transferred from one ambulance to another, thereby compromising on the health and increasing the risks for the patients. Additionally, the Palestinian Red Crescent Society faces obstacles in licensing their ambulances, due to the presence of the word 'Palestine' on the ambulance. Accordingly, Palestinian organisations working in healthcare have removed the word 'Palestine' from their names to avoid such obstacles.³⁶

Healthcare providers also face financial constraints and challenges. Specifically, limited donor funding for operational costs affects hospitals' ability to secure their running costs, job security, and sustainability. Additionally, the delays in the transfer of the Palestinian

³⁴ Varsen Aghabekian, *Social Sector Cluster Review East Jerusalem* (Palestine Economic Policy Research Institute (MAS), 2019) <<https://mas.ps/en/publications/2852.html>> 27.

³⁵ World Health Organization, *Right to Health: Barriers to Health and Attacks on Healthcare in the Occupied Palestinian Territory, 2019 to 2021* (WHO, 2022) <<https://applications.emro.who.int/docs/9789292740887-eng.pdf>> 53-54.

³⁶ Ibid.

National Authority dues to the hospitals, particularly Al-Makased and Augusta Victoria Hospitals, severely compromise on the ability of these hospitals to function and operate normally and with stability.³⁷

Last, the identification and hiring of qualified staff is an obstacle that all healthcare providers face across the board. This is exacerbated by the closure regime that Israel imposes at Jerusalem and its ability at will to revoke and refrain from extending permits for doctors and other professionals.³⁸

The challenges that face primary healthcare providers and hospitals are compromising on the enjoyment of the right to health. This is clearly seen in several indicators reflecting the health status and quality of life of Palestinians in Jerusalem. For example, in 2022 the life expectancy of Palestinians in the occupied Palestinian territory stood at 75.4 years for females and 73.2 years for males, with it being slightly higher in the West Bank (75.7 years for women and 73.5 years for men), compared to 85.1 years for females and 81.8 years for males in Israel and Israeli settlements. Further, while life expectancy for women in Israel and Israeli settlements stands at 85.1 years, this drops to 81.9 years for Palestinian women in Jerusalem, despite the theoretical accessibility to the same healthcare services.³⁹ Another significant indicator is on the probability of dying between the ages of 30 and 70 from select noncommunicable diseases, which stood at 26.7% for Palestinians, compared to 8.8% in Israel.⁴⁰

Shu'fat refugee camp is located at the outskirts of Jerusalem, and is bordered by Pisgat Ze'ev illegal settlement to the north. Shu'fat refugee camp was established by the UNRWA in 1965, based on the request of the Jordanian government with the view of improving the housing conditions of 500 refugee families. The total area of the refugee camp is 0.23 km², with a high population density of 50,000 residents per km², given the large number of refugees residing in it, which is estimated at 16,329. Nonetheless, the UNRWA believes the number to be higher than that. Two main factors influencing the high number of residents in Shu'fat refugee camp is the relatively more affordable cost of living, which is exacerbated by the accelerated revocation of residency by Israeli government based on the 'centre of life' criterion.⁴¹

Shu'fat refugee camp was annexed to Israel in 1967, when the borders of the Jerusalem Municipality were extended to include the eastern part of the city. Accordingly, the residents of the refugee camp hold Israeli Jerusalem residency permits. In 2005, Israel commenced in building the annexation wall in the eastern Jerusalem area, which effectively isolated Shu'fat refugee camp from the city of Jerusalem and rendered it part of the West Bank. Despite objections by the residents on their separation from Jerusalem, the Israeli High Court of Justice refused the claim of the plaintiffs in 2008. Based on this,

³⁷ Aghabekian (n 34) 29.

³⁸ Ibid 30.

³⁹ World Health Organization, *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan: Report by the Director-General* (WHO, May 2023) <https://apps.who.int/gb/ebwha/pdf_files/WHA76/A76_15-en.pdf> 2.

⁴⁰ Ibid 3.

⁴¹ United Nations Relief and Work Agency for Palestinian Refugees in the Near East, *Shu'fat Camp* (UNRWA 2023) <<https://www.unrwa.org/where-we-work/west-bank/shufat-camp>>

the construction of the Wall around Shu'fat refugee camp was completed in 2013. The Wall have effectively separated the camp from the remainder of Jerusalem, with the presence of one checkpoint, restricting movement from the camp to Jerusalem.⁴² The Wall and checkpoint naturally have an adversarial impact on the enjoyment of human rights of Palestinians in the camp, particularly vis-à-vis economic and social rights, which directly hinge on enjoyment of freedom of movement.

The UNRWA clarifies that there is 1 UNRWA healthcare centre in Shu'fat refugee camp that provides wing-ranging services to its residents. The centre provides primary healthcare services, which purportedly include reproductive health, oral health, infant and childcare, immunisations, screening and medical check-ups, treatment of communicable and non-communicable diseases, and psychosocial counselling.⁴³

Qalandiya refugee camp is located within Area "C" and East Jerusalem, in close proximity to the main checkpoint separating Jerusalem and Ramallah "Qalandiya Checkpoint" and the annexation wall. The camp was built by the UNRWA in 1949, and currently houses 16,076 refugees in a total area of 0.42 km², bringing the population density of the camp to 35,410 in 1 km². The expansion of Qalandiya checkpoint and construction of the annexation Wall adversely impacted the residents of the camp by cutting them from the remainder of Jerusalem.⁴⁴

The UNRWA clarifies that there is 1 UNRWA healthcare centre in Qalandiya refugee camp that provides wing-ranging services to its residents. The centre provides primary healthcare services, which purportedly include reproductive health, infant and child care, immunisations, screening and medical check-ups, treatment of communicable and non-communicable diseases, and psychosocial counselling, in addition to a dentist who works there 3 times a week.⁴⁵

Conceptualisation of the Right to Health

The Committee on Economic, Social and Cultural Rights, the body mandated with monitoring state obligations under the International Covenant on Economic Social and Cultural Rights, conceptualises the right to health in General Comment 14 as constituting four essential elements: availability, accessibility, acceptability, and quality, three of which are relevant to the documented violations.

First, availability refers to the availability of functioning public health and health-care facilities, goods and services, as well as programmes in sufficient quantity. Second, accessibility refers to the accessibility of patients to health facilities, goods and services, and includes non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility. Third, quality, refers to the presence of healthcare facilities, goods and services of good quality, which includes inter alia, skilled medical personnel and hospital equipment.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ United Nations Relief and Work Agency for Palestinian Refugees in the Near East, *Kalandia Camp* (UNRWA 2023) <<https://www.unrwa.org/where-we-work/west-bank/kalandia-camp>>

⁴⁵ Ibid.

Primary Research Findings

This section covers findings from 2 field reports based on 15 testimonies that document the health status of women in Shu'fat and Qalandiya refugee camps in Jerusalem. It is further subcategorised into three main sections, covering availability, accessibility, and quality of healthcare services.

Availability:

There is an overall lack in services available to refugee women in Qalandiya refugee camp and Shu'fat refugee camp that is observed at multiple levels.

In the healthcare centres in both Qalandiya and Shu'fat refugee camps, only general practitioners are available, with a noticeable lack of available specialisations, including in hypertension, diabetes, kidneys, arthritis, cancer, nerves, and eyes. Additionally, there is a complete absence of hospitals and emergency clinics, as well as lack of ambulances. The lack of ambulances poses a serious challenge in Shu'fat refugee camp, as Israeli ambulances refuse to enter the camp. This necessitates the arrival of the Palestinian ambulance (through the West Bank entrance), and the moving of the patient to the checkpoint, who is then transferred to the Israeli ambulance.

Availability issues extend to medication, which is restricted to pain relief medication, such as Acamol and Paracetamol. The availability of these medications is inconsistent. Medication for other diseases (including chronic diseases) such as diabetes, hypertension, heart disease, bones, skin are not available.

There is also limited equipment to diagnose diseases and follow-up on cases. In cases of pregnant women, basic equipment is lacking, such as an ultrasound. Moreover, availability of tests is limited, and specialised tests are completely lacking.

Regarding pregnant women, the services available are highly limited, including in terms of tests, specialised doctors, and medication/supplements. On the level of persons with disabilities, a highly vulnerable and marginalised social group, there is a complete lack of services, specialised doctors, tests, and medications.

Accessibility:

Challenges pertaining to accessibility are witnessed at the level of both physical accessibility and economic accessibility.

At the level of physical accessibility, refugee women face several obstacles. For example, Qalandiya refugee camp is cut off from Jerusalem due to Qalandiya checkpoint. Residents of the refugee camp who do not hold a Jerusalem identity card cannot access Jerusalem. Residents of the refugee camp who do hold a Jerusalem identity card face significant challenges in crossing the checkpoint. These challenges include the traffic jam because of the checkpoint, waiting in line at the checkpoint as Palestinians are not allowed to cross inside the bus, and walking the long distance in the tunnel after crossing the checkpoint. Similarly, residents in Shu'fat refugee camp are cut off from Jerusalem due to Shu'fat checkpoint. In cases of emergency, due to the lack of hospitals and emergency rooms and

the presence of the checkpoint, it takes between 45-90 minutes to cross the checkpoint and access healthcare in Jerusalem.

At the level of economic accessibility, the challenges faced are numerous and vary. There is an overall lack of comprehensive medical insurance, which gives rise to significant costs in accessing necessary healthcare. This includes the high cost of medical services in private centres, high cost of the doctor check-ups in private clinics, high cost of tests that are not available in the UNRWA centre. For example, the cost of the MRI test ranges between ILS 1,200- 1,700, which is the equivalent of USD 296- 419. In addition to the high cost of medications that are not available at the UNRWA clinic . This leads to inconsistent purchase of medication for chronic illnesses. At the level of pregnant women, the referral to give birth to the hospital covers only 60-75% of the cost. The lack of emergency rooms in healthcare centres, incurs a high cost of going to the emergency room. Residents of Qalandiya refugee camp go to the emergency room of the Palestinian Red Crescent Society. Apart from the cost of tests and any medical services provides, the patient needs to pay ILS 500 as an admission fee, which is the equivalent of USD 123. Moreover, the high cost of accessing healthcare in terms of doctor appointments, tests, medications poses significant challenges to refugee women, many of whom live below the poverty line. The financial limitations that these women face limit their ability to purchase home testing equipment for hypertension and diabetes, which also includes a running cost of buying the chips for the testing machine.

Quality:

Additional challenges are witnessed at the level of the quality of the services provided, which include long waiting times to obtain their test results for patients who access healthcare at the UNRWA clinics. Similarly, there are long waiting times to set appointments with doctors, with visits far apart. Due to the lack of specialised doctors, necessary tests, and equipment, several cases were misdiagnosed. In one case a cyst on a child's neck was diagnosed as cancer, when it turned out to be a sebaceous cyst. In another case the doctor prescribed a wrong medication to a child that had small cysts on her tongue. The medication exacerbated the problem, and only when the mother took her daughter to a private doctor, at a considerably high cost, was the problem solved.

Legal Analysis: Violations of International Refugee Law, International Humanitarian Law and International Human Rights as a Result of Israeli Policies

The abysmal situation of healthcare in Qalandiya and Shu'fat refugee camps gives rise to a myriad of violations on the part of Israel in terms of its obligations as an occupying power under international refugee law, international humanitarian law, and international human rights law.

International Refugee Law:

Refugee women are subjected to discrimination by Israel in terms of accessing medical healthcare in Jerusalem, as contained in article 3 on non-discrimination, which states:

“The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”

Refugee women are also deprived of enjoying their right to the highest attainable standard of healthcare, which violates article 5 of the convention, and which provides for enjoying human rights that are granted by other conventions, as follows:

“Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.”

International Humanitarian Law:

The Fourth Geneva Convention also provides protection to the right to health. In this sense, article 38, paragraph 2, on non-repatriated persons provides for the receipt of medical attention and hospital treatment, as follows:

“With the exception of special measures authorized by the present Convention, in particular by Articles 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them: 2) They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.”

Moreover, article 56 sets the responsibilities of the occupying power vis-à-vis hygiene and public health, which includes ensuring and maintaining the medical hospital establishments and services, public health, and hygiene in the occupied territory. The lack of accessible hospitals and availability of emergency rooms in refugee camps violates this requirement. Article 56 states:

“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory...”

International Human Rights Law:

The right to healthcare is extensively covered under international human rights law. Specifically, the status of health of refugee women, violates several provisions. Firstly, it violates article 25 of the Universal Declaration of Human Rights which provides for the right to health, particularly at the availability, accessibility, and quality levels, stating:

“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Further, the healthcare status of refugee women violates article 2(2) of ICESCR on non-discrimination, and article 12 of ICESCR on the right to health, which state:

Article 2(2) ICESCR “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Article 12 ICESCR “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Specifically on the level of women, as a vulnerable and marginalised social group, the healthcare status of women violates article 12 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) on the right to health, which states:

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

The right to healthcare is also protected by **CEDAW General Recommendations. General Recommendation 24 focuses exclusively on women and health.** Nonetheless, particular reference is made to paragraph 11 on provision of reproductive health services to women, stating:

“Measures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”

Further, **CEDAW General Recommendation 32** on the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, with a particular reference to paragraph 33, which provides for the provision of specific rights, including, inter alia, the right to health, as follows:

“Articles 3 and 10 to 13 of the Convention entail that women seeking asylum and women refugees be granted, without discrimination, the right to accommodation, education, health care and other support, including...”

Further, at the level of the girl child, the healthcare status of refugee women violates article 2(1) of CRC on non-discrimination, and article 24 of CRC on the right to health, which state:

Article 2(1) CRC “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 24 CRC “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Moreover, at the level of the women with disabilities, the healthcare status of refugee women with disabilities violates article 3 of CRPD on non-discrimination, and article 25 of CRPD on the right to health, which state:

Article 3 CRPD “The principles of the present Convention shall be:

b. Non-discrimination...”

Article 25 CRPD “States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

A. Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

B. Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

C. Provide these health services as close as possible to people's own communities, including in rural areas;

D. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

E. Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

F. Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.”

Recommendations

This section provides evidence-based recommendations based on the findings of this report. It is divided into subsections; the first focuses exclusively on recommendations for home demolitions, and the second focuses exclusively on recommendations regarding the health rights of refugee women. Overall, these recommendations should be seen within the wider framework of Israeli settler colonialism and apartheid against Palestinians, which include settlement expansion, displacement of Palestinians, and instituting a system of domination over Palestinian that inter alia encompasses assaults on the Gaza Strip and wider siege on Gaza, settler and army violence in the West Bank, including Jerusalem, and detainment and imprisonment of Palestinians and wider deprivation of liberties.

Recommendations on Home Demolitions

- The international community should exert significant pressure on Israel to cease its practices of home demolitions, both administrative and punitive, given that it gives rise to the displacement of Palestinians. This pressure should be within a wider framework for Israel to cease all measures of forced displacement. It should also be part of long-term political pressure to ensure availability of proper zoning and planning, which enables Palestinians to construct and expand housing without discrimination.
- Palestinian civil society organisations should lobby for the reframe the discourse around Palestine beyond daily incidents with international duty bearers, namely diplomatic missions, and parliamentarians. For example, home demolitions and displacement of Palestinians should be situated within the wider framework of settler colonialism and the elimination of the native population.
- Palestinian civil society organisations should, and the State of Palestine should continuously monitor the composition of the United Nations Security Council, and exert pressure on the Security Council in the presence of Palestine-friendly nations among the non-permanent members to adopt another resolution under the Women, Peace, and Security Agenda that appropriately addresses the needs and provides protection to women under armed conflict in cases of prolonged, colonial occupation.
- The international community should move beyond the standard rhetoric and discourse of “condemnation” and “deploration” of Israeli human rights abuses and violations of international law, to ensure proper investigation by relevant international institutions and pathways for accountability.
- Civil society organisations should consolidate partnerships with European and International civil society organisations with the view of invoking universal jurisdiction and submitting both criminal and civil lawsuits against Israeli criminals who perpetrate war crimes and crimes against humanity. Such organisations include European Center for Human and Constitutional Rights in Berlin, and Center for Constitutional Rights in New York, and wider organisations

within the Bertha Justice Network,⁴⁶ who employ strategic litigation to advance justice and accountability for international crimes and human rights abuses.

- The Palestinian Authority should apply pressure on global south and friendly nations who are members of the ICC at the Assembly of the States Parties in order to revive the Palestine investigation.
- Civil society organisations should continue to submit complaints and communications to the International Criminal Court to avoid further neglect of the Palestine investigation. It should also seek to join the Coalition for the ICC,⁴⁷ where civil society organisations have observer status in the Assembly of States Parties, and which would enable them to lobby States Parties to revive the Palestine investigation.
- Civil society organisations should also organise side events in the Assembly of States Parties and within UN forums to maintain the importance of the Palestinian cause at the table of the international community.
- The “United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel” should be strengthened both politically and financially by the international community, and urged to expand the conceptual framework it employs beyond military occupation to include settler colonialism and apartheid.

Recommendations on Health Rights of Refugee Women

- The international community should exert significant pressure on Israel in multiple dimensions. This includes delayed accessibility of Palestinians to hospitals due to Israeli checkpoints, policies with ambulances being forced to undertake back-to-back transfers on both Qalandiya and Shu’fat checkpoints. Applied pressure should also extend to ceasing restrictions on entry of Palestinian equipment and machinery, and access to specialised doctors and professionals.
- Palestinian civil society organisations should lobby to reframe the discourse around Jerusalem beyond daily incidents with international duty bearers, namely diplomatic missions and parliamentarians. For example, violations of the right to health should be situated within the wider context of Israeli discriminatory policies against Palestinians, and the coercive environment that Israel imposes on Jerusalem to drive out its Palestinian residents.
- Palestinian civil society organisations should lobby the international community to overcome the fragmentation of Palestinians and not to succumb to the imposition of facts on the ground and the ever deteriorating situation in different areas. Specifically, the assaults on Gaza, settlement expansion in the West Bank, and settler violence should not be addressed by the international community in isolated manners. Instead, the international community should always focus on Israel ending its occupation of the State of Palestine, which is the root cause of all human rights violations Palestinians endure.

⁴⁶ For the full list of organisations in the network, please see the following link: <https://berthafoundation.org/lawyers/#partners>

⁴⁷ For more information, please see the following link: <https://www.icc-cpi.int/get-involved/ngos>

- The international community should expand their support to the healthcare sector in two main dimensions. First by supporting the health sector strategy of the Palestinian Authority, and second and more importantly to provide financial support the UNRWA, whose budget is continuously declining, in order to be able to provide the healthcare services they are mandated to provide for Palestinian refugees, focusing on the health of refugee women and sexual and reproductive health and rights.
- The “United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel” should be strengthened both politically and financially by the international community, and urged to focus in its work on economic and social rights, including the right to health.
- Palestinian civil society organisations should undertake and publish specific research on the impact of the defunding of the UNRWA on its ability to provide healthcare and other social services, as well as other relevant research as appropriate.

Conclusion

This human rights documentation report is based on 113 questionnaires documenting home demolitions in Jerusalem, as well as 2 field reports based on 15 testimonies on the health status of Jerusalemite refugee women in Qalandiya and Shu'fat refugee camps. The report seeks to highlight human rights and international law violations associated with both situations and provide recommendations to national and international duty bearers to improve the situation of human rights in Palestine.

The West Bank, including East Jerusalem, and Gaza Strip are considered occupied territory, despite elaborate Israeli academic, executive, and judicial pretexts that claim otherwise. The status of occupied territory has been reiterated and emphasised by all relevant UN institutions, including General Assembly, Security Council, Economic and Social Council, Human Rights Commission/Council, International Committee of the Red Cross, and International Court of Justice. In this sense, international humanitarian law automatically applies to the West Bank, including East Jerusalem, and Gaza Strip, with international human rights law also applying to fill in any protection gaps left behind by international humanitarian law.

The documentations and research findings demonstrated home demolitions in Jerusalem by Israel in contravention with its obligations as an occupying power under international law. According to the United Nations Office of Coordination of Humanitarian Affairs, between 2009 and November 2023, Israel has demolished 1,968 structures in Jerusalem, which led to the displacement of 3,872 Palestinians. Demolitions of homes have significant consequences on Palestinians, impacting living conditions, economic situation, psychosocial wellbeing of the family, and psychosocial wellbeing of women. Further, the research found that Palestinians whose homes have been demolished do not have an inclination to appeal the decision to Israeli courts. In this sense, 44.2% of research respondents decided not to appeal the demolition decision. Additionally, of the total respondents who appealed the decision, the appeal was rejected in 78.125% of the cases. In the case of 7.8125%, the appeal was rejected but the plaintiffs were given a grace period before the demolition, and in 14.1% of the cases, the appeal led to the postponement of the demolition before ultimately rejecting the appeal.

There are a myriad of actors providing healthcare services in Jerusalem, including the UNRWA. However, UNRWA financing has been persistently declining, which has impacted its ability to deliver the social services it is mandated to provide to Palestinian refugees. Naturally, this has extended to healthcare services in terms of availability of specialised doctors, emergency rooms, necessary medication, and basic tests. Further, the Israeli occupation has cut off both Shu'fat and Qalandiya refugee camps from Jerusalem through the annexation wall and checkpoints that severely restrict freedom of movement. This has significantly impacted access to secondary and tertiary healthcare in Jerusalem, and in situations of emergencies, as delays on checkpoints extend between 45-90 minutes in the case of Shu'fat checkpoint, and up to hours on Qalandiya checkpoint. Last, the lack of availability of necessary equipment, specialisations, and tests have led to several misdiagnosis for both women and children that had an adversarial impact on women who are primarily responsible for childcare in Palestinian society.

Annex I: Applicability of International Humanitarian Law, International Human Rights Law, and International Criminal Law in Jerusalem

International Humanitarian Law:

Different branches of international law apply to different types of situations. International humanitarian law is concerned with situations of armed conflict; hence, the need for the qualification of military occupation as an international armed conflict. In accordance with common Article 2 of the Geneva Conventions,⁴⁸ international armed conflicts arise when one high contracting party -state- resorts to armed force against another state, irrespective of the reasons or intensity of the conflict. Common Article 2(2) extends the scope of the application of the Geneva Conventions to include the military occupation of the territory of a high contracting party. Moreover, Additional Protocol I of the Geneva Conventions⁴⁹ extends the definition of international armed conflict to include wars of national liberation, whereby peoples are fighting against colonial domination, alien occupation, or racist regimes in the exercise of their right to self-determination.⁵⁰

The definition of occupation is provided in the Convention Concerning the Laws and Customs of War at Land with Annex of Regulations as follows: "Territory is considered occupied when it is actually placed under the authority of the hostile army..."⁵¹ Article 43 of the Hague Regulations specifies that the occupying power must "take all the measures in its power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."⁵² Since military occupation leads to the dissolution of sovereign powers, which are thereafter assumed by the occupier, this means that the occupier essentially becomes the government responsible for the occupied territory; as such, international law imposes strict obligations on the occupier with the view of respecting the rights of the occupied civilian population.⁵³

Despite the inclusion of military occupation in common Article 2(2) of the Geneva Conventions, Israel disputes the applicability of the Fourth Geneva Convention to the West Bank, including East Jerusalem, and Gaza Strip. This is primarily based on their argument that the previous status of the territory is different from that envisaged by the convention.⁵⁴ Israeli Foreign Minister Moshe Dayan reiterated the position of the government before the United Nations General Assembly in 1977, arguing that as neither the West Bank nor the Gaza Strip were the territory of a "High Contracting Party" when occupied by Israel in 1967⁵⁵ that leaves the Occupied Palestinian Territory outside the

⁴⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 75 UNTS 287 art 2.

⁴⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977) 1125 UNTS 3

⁵⁰ Ibid art 1(4).

⁵¹ Hague Regulations (n 11) art 42.

⁵² Ibid art 43.

⁵³ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2013) 579.

⁵⁴ Adam Roberts, 'Decline of Illusions: The Status of the Israeli Occupied Territories Over 21 Years' (1988) 64 *International Affairs* 345, 348.

⁵⁵ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002) 33-34.

scope of application of Fourth Geneva Convention.⁵⁶ Israel's interpretation of Article 2 of Fourth Geneva Convention argues the concept of the "missing sovereign," whereby the ousting of a sovereign power is a precondition for the applicability of the Convention.⁵⁷ As such, Israeli officials and spokespersons have elaborated that since both the West Bank and Gaza Strip were previously under Jordanian and Egyptian occupation respectively, the automatic applicability of the convention would accord rights to Jordan and Egypt that they are not entitled to.⁵⁸

In contrast, the Israeli Supreme Court issued conflicting judgements on the applicability of the Fourth Geneva Convention. The High Court of Justice referred to the Military Justice Law⁵⁹ in the case of *Basil Abu Aita et. al. v the Regional Commander of Judea and Samaria*. The law states that customary international law is automatically incorporated into Israeli law but not conventional international law, including Geneva Conventions, which need to be incorporated through statutory enactment or subsidiary legislation.⁶⁰ However, in a different case, the Israeli Supreme Court held that the humanitarian provisions of the Fourth Geneva Convention apply, but left it to the executive authority to determine which provisions are considered humanitarian.⁶¹

These elaborate claims are refuted two main grounds. The Israeli interpretation of common Article (2) assumes that the term "territory of a High Contracting Party" refers to full legal title. In this context, not only there is no evidence that this term was intended to be understood as such, but also the Conventions' drafters intended, particularly in the Fourth Geneva Convention, as demonstrated by the commentary by the International Committee of the Red Cross, to extend maximum protection to civilians in times of armed conflict. The second and more relevant ground for refutation is based on the Palestinian right to self-determination. Within this framework, sovereignty is vested in the Palestinian people and not in the government.⁶² Furthermore, irrespective of the legality/illegality of the Jordanian annexation of the West Bank, including East Jerusalem, in 1950, the Palestinian people, as the lawful sovereign over the territory, ultimately allowed the annexation. As such, the territory was taken from a High Contracting Party in 1967.

Further, the international community has rejected these elaborate academic, executive, and judicial interpretations. The applicability of the Fourth Geneva Convention has been affirmed at least 126 times by,⁶³ to name a few, the General Assembly,⁶⁴ Security Council,⁶⁵

⁵⁶ Harvard Program on Humanitarian Policy and Conflict Research, *Review of the Applicability of International Humanitarian Law to the OPT* (International Humanitarian Law Research Initiative, 2004) 3.

⁵⁷ Yehuda Z. Blum, 'The Missing Reversioner: Reflections on the Status of Judea and Samaria' (1968) 3 Israel Law Review 279 293.

⁵⁸ Meir Shamgar, *Military Government in the Territories Administered by Israel 1967- 1980: The Legal Aspects* (Alpha Press, 1982) 37.

⁵⁹ Military Justice Law 1955.

⁶⁰ *Basil Abu Aita v Military Commander of Judea and Samaria* [1983] HCJ, 37(2)(HCJ) 43-44.

⁶¹ HCJ 7957/04, *Mara'be v. The Prime Minister of Israel*, 14 (HCJ 2005).

⁶² Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory' [2005] *Berkley Journal of International Law* 551, 567-568.

⁶³ Harvard Program (n 56) 13.

⁶⁴ United Nations General Assembly Resolution 2252 (4 July 1967).

⁶⁵ United Nations Security Council Resolution 446 (22 March 1979).

Economic and Social Council⁶⁶ and the Human Rights Commission.⁶⁷ This international consensus was further demonstrated by the ruling of the International Court of Justice “Legal Consequences of the Construction of a Wall in the OPT”⁶⁸ as well as the continuous emphasis and reiterations by the International Committee of the Red Cross of its applicability.⁶⁹

International Human Rights Law:

With the confirmation of the applicability of international humanitarian law to the West Bank, including East Jerusalem, and Gaza Strip, there remains the contested issue of the applicability of International Human Rights Law, including both the International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights.

Under the *Lex Specialis* principle and the definition of occupation in the Hague Regulations, the more relevant body of law is international humanitarian law.⁷⁰ Conversely, other scholars argue that international human rights law applies simultaneously with international humanitarian law, filling in any gaps and increasing protection of civilians, which is the main purpose of international humanitarian law. Thus, arguably, the application of international human rights law complements that of international humanitarian law.⁷¹

Article 2(1) of the International Covenant on Civil and Political Rights defines the scope of application of the Covenant as: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals **within its territory** and **subject to its jurisdiction...**”⁷² The primary interpretation of this article specified that the scope of application extends to persons *both* within the State’s territory and subject to its jurisdiction.⁷³ However, the interpretation has now evolved such that the UN Human Rights Committee asserted in its General Comment 31 that states parties are required “to respect and to ensure the Convention rights...and to all persons subject to their jurisdiction.”⁷⁴

Furthermore, the Human Rights Committee emphasised the applicability of the International Covenant on Civil and Political Rights to Israel in its Concluding Observations in 2010 and reiterated that position in their latest concluding observations to Israel in 2014, stating:

⁶⁶ Economic and Social Council Resolution 1988/25 (26 May 1988).

⁶⁷ Human Rights Commission Resolution 1993/2 (19 February 1993).

⁶⁸ *Legal Consequences of the Construction of a Wall* (Advisory Opinion) 2004 <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>> [140].

⁶⁹ Conference of High Contracting Parties to the GCIV Declaration (17 December 2014) paragraph 4.

⁷⁰ Wall Advisory Opinion (n 68) [178].

⁷¹ Adam J. Roberts, ‘Transformative Military Occupation: Applying the Laws of War and Human Rights’ (2006) *American Journal of International Law* 580, 594.

⁷² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2(1).

⁷³ Michael J. Dennis, ‘The Application of Human Rights Treaties Extraterritorially in Times of Conflict and Military Occupation’ (2005) 99 *American Journal of International Law* 119, 122.

⁷⁴ UN CCPR, ‘General Recommendation No 31’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (26 May 2004) UN Doc CCPR/C/21/Rev.1

“The Committee regrets that the State party continues to maintain its position on the non-applicability of the Covenant to the Occupied Territories, by claiming that the Covenant is a territorially bound treaty and does not apply with respect to individuals under its jurisdiction, but outside its territory, despite the interpretation to the contrary of article 2, paragraph 1, supported by the Committee’s established jurisprudence, the jurisprudence of the International Court of Justice and State practice. It is further concerned at the position of the State party that international human rights law does not apply when international humanitarian law is applicable. The Committee reiterates its views on these matters (see CCPR/CO/ISR/3, para. 5; CCPR/CO/78/ISR, para. 11 and CCPR/C/79/Add.93, para. 10)”.⁷⁵

Moreover, the International Court of Justice emphasised, in its ruling on the Wall, the applicability of international human rights law to the occupied territory, including both the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights,⁷⁶ citing the first concluding observations of the Committee on Economic, Social and Cultural Rights to the State of Israel in 1998 that emphasised the applicability of the covenant to the Occupied Palestinian Territory.⁷⁷

International Criminal Law:

The applicability of international criminal law to a certain territory hinges on the accession of the State concerned to the Rome Statute of the International Criminal Court.⁷⁸ The first attempt of the Palestinian polity to enter the realms of international criminal justice took place on 22 January 2009, through lodging an Article 12(3) Declaration under the Rome Statute, accepting the jurisdiction of the International Criminal Court over its territory.⁷⁹ This declaration is believed by many to be for the purposes of holding Israeli officials who took part in the 2008-2009 war on Gaza accountable.⁸⁰ The issue was contentious at the time due to the status of the Palestinian Liberation Organisation at the UN as a non-member observer entity, such that acceptance of the declaration would, in the very least, incur an indirect confirmation and acknowledgement of Palestinian statehood.

In April 2012, following a thorough consideration of the Declaration made by the Palestinian National Authority, the Office of the Prosecutor of the International Criminal Court concluded that the status of the Palestinian Liberation Organisation at the UN prevented it from signing and or ratifying the Rome Statute, which in turn prevented the lodging of an Article 12(3) Declaration. As the examination of the Office of the Prosecutor was ongoing, the Palestinian National Authority continued its international efforts for

⁷⁵ Human Rights Committee, *Concluding Observations of Human Rights Committee: Israel* (Human Rights Committee 2014) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR/C/ISR/CO/4&Lang=En> paragraph 5.

⁷⁶ Wall Advisory Opinion (n 68) [197].

⁷⁷ UN CESCR, *Concluding Observations: Israel*, 4 December 1998, E/C.12/1/Add.27, 2.

⁷⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

⁷⁹ International Criminal Court, *Report on Preliminary Examination Activities* (ICC 2015) 11.

⁸⁰ 'ICC Prosecutor Rejects Palestinian Recognition' (BBC News, 2012) <<http://www.bbc.co.uk/news/world-middle-east-17602425>>.

recognition and statehood. The UN General Assembly Resolution 67/19 was adopted on 29 November 2012, where 138 States voted in favour, 9 against, and 41 abstained. The resolution effectively upgraded Palestine to the status of non-member Observer State.⁸¹

This upgraded status enabled the State of Palestine to accede to the Rome Statute.⁸² This was realised by lodging an Article 12(3) Declaration on 1 January 2015, accepting the jurisdiction of the Court, and followed by depositing an instrument of accession to the Statute with the UN Secretary General.⁸³ The Declaration clarified that the State of Palestine grants the court retroactive jurisdiction to 13 June 2014.⁸⁴ Consequently, and as a matter of policy,⁸⁵ the Office of the Prosecutor opened a preliminary examination into the situation in Palestine.⁸⁶ The preliminary examination establishes whether the criteria set in Article 53(1) of the Rome Statute are met to open an investigation,⁸⁷ which are 'jurisdiction', 'admissibility' and 'interests of justice'.⁸⁸

Palestine's journey in the International Criminal Court went through several stages. In March 2021, the Office of the Prosecutor opened an investigation in the situation in Palestine.⁸⁹ This decision followed the ruling of the Pre-Trial Chamber in February 2021 that the Court does have territorial jurisdiction based on article 12(2)(a) in the West Bank, including East Jerusalem, and Gaza Strip.⁹⁰

However, since the election of a new Prosecutor to the International Criminal Court, and more so since the Russian-Ukrainian war, the current prosecutor has deprioritised the Palestine investigation. This is demonstrated in the opening of an investigation in Ukraine,⁹¹ and accelerating the preliminary examinations in Venezuela and Congo, in addition to allocating substantial resources to these examinations and investigation.⁹² Notwithstanding, the recent assault on Gaza on October 7 seems to have reactivated the Palestine investigation, with the ICC Prosecutor referring to law enforcement and

⁸¹ United Nations General Assembly Resolution 67/19 (29 November 2012).

⁸² International Criminal Court, *Report on Preliminary Examination Activities* (ICC 2015) 12.

⁸³ *Ibid* 11.

⁸⁴ ICC, 'Palestine Declares Acceptance of ICC Jurisdiction Since 13 June 2014' ICC-CPI-20150105-PR1080 (1 January 2015).

⁸⁵ ICC 'Regulations Of The Office Of The Prosecutor- ICC-BD/05-01-09'(International Criminal Court, 2009) <<https://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBD050109ENG.pdf>>; Regulation 25; 'Policy Paper On Preliminary Examinations' (International Criminal Court, 2013) <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf> Paragraph 76.

⁸⁶ ICC (n 82).

⁸⁷ ICC 'State of Palestine- Situation in the State of Palestine' (International Criminal Court) <<https://www.icc-cpi.int/palestine>>.

⁸⁸ ICC (n 82) 4-5.

⁸⁹ ICC, 'Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine' (3 March 2021) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>>.

⁹⁰ ICC, *Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'* (5 February 2021) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF>.

⁹¹ ICC 'Situations under Investigation' (International Criminal Court) <<https://www.icc-cpi.int/situations-under-investigations>>

⁹² ICC 'Preliminary Examinations' (International Criminal Court) <<https://www.icc-cpi.int/situations-preliminary-examinations>>

justice,⁹³ and five states (South Africa, Bangladesh, Bolivia, Comoros, and Djibouti) referring Israel to the ICC for crimes committed in Gaza.⁹⁴

⁹³ International Criminal Courts, 'Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel' (30 October 2023) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>>.

⁹⁴ International Criminal Courts, 'Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine: receipt of a referral from five States Parties' (17 November 2023) <<https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-situation-state-palestine>>.

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