



50 years of occupation, 50 years of impunity

A EuroMed Rights briefing - 2 June 2017

The 5th of June 2017 marks 50 years since the beginning of Israel's occupation of the Palestinian Territory. Israelis and Palestinians now live a reality where, under a single regime, one group is privileged while the other is deprived of its basic human rights. For 50 years, Israel has administered a pervasive system of control over Palestinians in the Occupied Palestinian Territory (OPT), while denying them their right to self-determination and controlling virtually all aspects of their life without giving them any say. The European Union (EU) has a crucial and urgent role to play to counter these developments and help put an end to the occupation.

Israel's occupation of the OPT lies at the root of the daily human rights violations Palestinians face, and has unfortunately become a familiar feature of the international order. As an actor that puts human rights and respect for international law at the centre of its policy, the EU can and has in the past played a crucial role as policy-setter toward resolving the conflict. Yet it has often punched below its weight. Adopting half-way measures or trading in its commitment to international law for short-sighted political considerations, the EU and its Member States have for too long acquiesced to the emerging reality on the ground.

In 2017, the Israeli government has advanced a series of increasingly brazen steps to further entrench the occupation, massively expanding its settlements and transferring its population into the West Bank, while approving thousands of new housing units and even its first officially announced new settlement in decades. This step followed the enactment by the Knesset in February 2017 of the "Regularisation Law" which retroactively "legalises" settlement outposts built on privately owned Palestinian land in violation even of Israel's own law. Moreover, Israel's Housing Minister has recently indicated that the government will advance [some 15,000 new housing units in East Jerusalem](#) around the date of the anniversary. These moves represent

dangerous steps towards the de facto annexation of more occupied territory in the West Bank, which members of the government are openly promoting.

To end the occupation, international action is urgently needed as change will not come only from within. However, as the new US administration moves to elucidate its policy towards the conflict, its recent announcements as well as its political appointments appear to only further embolden Israel's settlement expansion. This includes the Trump administration's apparent [tolerance of settlement construction](#) within "pre-existing settlement blocks". Such policy changes are tantamount to condoning annexation of occupied territory and threaten to seriously erode the international standards on which a long-term solution to the conflict must be founded. Amidst these developments, the coming months may prove pivotal for the EU's role in the region. Decisive steps are therefore needed to guarantee respect for international law and an end to the occupation. The EU and its Member States can no longer afford to acquiesce to this reality and the injustice that it breeds

What have 50 years of occupation meant on the ground?

Half a century of occupation has resulted in Israel's control over almost all aspects of Palestinian life spanning from the Gaza Strip to the West Bank, including East Jerusalem. This control is entrenched by a deliberate policy of separation and fragmentation aimed at dividing the Palestinian land and its people. Palestinians are divided into disparate geographic regions administered by a distinct set of laws and policies. This fragmentation allows Israel to control Palestinian land and resources while containing and quelling its population. Israel's control over the occupied territory and its population serves Israel's political and demographic interests and results in daily human rights violations.

For Palestinians in the West Bank this translates into an inescapable web of arbitrary movement restrictions which take the form of both physical and administrative barriers. These restrictions include the endless travel and work permit regime, the ubiquitous checkpoints, the several kilometres of “settler-only” bypass roads and the meandering Separation Wall which veers deep into the West Bank to incorporate Israel’s [228](#) illegal settlements. The impact of Israeli settlements on Palestinian human rights goes well beyond the land confiscated to build them. Fragmenting the West Bank into an archipelago of [167](#) Palestinian cantons, Israel’s settlement policy encroaches on the right of Palestinians to an adequate standard of living, work, education and the right to self-determination.

In Area C and East Jerusalem, the Israeli government uses its control over land-management to pursue a policy of “maximum land with minimum Palestinians”. Contrary to its obligations as an Occupying Power, Israel uses its control over the territory to serve its own interests and those of its settlers. While it promotes settlements in Area C, the government operates a permit regime that denies almost all construction and development to Palestinians, and has declared vast swathes of the territory State land, enabling it to confiscate resources and prevent Palestinians from living there. Palestinians who, with no alternative, build their houses without a permit, run the risk of having their homes demolished and being forcibly displaced. 2016 saw the largest spate of home demolitions recorded in over a decade.

Palestinians in East Jerusalem face similar policies that serve Israel’s political and demographic interests. In 1967, the State of Israel annexed East Jerusalem and its surroundings and subsequently cut it off from the rest of West Bank. Since then, its roughly 300,000 Palestinian residents have been assigned a highly insecure permanent residency status and are subjected to a host of discriminatory laws, policies and practices in the fields of access to education, health care, employment, residency, building rights and the allocation of budgeting and municipal services.

Roughly [75%](#) of Palestinians in East Jerusalem live under the poverty line and only [64%](#) of households are properly connected to the city’s water network. By wilfully neglecting Palestinian neighbourhoods and forcibly displacing its residents, Israel openly pursues a policy of “demographic balance” in favour of its Jewish citizens. Displacing Palestinians and demolishing their homes, the Israeli authorities have confiscated hundreds of hectares of land to build neighbourhoods designated for Jews. Despite their permanent resident status, Palestinian residents of East Jerusalem are treated as foreigners whose residency status can be revoked at any time. They are forced to constantly prove that Jerusalem is their ‘centre of life’ and risk having their residency revoked if they are unable to do so or if they are considered to have breached trust or [loyalty to the State](#) of Israel. Since 1967, more than [14,500](#) Palestinians had their permanent residency status revoked.

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For Palestinians in Gaza, Israel’s policy of separation, control and containment is most flagrant. Using its control over Gaza’s borders, sea and airspace, as well as the Population Registry, Israel has

pursued an explicit policy aimed at entrenching the separation between Gaza and the West Bank. For ten years now, Israel has imposed a comprehensive closure on the Gaza Strip, applying blanket and disproportionate restrictions on the movement of people and the transfer of goods between Gaza and the West Bank. Through this policy, Israel continues to collectively punish Gaza’s two million residents, while seriously impinging on their right to life, health, education, food, water and an adequate standard of living. Israel’s import and export restrictions have crippled Gaza’s basic infrastructure, already devastated by periodic wars and military incursions, in which thousands of its residents were killed and tens of thousands displaced. For its residents, this translates into the [highest unemployment rate in the world](#) and a staggering [80%](#) of the population that is dependent on humanitarian aid.

Patients who, due to the lack of adequate facilities and equipment, seek medical treatment outside of Gaza, often face protracted delays in obtaining permits, or worse yet are denied access to necessary medical care. These policies put patients

in unnecessary danger and undermine their basic right to life and health.

Beyond this, Israel's separation policy, together with the Palestinian factional split, has deeply divided the Palestinian population and undermined its ability to develop cohesive, democratic and representative institutions.

How has the occupation been upheld?

These injustices persist due to Israeli laws and the readiness of its Supreme Court and military courts to approve almost every human rights violation in the OPT. The distinct sets of laws that apply to Palestinians in Gaza and the West Bank - including East Jerusalem - all contribute to entrenching Israel's control and a reality of unequal rights while providing a veneer of legality. Israeli law places Palestinians in the OPT under military rule. While Palestinians are governed by military orders, the approximately [386,000](#) Israeli settlers living in the West Bank remain under the jurisdiction of Israeli civil law. This creates a discriminatory dual system of laws which, for Palestinians, is much harsher and aimed at administering control and quelling resistance rather than upholding the rule of law.

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Israel's policy of administrative [detention and detention under the 'Unlawful Combatants' law](#) have been used to detain thousands of Palestinians without charge or trial for unlimited renewable periods of one to six months. These laws allow Israel to detain people for political rather than security-related purposes as illustrated by the administrative detention of children, human rights defenders, journalists and Palestinian Legislative Council members. Under the military regime, Palestinians are routinely denied due process rights and face discriminatory access to counsel and harsh sentences. This regime also creates the conditions under which torture and ill-treatment of Palestinian detainees can flourish, practices which are systematic, widespread and institutionalised by the Israeli security forces

Meanwhile Israel's military law enforcement system routinely whitewashes hundreds of cases in which Palestinians are killed or abused. This system has no intention to hold perpetrators to

account, as is illustrated by the systematic impunity Israel's security forces enjoy for cases ranging from torture and ill-treatment to suspected extrajudicial executions and war crimes. Even Israel's Supreme Court, the pinnacle of Israel's legal system, plays a key role in legitimising the occupation and its injustices: torture, home demolitions, the forced displacement of communities, the building of the Separation Wall, the legalisation of force feeding and the continuous renewal of administrative detention orders are all measures which have received the Supreme Court's seal of approval.

What role for the EU and Member States?

The EU and its Member States have long [identified](#) that an agreement which ends the occupation is a fundamental foreign policy interest. In line with this position and its commitment to uphold and promote international law, the EU has - at times - played an important role as a "policy-setter". Indeed, the European Community's 1980 Venice Declaration, which recognised the right of Palestinians to self-determination, moved on to shape international positions and the framing of future peace efforts. Today, again, the EU's "non-recognition policy" has been codified as an international norm in [UN Security Council Resolution 2334](#), which calls upon states to "distinguish in their relevant dealings" between Israel and the Occupied Territory.

In addition to its normative power, the EU, as Israel's [top trading partner](#), is well placed to use its leverage in order to end the occupation and guarantee respect for international law. Nonetheless, the EU and its Member States have often refrained from using this influence, adopting only half-way measures or trading in human rights principles for short-sighted political considerations. In light of this, EuroMed Rights calls on the EU and its Member States to:

1. Condition enhancement of EU-Israel relations: In 2009, the EU decided to freeze an upgrade in its bilateral relations with Israel and condition the enhancement of relations on progress towards peace and common human rights values. Despite the total lack of progress in these fields, the EU has continued to deepen its ties with Israel by identifying unexploited opportunities for cooperation in the

2005 Action Plan. At the 2012 EU-Israel Association Council, the EU identified 60 activities in 15 fields of cooperation to further enhance relations. Today, ahead of the next Association Council, the EU is again exploring ways of enhancing EU-Israel relations. While in EU jargon this is not considered an “upgrade”, the continued enhancement of relations shields Israel of any consequences for its human rights violations while seriously undermining the EU’s leverage and credibility in the conflict.

» *The EU and its Member States should unequivocally condition the further deepening of their bilateral relations with Israel on respect for human rights and international humanitarian law.*

2. Fully implement the EU’s non-recognition policy:

Since 2012, the EU has committed to ensure that all EU-Israel agreements “unequivocally and explicitly indicate their inapplicability” to the 1967 Occupied Territories. This commitment is based on the EU and its Member States’ obligations not to recognise as legal a serious breach of a peremptory norm of international law in its own domestic legislation and international relations. While important steps have been taken in this direction, the EU – and in particular its Member States – still have some way to go in ensuring its implementation across the full scope of its relevant dealings with Israel.

» *The EU and its Member States should review the full scope of their bilateral relations with Israel to ensure the correct implementation of its non-recognition policy, including by preventing the entry of illegal settlement goods into the EU market.*

3. Call for the dismantling of all settlements, not just outposts:

Although the EU recognises that settlements are illegal under international law, its policy is limited to [calling](#) for the dismantling of Israeli outposts since 2001, while merely calling for the “freezing” of Israel’s settlement activities. All settlements and outposts are illegal under international law and should therefore all be fully dismantled.

» *The EU should clearly call for the full dismantling of all settlements and outposts in the West Bank, including East Jerusalem, and reject any efforts to recognise these areas as legal.*

4. Stop conditioning the lifting of the Gaza closure:

While the EU has repeatedly [called](#) for the “immediate, sustained and unconditional opening” of the Gaza crossings, it has at the same time conditioned this call on Israel’s security and the return of the Palestinian Authority to the Gaza Strip. The Gaza closure is illegal under international law and constitutes a form of [collective punishment](#). Its lifting should not be conditional.

» *The EU should take significant measures to ensure the immediate and unconditional lifting of the Gaza closure.*

5. End the double standards in the fight against impunity:

Although the fight against impunity is considered a [priority](#) for the EU and its Member States, for a long time, this [commitment](#) did not appear to apply to the Israeli-Palestinian conflict. This contradiction was, and continues to be, reflected in several EU Member States’ unfavourable votes on UN Human Rights Council resolutions. Beyond regular abstentions or votes against Human Rights Council resolutions, some Member States even went as far as to [explicitly discourage](#) Palestine from joining the International Criminal Court (ICC). This position stands in stark contrast to their firm commitment to the ICC and their policies in other contexts.

» *The EU should challenge all instances of impunity at local and international level, in particular by supporting UN-based accountability mechanisms and the ICC.*

6. Prioritise respect for international law in the Middle East Quartet:

Despite its clear [commitment](#) to promote compliance with international law, the EU has repeatedly accepted to sideline these principles in the Quartet. The July 2016 Quartet report fails to make even a single reference to international law. This stark omission completely dismisses the international legal framework in which the conflict takes place, and undermines the EU’s own positions. European peace efforts also fail to address the rights of Palestinian refugees and Palestinian citizens of Israel as central to resolving the conflict.

» *The EU should pursue an independent policy firmly grounding its engagement in any international peace efforts on the strict respect for international law, including human rights.*