

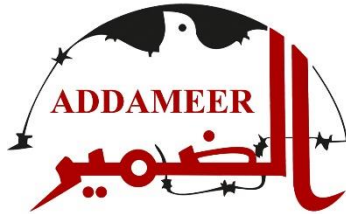
**Joint Submission to the Expert Mechanism on the Rights of Indigenous Peoples on Israel's
Discriminatory Planning and Zoning Regime and its Impacts on the Palestinian People**

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1. This submission is prepared in response to a call for inputs issued by the United Nations (UN) Expert Mechanism on the Rights of Indigenous Peoples for its upcoming global study on the impact of militarisation on the rights of Indigenous Peoples.ⁱ Noting that this submission is to be read in conjunction with our submission ‘on the indigeneity of the Palestinian people’ dated 31 January 2023, this joint submission addresses Israel’s discriminatory planning and zoning policies, and their impact on the lives of indigenous Palestinian people.
2. Since its establishment, the State of Israel has used militarisation as a tool to displace, fragment, and discriminate the indigenous Palestinian people and to establish and consolidate its control over Palestinian land. While such policies are particularly evident in the Palestinian territory militarily occupied by Israel in 1967—i.e., West Bank, including the eastern part of occupied Jerusalem, and the Gaza Strip, collectively known as the occupied Palestinian territory (OPT)—Israeli authorities have also instituted aggressive planning and zoning policies targeting Palestinians within the Green Line, particularly in the Naqab.
3. As of 2022, Israel has declared approximately 20% of the OPT as closed military zones, which has increased by two percent over the last 10 years.ⁱⁱ While more than half of Area C within the OPT (1.765 million dunams) has been officially designated as closed military zones, most of these military zones are not used for military purposes, but are instead created for Israeli settlers to establish and expand illegal Israeli colonial settlements, including on private Palestinian land.ⁱⁱⁱ
4. On the surface, Israel’s established military zones are created for the purpose of military trainings, but are, in reality, constructed as a part of a larger strategy to re-engineering the demographics as to ensure Jewish-Israeli demographic majority on all lands under its control. Indeed, classified Israeli government documents have revealed that Israel has used the establishment of military firing zones within the OPT as a mechanism for seizing land for the benefit of Israeli settlers, to be used for the non-military purpose of establishing and expanding illegal Israeli colonial settlements—a war crime under the Rome Statute of the International Criminal Court.^{iv}
5. Quasi-governmental entities, such as the Jewish National Fund and the World Zionist Organization, have continually played a role in expropriating Palestinian land and managing its allocation to colonial settlements.^v In August 2022, the Jewish National Fund voted to allocate NIS 61 million for the purchase of land owned by Palestinians in the Jordan Valley, located on a closed military zone.^{vi}
6. Masafer Yatta, located in the southern hills of Hebron, is home to around 1,700 indigenous Palestinians, who have been living in the region since before *al-Nakba* of 1948, in small, remote communities that have traditionally relied on pastoral and agricultural practices. Since 1980, twelve communities in the Masafer Yatta region, have been under the risk of displacement and dispossession as the Israeli occupying authorities declared the communities as a closed military area, known as ‘Firing Zone 918’.^{vii} In practice, declaring Masafer Yatta as a closed military zone was ultimately intended to forcibly transfer Palestinians from their homes.^{viii} Notably, while Palestinian residents of the so-called ‘Firing Zone 918’ have been at risk of forced eviction, demolition, and forcible transfer, Israeli settlers have been allowed to illegally and discriminatorily operate parts of Israeli colonial settlements inside ‘Firing Zone 918’.^{ix}

7. The legal battle of the Masafer Yatta residents continued for two decades, only ending on 4 May 2022 when the Israeli High Court of Justice rejected appeals against the eviction orders of eight communities within Masafer Yatta, effectively allowing arbitrary and forcible displacement of dozens of indigenous Palestinian residents.^x These acts amount to a war crime under Article 8(2)(a)(vii) of the Rome Statute to the International Criminal Court and a grave breach of the Fourth Geneva Convention of 1949. Between 2019 and April 2022, the IOF demolished 68 homes in Masafer Yatta region, including in the so-called ‘Firing Zone 918’, resulting in the displacement of 356 Palestinians, including 144 children.^{xi} Further, on 21 August 2022, the High Court of Justice rejected a petition to appeal the demolition of two schools and 32 residential facilities in the Masafer Yatta area.^{xii} Israeli military operations and trainings in the area, coupled with expanding colonial settlements and acts of settler violence have worsened the living conditions of the residents.^{xiii}
8. Israel continuously strips land and natural resources away from Palestinians, stifling the development of economic growth and cultural identity of Palestinians. One such affected resource is water. In areas declared as closed military zones, nearby Palestinian farmers and communities are not only deprived from accessing their land located within those military zones, but often have their water structures (such as wells) that fall within those military zones, confiscated from them.^{xiv} Additionally, one of the three main water resources in the OPT, the Mountain Aquifer, is the only region where the natural groundwater flow does not carry underground water beyond the Green Line. Thus, Israeli companies, such as Mekorot, use groundwater extraction to appropriate this water and supply it to its illegal settlements, in violation of the Fourth Geneva Convention.^{xv} These water rich areas have been incorporated into Israeli firing zones and military areas to maximise unimpeded drilling of the wells and water extraction, while denying Palestinian access and permanent sovereignty over their natural resources.^{xvi}
9. In the occupied Gaza Strip, Israel unilaterally imposes maritime and land “buffer zones”, widely known as “access restricted areas” (ARA), which are no-go military areas on Palestinian territory. The Israeli military enforces the access restrictions by targeting civilian individuals, properties, and objects with various types of weaponry and artillery. In addition to the repeated attacks targeting them directly, Palestinian farmers working in the ARA are confronted with continuous raids by Israeli occupying forces and the destruction of their farmland through levelling, aerial spraying of herbicides, and the opening of water dams.
10. The *de facto*, initial implementation of the ARA by land started after September 2005, when Israel executed its unilateral withdrawal plan and vacated its formal presence in the Gaza Strip, ultimately re-deploying its occupying forces around the separation fence. The ARA was then formally imposed in 2008 when Israeli aircraft dropped leaflets over the Gaza Strip, warning Palestinian residents not to approach within 300 meters of the separation fence and threatening anyone doing so with a risk to their life. The message was further supported by a map showing the ARA along the eastern and northern perimeters of the Gaza Strip. Whilst Israel claims that it only enforces a 300-meter-wide buffer zone, facts on the ground demonstrate that its military enforces the ARA up to a distance of 1,500 meters from the separation fence. For instance, Israeli occupying forces continue to destroy 100 percent of agricultural lands and civilian, residential, agricultural, and industrial facilities within 500 meters from the fence, while targeting and bulldozing 75 percent of lands within a range of 1,000 meters. In practice, on land, the ARA covers approximately 62.6 km² of the Gaza Strip’s total 365 km². Notably, as Gaza’s width varies from

six to 12 km, the effective ARA covers about 35 percent of the total agricultural land of the Strip and 15 percent of its total area.

11. Besides the frequent levelling, clearing, and bulldozing of agricultural land, since 2014, Israel has engaged in “herbicidal warfare” against the Gaza Strip.^{xvii} This is carried out by routinely spraying herbicides and other chemicals from the air on the lands located in the buffer zone, damaging and destroying over years vast areas of land and Palestinian farmers’ crops.
12. The Palestinian fishing industry in Gaza suffers from Israeli-imposed restrictions on maritime and fishing zones, with frequent changes to the permitted nautical miles in which fishermen can work, severely affecting Palestinian fishermen and their families and contributing to further economic dependency and food insecurity in Gaza. Furthermore, the restrictions imposed on the fishing sector have resulted in overfishing and depletion of certain types of fish. It should be noted that Israeli-imposed restrictions on Gaza’s waters prevent Palestinians from accessing their natural gas sources, enabling Israel to expropriate Palestinian gas reserves, which serves its economic interests in the energy sector.
13. Israel’s institutional discriminatory legal framework has obscured the issue of Palestinian dispossession and refugees, while establishing structural inequality between Jewish Israelis and Palestinians on both sides of the Green Line. Laws such as the Absentee Property Law (1950), which allows the state to confiscate movable and immovable property deemed to be ‘absentee property,’ and the Legal and Administrative Matters Law (1970), which allows Israeli Jews to pursue claims to land and property allegedly owned by Jews in eastern part of occupied Jerusalem before the establishment of the State of Israel in 1948, are continually used to displace and dispossess Palestinians.^{xviii} These laws legalise and legitimise the dispossession of Palestinian land that took place during the periods of conquest while also facilitating future land grabs to appropriate Palestinian land.^{xix}
14. The Israeli authorities have also instituted aggressive planning and zoning policies targeting Palestinians within the Green Line, particularly in the Naqab, which deprive the indigenous Palestinian people of their rights to freedom of movement and residence, adequate housing, and access to and control over their land and other natural resources.^{xx} These policies have dramatically reduced the amount of land available for Palestinian use due to unlawful appropriation and designation of lands as closed military zones.
15. Since 1948, Israel has created only a handful of government-planned townships for Palestinians with Israeli citizenship, such as Palestinian Bedouin communities in the Naqab and the Galilee, while more than 900 Jewish-Israeli localities have been created.^{xxi} In order to confine such Palestinian towns and villages, within the Green Line, Israeli authorities have systematically designated the land surrounding as ‘security zones,’ Jewish regional councils, ‘national parks,’ nature reserves, and highways.^{xxii} As a result, 15-20% of homes in Palestinian towns and villages lack permits, putting some 60,000 to 70,000 Palestinian homes inside the Green Line at risk of demolition, while the state provides sufficient land and zoning permissions for Jewish Israelis, ‘to facilitate their growth.’^{xxiii}
16. Israel’s appropriation of Palestinian land and resources through its militarization policies is a violation of international law. Under international law, Israel, as an occupying Power, must only

act as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates.^{xxiv} Further, it must safeguard the capital of such properties and administer them in accordance with the rules of usufruct. Under the Hague Regulations and the Fourth Geneva Convention, Israel is prohibited from pillage, a war crime under the article 8 (2) (b) (xvi) of the Rome Statute, which applies to all types of property, whether belonging to private persons or to the State.^{xxv}

ⁱ OHCHR, ‘Call for Inputs: Study on “The impact of militarization on the rights of Indigenous Peoples’, at: <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-study-impact-militarization-rights-indigenous-peoples>.

ⁱⁱ OCHA, ‘Fact sheet: Masafer Yatta communities at risk of forcible transfer - June 2022’ (06 July 2022), at: <https://www.ochaopt.org/content/masafer-yatta-communities-risk-forcibletransfer-june-2022>; OCHA, ‘The humanitarian impact of Israeli declared ‘firing zones’ in the West Bank, (August 2012), at: https://www.ochaopt.org/sites/default/files/ocha_opt_firing_zone_factsheet_august_2012_english.pdf/.

ⁱⁱⁱ Kerem Navot, A Locked Garden: Declaration of Closed Areas in the West Bank, (March 2015), pp. 10–15.

^{iv} Yuval Abraham, ‘Classified document reveals IDF ‘firing zones’ built to give land to settlers’, +972 Magazine (11 July 2022), at: <https://www.972mag.com/firing-zones-sharon-settlements/>. The establishment of illegal Israeli colonial settlements has been internationally condemned under UN Security Council resolution 2334 (2016) as having “no legal validity” and constituting “a flagrant violation under international law”. See Articles 49, 147 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949; UN Security Council, Security Council resolution 2334 (2016) [on cessation of Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem], 23 December 2016, S/RES/2334 (2016); A/HRC/37/43, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, para 69.

^v Rania Muhareb, Elizabeth Rghebi, Pearce Clancy, Joseph Schechla, Nada Awad, and Maha Abdallah, *Israeli Apartheid: Tool of Zionist Settler Colonialism* (Al-Haq 2022) 11-12.

^{vi} Hagar Shezaf, ‘Israel recruited the Jewish National Fund to secretly buy Palestinian Land for settlers’, Haaretz, (15 July 2021), at: <https://www.haaretz.com/israel-news/2021-07-15/ty-article-magazine/.premium/israel-recruited-jewish-national-fund-to-secretly-buy-palestinian-land-for-settlers/0000017f-db3d-db5a-a57f-db7f4e1b0000>. See also Hagar Shezaf, ‘JNF approves funds to buy Palestinian-owned Jordan Valley land at Israel’s request’, Haaretz, (3 August 2022), at: <https://www.haaretz.com/israel-news/2022-08-03/ty-article/.premium/jnf-to-vote-on-buying-palestinian-owned-jordan-valley-land-at-israels-request/00000182-63be-d454-a5aa-e7bf717f0000>.

^{vii} Al-Haq Field Report, dated 11 May 2022.

^{viii} Ofer Aderet, ‘40-year-old Document Reveals Ariel Sharon’s Plan to Evict 1,000 Palestinians From Their Homes’ Haaretz (9 August 2020), at: <https://www.haaretz.com/israel-news/2020-08-09/ty-article/.premium/40-year-old-document-reveals-ariel-sharons-plan-to-expel-1-000-palestinians/0000017f-e4f9-d804-ad7f-f5fba0ee0000>.

^{ix} OCHA, ‘Fact sheet: Masafer Yatta communities at risk of forcible transfer - June 2022’ (06 July 2022) at: <https://www.ochaopt.org/content/masafer-yatta-communities-risk-forcibletransfer-june-2022>; Stop the Wall, ‘Defend Masafar Yatta’, at: <https://www.stophewall.org/right2exist/masafar-yatta/>.

^x OHCHR, ‘UN experts alarmed by Israel High Court ruling on Masafer Yatta and risk of imminent forcible transfer of Palestinians’ (16 May 2022), at: <https://www.ohchr.org/en/pressreleases/2022/05/un-experts-alarmed-israel-high-court-ruling-masafer-yatta-and-risk-imminent>.

^{xi} According to Al-Haq’s documentation.

^{xii} Wafa News Agency, ‘Israel’s top court rejects a petition against demolition of two schools, 32 homes in Masafer Yatta’ (21 August 2022), at: <https://english.wafa.ps/Pages/Details/130526>.

^{xiii} Al-Haq, ‘Virtual Field Visit: Firing Zone 918’, at: <https://www.alhaq.org/media/15717.html>.

^{xiv} Al-Haq Affidavit 428/2016, taken in Khirbet Samra District, Tubas on 16 June 2016.

^{xv} UNHRA, ‘Report of the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied since 1967’ (15 March 2019) UN Doc A/HRC/40/73, para. 51.

^{xvi} Al-Haq Legal Research and Advocacy Department Team, *Corporate Liability The Right to Water and the War Crime of Pillage* (Al-Haq 2022) 28.

^{xvii} Forensic Architecture, *Herbicide Warfare in Gaza*, available at: <https://forensic-architecture.org/investigation/herbicide-warfare-in-gaza>.

^{xviii} Absentees’ Property Law of 1950; Administrative Matters Law, 5730-1970.

^{xix} Supra n. 3 at 106-108.

^{xx} Articles 5(d)(i) and 5(e)(iii), ICERD; Article 1(2), ICESCR and ICCPR.

^{xxi} Human Rights Watch, *Discriminatory Land Policies*.

^{xxii} *Ibid.*

^{xxiii} *Ibid.*

^{xxiv} Article 55 of the Regulations respecting the Laws and Customs of War on Land of 1907.

^{xxv} Articles 28 and 47 of the Hague Regulations; Article 33 of the Fourth Geneva Convention; *see also* ICRC, commentary of 1958 on article 33 of the Convention relative to the Protection of Civilian Persons in Time of War.