
The Impact of Mega-Projects on the Human Rights to Water and Sanitation

Submission made to United Nations Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Leo Heller, pursuant to call for submission in light of his thematic report to the seventy-fourth session of the General Assembly in 2019 on the impact of mega-projects on the human rights to water and sanitation.



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1. Context

§ 1 Recent information collected by Al-Haq focuses on the right to access water as enshrined in international human rights law (IHRL) and international humanitarian law (IHL), including the prohibition of pillage of water as a major natural resource and qualifying as a war crime under international law.¹ In the Occupied Palestinian Territory (OPT), four mega-projects undertaken by private actors in cooperation with the State of Israel negatively impact Palestinian access to their water resources and violate their right to water and sanitation.² The projects provide illegal Israeli settlements with water and therefore sustain long-term strategies to deny Palestinians access to essential natural resources. The effects are intrinsically tied to broader strategies for the deprivation of access to water and related forcible transfer of Palestinian communities. Therefore, the involvement of governmental and corporate actors in these projects should immediately be terminated. In this submission, Al-Haq highlights the impact of the following mega-projects,³ taking place in the OPT, on the right to water and sanitation of the occupied Palestinian population therein:

- a) The National Water Carrier (1964);
- b) The Construction of the Annexation Wall (2002);
- c) The New National Water Carrier (2005);
- d) The Fifth Water Pipeline to Jerusalem (2016).

2. General Questions

A. Al-Haq's Role and Responsibility in Monitoring Mega-Projects (*Question 1*)

§ 2 Established in 1979, Al-Haq is an independent Palestinian non-governmental human rights organization based in Ramallah, West Bank, working on protecting and promoting human rights and the rule of law in the OPT. The organization has special consultative status with the United Nations (UN) Economic and Social Council. Al-Haq closely cooperates with civil society organizations, and documents violations of the individual and collective rights of Palestinians in the OPT and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable.

¹ Prohibited by Articles 28 and 47 of 1907 Hague Regulations (HR), Article 33 (2) Fourth Geneva Convention (IV GC), Article 8(2)(b)(xvi) of the 1998 Rome Statute and customary international humanitarian law (CIHL) rule 52.

² The scope focuses on the access to drinking water services for human consumption and access to sanitation services including toilets and shower facilities as well as personal hygiene.

³ The term "mega-projects" refers to "projects that cause significant impacts on the human rights to water and sanitation and on other related rights and that meet at least one of the following criteria: (1) wide land use and/or large modification of water resources; (2) long-implementation period. OHCHR, 'The impact of mega-projects on the human rights to water and sanitation,' available at

<< <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/MegaProjects.aspx> >> accessed on 10 March 2019.

§ 3 In the area of business and human rights, Al-Haq has highlighted both state and business complicity in human rights violations, including acts that may rise to the level of war crimes, in the OPT. This focus has included mega-projects such as the construction of the Annexation Wall, the Jerusalem light rail and infrastructure projects tied to the settlement enterprise in the occupied West Bank⁴ as well as recent expansion of service supply to illegal Israeli settlements in the West Bank.⁵

2. Impacts of Mega-Projects on the Right to Water and Sanitation and Other Human Rights Principles (Question 2)

§ 4 While assessing mega-projects in the OPT, it is paramount to consider that the entire OPT, comprising the West Bank, including East Jerusalem, and the Gaza Strip is occupied by Israel, to which IHL and concurrently IHRL apply.⁶ East Jerusalem remains an integral part of the West Bank under the continued application of the Fourth Geneva Convention.⁷ The human rights obligations of Israel within the OPT stem from the jurisdiction and effective control exercised by Israel as the occupying power,⁸ asserted in relevant resolutions of the UN General Assembly,⁹ in reports of the UN Secretary-General,¹⁰ and the UN High Commissioner for Human Rights,¹¹ and by various human rights treaty bodies,¹² and despite of the fact that Israel has

⁴ Al Haq, 'French Company Withdraws from Jerusalem Light-Rail' (2 July 2018) available at: << <http://www.alhaq.org/advocacy/topics/business-and-human-rights-focus/1277-french-company-withdraws-from-jerusalem-light-rail> >> accessed on 10 March 2019.

⁵ Al Haq, 'Al-Haq Communicates with Honda Regarding its Operations in the Occupied Palestinian Territory (OPT),' available at: << <http://www.alhaq.org/advocacy/topics/business-and-human-rights-focus/1223-al-haq-communicates-with-honda-regarding-its-operations-in-the-occupied-palestinian-territory-opt> >> accessed on 10 March 2010.

⁶ UNHRC, 'Human rights situation in the Occupied Palestinian Territory, including East Jerusalem,' (27 February-24 March 2017) UN Doc A/HRC/34/38 para. 10; ICJ, Legal Consequences of the Construction of a Wall, para. 101, 106; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) ICJ Rep 1996, 226, para. 25; See Common Article 2 Geneva Conventions: "[t]he Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." It establishes that the offense might be perpetrated even when foreign occupation was not met by substantial military resistance, or in instances where resistance subsided a long time prior to the exploitation of natural resources.

⁷ UNSC Res 478 (20 August 1980) UN Doc S/RES/478; UNSC Res 476 (30 June 1980) UN Doc S/RES/476; UNGA Res 70/88 (15 December 2015) UN Doc A/RES/70/88.

⁸ UNSG, 'Human rights situation in the Occupied Palestinian Territory, including East Jerusalem,' (13 April 2017) UN Doc. A/HRC/34/38 para 6.

⁹ UNGA Res 71/98 (23 December 2016) UN Doc A/RES/71/98.

¹⁰ UNSG, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan,' (25 August 2014) UN Doc A/69/348, para. 5; UNSG, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan,' (9 March 2015) UN Doc A/HRC/28/44, para. 6.

¹¹ UNGA, 'Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 7/1,' (6 June 2008) A/HRC/8/17, para. 7; UNGA, 'Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolution S-9/1,' (19 August 2009) UN Doc A/HRC/12/37, paras. 5-6.

¹² UNHRC, 'General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para. 10; See also UNCommESC, 'Concluding observations of the Committee on Economic, Social and Cultural Rights,' (26 June 2003) UN Doc E/C.12/1/Add.90 para. 31. UNHRC, 'General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para. 10; See also UNCommESC, 'Concluding observations of the Committee on Economic, Social and Cultural Rights,' (26 June 2003) UN Doc E/C.12/1/Add.90 para. 31. UNHRC, 'General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para. 10; See also UNCommESC, 'Concluding observations of the Committee on Economic, Social and Cultural Rights,' (26 June 2003) UN Doc E/C.12/1/Add.90 para. 31.

rejected the applicability of its human rights obligations outside its national territory.¹³ The following legal frameworks apply to situations of belligerent occupation and are complementary.

§ 5 Under IHL, with the exception of demanding proportionate requisitions for the occupying power's needs enshrined in Article 52 of the Hague Regulations, Article 46 and 56 of the Hague Regulations as well as Article 53 of the Fourth Geneva Convention and ICRC Rule 51 prohibit the confiscation of private property within the occupied territory. Article 53 and 55 of the Hague Regulations protect publicly owned water resources. The three Palestinian water resources in the OPT; the Mountain and Coastal Aquifers and the Jordan River, constitute immovable public property. Therefore, they are protected under two exceptions: a) the rule of usufruct applicable to immovable property, and b) the seizure of moveable property only for military needs.¹⁴ As a result, Israel has the right to use groundwater systems classified as public immovable property.¹⁵ Yet, its use must correspond to the local population's needs¹⁶ without seeking Israel's own economic benefit.¹⁷ Overexploitation that renders groundwater a non-renewable resource undermines those requirements.¹⁸

§ 6 The protection of natural resources and natural environment in occupied territory are provided for under Articles 35(3) and 55 of Additional Protocol I. Article 35(3) prohibits Israel from "employ[ing] methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment."¹⁹

§ 7 According to General Comment 15 by the UN Committee on Economic, Social and Cultural Rights, the right to water is defined as "right to access water of adequate quality and in sufficient quantity to meet human needs," governed by the principles of non-discrimination and non-interference with existing water supplies.²⁰ Being legally binding²¹ and self-standing,²² this right "entitles everyone to sufficient,

'Concluding observations on the fourth periodic report of Israel,' (21 November 2014) UN Doc CCPR/C/ISR/CO/4, para. 5.

¹³ UNCommESC, 'Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel,' (4 December 1998) UN Doc E/C.12/1/Add.27, para. 8. See also ICJ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) 9 July 2004 available at << <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm> >> accessed on 10 March 2019 para. 112.

¹⁴ M Tignino, 'Water, International Peace, and Security' (2010) 92 IRRC 879, 664.

¹⁵ H Dichter, 'The Legal Status of Israel's Water Policies in the Occupied Territories' 35 HILJ 565.

¹⁶ Benvenisti E, 'Water Conflicts during the Occupation of Iraq' (2003) 97 AJIL 869.

¹⁷ Flick et al. US Military Tribunal Nuremberg Judgment of 22 December 1947 para 226.

¹⁸ I Scobbi, 'Natural Resources and Belligerent Occupation: Perspectives from international humanitarian and human rights law' in Akram S, Dumper M, Lynk M, Scobbie I (eds) in *International Law and the Israeli-Palestinian Conflict* (1st edn. RL 2011), 279-282.

¹⁹ ICRC, 'Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict,' available at: << <https://www.icrc.org/en/doc/resources/documents/article/other/57jn38.htm> >> accessed on 6 January 2019.

²⁰ UNCESCR, 'General Comment 15' (20 January 2003) UN Doc. E/C.12/2002/11 para 37(b).

²¹ UNCHR, 'Human Rights and Access to Safe Drinking Water and Sanitation' (24 September 2010) UN DocA/HRC/15/L.14 .

safe, acceptable, physically accessible and affordable water”²³ as part of an adequate standard of living under Article 11(1) and as a right to the highest standard of health in Article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). The right to water is essential for the enjoyment of all human rights,²⁴ and the right to life enshrined in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).²⁵

§ 8 Not only states, but also corporations, have obligations to respect the right to water of individuals and communities.²⁶ The right implies the access to the infrastructure for the provision of water such as "the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water."²⁷ Affordability, accessibility and availability, as human rights criteria, require that the use of water, sanitation and hygiene facilities and services is accessible at a price that is affordable to all people.²⁸ In this context, availability means "the water supply for each person must be sufficient and continuous for personal and domestic uses."²⁹ Accessibility to water services implies physical accessibility, economic accessibility, non-discrimination and information accessibility.³⁰ A fully-fledged implementation of the human right to water requires that all four elements be included.³¹ The right to water and sanitation is inextricably related to human dignity.³²

§ 9 Under International Water Law (IWL), Article 5 UN Watercourses Convention (UNWC) enshrines the principle of “optimal”³³ reasonable and equitable watercourse usage.³⁴ This includes the right to utilise the watercourse. Each riparian state to an international watercourse is entitled to make use of the waters of an international watercourse within its own territory. The relevant factors to be considered are the social and economic needs of the affected watercourse states

²² Leeb C, ‘The Right to Water in Transboundary Context: Emergence of Seminal Trends’ (2012) 37 WI 6, 643.

²³ UNCESCR (n 20) para 2.

²⁴ UNCESCR (n 20) para 3.

²⁵ UNGA, ‘The human right to water and sanitation,’ UN Doc Res 64/292 (3 August 2010) para 1. UNHRC ‘Compilation of Gen. Comments and Gen. Recommendations Adopted by Human Rights Treaty Bodies,’ UN Doc HRI/GEN/I/Rev.1 para 6.

²⁶ ECOSOC, ‘Substantive Issues Arising in the Implementation of the Int'l Covenant on Econ., Soc. and Cultural Rights: The Right to Water,’ (Jan. 20, 2003) UN Doc E/C.12/2002/11 33.

²⁷ ECOSOC, ‘Substantive Issues,’ (n 26) 10; This is also reflected in Goal 6 of the 2030 Agenda for Sustainable Development, see Goal 6, 2030 Agenda for Sustainable Development, available at <<
<https://sustainabledevelopment.un.org/sdg6> >> accessed on 10 March 2019.

²⁸ UNHRC, ‘The human rights to safe drinking water and sanitation’ (29 September 2016) UN Doc A/HRC/RES/33/10 para 1; OHCHR, ‘Factsheet: Right to Water (FAQ) available at: <<
https://www.ohchr.org/Documents/Issues/Water/FAQWater_en.pdf >> accessed on 10 March 2019, 1.

²⁹ ECOSOC, ‘Substantive Issues,’ (n 26) para 12.

³⁰ Ibid.

³¹ Cernic JL, ‘Corporate Obligations Under the Human Right to Water’(2011) 39 DJILP 2, 315.

³² UNHRC, ‘The human right to safe drinking water and sanitation’ (2 October 2014) UN Doc. A/HRC/RES/27/7; See UNGA Res 64/292 (28 July 2010) UN Doc A/64/292; UNGA Res 68/157 (18 December 2013) UN Doc A/68/157.

³³ Gabčíkovo-Nagymaros (Judgment) (1997) ICJ Rep 7 para 78, 85, 147 and 150.

³⁴ Pulp Mills on the River Uruguay, Argentina v Uruguay (2006) ICJ Rep 113 para 68.

concerned.³⁵ Non-discrimination and equality are fundamental human rights principles that prohibit inequalities in the realization of the right to safe drinking water and sanitation.³⁶

§ 10 A set of zoning and planning policies and military orders by Israel, including Military Order 418, Military Order No. 92, Proclamation No. 2, Military Order No. 291 and Military Order No 158, contribute to preventing Palestinians from accessing their water resources. The various discriminatory practices, including physical barriers, obstructing Palestinians' freedom of movement, as well as the appropriation and confiscation of Palestinian land and natural resources, play a role in restricting and denying Palestinians from extracting their own groundwater resources. In addition, between 2013 and 2018 the total number of demolitions of water structures amounted to 143 in the West Bank, including 98 wells have been documented.³⁷ In the Gaza Strip, water and sewage infrastructure have been subject to attacks and targeting, especially during the 2014 offensive.³⁸ Meanwhile, since 1967, no new Palestinian wells have been drilled in the Western Aquifer Basin of the Mountain Aquifer in the West Bank.

§ 11 Mega-Projects are directly or indirectly are involved along the water supply chain in the development and maintenance of a water system, which strengthens Israeli control over the West Bank, favours Israeli settlers and ignores the basic needs and right to water and sanitation and even the mere presence of the occupied Palestinian population.

a) National Water Carrier (NWC)

§ 12 The mega-project of the National Water Carrier (NWC) designed by *Tahal International* headquartered in the Netherlands, and operated by the water company, *Mekorot*, a fully government-owned company, which is under the responsibility of the Israeli Ministry of Infrastructure, Energy and Water,³⁹ is endemic to the unequal and discriminatory supply of water to Palestinian communities in the OPT. As of 2019, Mekorot is the largest single water supplier in the OPT since 1982 and has undertaken all the supply of water within the West Bank. Mekorot controls 42 wells inside the West Bank⁴⁰ and supplies illegal Israeli settlements inside the West Bank and East

³⁵ Article 6 UN Watercourses Convention.

³⁶ UNHRC (n 32).

³⁷ Internal Documentation by Land Resource Center (LRC), received January 2019.

³⁸ Al-Haq, 'Divide and Conquer – A Legal Analysis of Israel's 2014 Military Offensive Against the Gaza Strip' (2015) 67.

³⁹ Crunchbase, 'Mekorot' available at: << <https://www.crunchbase.com/organization/mekorot> >> accessed on 10 March 2019.

⁴⁰ Palestinian Water Authority (PWA), 'Israeli Violations to Palestinian Right to Water.' (Internal Document) received on 8 March 2019.

Jerusalem with water. Mekorot frequently and arbitrarily cuts water supply to Palestinian communities.⁴¹

§ 13 Since the construction of the NWC in 1964, Palestinians have been denied access to any extraction of water from the Jordan River.⁴² Israel controls 100 per cent of the waters of the Jordan River, from which 80 per cent of the water was allocated for agricultural use, while about 20 per cent was allocated for drinking water within Israel. In 2018, up to 72,000 m³/h flow through the NWC, which is altogether 1.7 mcm daily. Israel diverts the lower Jordan River to Israel's coastal plain and then to the Naqab (Negev) desert in the south, with major repercussions today for the health of the ecosystem.⁴³ The NWC denies Palestinians their right to internationally shared transboundary water resources under IWL. Continuous denial of access to the Jordan River contradicts necessary cooperation under IWL's customary principles including the equitable and reasonable allocation of transboundary water resources.

§ 14 The NWC has a severe impact on Palestinians' right to water and sanitation. 220 l/d/c are allocated to Israeli households for domestic use per person per day. In contrast, almost one quarter of the Palestinian communities who are connected to the same water network receive less than 50 litres per person per day. In rural communities, Palestinians survive on 20 litres per day, the minimum amount recommended by the WHO for emergency situations response,⁴⁴ involving significant health concerns.⁴⁵

§ 15 The discriminatory water supply to Palestinian communities by the water company Mekorot systemically violates their right to water and sanitation since water is not sufficient, physically accessible, of an adequate quality or affordable. Furthermore, Mekorot systematically discriminates against Palestinians, violating the right to water supply and management system, which prevents equality of opportunity to enjoy the right to water.⁴⁶

b) The Construction of the Annexation Wall (2002)

⁴¹ Hass A, 'Under Israeli Occupation, Water Is a Luxury' (Haaretz, 24 February 2019) accessed on 10 March 2019; Peter Yeung, "Ramadan 2016: Israel 'cuts off water supply to West Bank' during Muslim holy month" Independent (15 June 2016), available at: << <https://www.independent.co.uk/news/world/middle-east/ramadan-2016-israel-water-west-bank-cuts-off-a7082826.html> >> accessed on 10 March 2019.

⁴² Palestinian Central Bureau of Statistics (PCBS), 'The Palestinian Central Bureau of Statistics (PCBS) and the Palestinian Water Authority (PWA) Issue a Press Release on the Occasion of World Water' (21 March 2019) available at << http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_21-3-2018-water-en.pdf >> accessed on 10 March 2019, 1.

⁴³ Howe C M, 'Water Scarcity and Increased Instability,' (2010) available at << <https://apps.dtic.mil/dtic/tr/fulltext/u2/a603000.pdf> >> accessed on 10 March 2019.

⁴⁴ WHO, 'How much water is needed?' available at << http://wedc.lboro.ac.uk/resources/who_notes/WHO_TN_09_How_much_water_is_needed.pdf >> accessed on 10 March 2019.

⁴⁵ OHCHR (n 28).

⁴⁶ ECOSOC, 'Substantive Issues,' (n 26) 10.

§ 16 In 2002, Israel began the construction of a segregation barrier impacting Palestinian access and right to water, among other rights. The path that the Wall has taken through the West Bank is resulting in massive land confiscation and the destruction of cultivated lands (olive and citrus trees, greenhouses, irrigation pipe lines, etc.). More than 395,000 residents (17.8 per cent of the Palestinian population) are trapped or will be trapped between the Wall and the green line.⁴⁷ The Wall is part of a complex strategy of annexation of Palestinian land. The Wall and its associated regime are illegal and States have an obligation to not recognize as lawful an internationally wrongful act such as annexation.

§ 17 The Wall's positioning has allowed for the takeover of Palestinian wells, springs and cisterns that Palestinians have depended on for centuries. The Wall captures most of the few future potential Palestinian abstraction zones of the Western Aquifer. The Wall stands to cut Palestinians off from areas that would yield an additional 90 million cubic meters of water annually. Thirty-six groundwater wells and over 200 cisterns have been isolated from their communities by the Wall with an additional 14 wells threatened for demolition in the Wall's "buffer zone" by 2017.⁴⁸ The Wall has further captured a great deal of rich farmland to the Israeli side of the Wall. At least 115 Palestinian towns and villages have so far been directly affected by the Wall, cutting them off from their land and resources, such as water. If Palestinians had access to only half of the sustainable yield of the Western Aquifer, Palestinians total water supply in the West Bank would double.⁴⁹ Therefore, the Annexation Wall violates "the right to maintain access to existing water supplies" and "the right to be free from interference" necessary for the right to water.⁵⁰

c) The New National Water Carrier and the Red-Dead-Sea Conveyance

§ 18 By virtue of the ongoing occupation, Israel has forced the dependence of Palestinians on bulk water purchases from Mekorot.⁵¹ Palestinians have bought extracted water from the Mountain Aquifer and the Jordan River by Mekorot to cover their basic needs, which Palestinians should be able to extract themselves. Under the Oslo Accords, the Palestinian demand for the interim five years period was 118 m³ per year to be extracted from previously unused sources in the eastern basin of the Mountain Aquifer. However, between 1996 – 2018, out of the 200 mcm of water (118 mcm + 78 mcm) that Israel was obliged to provide to the Palestinians, in line with the provisions of the Oslo Accords II, only 95 mcm were provided as of 2018.⁵² The quantity of water purchased from Mekorot increased from 60.3 mcm/a (55.4 mcm/a

⁴⁷ PWA, 'Israeli Violations to Palestinian Right to Water' (n 40).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ ECOSOC, 'Substantive Issues,' (n 26) 10.

⁵¹ World Bank, 'Securing Water for Development in the West Bank and Gaza,' (2018) Working Paper available at: << <http://documents.worldbank.org/curated/en/736571530044615402/Securing-water-for-development-in-West-Bank-and-Gaza-sector-note> >> accessed on 10 March 2019, 4.

⁵² Al Haq, Internal Documentation 2019.

for the West Bank and 4.9 mcm/a for Gaza) in 2010 to 79.1 mcm/a (69.0 mcm/a for the West Bank and 10.1 mcm/a for Gaza) in 2016. More than 70 per cent of communities located entirely or mostly in Area C are not connected to a water network and rely on tankered water at vastly increased cost.⁵³ Tankered water costs up to 12 times as much as water from the tap in 2019 and carries increased risk of water-borne disease.⁵⁴

§ 19 In this context, desalinated water, transported from the various desalination plants through the “New National Water Carrier” used for additional water supply to Palestinian communities serves as an argument for increasing costs per 1m³ of purchased water.

The New National Water Carrier is a water conduit system constructed by *EMS Mekorot Projects* that links all the desalination plants within Israel.⁵⁵ Jerusalem has also been connected to the New National Water Carrier as part of this pipeline system. In 1999, the Israeli government initiated a long-term, large scale SWRO (Sea Water Reverse Osmosis) desalination program.⁵⁶ The initial target capacity of 50 million cubic meters (MCM) per year was re-set in 2002, to 400 MCM/year. Additional drought conditions led to a further increase in target capacity to 750 MCM/year to be reached by the year 2020.⁵⁷ Desalination plants currently produce 585 million cubic meters of water a year.⁵⁸

§ 20 The 2013 Red-Dead-Sea Conveyance, signed on 9 December 2013 in Washington DC also contributes to the increasing costs of purchased water. In 1981, the UN declared that the Israeli project to build a canal linking the Mediterranean Sea and the Dead Sea breaches the fundamental rights and duties of States, causing direct and irreparable damage to the rights of the Palestinian people, in violation of international law.⁵⁹ Companies, governmental and non-governmental organizations

⁵³ Palestinian Central Bureau of Statistics, ‘Quantity of Water Purchased From Israeli Water Company (Mekorot) in Palestine by Year and Governorate,’ available at <<

<http://www.pcbs.gov.ps/Portals/Rainbow/Documents/water-E5-2016.html> >> accessed 11 January 2019.

⁵⁴ PWA, ‘Israeli Violations to Palestinian Right to Water’ (n 40).

⁵⁵ EMS Mekorot Projects Ltd, ‘The New National Water’ available at <<

<http://www.emsmekorotprojects.com/?CategoryID=300> >> accessed on 10 March 2019.

⁵⁶ Israeli Ministry of Finance, ‘Background: Seawater Desalination in Israel’ available at <<

https://mof.gov.il/en/InternationalAffairs/InfrastructuresAndProjects/Projects/Pages/Background_DesalinationInIsrael.aspx >> accessed on 10 March 2019.

⁵⁷ Israeli Water Authority, ‘Sea Water Desalination in Israel: Planning, coping with difficulties, and economic aspects of long-term risks,’ (October 2010) available at <<

<http://www.water.gov.il/hebrew/planning-and-development/desalination/documents/desalination-in-israel.pdf> >> accessed on 10 March 2019.

⁵⁸ Globes, ‘Israel failing to meet desalination targets,’ available at << <https://en.globes.co.il/en/article-israel-failing-to-meet-desalination-targets-1001251056> >> accessed on 10 March 2019.

⁵⁹ UNGA, ‘Israel’s Decision to Build a Dead Sea Mediterranean Canal’ (16 December 1981) UN Doc A/36/150; See also UNGA Res 38/85 (15 December 1983) UN Doc A/38/85.

were urged not to assist, directly or indirectly, in preparations for and execution of this project.⁶⁰

§ 21 The 2013 Red-Dead-Sea Conveyance allows for the diversion of the Jordan River's upstream flow contributing to an irrevocable drop of the Dead Sea's water level. The Red-Dead-Sea Conveyance is implemented in occupied territory, not for the benefit of the occupied population, but for the benefit of Israel, who shares a contiguous Dead Sea resource with Palestine. Israel prevents Palestinians from accessing their side of the Jordan River through military checkpoints, and the designation of the surrounding land as closed military and military training areas. The Palestinian Authority purchased about 79m³ in 2016 and agreed under the Red-Dead Sea conveyance project to get another 32m³ with a demand for an additional 34m³. If these deals are agreed and implemented, the Palestinians will purchase about 145m³ from Mekorot.⁶¹ Although the price for the West Bank additionally purchased water should not accede the price enshrined in Article 10 of the Protocol Relating to Water Supply of 2012, which corresponds to 2.8 NIS/m³ in the West Bank and 2.5 NIS/ m³ in Gaza,⁶² the Red-Dead-Sea Conveyance will lead to the increase of costs for additionally purchased water from 2.6-2.8 NIS/m³ to 3.3 NIS/m³ for the West Bank and 3.2 NIS/m³ for Gaza of 10-13 per cent of the overall water supply to the Palestinian Water Authority (PWA).⁶³ As a result, the price for water for some of these communities is as high as 20 NIS/m³, who experience an increased vulnerability due to unavailability of water, unaffordability of water through high economic costs for its purchase and the poor quality of water in water tanks.⁶⁴ As such, the aforementioned mega-projects contribute to the broader discriminatory water infrastructure which negatively impacts the right to water and sanitation.

d) The Fifth Water System to Jerusalem

§ 22 The Fifth Water System to Jerusalem, as a mega-project undertaken by *EMS Mekorot Project Ltd*, carried out by the German-Austrian based private company *Joint Venture Züblin-Jäger* was approved by the National Infrastructures Committee as a national infrastructure project. The project is expected to alleviate future water supply needs for both the City of Jerusalem and its surrounding areas. The project is to be completed in 2065 when the water consumption is expected to top 1.65 million cu. m. per day, compared to the current consumption of about 340,000 m³ per day.⁶⁵

⁶⁰ UNGA Israel's Decision to Build a Dead Sea Mediterranean Canal' (16 December 16 1982) UN Doc A/37/122 para 4.

⁶¹ World Bank (n 51) 4.

⁶² Interview with Shaddad Attali, 24 January 2019. Internal Document.

⁶³ Interview with Shaddad Attali, 24 January 2019. Internal Document.

⁶⁴ UN OCHA, '46 Bedouin Communities at Risk of Forcible Transfer in the Central West Bank: A Vulnerability Profile' available at: <<

<https://www.ochaopt.org/page/46-bedouin-communities-risk-forcible-transfer-central-west-bank-vulnerability-profile> >> accessed on 10 March 2019.

⁶⁵ Ibid.

The long-term project exceeds temporary conservationist principle of Article 43 of the Hague Regulations.

§ 23 The project does also supply water to illegal Israeli settlements.⁶⁶ The Fifth Water Pipeline's construction is entirely within Israeli territory; however, it is connected to the general Jerusalem water infrastructure operated by Hagihon Company, which supplies illegal Israeli settlements. Hagihon builds and operates Jerusalem's waste-water treatment system, including the Western Sewage Treatment Plant (Sorek), serving the settlements around Jerusalem such as Giv'at Ze'ev and Beithar Iilit. The Eastern Sewage Treatment Plant (Nebi Mussa) treats sewage from the illegal Israeli settlements of Ma'aleh Adumim, Ma'aleh Adumin Industrial Zone and from a few more illegal Israeli settlements in the West Bank.⁶⁷

§ 24 Furthermore, the water transported through this pipeline is connected to water pipelines running through the West Bank that have been established without the approval of the Palestinian-Israeli Joint Water Committee (JWC) such as the Masouh pipeline in the Jordan Valley, the Water pipeline for Mekhmas settlement, the Beit El pipeline in Ramallah.⁶⁸ Many of Israel's illegal settlements in the West Bank, contain industries that are using and polluting local water resources.⁶⁹ Water supply is at risk as a result of domestic and industrial sewage originating from Israeli settlements, which cause negative consequences for Palestinians' right to water and sanitation. Moreover, by changing the water infrastructure those mega-projects contribute to the entrenching of the illegal annexation of the area.

3. Macro Planning

§ 25 In terms of the integration of the aforementioned mega-projects into the Israeli national agenda, this enterprise clearly fits into broader Israeli practices of land grab and forced displacement of entire Palestinian communities, including Bedouin communities, by creating coercive environments.⁷⁰ In terms of the violations of international law, the mega-projects contribute to the illegal expansion of settlements, to the annexation of Palestinian land, particularly in Area C, and to the discriminatory practices against Palestinians through the involvement of corporate actors along the water supply chain. Ultimately, those practices, deny entire Palestinian communities the right to affordable and accessible water, leading to their forcible transfer. The practices of denial of water resources are used to trigger forced displacement, particularly in agricultural areas affected by settlement expansion. Those practices

⁶⁶ EMS Mekorot projects Ltd, 'The Fifth Water System to Jerusalem' available at << <http://www.emsmekorotprojects.com/?CategoryID=301> >> accessed on 10 March 2019.

⁶⁷ Who Profits, 'Hagihon Company' available at << <https://whoprofits.org/company/hagihon-company/> >> accessed on 10 March 2019.

⁶⁸ PWA, 'Israeli Violations to Palestinian Right to Water' (n 40).

⁶⁹ Ibid.

⁷⁰ UNSG, 'Human rights situation in the Occupied Palestinian Territory, including East Jerusalem' (13 April 2017) UN Doc A/HRC/34/38 para 23, 24, 28.

present a flagrant violation of customary humanitarian law; Rule 129 (A) and Rule 130. This is reiterated in Article 49 of the Fourth Geneva Convention, constituting a grave breach pursuant to Article 85(4)(a) of the 1977 Additional Protocol I, for which there may be individual criminal liability under Article 8(2)(b)(viii) of the 1998 Rome Statute.

4. Licensing and Approval

§ 26 States have the primary responsibility to ensure the full realization of all human rights and an effective remedy for violations of economic, social and cultural rights, including the rights to safe drinking water and sanitation.⁷¹ The granting of licensing or approval for mega-projects is entirely carried out by the Israeli government, which therefore is liable for the human rights violations committed in relation to those mega-projects. The approval of construction and operation do not state any focus on guaranteeing relevant human rights standards or incorporate any human rights perspective in relation to the right to water of Palestinians.⁷² (*Question 15*).

5. Conclusion and Recommendations

§ 27 The aforementioned mega-projects negatively impact the right to water and sanitation of Palestinians in the OPT. The mega-projects in questions further contribute to violations of IHRL, IHL and IWL. The mega-projects initiated by Israel consist in a violation of its primary obligation as occupying power to create an environment conducive to the realization of human rights, including the right to water and sanitation.⁷³ Moreover, the mega-projects lead to negative repercussions for economic activities of Palestinians and therefore impede the realization of related economic, social and cultural rights, as well as the fundamental right to self-determination and sovereignty over natural resources.⁷⁴

§ 28 In light of the aforementioned, Al-Haq:

- i. Stresses the importance of paying special attention to mega-projects in situations of conflict and occupation and their multi-layered impact considering the environment they are operating in, as well as the support they receive from the occupying power, in this case Israel. This should be

⁷¹ UNHRC, 'The human rights to safe drinking water and sanitation' (A/HRC/RES/33/10) UN Doc A/HRC/RES/33/10 para 6-8.

⁷² An ecological and environmental-friendly but not a human rights-friendly approach is indicated as standards for the projects' operation; See EMS Mekorot projects Ltd (n 66).

⁷³ OHCHR (n 28).

⁷⁴ World Bank, World Bank, 'Economic Effects of Restricted Access to Land in the West Bank' (21 October 2018) available at <<

<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconomicEffectsofRestrictedAccessToLandintheWestBankOct.21.08.pdf> >> accessed on 10 March 2019.

particularly considered in relation to mega-projects concerned with natural resources, often being a main driver of conflict.

- ii. Calls for identifying and holding accountable States and corporate actors involved in the aforementioned mega-projects, which either directly or indirectly contribute to the complex practices of deprivation of water resources from Palestinians profiting from the overall system of human rights violations installed by the Israeli occupation.
- iii. Highlights the urgent need for the State and corporations to abide by prevalent obligations under IHRL and IHL in relation to those mega-projects that have already been under construction and or operation, and call on the State of Israel to immediately terminate them.
- iv. Considers that mega projects produce long term and permanent effects in occupied territory, in violation of the principle of territorial integrity and the right of self-determination and permanent sovereignty of the occupied population over natural resources.
- v. Warns that the implementation of mega projects in the occupied Palestinian territory, and the diversion and use of Palestinian water resources for the benefit of the Occupying Power, may amount to an excessive usufruct, and the crime of pillage.