

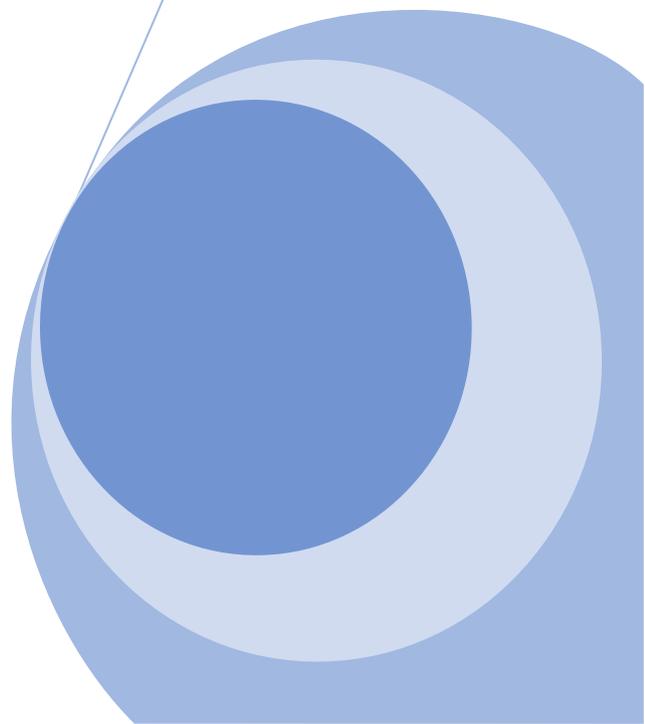


The Sun Belongs to Everyone

Israeli Demolitions and Confiscations of Solar Panel Aid Projects in Area C of the West Bank



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Al-Haq
P.O. Box 1413
54 Main Street 2nd & 3rd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
Ramallah - West Bank – Palestine

Tel: + 970 (0)2 2954646/7/9

Fax: + 970 (0)2 2954903

Website: www.alhaq.org

Author: Crystal Yeung, Master of Laws in Human Rights, University of Hong Kong

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Introduction

Receiving on average eight and a half hours of sun every day, Palestine's abundance of sunlight combined with the open and expansive landscapes of the West Bank, give rise to enormous potential in solar energy generation.¹ For many Palestinian communities in Area C, which constitutes over 60 percent of the West Bank, power harnessed through solar energy is the only source of electricity available.² Where the Israeli Civil Administration (ICA) has denied Palestinian communities access to the nearby electricity networks, solar panels serve to power refrigerators necessary to preserve medication and food, heat water, and provide lighting for children to study, amongst other uses. In these circumstances, solar energy does not function as a supplemental source of power but rather constitutes a last resort measure to meet basic human needs.

According to the Interim Agreements between the Palestine Liberation Organization and Israel (the 'Oslo Accords'), Israel is responsible for constructing infrastructure and providing civil services (except for medical services and education)³ in Area C of the occupied West Bank.⁴ Yet, the ICA denies Palestinian communities in Area C from accessing existing electric grids and constructing their own, thereby effectively rendering them 'off-grid communities.' The Israeli Government's failure to provide these Palestinian communities with access to electricity does not arise from its inability to offer energy resources but forms part of a multifaceted system of discriminatory restrictions designed to isolate, harass, and oppress Palestinians, creating coercive environments to force their transfer. This is evidenced by the fact that while Palestinian communities are denied connection to electric grids, nearby illegal Israeli settlements are provided with full access to stable electricity as well as alternative sources of power.

Such discriminatory practices have been widely criticized,⁵ as they create a dual effect of displacing Palestinians while expanding illegal Israeli settlements in the Occupied Palestinian Territory (OPT).

¹ Palestinian Central Bureau of Statistics, Mean Sunshine Duration in Palestine by Year and Station Location, 2007-2015 (*hour\day*), 2015, available at:

<http://www.pcbs.gov.ps/Portals/Rainbow/Documents/Meteorological-2015-Tab10E.htm>

² According to the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), many Bedouin communities in Area C, an increasingly vulnerable population, "rely on solar panels as the only or main source of electricity" and "are at risk of requisition without prior warning. Half of the communities still rely on gas, kerosene and/or batteries as their first or second main source of electricity."

UN OCHA, Humanitarian Bulletin, occupied Palestinian territory, September 2017, (hereinafter UN OCHA, Humanitarian Bulletin), pages 13-14, available at:

https://www.ochaopt.org/sites/default/files/hummonitor_september_2017_final.pdf

³ Although these responsibilities are left to the Palestinian Authority (PA), the PA has no authority in Area C of the West Bank and is unable to ensure these medical and education services to Palestinian communities in Area C.

⁴ Peace Agreements & Related, Declaration of Principles on Interim Self-Government Arrangements (Oslo Agreement), 13 September 1993, available at: <http://www.refworld.org/docid/3de5e96e4.html>; and Peace Agreements & Related, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), 28 September 1995, available at: <http://www.refworld.org/docid/3de5ebbc0.html>

⁵ See for example: UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, UN Doc CERD/C/ISR/CO/14-16, 09 March 2012,

According to a 2014 report by the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA), the Israeli Government's restrictions against Palestinian development in Area C coincides with unlawfully prioritizing "settlement growth at the expense of the housing, livelihood and development needs of Palestinian communities."⁶

In August 2017, the Head of the Palestinian village of Susiya, in the South Hebron Hills, Mr. Jihad Nawaja'a explained the inherently discriminatory situation in the OPT in an interview with Al-Haq. He relayed how neighboring Israeli settlements regularly flew drones over the airspace of the Palestinian village in order to inspect whether new construction might be taking place in the village. When the drones capture 'building materials' or 'construction activity', the settlers inform the Israeli authorities, who in turn immediately enter the village to confiscate or demolish these structures.

1. Planning, Electricity, and Humanitarian Aid

Israel controls the zoning and development in Area C through Military Order 418, issued by the military commander in 1971.⁷ The order amended the 1966 Jordanian Planning Law Number 79, and effectively prevents Palestinians from participating in planning mechanisms previously present.⁸

The lack of Palestinian participation coupled with Israel's discriminatory manipulation of the outdated British Mandatory Regional Outline Plans (which have not been formally repealed),⁹ have facilitated a situation in Area C where only one per cent of the land is zoned for Palestinian development. Pursuant to this planning process, the development potential of Palestinians is restricted to an extent that fails to meet even the most basic requirements under any human rights framework.

Within this system, it is virtually impossible for Palestinians to acquire building permits to erect even simple building structures in Area C of the West Bank. In February 2016, the UN Coordinator for Humanitarian Assistance and Development Aid for the OPT, Robert Piper, stated, "in Area C, official Israeli figures indicate only 1.5 per cent of Palestinian permit applications are approved."¹⁰ Israel's

para. 24: "[t]he Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population (Article 3 of the Convention)."

⁶ UN OCHA, *Fragmented Lives: Humanitarian Overview 2013*, March 2014, available at:

https://www.ochaopt.org/sites/default/files/ocha_opt_annual_review_2014.pdf

⁷ UN Habitat, 'One UN' Approach to Spatial Planning in "Area C" of the Occupied West Bank, September 2015, (hereinafter UN Habitat, One UN Approach), page 4, para. 9, available at: <https://unhabitat.org/wp-content/uploads/2015/10/One-UN-Approach-to-Spatial-Planning-in-Area-C-.pdf>

⁸ Amnesty International, *Israeli authorities must Transfer Planning Powers to Palestinians in Area C of the occupied West Bank*, 10 April 2015, available at:

<https://www.amnesty.org/en/documents/mde15/1430/2015/en/>

⁹ UN Habitat, *One UN Approach*, page 5, para. 10.

¹⁰ UN OCHA, *Humanitarian Coordinator Calls on Israel to Halt Demolitions in the Occupied West Bank immediately and to Respect International Law*, 17 February 2016, available at:

<https://www.ochaopt.org/content/humanitarian-coordinator-calls-israel-halt-demolitions-occupied-west-bank-immediately-and>

denial of building permits is an issue that has plagued Palestinian villages in Area C of the West Bank for years and prevented these communities from development or achieving an adequate standard of living.

Moreover, under Israel's planning process in Area C, one condition for setting up 'authorized' solar panels is that the structure upon which the solar panels are built must have a permit; this requirement excludes nearly all buildings in Area C.¹¹ Where the ICA subsequently issues a confiscation¹² or demolition order on a Palestinian solar installation, it is possible to seek an injunction against that order from the Israeli courts. It is also possible to retroactively apply for a permit for the solar panels. In practice, however, applications are inevitably rejected, Israeli courts rubberstamp ICA decisions, and there is no realistic avenue for Palestinians living in Area C to 'legally' install or maintain solar panels.¹³

a. International Law and the Demolition of Structures

According to a 2008 World Bank report, Israel's planning and zoning regime in Area C "has become an increasingly severe constraint to [Palestinian] economic activity."¹⁴ Additionally, in March 2017, the United Nations Secretary-General released a report noting that it was "near impossible for Palestinians to obtain" such building permits.¹⁵ It has thus been repeatedly stated in a string of reports by the UN, international and local NGOs, that the "Israeli zoning and planning policy in the West Bank ... is restrictive, discriminatory and incompatible with requirements under international law."¹⁶

Israel's practice of demolishing European Union (EU) and other donor-funded humanitarian aid projects is irreconcilable with its legal responsibility to permit and facilitate relief consignments and humanitarian access to civilians in the OPT.¹⁷ Furthermore, the practice runs contrary to Article 53 of the Fourth Geneva Convention, which prohibits "any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, except where such destruction is rendered absolutely necessary by military operations."¹⁸ Unlawful and wanton

¹¹ National Planning and Building Law 1965, Chapter 10, available at:

<https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/07-National-Planning-Building-Law-1965.pdf>

¹² To justify its confiscation practices, Israel relies on Article 80 of Military Order No. 378, which allows for the seizure of any goods, articles, documents, or objects for "security" purposes at the Israeli Military Commander's discretion. Israel's Manual on the Rules of Warfare (2006) contradicts Military Order No. 378 by prohibiting the seizure of public and private property in the OPT, where such seizures are not for a military purpose. However, in practice, the Israeli Military Commander exercises his discretion under the order with sweeping authority.

¹³ Uri Blau, "Solar Energy Access Drives New Wedge into Israeli-Palestinian Conflict", (TakePart, 6 November 2015), available at:

<http://www.takepart.com/feature/2015/11/06/israel-solar-energy>

¹⁴ World Bank, The Economic Effects of Restricted Access to Land in the West Bank, October 2008, page iv, available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN/0,,contentMDK:21946232~pagePK:1497618~piPK:217854~theSitePK:294365,00.html>.

¹⁵ UN Human Rights Council, Report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, 16 March 2017, UN Doc A/HRC/34/38, (hereinafter UN HRC, Report of the Secretary-General), para. 25.

¹⁶ UN HRC, Report of the Secretary-General, para. 25 and footnote 55.

¹⁷ Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, adopted 12 August 1949, entered into force 21 October 1950, (hereinafter Fourth Geneva Convention), Article 59.

¹⁸ Fourth Geneva Convention, Article 53.

destruction of property not justified by military necessity amounts to a grave breach of the Geneva Conventions and a war crime,¹⁹ within the jurisdiction of the International Criminal Court.

Under Article 55 of the Fourth Geneva Convention,²⁰ as the Occupying Power, Israel is responsible for providing the occupied Palestinian population with food, medication and supplies necessary to support life.²¹ In the marginalized and impoverished Palestinian villages in Area C of the West Bank, electricity supplies are critical for survival. Consequently, Israel's failure to provide these Palestinian communities with access to electricity is in direct contravention of its obligation under customary international law to ensure public order and civil life.²²

In a similar vein, Israel's failure to provide Palestinians with access to electricity contravenes Article 50 of the Fourth Geneva Convention, which concerns the care and education of children.²³ Without electricity, the institutions and infrastructure necessary to facilitate the hygiene, food and water supply, health, and education of children are significantly compromised.²⁴ As stated by a mother of three children in Munayzel, an off-grid Palestinian community in the south Hebron hills, *"the kids get sick all the time ... At the moment, because of a change in the weather, they all have colds. Without electricity [from a Spanish-funded solar aid project] I wouldn't even be able to see to help them when they need to use the [outdoor] toilet at night."*²⁵

b. Creation of a Coercive Environment

The UN has repeatedly reiterated that the forcible transfer of Palestinian communities through the denial of basic necessities is in contravention of international law and amounts to a grave breach of the Geneva Conventions and a war crime.²⁶ Under international law, forcible transfer can be direct for example, through physical force or indirect, for example, through the creation of coercive environments.²⁷ According to the International Criminal Tribunal for the former Yugoslavia, "forcible transfer is the movement of individuals under duress from where they reside to a place that is not of their choosing."²⁸ In early October 2017, OCHA warned of an exacerbated risk of forcible transfer as a result of demolitions and seizures of service infrastructure in Palestinian communities, creating a coercive environment in Area C of the West Bank.²⁹

¹⁹ Fourth Geneva Convention, Article 147; and the Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 01 July 2002, (hereinafter ICC Rome Statute), Article 8(2)(a)(iv).

²⁰ Fourth Geneva Convention, Article 55.

²¹ Jean Pictet, *Commentary on the Fourth Geneva Convention*, 1958, Article 55, at 310: "Supplies for the population are not limited to food, but include medical supplies and any article necessary to support life."

²² Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Annex to the Convention: Regulations respecting the Laws and Customs of War on Land, Section III (hereinafter the Hague Regulations), Article 43. See also Iain Scobbie, Alon Margalit, and Sarah Hibbin, "Expert Opinion Submitted to the Israeli High Court of Justice in the matter of *Dqeiqa Village Council v. The Military Commander of the West Bank*" (15 November 2011), para. 19.

²³ Fourth Geneva Convention, Article 50.

²⁴ Yotem Berger, "Ignoring Court Case, Israel Seizes Solar Panels Powering Bedouin School in West Bank" (Haaretz, 10 August 2017) available at: <https://www.haaretz.com/israel-news/.premium-ignoring-court-case-israel-seizes-solar-panels-in-west-bank-1.5441736>

²⁵ Phoebe Greenwood, "Palestinians Prepare to Lose the Solar Panels that Provide a Lifeline", (The Guardian, 14 March 2012), available at: <https://www.theguardian.com/global-development/2012/mar/14/palestinians-prepare-to-lose-solar-panels>

²⁶ See for example: UN HRC, Report of the Secretary-General, para. 21.

²⁷ ICTY, *The Prosecutor v. Krnojelac*, IT-97-25, Trial Chamber II, Judgment, 15 March 2002, para. 474.

²⁸ ICTY, *The Prosecutor v. Naletilić and Martinović*, IT-98-34, Trial Chamber, 31 March 2003, para. 519.

²⁹ UN OCHA, Humanitarian Bulletin, page 13.

The Israeli Government's strategy to remove Palestinians from Area C of the West Bank by creating a coercive environment, including by obstructing access to electricity, is visually apparent. Located south of Hebron, the Palestinian village Umm Al-Kheir is one of many such examples. Although water pipes and electrical lines run beside Umm Al-Kheir to the adjacent Israeli settlement of Karmel, the ICA has refused to connect Umm Al-Kheir to the same electric infrastructure that benefits Karmel.

In another case, during a field interview with the Bedouin community of Abu Nuwwar, Al-Haq was informed that Israeli soldiers had repeatedly promised the villagers that they would cease demolishing the village's infrastructure and provide "access to electricity and other benefits" if the villagers would move off the land and relocate elsewhere.³⁰ Under international law, the determination of whether a transferred person had a 'real choice' in moving "has to be made in the context of all relevant circumstances on a case by case basis."³¹ To this end, the community of Abu Nuwwar informed Al-Haq that several families in the community moved from the area in the winter of 2016, as a result of the impossible living conditions, created by a constant inaccessibility to electricity and water.³²

c. Israeli Profiteering from Solar Energy in Area C

While Israel denies Palestinians in Area C of the West Bank the ability to take advantage of solar energy, it also profits enormously from this renewable resource itself.³³ Indeed, Israel has long since recognized the region's capacity to harness solar power and has secured mammoth profits from operating solar projects in the OPT. The Israeli Electricity Authority had projected that nearly 1.6 billion NIS in electricity revenue was generated from Israel's solar energy projects operating in Israel and the OPT in 2016.³⁴ To date, four Israeli commercial solar fields have been constructed in illegal industrial settlements in the West Bank.³⁵ Despite the fact that investors and businesses are assisting Israel's unlawful activities and therefore complicit in its illegal acts, Israeli development in this sector of renewable energy continues to accelerate.

Under international law, Israel is only considered a trustee of the natural resources of the OPT. Article 55 of the Hague Regulations prohibits Israel, as Occupying Power, from exploiting resources in the occupied territory except to provide for the occupying troops and personnel or provide for the needs of the civilian population.³⁶ Israel is in breach of this provision as it illegally confiscates land in Area C of the West Bank to exploit the territory's solar energy without investing the benefits back into the occupied territory. Furthermore, the resulting financial profits support Israel's settlement economy thereby allowing it to further entrench the occupation and expand its unlawful settlement enterprise. In view of this, while sunlight, as an unlimited resource, may not fall strictly under Article 55, Israel's illegal confiscation of Palestinian land and profiteering of solar energy at the expense of Palestinians far exceeds what is permissible under international humanitarian law.

³⁰ Interview on 22 July 2017.

³¹ ICTY, *The Prosecutor v. Slobodan Milosevic*, IT-02-54-T, Trial Chamber Decision on Motion for Judgment of Acquittal, 16 June 2004, para. 76.

³² Interview on 22 July 2017.

³³ *Who Profits, Greenwashing the Occupation: The Solar Energy Industry and the Israeli Occupation*, January 2017, (hereinafter *Who Profits, Greenwashing the Occupation*), page 10, available at: https://whoprofits.org/sites/default/files/greenwashing_the_occupation_web.pdf.

³⁴ *Who Profits, Greenwashing the Occupation*, page 12, footnote 6.

³⁵ European Union, *Six-Month Report on Demolitions and Confiscations of EU funded structures in Area C September 2016 – February 2017*, 6 April 2017, (hereinafter *EU, Six-Month Report on Demolitions and Confiscations*), available at: https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/24279/six-month-report-demolitions-and-confiscations-eu-funded-structures-area-c-september-2016_en

³⁶ The Hague Regulations, Article 55.

2. EU and NGO funded projects

In circumstances where Israel intentionally deprives Palestinians from access to electricity infrastructure, the international community has attempted to provide humanitarian relief by funding solar energy projects and initiatives. The European Union (EU) and EU Member States are the largest funders of financial aid to Palestine.³⁷ Since 2000, the European Commission's Civil Protection and Humanitarian Aid Operations has contributed over 700 million Euros in humanitarian aid to alleviate the effects of the occupation on the Palestinian population.³⁸ Irrespective of the source of the aid, and the need for it, the Israeli Government has adopted a practice of demolishing EU-funded projects, such as solar panel installations.³⁹

Between 2001 and 2016, the Euro-Mediterranean Human Rights Monitor estimates that approximately 65 million Euros of EU aid money was lost as a result of Israeli demolitions.⁴⁰ In 2012, the European Commissioner for Enlargement and Neighborhood Policy released a list of EU and EU Member State-funded projects destroyed or damaged by Israeli authorities between May 2001 and October 2011. According to the report, 49.2 million Euros were lost as a result of the destruction of 26 projects in the West Bank, with nearly 30 million Euros of that contribution having come from the European Commission.⁴¹ The Israeli Government attempts to justify its demolitions on the ground that the EU aid projects were implemented without building permits and therefore constituted 'illegal constructions'; however, as previously noted, Israel's continuous demolition of life sustaining infrastructure, is intended to create coercive environments to force the transfer of Palestinians from the area.

Nonetheless, while Israel's unlawful objectives are clear, given the relentless restrictions on Palestinian construction in Area C, as well as the frequency of demolitions by the Israeli authorities, European donors have expressed reluctance in funding aid projects without guarantees from Israel.⁴² Many, however, remain undeterred, and instead take bolder action to counter Israel's unlawful policies and practices. In 2014, the untenability of the situation prompted the Belgian Government to publicly demand compensation from Israel for damages of an estimated value of 55,000 Euros following the demolition of an electrification aid project.⁴³ The project, initiated in 2004, was set to provide power to 200 Palestinians in Khirbet al-Twayel, 'Aqraba, south of Nablus. Despite the fact that the project had been completed with the coordination of the Israeli authorities, the Israeli military demolished the infrastructure in September 2014, tearing down 100 electrical posts, 3.5 kilometers of electric cables, and numerous electrical structures.

³⁷ European Commission, Neighbourhood Policy Overview of Palestine (2016), available at:

https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/palestine_en

³⁸ European Commission, Palestine Factsheet of the European Civil Protection and Humanitarian Aid Operations, April 2017, available at: http://ec.europa.eu/echo/files/aid/countries/factsheets/palestine_en.pdf

³⁹ Human Rights Watch, World Report – 2017 Events of 2016, available at:

https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf

⁴⁰ Euro-Mediterranean Human Rights Monitor, Squandered Aid: Israel's Repetitive Destruction of EU-Funded Projects in Palestine, June 2016, (hereinafter EMHRN, Squandered Aid), available at:

http://euromedmonitor.org/uploads/reports/SquanderedAid_En.pdf

⁴¹ EMHRN, Squandered Aid, page 10.

⁴² Association of International Development Agencies (AIDA), Failing to make the Grade, 27 May 2013, page 7, available at:

https://www.oxfam.org/sites/www.oxfam.org/files/aida_eu_public_report_final_web_corrected.pdf

⁴³ EMHRN, Squandered Aid, page 11.

Other EU Member States, such as Germany, have also intervened in the confiscation and demolition of their solar initiatives in Area C of the West Bank. In mid-2012, Germany donated 400,000 Euros to fund a solar energy project that would power the dairy operations of 16 Palestinian communities in the south Hebron hills.⁴⁴ When the ICA issued a stop-work order on that project in the small community of Tha'leh on the basis of 'illegal construction', the German Government contacted the Israeli Government to resolve the issue through diplomatic means. Similarly, when a set of solar panels funded by a Spanish NGO for 30,000 Euros were slated for demolition by the ICA in March 2012, the non-governmental organization Rabbis for Human Rights applied to suspend the demolition order through legal channels.⁴⁵

a. Intensified Demolitions of EU-funded Humanitarian Aid Projects in 2016 and 2017

Beginning 2016, the Israeli Government drastically escalated its confiscation and demolition measures, and in so doing, intensified the coercive environment faced by Palestinian communities in Area C of the West Bank. The number of Palestinian structures demolished or confiscated in 2016 totals nearly the combined number of demolitions and confiscations in 2014 and 2015.⁴⁶ According to Al-Haq documentation, 599 Palestinian-owned houses and structures were demolished in 2016 and 177 in 2017 in the West Bank. In fact, the UN Secretary-General has reported that 292 donor-funded structures had been demolished or seized by the Israeli authorities in 2016, which represents a 165 per cent increase from 2015.⁴⁷ One such reported instance took place in March 2016, where upon the failure of a mediation process between the Israeli authorities and the Palestinian community, the ICA confiscated solar panels, which had been donated by international humanitarian agencies to the Palestinian community in Khirbet Jinba, in Masafer Yatta.⁴⁸ For example, according to Al-Haq documentation, on 2 February 2016, the IOF confiscated five solar panels in Jinba and Halawa areas of Masafer Yatta and demolished Palestinian-owned structures therein.⁴⁹ Overall, in 2016, the Israeli Government demolished and confiscated more Palestinian-owned structures in the West Bank, including East Jerusalem, than in any other year since the UN began to systemically document the issue in 2009.⁵⁰

The statistics on EU-funded projects are even more alarming with OCHA reporting that the Israeli Government destroyed nearly as many EU or EU Member State-funded structures in the first three months of 2016 than in all of 2015 combined.⁵¹ Approximately 536,000 Euros worth of humanitarian structures provided by the EU or its Member States had been demolished or confiscated by the ICA

⁴⁴ Akiva Eldar, "Israel Demolishes West Bank Villages as Jewish Outposts Remains Untouched" (Haaretz, 21 February 2012), available at: <http://www.haaretz.com/print-edition/features/israel-demolishes-west-bank-villages-as-jewish-outposts-remains-untouched-1.413875>

⁴⁵ Ibid.

⁴⁶ B'Tselem, 2016 Sees Israel Demolish Record Number of West Bank Homes, 14 February 2017, available at: http://www.btselem.org/planning_and_building/20170213_2016_demolitions

⁴⁷ UNHRC, Report of the Secretary-General, para. 26.

⁴⁸ B'Tselem, Israeli Authorities Demolished 22 Homes in Firing Zone 918 in the South Hebron Hills, 2 February 2016, available at: http://www.btselem.org/south_hebron_hills/20160202_demolitions_in_firing_zone_918

⁴⁹ Al-Haq, Israel Demolishes Palestinian Homes and Property in Jerusalem and Area C, Puts More at Risk, 4 February 2016, available at: <http://www.alhaq.org/documentation/weekly-focuses/1013-israel-demolishes-palestinian-homes-and-property-in-jerusalem-and-area-c-puts-more-at-risk>

⁵⁰ UN OCHA, Record number of Demolitions and Displacements in the West Bank during 2016, 10 February 2017, available at: <https://www.ochaopt.org/content/record-number-demolitions-and-displacements-west-bank-during-2016>

⁵¹ EMHRN, Squandered Aid, page 12.

in 2016.⁵² In December 2016, after the EU denounced Israel's demolitions of aid structures in the OPT, the Israeli authorities announced their intention to confiscate solar panel installations in a number of Masafer Yatta communities in the south of Hebron, which had been provided as part of a humanitarian assistance initiative.⁵³

In 2017, the IOF continued its acts of unlawful confiscation and demolition of Palestinian properties in Area C and Jerusalem. More specifically, according to an EU bi-annual report, between January and August 2017, at least 150 Palestinian structures were impacted by demolitions, seizures, evictions, or were sealed off, 72 of whom were EU funded structures, estimated at 240,000 Euros cost.⁵⁴

Frequently, the confiscations and demolitions were not preceded by advanced notice or stop-work orders. Therefore, not only did they amount to breaches of international law, they also violated Israel's planning regime, which requires notification of demolitions to be given to affected parties.

Case Study 1: Confiscation of Solar Panels in Khalet Hamad

On 5 July 2017, without first presenting a stop-work order, the ICA confiscated two home solar power units in Khalet Hamad which had been donated by the EU three months before.⁵⁵ Khalet Hamad is a sheep-herding community near 'Ein al-Beida in the northern Jordan Valley. The solar power units had enabled its inhabitants to refrigerate medication and the cheeses upon which their unique agrarian livelihoods depend. Al-Haq documented Israel's confiscation of the solar panels from Palestinian herders, Mahmoud Awwad Ayoub, and his son, Hani. Mahmoud described how the Israeli Occupation Forces (IOF) carried out the confiscation without prior notice or warning:

On 29 June 2017, all our structures, both residential and those used to house livestock, including hangars and barracks, were demolished. Afterwards, all the residential tents that we were given by donor organizations were confiscated until we were able to receive an injunction to freeze the demolition order [against our property]. We were then able to build a few residential tents and a number of hangars and barracks for our livestock. One of the donors, an Italian organization called GVC, presented us with solar panels to use as a source of electricity, which we did not previously have. It became our sole source of energy. We were given two solar panels, one for me and one for my son, Hani Ayoub. With them, we could drink cold water when the weather was hot. We could also store food in the fridge and make cheese, a process that requires cool storage space. We used a fan to preserve [the

⁵² EMHRN, Local Statement on Israeli demolitions of Palestinian Structures in Area C, 22 February 2017, available at: https://eeas.europa.eu/headquarters/headquarters-homepage_en/21143/Local%20Statement%20on%20Israeli%20demolitions%20of%20Palestinian%20structures%20in%20Area%20C

⁵³ Alternative Information Centre (AIC), Indifferent to EU, Israel Continues to Demolish Aid Structures, 15 December 2016, available at: <http://www.alternativenews.org/index.php/headlines/293-indifferent-to-eu-israel-continues-to-demolish-aid-structures>

⁵⁴ The Office of the European Union Representative, Six-Month Report on Demolitions and Confiscations of EU Funded Structures in the West Bank including East Jerusalem, 4 October 2017, available at: https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip_en/33268/Six-Month%20report%20on%20demolitions%20and%20confiscations%20of%20EU%20funded%20structures%20in%20the%20West%20Bank%20including%20East%20Jerusalem

⁵⁵ Amira Hass, "Israel Confiscates Palestinian Shepherds' Home Solar Power Units", (Haaretz, 6 July 2017), available at: <http://www.haaretz.com/middle-east-news/palestinians/.premium-1.799795>

cheese] for longer periods and were able to transport it to the markets and sell it in the city of Toubas.

But on Wednesday, 5 July 2017, around 8:30 am, an Israeli police force raided our home. The force was made up of two military jeeps, a jeep belonging to the Israeli Civil Administration (ICA), a white vehicle with five workers in civilian clothing, in addition to a large truck carrying a crane. Around ten soldiers, dressed in formal military clothing, stretched out a tight security cordon. The workers started to cut the base upon which the solar panels had been fixed... then [the driver] carried the panels and put them on the truck. All of this happened under the supervision of an ICA officer by the name of 'Avi', who I had known from before. When I asked him for the reason behind the confiscation, he replied that it was unlicensed and that it required a permit.⁵⁶

Case Study 2: Confiscation of Solar Panels in Jib Al-Dhib

Situated 350 meters across from the well-powered Israeli settlement of *Sdeh Bar*, the Palestinian village of Jib Al-Dhib in Bethlehem in the central West Bank has requested to be connected to the area's electric grid since 1988.⁵⁷ In addition to rejecting these requests, in 2009, the ICA demolished the village's solar microgrid.⁵⁸ Consequently, the community's 150 residents have had to rely on the diesel generators donated to them by aid organizations for power. The absence of adequate electricity and the impossibility of acquiring building permits have caused living conditions in the village to become so unbearable that some of its members have since moved. As the generators were only able to provide three hours of electricity every day, in 2016, the Dutch Government sought to bring power to the village through a hybrid energy initiative estimated at 350,000 Euros.⁵⁹ The initiative formed part of a 500,000 Euro electrification project in the southwest of Bethlehem and was implemented by the local women's committee. It was the hope of the villagers that the Dutch initiative would bring back members who had left, as well as increase education in the community.

In collaboration with Jib Al-Dhib's Women's Charitable Organization, the Israeli-Palestinian NGO Comet-ME installed the solar panels in June 2017.⁶⁰ Although Comet-ME informed the Israeli authorities of the solar initiative nine months prior to installing the solar panels, the ICA did not respond at all. On 28 June 2017, however, just one week after Comet-ME set up the solar panels in the village, the ICA entered the village, confiscated around 96 solar panels and related equipment and destroyed various electrical equipment worth approximately 40,000 Euros.⁶¹ Fadia 'Allan Khamis, the director of the village's Women's Charitable Organization, told Al-Haq that the village has suffered from a lack of access to essential services, including electricity and water, since the 1980s. She described the confiscation as follows:

On 28 June 2017 around 8:00 am, I woke up to a power cut in the village and to sounds of screaming by the villagers. I headed towards the village's mosque, which is close to my house, where I saw some 50 Israeli soldiers in military uniform and 20 others in civilian

⁵⁶ Al-Haq Affidavit No. 496/2017 given on 5 July 2017, by Mahmoud Awwad Ayoub, a resident of al-Himma, Toubas Governorate.

⁵⁷ Human Rights Watch, *Israel/West Bank: Separate and Unequal*, 19 December 2010, available at: <https://www.hrw.org/news/2010/12/19/israel/west-bank-separate-and-unequal>

⁵⁸ Amira Hass, "Dutch Protest Israeli Seizure of Palestinian Solar Panels They Funded in West Bank", (Haaretz, 1 July 2017) (hereinafter Hass, *Dutch Protest Israeli Seizure of Palestinian Solar Panels*), available at: <http://www.haaretz.com/middle-east-news/palestinians/.premium-1.798792>

⁵⁹ Hass, *Dutch Protest Israeli Seizure of Palestinian Solar Panels*.

⁶⁰ UN OCHA, *Humanitarian Bulletin*, page 14.

⁶¹ *Ibid.*

clothing... The batteries to charge the solar panels were kept inside one of the mosque's rooms. I found out from one of my relatives who had been at the scene that electrical technicians had disconnected the power supply from the village by order from the IOF. The IOF had come with around 20 electrical technicians dressed in civilian clothing.

After cutting off the power supply, they headed towards a piece of land belonging to Abed Muhammad Khamis where the solar panels that supplied electricity to the village were installed. [The IOF] approved the disassembling of the solar panels. I asked one of the soldiers for the reason behind the removal of the panels, which if confiscated would lead to the electricity supply being cut off from the entire village. The soldier informed me that they were going to confiscate the panels in addition to 48 electric generators on the pretext that they had no permits. The inhabitants of the village tried to prevent [the IOF] from confiscating the panels and generators but they prevented the villagers from reaching the place in which the panels were located. They also prohibited them from taking pictures and prohibited the press from accessing the place. The soldiers were unable to remove the batteries from inside the mosque due to their heavy weight. Instead, they ordered the electrical technicians to destroy them and cut the cables connected to them. They confiscated 100 solar panels and transported them with their military jeeps. Before their withdrawal from the area, they handed Abed Ali Khamis a notice regarding the presence of the solar panels on his property. A notice was also given to the Jib ad-Dhib Women's Charitable Organization and to the Waqf Department in the city of Bethlehem for keeping the batteries in the village's mosque. [The IOF] withdrew from the area around 11:00 am. In the village, we have filed a case to the Israeli High Court of Justice as a result of what happened.⁶²

As a result of the raid, 27 families and public buildings in the village immediately lost power.⁶³ Amna Al-Wahsh, a member of the village's Women's Charitable Organization, said she told Israeli soldiers that the villagers were keeping medication such as insulin in the solar-powered refrigerators.⁶⁴ Their reply was for her to move away. While the ICA insists that a stop-work order had been previously issued, Comet-ME claims that the order was only delivered during the raid itself and was therefore in contravention of the Israeli planning process. If a stop-work order had been issued, the village could have taken administrative or legal action to try to suspend the order.

In direct response to the incident at Jib ad-Dhib, the Dutch Government "immediately protested seriously with the Israeli authorities and demanded return of the goods" and "investigat[ed] the exact damages and what steps can be taken."⁶⁵ The Dutch authorities publicly announced that the solar panel project was "essential for the continued existence" of the Palestinian village. In late September 2017, Israel returned the solar panels to the village and the system has since been reconnected.⁶⁶ OCHA reports that "[t]his followed a demand made by the Netherlands, as well as a petition against the requisition, filed with the Israeli High Court of Justice by the village council and

⁶² Al-Haq Affidavit No. 698/2017, given on 1 July 2017, by Fadia Allan Ahmad Khamis, a resident of Jib ad-Dhib, Bethlehem Governorate.

⁶³ UN OCHA, Protection of Civilians Report 20 June – 3 July 2017, 6 July 2017, available at: <https://www.ochaopt.org/content/protection-civilians-report-20-june-3-july-2017>

⁶⁴ Anne-Marie O'Connor, "This Palestinian Village Had Solar Power – Until Israeli Soldiers Took It Away" (The Washington Post, 7 July 2017), available at: https://www.washingtonpost.com/world/middle-east/this-palestinian-village-had-solar-power--until-israeli-soldiers-took-it-away/2017/07/05/d4b8a5fc-6036-11e7-a4f7-af34fc1d9d39_story.html?utm_term=.211d01b25d32

⁶⁵ Janene Pieters, "Israel destroys Dutch development project; Netherlands furious", (NL Times, 30 June 2017), available at: <http://nltimes.nl/2017/06/30/israel-destroys-dutch-development-project-netherlands-furious>

⁶⁶ Amira Hass, "Dear Europe, Take Note: If You Want To, Israel Can Be Pressured", (Haaretz, 22 October 2017) (hereinafter Hass, Dear Europe), available at: <https://www.haaretz.com/middle-east-news/palestinians/.premium-1.818549>

the implementing NGO.”⁶⁷ However, this petition was rendered unnecessary as the head of the ICA cited a technicality for returning the panels, noting: “[g]iven the circumstances of the matter – for one, the period of time that passed from when they were installed until they were taken – I have decided to immediately release the seized objects.”⁶⁸ There is no doubt that the Netherlands’ diplomacy efforts, including “protest and condemnation from the Dutch Foreign Ministry; protest by Dutch Prime Minister Mark Rutte in a face-to-face meeting with the Israeli prime minister just days after the confiscation; two hearings in the Dutch parliament about the confiscation; agenda questions submitted by three factions of the Dutch parliament; and clear and detailed responses received from the Dutch foreign minister and minister of international cooperation and development,” were successful.⁶⁹

Conclusion

In addition to the aforementioned violations of international law, the Israeli Government is in breach of a number of provisions enshrined in international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷⁰ and the Convention on the Rights of the Child.⁷¹ By denying Palestinian communities access to electricity, through both positive and negative measures, Israel has failed its core obligations to meet “minimum essential levels” of Palestinians’ rights to food, health, and an adequate standard of living. Crucially, Israel’s confiscation and demolition practices also impair the right to education of Palestinian children.

For example, on 9 August 2017, the ICA confiscated solar panels which powered a school in the Bedouin community of Abu Nuwwar.⁷² The confiscation of the solar panels took place just one hour before the Israeli High Court of Justice issued an order restraining the confiscation. On 28 August 2017, in reference to this confiscation and the dismantling of other educational facilities in Area C, the French Ministry for Europe and Foreign Affairs condemned Israel’s confiscation and demolition practices.⁷³ The French Ministry spokesperson stated that the destructions are “contrary to international law” and that France has approached the Israeli authorities to secure the return of confiscated property, which France has funded as part of its humanitarian aid projects in the West Bank. In particular, the French Ministry spokesperson declared that France “calls on the Israeli authorities to return the confiscated property and to put an end to this destruction which forms part of their settlement policy in the West Bank and East Jerusalem.”

At the EU level, discussions on requiring Israel to provide reparations in the form of restitution or compensation for demolitions and confiscations of EU humanitarian aid in Palestine have been in place for over a year.⁷⁴ In July 2017, the Mashreq-Maghreb Working Party, an EU committee

⁶⁷ UN OCHA, Humanitarian Bulletin, page 14.

⁶⁸ Amira Hass, “Electricity Returns to Palestinian Village, Three Months After Israel Confiscates Power System”, (Haaretz, 20 October 2017), available at: <https://www.haaretz.com/israel-news/.premium-1.818266>

⁶⁹ Hass, Dear Europe.

⁷⁰ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entry into force 3 January 1976, (hereinafter ICESCR), Article 2(1). ⁷¹ Convention on the Rights of the Child, adopted 20 November 1989, entry into force 2 September 1990, (hereinafter CRC).

⁷¹ Convention on the Rights of the Child, adopted 20 November 1989, entry into force 2 September 1990, (hereinafter CRC).

⁷² UN OCHA, Humanitarian Bulletin, page 13. Yotam Berger, “Ignoring Court Case, Israel Seizes Solar Panels Powering Bedouin School in West Bank” (Haaretz, 10 August 2017), available at: <http://www.haaretz.com/israel-news/.premium-1.806053>

⁷³ French Consulate General in Jerusalem, *Destruction of humanitarian structures*, Excerpts from the daily press briefing by the French Ministry for Europe and Foreign Affairs spokesperson, Paris (28 August 2017).

⁷⁴ European Parliament, *see specifically* Statement by the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy: West Bank Displacement and Demolitions,

concerned with affairs in the Middle East, issued a resolution recommending that EU Member States seek reparations from Israel for the demolition of aid structures, which they had financed.⁷⁵ According to European diplomats, the resolution recommends only that Member States *request* compensation and not that Member States *demand* compensation from Israel following a demolition or confiscation incident.⁷⁶ Although the resolution is not binding, it serves as a basis for future binding resolutions that may be adopted by the EU's Political and Security Committee or Foreign Affairs Council. Moreover, the right to compensation is well recognized under customary international humanitarian law.⁷⁷

As stated by Vice-President of the EU Commission and High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, it is the EU's "humanitarian duty" to provide aid to the "most vulnerable" Palestinian communities in the OPT.⁷⁸ Therefore, the EU and its Member States should adopt a consistent approach with Israel concerning the demolition and confiscation of their solar panel and other aid initiatives. Notably, at the time of writing, eight EU States were scheduled to submit a letter to Israel demanding compensation worth 30,000 Euros for confiscations and destruction of their funded structures in Area C of the West Bank.⁷⁹ By demanding accountability through restitution (reversal of the seized assets to their intended beneficiaries to fulfill the intended humanitarian relief), direct monetary compensation, and/or guarantees of non-repetition for the humanitarian projects seized or destroyed by Israel under the ruse of "illegal construction", the EU and its Member States will be more effective in fulfilling their humanitarian duties. Furthermore, in the absence of a competent forum to adjudicate any such restitution claims, the EU and its Member States should utilize international law countermeasures to ensure that Israel complies with its international obligations.⁸⁰

including of EU-funded projects, Strasbourg, 10 May 2016, available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20160510&secondRef=ITEM-018&language=EN>

⁷⁵ Barak Ravid, "EU Committee Recommends States Ask Israel to Pay for Ruined West Bank Projects" (Haaretz, 01 July 2017), available at: <http://www.haaretz.com/israel-news/.premium-1.751439>

⁷⁶ The Times of Israel, "EU could seek damages for West Bank buildings razed by Israel" (07 November 2016), available at: <http://www.timesofisrael.com/eu-could-seek-damages-for-west-bank-buildings-razed-by-israel/>

⁷⁷ The Hague Regulations, Article 3.

⁷⁸ European Parliament, Debates, West Bank Displacement and Demolitions, including of EU Funded Projects (Debate), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20160510+ITEM-018+DOC+XML+V0//EN>

⁷⁹ Barak Ravid, "In Unprecedented Move, Eight European Countries to Demand Compensation From Israel for West Bank Demolitions" (Haaretz, 19 October 2017), available at: <https://www.haaretz.com/israel-news/.premium-1.818017>

⁸⁰ Joaquin Alcaide Fernandez, "Countermeasures" Oxford Bibliographies, available at:

<http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0072.xml>