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Can there be citizenship without a right to self-determination? The case of Palestinians in Israel

¿Puede existir ciudadanía sin derecho a la autodeterminación? El caso de los palestinos en Israel?

Sonia BOULOS[1]
Sboulos@nebrija.es
https://orcid.org/0000-0001-9388-5159

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Abstract
The aim of this article is to revisit the question of the citizenship regime imposed on '48 Palestinians (Palestinian citizens of Israel) through the prism of self-determination. By doing so, the article attempts to achieve two goals: First, to explicate how the denying '48 Palestinians of right to self-determination by the Nation State Law of 2018 forms part of the settler colonial logic of elimination. The article concludes that the Nation State Law is a watershed moment in Israel's settler-colonial project that downgraded

[1] Associate Professor of International Human Rights law, Faculty of Law and International Relations, Nebrija University.

the legal status of '48 Palestinians from citizens granted a settler-colonial citizenship to permanent residents in their own homeland. This, in turn, elucidates how the denial of self-determination to '48 Palestinians buttresses Jewish supremacy and domination, expanding the territorial reach of Israel's Apartheid regime to cover all the area between the Jordan River to the Mediterranean Sea. Second, the article attempts to contextualize the struggle of '48 Palestinians within a broader emancipatory agenda that challenges the political erasure of the Palestinian people, pursued through the geographical, legal and political fragmentation of Palestinians.

Keywords: 48 Palestinians, Israel, Self-determination, Settler-colonialism, Citizenship, Apartheid.

Resumen

El objetivo de este artículo es revisar la cuestión del régimen de ciudadanía impuesto a los palestinos del 48 (ciudadanos palestinos de Israel) desde la perspectiva de la autodeterminación. Con ello, el artículo intenta alcanzar dos objetivos: primero, explicar cómo la negación del derecho a la autodeterminación a los palestinos del 48, mediante la Ley del Estado-Nación de 2018, forma parte de la lógica de eliminación del régimen colonial de Israel. El artículo concluye que la Ley del Estado-Nación marca un punto de inflexión en el proyecto colonial de asentamiento israelí, que degradó el estatus legal de los palestinos del 48, pasando de ciudadanos con ciudadanía colonial a residentes permanentes de facto en su patria. Esto, a su vez, explica cómo la negación de la autodeterminación a los palestinos del 48 refuerza la supremacía y la dominación judías, ampliando el alcance territorial del régimen de apartheid israelí hasta abarcar toda la zona comprendida entre el río Jordán y el mar Mediterráneo. En segundo lugar, el artículo intenta contextualizar la lucha de los palestinos del 48 dentro de una agenda emancipadora más amplia que desafía la eliminación política del pueblo palestino, impulsada mediante la fragmentación geográfica, jurídica y política de los palestinos.

Palabras clave: palestinos del 48, Israel, autodeterminación, colonialismo de asentamiento, ciudadanía, apartheid.

Introduction

The recent Israeli onslaught on Gaza has reignited debates on the colonial nature of Israel's rule over Palestinians from the Jordan River to the Mediterranean Sea (Ghanim, 2024; Lustick, 2024; Yiftachel 2024). These debates focused primarily on the genocidal violence inflicted on Gazans, and to a lesser extent on the colonial violence against Palestinians in the West Bank. Far less attention was paid to the political oppression of the Palestinian citizens of Israel (hereinafter '48 Palestinians), who faced an unprecedented wave of oppression since the beginning of the war in October 2023. With the inception of the war, Netanyahu declared that Israel is facing four fronts, Gaza, the

West Bank, the northern front, and the internal front, referring to '48 Palestinians (Shihadeh, 2024). Itamar Ben-Gvir, the Minister of National Security, threatened to handle with an iron fist any protest against the war in Gaza inside the Green line and to eliminate the “danger” posed by '48 Palestinians, whom Ben-Gvir described as a security threat to the State. At the beginning of the war, he ordered the purchase of 10,000 assault rifles and handed them out to “protection units” in Israeli towns. Officers were also appointed to organize “civilian combat units” in Israeli towns (Mada al-Carmel, 2023). Additionally, he proposed to relax the guidelines on the use of live ammunition against protestors (Shihadeh, 2024).

Treating '48 Palestinians as a security threat was translated into political persecution and assaults on their identity, orchestrated by government offices, Israeli institutions, and far-right groups. Anyone expressing opposition to the war or solidarity with civilians in Gaza, whether on social media or through protests, was at risk of being accused of supporting organizations designated as terrorist organizations under Israeli law or of incitement to terrorism (Adalah, 2024a). For example, the journalist Mohannad Taha was arrested for posting “my heart is with the children in Gaza”. Dr. Amer al-Huzayil, a mayoral candidate from the town of Rahat, was arrested for a post on social media in which he tried to give different scenarios for land invasion in Gaza. Al-Huzayil was accused of providing information that could aid the enemy. The singer Dalal Abu Amneh was arrested for publishing a Quranic verse “There’s no victor, but God” (Shihadeh, 2024). Yaakov Shabtai, the Commissioner of the Israel Police, issued a directive to reject all permits for demonstrations in support of the Palestinian people in Gaza. He further stated that he would personally take part in the transfer of Palestinians who "identify with Gaza" to the Gaza Strip (ibid). A petition against this directive was rejected by Israel’s High Court of Justice (hereinafter HCJ), hence granting the police a wide discretion to suppress protests, even those that do not require a police permit (Adalah, 2024b).

The aim of this article is to revisit the citizenship regime imposed on '48 Palestinians through the prism of self-determination. The citizenship regime in Israel has attracted staunch criticism in recent years. The citizenship imposed on '48 Palestinians was labeled by Rouhana and Sabbagh-Khoury (2015) as a settler-colonial citizenship, which is an empty citizenship. According to Bishara (2017: 148) the Israeli legal order creates two types of citizenships: essential citizenship for the Jews and incidental citizenship for the Palestinians. The latter “are tolerated guests, and have been magnanimously and incidentally granted citizenship out of the largesse of those who own the right to grant such citizenship” (ibid). Lana Tatour (2019: 29) argues that the citizenship regime in Israel aims at “the production of Palestinian natives as aliens, foreigners, and invaders”. Jabreen (2014) calls it “Hobbesian citizenship”, which is the product of surrender and humiliation. Berda (2018: 98) conceptualizes citizenship as a mobility regime and argues that the citizenship granted to '48 Palestinians guarantees “non-deportability and protection from exile, though not from displacement”; it was never conceptualized as the “right to have rights”. However, little attention has been given to the interconnection between self-determination and citizenship, especially after the adoption of “The Basic Law: Israel the Nation State of the Jewish People” (hereinafter

The Nation State Law) in 2018, which declares that “the right to exercise national self-determination in the State of Israel is unique to the Jewish people”.

In recent years, settler-colonialism has become a key framework for understanding Israel’s rule over Palestinians, even beyond Palestinian and anti-Zionist Israeli academic circles (see, for example, Jabary Salamanca et. al. 2012; Lloyd, 2012; Veracini, 2013; Busbridge, 2018; Domínguez de Olazábal, 2023; Abu-Tarbush & Barreñada, 2023).

Although settler-colonialism was consolidated as a field of study only in the last two decades (Sabbagh-Khoury, 2022), it was Fayez Sayegh (1965) who made the first comprehensive analogy between Zionism and franchise European colonialism. According to Sayegh, franchise European colonialism intended either “to accumulate fortunes by means of privileged and protected exploitation of immense natural resources, […]to prepare the ground for […] the annexation of those coveted territories by imperial European governments” (ibid: 4). Therefore, “European settlers could coexist with the indigenous populations – whom they would exploit and dominate” (Ibid). In comparison, Zionist colonizers were driven “by the desire to attain nationhood for themselves, and to establish a Jewish state which would be independent of any existing government” (ibid). Therefore “Zionist colonisation could not possibly assume the physical proportions envisaged by Zionism while the Arab people of Palestine continued to inhabit its homeland” (ibid: 5). The engagement of recent critical literature with self-determination as a *legal* right is very scarce in relation to '48 Palestinians, if not to say absent.

The exclusion of '48 Palestinians from the language of self-determination is not only a key feature of Israel’s settler-colonial regime, it is also prevalent in discussing the right to self-determination of the Palestinian people at the international level. As Ralph Wilde (2021) points out, self-determination of Palestinians has been conditioned by the Two-State solution formula, which assumes that only Palestinians living in the West Bank and Gaza are entitled to exercise self-determination as Palestinians. The partition paradigm, which was promoted by the British colonial rule, has dominated the “normative universe” of the international community. As Mann and Berda (2022) point out, this “partition-thinking” continues to eclipse other forms for exercising the right to self-determination.

The geographical fragmentation of the Palestinian political body, and the subjugation of Palestinians to different systems of control (refugees, West Bank and Gaza, '48 Palestinians) have contributed to the political erasure of the Palestinian people (Wilde, 2021). By revisiting the citizenship of '48 Palestinians through the prism of self-determination, this article attempts to achieve two goals: First, to explicate how the denial of self-determination by the Nation State Law forms part of the settler colonial logic of elimination. The article concludes that the Nation State Law is a watershed moment in Israel’s settler-colonial project that downgraded legal status '48 Palestinians from citizens with a settler-colonial citizenship to a *de facto* to permanent residents in their own homeland. This, in turn, elucidates how the denial of self-determination to '48 Palestinians buttresses Jewish supremacy and domination, expanding the territorial reach of Israel’s Apartheid regime to cover all the area between the Jordan River to the Mediterranean Sea. Second, the article attempts to contextualize the struggle of '48 Palestinians within a broader emancipatory agenda that challenges the political erasure

of the Palestinian people, pursued through the geographical, legal and political fragmentation of Palestinians. This could open the door to the internationalization of the struggle of '48 Palestinians by situating it at the heart of the Palestinian question.

The first part of this article explores the right to self-determination and its applicability to '48 Palestinians. The second part attempts to highlight the interconnections between the denial of self-determination and the maintenance of a racial supremacy regime on both sides of the Green Line. By applying the principle of self-determination to '48 Palestinians, the article demonstrates how the erosion of their citizenship is central to their political elimination as natives. In the last part, the article suggests that the legal remedies articulated by the International Court of Jusice in relation to the colonization of the West Bank should eqully apply to Israel settler-colonial policies inside the Green Line.

What is the right to self-determination?

The right to self-determination of peoples is “one of the essential principles of contemporary international law”, as highlighted by the International Court of Justice (hereinafter ICJ) (ICJ, 1995: 102). In its recent Advisory Opinion on the “Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem” (hereinafter AO), the ICJ (2024: para. 233) declared that “in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law”. The right to self-determination “requires a free and genuine expression of the will of the peoples concerned” (ICJ,1975: para. 56). The equal right of peoples to self-determination is recognized in the United Nations Charter (UN, 1945).

Self-determination is recognized by key international instruments, including the International Covenant on Civil and Political Rights (ICCPR) (UN, 1966a), the International Covenant on Economic Social and Cultural Rights (ICESCR) (UN, 1966b), the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (hereinafter Declaration on Friendly Relations) (UN, 1970), and the Vienna Declaration and Programme of Action of 1993 (UN, 1993).

The invocation of the right to self-determination emerged post WWII in the context of colonialism and alien domination. The UN Declaration on the Granting of Independence to Colonial Countries and Peoples focused on the right to self-determination to peoples subjected to alien subjugation, domination and exploitation (UN, 1960). This form of self-determination is known as external self-determination. In such cases, exercising the right to self-determination was realized through the establishment of a State that is distinguishable and independent from the alien dominating power. Generally speaking, international law envisioned the following modalities for the exercise of external self-determination: a) the establishment of a sovereign and independent State; b) the free association or integration with an independent State, or; c) the emergence into any other political status freely determined by a people (UN, 1970).

In the colonial context, the term people referred exclusively to peoples living in overseas colonies according to the principle of *uti possideti juris*, rather than to objectively or subjectively identifiable national groups (Toubeau & Almeda, 2019). Different national or ethnic groups living in a former colony had to exercise their right to self-determination in the newly established sovereign State based on existing colonial borders, relinquishing any residual right to secede (Sakran, 2020). All citizens of the newly established State were the beneficiaries of the right to self-determination regardless of their national or ethnic affiliation.

Self-determination claims did not vanish with the decline of franchise colonialism; they resurfaced a couple of decades later to address the plight of indigenous peoples in the context of internal colonialism or settler colonialism. This form of self-determination is known as internal self-determination. As mentioned earlier, settler-colonialism "destroys to replace" (Wolfe, 2006: 388). Settler-colonial projects are essentially built on the denial of self-determination and sovereignty for the natives. Therefore, invocation of self-determination internally aims at reclaiming indigenous delf-determination and sovereignty rights. For example, the UN Declaration on the Rights of Indigenous Peoples recognizes the right to self-determination of indigenous peoples and their right to "freely determine their political status and freely pursue their economic, social and cultural development" (UN, 2007: Art. 3). The declaration also recognizes collective land rights of indigenous peoples and contemplates remedies for the unlawful confiscation of their lands (Arts. 26 & 28). The right to self-determination also applies to peoples and nationalities in multinational States, such as Serbs, Croats and Slovenes in the former Yugoslavia. According to Nowak (1993), these groups are considered 'peoples' in the meaning of common Article 1 of the ICCPR and the ICESCR, which recognizes the right of peoples to self-determination.

With the exception of the UN Declaration on the Rights of Indigenous Peoples, which calls for granting indigenous peoples self-governing powers in matters relating to their internal and local affairs, international law provides little guidance on how internal self-determination could be exercised. This question is left to the prerogative of States. For example, Klabbers (2006: 188) conceptualizes internal self-determination as the right of peoples "to see their position taken into account whenever their futures are being decided". He compares his participative approach to self-determination to Arendt's articulation of the "right to have rights", which embodies the idea that no rights can be guaranteed when one is denied membership in a political community (Besson, 2012).

While the modalities of exercising internal self-determination are opened to contestations, its core element remain clear. In the first place, internal self-determination cannot violate the State's territorial integrity and political unity. Only in very exceptional cases involving massive violations of human rights, separation from the parent State might be justified. This option is known as remedial secession (Buchanan, 2003).

A second core element of internal self-determination is the obligation of States to recognize the equal right to self-determination of *all* peoples living in its territory. When defending the inviolability and the territorial integrity of States, the Declaration on Friendly Relations confers this protection only to States "conducting themselves in compliance with the principle of equal rights and self-determination of peoples… and

thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour” (UN, 1970: Art. 1). Put differently, plurinational States must represent all their peoples on an equal footing and recognize their equal right to self-determination. This principle could be understood as the negation on inter-communal domination (Roth, 2023).

The right to self-determination encompasses two main components, as articulated in common Article 1 of the ICCPR and the ICESCR:

> 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation […] In no case may a people be deprived of its own means of subsistence.

The first component of self-determination was elucidated by a group of international experts convened by UNESCO in 1988 to study the role of self-determination in preventing conflicts. At its core, self-determination consists in “the free expression and protection of collective identity in dignity” (van Praag & Seroo, 1998: 11). It aims to protect “communal security and cultural integrity, and political security” of peoples (ibid: 23). To achieve these goals, “human beings, individually and as groups should be in control of their own destinies and that institutions of government should be devised accordingly” (ibid: 22). Therefore, self-determination “should not be viewed as a one time choice, but as an ongoing process which ensures the continuance of a people’s participation in decision making and control over its own destiny” (ibid: 23).

In democratic societies, the right to self-determination is exercised mainly through elections. Universal voting rights on a nondiscriminatory basis serve as a mechanism for negotiating the relationship between self-determination and statehood, on democratic and equal terms (Mann & Berda, 2022). However, as Toubeau and Almeda (2019: 32) highlight, self-determination “is not reducible to a simple right to democratic participation and representation in the government of a country, for which case a liberal regime of individual rights (to e.g. free speech, assembly and voting) would be enough”. In an intra-State context, “[s]elf-determination is fundamentally about the ability of a national group […] to refashion its relationship with the central government” (ibid). National self-determination requires establishing “a set of institutional arrangements that will allow national groups to express their identity in the public sphere- thereby furnishing them with recognition and status” (ibid).

The second component of self-determination could be traced back to the decolonization era of 1950s and 1960s. It represented an attempt to condemn and proscribe foreign exploitation of the natural resources of former colonies by colonial powers. However, this component is being increasingly invoked vis-à-vis national authorities. This could be attributed to two factors: the exploitation of natural resources by elites to the detriment of the rest of the population, and due to the negative impact of States’ developmental

polices on indigenous peoples and historically marginalized communities (Aponte Miranda, 2012). In the *intra*-State context, a human rights approach to the right to benefit from national resources reflects "emerging shift in the doctrine of permanent sovereignty over natural resources away from absolute state entitlement and toward a model premised on state duties" vis-à-vis its nationals (ibid: 812). In this vein, the General Assembly resolution "Permanent sovereignty over natural resources" states that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned (UN, 1973a). In 2004, the UN Special Rapporteur on Indigenous Issues, Erica Irene Daes, called for applying the principle of permanent sovereignty over natural resources to indigenous peoples, as she recognized that natural resources belonging to indigenous communities "were not, in most situations, freely and fairly given up" (UN Economic and Social Council 2004: para. 32).

Palestinians in Israel: Citizens without self-determination

To analyze the implications the Nation State Law on the citizenship of '48 Palestinians, the two key elements of self-determination must be addressed first.

Self-determination and the participation in the political life

Although '48 Palestinians participate in the Israeli elections, the electoral law is designed to thwart their political power and their ability to challenge, through democratic channels, the settler-colonial foundation of the State and the institutionalization of settler-colonial privileges. Such privileges are buttressed in key provisions of the Nation State Law. These provisions translate the exclusive right of Jews to self-determination into operational principles, including: the duty of the State to encourage, promote and establish Jewish settlements; granting Jews exclusively the right to an automatic citizenship upon settling in Israel; establishing Hebrew as the only official language of the State and downgrading the status of Arabic from an official language to a language with "special" status; and the total exclusion of the Palestinian narrative, history and language from official state symbols and holidays (Boulos, 2019).

The right to participate in the Israeli parliamentary elections (hereinafter Knesset elections) is regulated by the Basic Law: The Knesset. Article 7A of this basic law bans political partis and candidates that negate the existence of the State of Israel as a Jewish State from participating in elections. As Masri (2017: 24) highlights, this legal regime "seek[s] to block the access of ideas that actively seek to challenge the status quo based on universal values…[and] to stop the natives from using electoral politics in order to challenge the dominance of the settler society". The best exemplification of the effort to block basic democratic ideas, based on Article 7A, is the attempt to disqualify the Arab party the National Democratic Assembly (hereinafter NDA) for promoting the slogan of "the State of all its citizens".

In 2002, the Central Elections Committee (hereinafter CEC) banned both NDA and its founder, the Palestinian intellectual Azmi Bishara, from participating in the 2003 Knesset

elections. CEC argued that the slogan “the State of all its citizens” contradicts the Jewish character of the State. The decision to ban NDA was reversed by the Israeli Supreme Court but only after reconstructing the meaning of the slogan and stripping it from its decolonizing potential. In its decision, the court ruled that only parties that deny the “core” or “minimal” characteristics of the State as a Jewish State can be barred from elections. This core includes the right of every Jew to immigrate to Israel, where the Jews constitute the majority; the designation of Hebrew as the official and principal language of the state; the official holidays and symbols must reflect the national revival of the Jewish people; and that Jewish heritage is a fundamental element of the State’s religious and cultural heritage (Supreme Court, 2003).

According to the court, demanding equality for ‘Arab’ citizens, and the recognition of their cultural and religious rights, do not necessarily contradict the basic core of the Jewish character of the State, as they do not deny the centrality of Hebrew as the official language of the State, nor they deny the Jewish character of official holidays and symbols of the State. Bishara’s disqualification was also based on his call to recognize the right of Palestinians refugees to return to their homeland, which was viewed as undermining the Jewish character of the State. In addressing this point, the Court stated that in the case of Bishara (and NDA), while he seeks to recognize the right of return of Palestinian refugees, he does not demand the nullification of the right of Jews to return to Israel. The Supreme Court concluded that indeed NDA’s electoral program “dangerously” approaches the threshold of denying the existence of the State of Israel as a Jewish state; however, both NDA and Bishara were allowed to run for elections due to the absence of conclusive evidence demonstrating that the slogan “the State of all its citizens” constitute a denial of the core characteristics of Israel as a Jewish State (ibid).

It is hard to reconcile this hollow reading of NDA’s platform with the decolonizing project it represented. When this case was heard by the Supreme Court, Justice Barak was its president. As a liberal Zionist, justice Barak probably understood that banning a political party for promoting a basic democratic axiom would dangerously undermine Israel’s Western liberal image. At the same time, being committed to Zionist ideology, he made sure that the approval of NDA was conditioned by stripping the slogan “the State of its all citizens” from its transformative and decolonizing potential. This was achieved by reducing the Party’s electoral program to a mere commitment to individual equality and cultural and religious rights for non-Jewish minorities, pressuring NDA to subscribe to a narrow interpretation of its own electoral program. The decision to allow NDA to participate in the Knesset elections did not prevent the continuous attempts to disqualify Arab parties and candidates in subsequent elections.

Beyond substantive limitations on the right of Arab parties to participate in Knesset elections, Israel pursued other legal tactics to hinder their political influence. For example, in 2014 the Knesset adopted an amendment to the Electoral Threshold Law. This amendment raised the percentage of votes needed to gain seats in the Knesset from 2% to 3.25%. Human rights organizations warned that this amendment would have a devastating impact on the political rights of '48 Palestinians (Sikkuy et al, 2014). In fact, the amendment compelled Arab parties to enter into a forced political coalition as necessary measure to prevent their disappearance from the political map in Israel. As a

consequence, the amendment deprived individual voters a meaningful choice between various political alternatives. The HCJ rejected a petition challenging the legality of the amendment with eight votes to one (HCJ, 2015).

Forcing Arab parties to run in joint lists served as a tool to lower the tone of the parties that posed a real challenge to the settler colonial foundations of the State, especially NDA. Even the Supreme Court assumed that the inclusion of NDA in a joint list could moderate its discourse. For example, the Supreme Court overturned the disqualification of a list composed of NDA and the Arab Movement for Renewal from participating in the elections for the 21st Knesset. In its reasoning, the court stated that NDA was running in a joint list, headed by the first candidate of the Arab Movement for Renewal (Supreme Court, 2019).

The adoption of the Nation State Law has changed the rules of the game, eroding even further the ability of Palestinian political parties to challenge the settler-colonial nature of the State. For example, in 2018, the Knesset Presidium blocked a bill proposed by NDA under the title "Basic Law: State of all its Citizens" (Adalah, 2018). Article 1 of the bill States that "The purpose of this basic law is to enshrine in a basic law the principle of equal citizenship for every citizen, while recognizing the existence and rights of the two national groups, the Jewish one and the Arab one, living within the borders of the State, as recognized by international law".[2] The decision to nix the bill was based on Article 75 (e) of the Knesset Regulations that allows the Knesset Presidium to block a bill if it denies, *inter alia*, the existence of the State of Israel as the State of the Jewish people (ibid).

The HCJ dismissed a petition submitted by NDA's Knesset Members (hereinafter MK) against the decision to nix the bill, stating that the issue had become theoretical after the 20th Knesset decided to dissolve itself and the country was heading for new elections (HCJ, 2018). In September 2022, the CEC barred NDA from participating in the elections for the 25th Knesset in a vote of nine to five. The Supreme Court overturned CEC's decision, however, it emphasized that had the party reintroduced the "Basic Law: State of all its Citizens" in the previous Knesset, this would have required its disqualification (Supreme Court, 2022).

Yiftachel argues that one of the main features of ethnocratic states like Israel, is the existence of a dominant, "charter" ethnoclass that appropriates the state apparatus and determines the outcome of most public policies (Yiftachel, 2006). Jamal argues that the mere participation of '48 Palestinians in the Israeli democratic game "renders them subjugated to a mechanism that renders their presence devoid of substantive meaning" (Jamal, 2017: 183). This participation "becomes imprisonment in a system of power that hollows out their citizenship and delegitimizes any attempt to exercise their power" (ibid). Jabareen highlights that the participation of '48 Palestinians in the first elections was an act of self-negation and the negations of the *Nakba*. This is reflected in their support of two key laws that established Israel's settler-colonial regime: The Absentees'

[2] An English translation of the Proposed Basic Law: A State for all its citizens is available at https://www.adalah.org/uploads/uploads/Proposed_Basic_Law_A_State_for_all_its_citizens_23092018.pdf.

Property Law —1950 (two out of three Palestinian MKs voted in favor) and the Law of Return —1950 (all in favor) (Jabareen, 2014).

The denial of the right to self-determination of '48 Palestinians is not limited to the electoral process. Israel has deployed myriad mechanisms of control and governmentality to fragment and erase the national identity of '48 Palestinians. Among those is the establishment of an Arab educational system, which functions as a separate and subordinated system within Israel’s educational system. This system purports to hinder rather than to enhance the formation of a Palestinian identity (Abu-Saad, 2004). Furthermore, the Arab educational system is divided into Arab, Druze, and Bedouin subsystems. According to Abu Saad, “Palestinian identity in particular is treated as something at best irrelevant and at worst, antithetical, to the overriding goals and aims of the Zionist educational project” (ibid: 109). Agbaria (2018) highlights that Israel uses Arab educational system as a tool of discipline and control. This includes close surveillance of the system by the General Security Services (hereinafter GSS), eliminating any national content from the curriculum and co-opting Palestinian teachers and converting them into apolitical teachers.

Family law regime in Israel also pursues similar objectives. Israel imposes illiberal and coercive religion-based family law regime that grants exclusive jurisdiction in matters of marriage and divorce to all religious communities in Israel. This so-called autonomy is exercised through the establishment of religious family courts (*Shari’a* courts for Muslims, Ecclesiastical courts for Christians and Druze courts for Druze). Karayyani (2020) highlights that Israel falsely portrays this family law regime as multicultural, when in fact it serves as a tool of control designed to fragment the Palestinian minority in Israel into religious communities, hindering hence the formation of a Palestinian national identity (Karayanni, 2020).

Cooptation and economic containment policies are also deployed to thwart the political mobilization of '48 Palestinians (Lustick 1980; Sa'di, 2014; Anabtawi, 2023). These policies fostered partial economic integration of '48 Palestinians into the margins of the Israeli economy, deliberately preventing the growth of autonomous economic infrastructure in Palestinian towns in Israel. This model of partial integration linked individual economic privileges to political loyalty, raising the individual economic costs of political resistance (Anabtawi, 2023).

These mechanisms have not prevented '48 Palestinians from seeking recognition of their national identity and historical rights and grievances as the natives of the land. The adoption of several “Future Vision” documents by the Palestinian political leadership and civil society inside the Green Line symbolized the culmination of these efforts (Ghanem & Mustafa, 2009). These documents focused on the future relations of Palestinians and Jews in Israel. All of them treat the *Nakba* as a constitutive element of the Palestinian identity and call for remedying its consequences, including recognizing the right of Palestinian refugees to return (Jabareen, 2014). As a response, in 2007 the GSS announced that any political activity that threatens the Jewish Character of the State would be treated as subversive activity even if promoted by democratic tools (ACRI, 2007).

Public expressions of a collective Palestinian identity and demands to recognize the *Nakba* has intensified Israel's efforts to thwart the decolonization of the Palestinian consciousness inside the Green Line. For example, in 2011 the Knesset adopted Amendment No. 40 to the Budgets Foundations Law, known as "the Nakba law". The amendment authorizes the Minister of Finance to withdraw State funds from any institution or body that commemorates "Israel's Independence Day or the day on which the state was established as a day of mourning", or that denies the existence of Israel as a "Jewish and democratic state." The HCJ dismissed a petition submitted by the Alumni Association of the Arab Orthodox School and others to challenge the legality of the amendment. The court found that the petition was premature, without addressing its merits (HCJ, 2012).

The attacks on the national identity of '48 Palestinians have escalated over the years whenever their political activism challenged the geographical fragmentation of the Palestinian people. In May 2021, during the "Dignity Upraising", Israel launched a harsh crackdown against '48 Palestinians. This included the detention of approximately three thousand protestors and the prosecution of approximately 460 activists. Israel conducted punitive trials against protestors who showed solidarity with the *Sheikh Jarrah* and Jerusalem protests against the forceful eviction of Palestinians families from their homes. As Anabtawi suggests, these oppressive measures systematically weakened grassroots youth organizations since 2021, depleting their capacity for sustained activism (Anabtawi, 2023).

This clampdown escalated in the aftermath of the October 7 attacks, and the ensuing Israeli onslaught on Gaza. For example, prior to October 7, the police had to seek the approval of the State Attorney's office in order to execute an arrest on charges of incitement. With the outbreak of the war, the State Attorney withdrew this requirement and authorized the police to initiate investigations into charges of incitement without the office's approval (Mada al-Carmel, 2023). In addition, the Israeli government used the powers granted to it during a state of emergency to promulgate a number of emergency regulations targeting political dissent to the war. For example, on October 8, the Government promulgated Emergency Regulations (Detention Hearings) to authorize the Minister of Justice to expand, temporarily, the scope for holding detention hearings in courts via video link, without the physical presence of the detainee. On October 14, 2023 the Government approved additional emergency regulations allowing the Israeli army to hack computer equipment used to operate fixed cameras, by authorizing the head of the Cyber Defense Unit, or another officer with the rank of lieutenant colonel, to hack private computers should the security situation so require. Overall, between 7 October 2023 and 1 May 2024, the state filed 162 indictments for 'incitement to terrorism', compared to 84 indictments submitted between 2018 and 2022 (Shihadeh, 2024).

Self-determination and land rights

The duty to promote Jewish settlement, as enshrined in the Nation State law, is intimately tied to depriving the Palestinians of the right to self-determination. In 2000, the HCJ ruled in the *Qa'adan* case that the principle of "Jewish settlement" should not be constructed as authorizing the discrimination of non-Jewish citizens in the allocation

of State’s lands (HCJ, 2000). This case was submitted by a Palestinian citizen who was banned from leasing State land in the suburban locality of Katzir, on grounds of him not being a Jew. While the court ruled in his favor, it did not issue an order to Katzir to let Qa’adan lease the land.

In its ruling on the legality of the Nation State Law, Justice Hayut reproduced the legal reasoning of the *Qa’adan* case, arguing that the promotion of Jewish settlements could be harmonized with the principle of non-discrimination. According to this view, the State is not allowed – directly or indirectly – to prevent an individual from residing in any locality for reasons of religious or national affiliation. Quoting justice Rubenstein, Hayut adds that the Zionist and official national ‘vital interest’ to promote Jewish settlement should not detract a parallel ‘sincere concern’ for the development of localities among other sectors in the state (HCJ, 2021).

This analysis is based on an erroneous interpretation of international legal norms on land rights, and on a misrepresentation of Israel’s land policies. The court conflates the right of peoples to enjoy collectively national natural resources for the development of their communities, with the individual right to access State lands, or as Sultany puts it “rights over the land and rights in the land” (Sultany, 2014: 206). The right of peoples to freely dispose of their natural resources, including lands, is a positive right encompassing a collective dimension. This dimension requires the State to utilize its natural resources for the development of all local communities on an equal footing. The *Qa’adan* case at best prohibits a categorical denial of the *individual* access of non-Jewish citizens to State lands, but it does not require the State to use land resources to pursue the development of non-Jewish communities.

The *Qa’adan* case, viewed by many as groundbreaking, only perpetuated the disfranchisement of the Palestinian citizens. As Jabareen points out, the decision “depicts the image of the petitioners as individuals who have no historic ties whatsoever with the territory, the land, the soil, or the place” (Jabareen, 2002: 204). The decision emphasizes that the petitioners do not seek to challenge the Jewish foundations of the State, nor they seek a remedy or recognition of the historical injustice inflicted on Palestinians. The language used by Justice Hayut to justify the principle of Jewish settlement attests to the negation of the right of '48 Palestinians to sovereignty over natural resources. The promotion of Jewish settlement is framed as a ‘vital interest’ of the state, whereas the development of localities among ‘other sectors’ is just a ‘concern’.

Justice Hayut’s opinion denies the fact that Israel’s land policies are nothing but a zero-sum game. Since the establishment of Israel, the principle of Jewish settlement was pursued through the dispossession of Palestinians and their erasure from the landscape. Even on official accounts, land resources were used primarily to advance the Zionist settler-colonial project. The Report of the State Commission of Inquiry to Clarify the Clashes between the Security Forces and Israeli Civilians in October 2000, headed by Justice Theodor Or of the Israeli Supreme Court, acknowledged that land appropriation measures were clearly tied to the interests of the Jewish majority and reduced

drastically lands under the jurisdiction of Arab localities, hindering the natural expansion and development of Palestinian communities in Israel (State of Israel, 2003).

According to Yiftachel, the Zionist settler-colonial project in Israel has been preoccupied with the territorial restructuring of the land. This State orchestrated restructuring has centered on the Judaization and de-Arabization of the space, claimed as Jewish (Yiftachel, 1999). This continuous process of restructuring commenced with the ethnic cleansing of 750,000 Palestinians during the *Nakba*, and has been pursued ever since with the help of complex web of land laws and policies. Three main laws constitute the essence of Israel's settler-colonial land regime: the Absentees' Property Law (Transfer of Property Law) of 1950; the Land Acquisition Law of 1953, which retroactively "legalized" the confiscation of land (both of absentee and non-absentee Palestinians) during and after 1948 on the basis of 'security' and 'development'; the Land (Acquisition for Public Purposes) Ordinance of 1943, which enabled the minister of finance to expropriate land for any public purpose (Adalah, 2014).

These laws have targeted lands belonging to Palestinian refugees, and lands owned by internally displaced '48 Palestinians. With its establishment, Israel imposed a military rule on '48 Palestinians that lasted till 1966. This military rule severely curtailed the freedom of movement of '48 Palestinians, ensuring Jewish control over most of the land by preventing the return of internally displaced Palestinians to their villages and cities (Sabbagh-Khoury, 2022). By 1964, Israel managed to expropriate seven million dunams of land belonging to refugees by enacting the Absentees' Property Law-1950 (Adalah, 2014). An estimated 1,200,000 dunams belonging to internally displaced Palestinians were also confiscated under the Land Acquisition (Validation of Acts and Compensation) Law - 1953. Over the years, Israel confiscated additional lands belonging to '48 Palestinians, including approximately 21,000 dunams, which were seized on Land Day in 1976. Currently the Israel Land Administration, which historically barred Palestinians from possessing or leasing State controlled lands, administers approximately 93% of the land resources in the State (ibid).

Forceful relocation plans were also utilized by Israel to further its goal to Judaize the space (Adalah, 2013). These plans focused primarily on unrecognized Bedouin villages in the *Naqab* region in the South and they include: massive house demolitions; the destruction of fields cultivated by Palestinian Bedouins, denying them their main source of livelihood; and depriving the inhabitants of unrecognized villages of basic services and infrastructure, such as sanitation, electricity, sewage, and water in unrecognized villages (ibid). Israel also instrumentalized the Land (Acquisition for Public Purposes) Ordinance to control more lands. This ordinance was originally enacted by the British Mandate, and it allows the State to expropriate private lands for "public purposes". Israel used this ordnance to confiscate lands belonging to '48 Palestinians when the benefit to their communities was absent or marginal (ibid).

The Jewish National Fund, a key institution of the Zionist settler colonial project, uses afforestation as a means of expropriating land belonging to '48 Palestinians to force their inhabitants to relocate. For example, in December 2011, the government announced a plan to expand Yatir Forest in the *Naqab*, which entailed the displacement of 500 residents from their homes (ibid).

Planning and zoning policies are routinely used to expand Jewish settlements and to obstruct the geographical expansion of Palestinian towns or Palestinian neighborhoods in ‘mixed cities’. Since its establishment, Israel has built more than 700 Jewish towns but it failed to build a single one for '48 Palestinians, except for the state-planned Bedouin townships in the *Naqab* designed for the forced urbanization of Palestinian Bedouin communities (Amnesty International, 2022).

In fact, the municipal jurisdiction of the existing Palestinian towns has shrunk due to the massive expropriation of land, largely for the purpose of housing Jewish citizens. The municipal jurisdiction of all Arab localities combined in Israel amounts to less than 3% of the land, although '48 Palestinians make up approximately 17 % of the citizens. About 90% of '48 Palestinians live in 139 Palestinian localities. Requests to expand the jurisdictional areas of these localities are routinely rejected. As a result, the population density has increased eleven-fold since 1948 (Adalah, 2017).

Under the Planning and Building Law of 1965, any building or structure without a building permit can be “demolished, dismantled or removed” by relevant Israeli authorities, and its owner may be liable for the cost of the demolition as well as a fine and/or imprisonment. In the absence of planning for Palestinian towns, '48 Palestinians are forced to build without permits facing the risk of demolition and other sanctions. In 2017, the Knesset adopted an amendment to the Planning and Building Law - 1965, known as the Kaminitz Law. The amendment was designed to enhance enforcement and penalization of “planning and building offenses.” This amounts to criminalization of the right of '48 Palestinians to self-determination and to the enjoyment of their own land resources (ibid).

Even the limited achievement of *Qa’adan* was eroded over time. In 2011, the Knesset enacted Amendment No. 8 to the Cooperative Societies Ordinance. This law establishes admissions committees as statutory bodies, with almost complete discretion to screen applicants seeking to purchase housing units and land plots in hundreds of Jewish Israeli “community towns”, built on State land. The amendment authorized these bodies to rely on the criterion “social suitability” to the “social and cultural fabric” of the community to screen applicants. While the law prohibits the rejection of candidates on grounds such as race, religion, gender, and nationality, the vague term of “social incompatibility” can easily be manipulated to camouflage racial discrimination aimed at excluding Palestinian candidates from accessing such localities. An expanded panel of nine Supreme Court judges rejected a petition challenging the legality of the amendment based on lack of ripeness doctrine (HCJ, 2014).

In 2023, the Knesset passed amendment No. 12 to the Cooperative Societies Ordinance to expand the law’s scope. Prior to this amendment, the law allowed only small towns with up to 400 households to operate admission committees. The amendment introduced the new category of “continued community town” (towns with 400-700 households), and allowed them to operate admission committees subject to the approval of a special committee. Starting in 2028, the Minister of Economy and Industry will have the authority to approve admission committees in towns with more than 700 households. The amendment also extended the law’s geographic scope, permitting not

only towns in the *Naqab* and Galilee to operate admission committees, but also towns listed on the national priority map. The law applies to 437 localities, covering more than 41% of all localities in Israel. A petition filed by Adalah challenging the legality of the amendment is pending in the HCJ (HCJ, 2023).

Conceptualizing a citizenship regime that denies the right to self-determination

Jabareen argues that "the absence of any recognition of the Palestinian Arabs as part of the homeland people and group leaves only one alternative, which allocates to the Arabs a status similar to that of migrants" (Jabareen, 2002: 104). But even this comparison fails to capture the full extent of the political erasure of '48 Palestinians. In the case of migrants, their naturalization opens the door for them to exercise the right to self-determination in their new State as part of the polity. A naturalized French citizen who migrated to France from Chad can exercise self-determination as part of the French polity upon being granted a French citizenship. Even in States where internal self-determination claims are controversial or contested, States still offer all their citizens the possibility to exercise the right to self-determination as part of a larger polity. The Nation State Law is unprecedented in the sense that it explicitly denies almost fifth of the citizens of the State from exercising the right to self-determination in any form, including through inclusion in a larger body-politic.

The exclusion of '48 Palestinians from the body-politic is reflected in the refusal of the State to recognize the existence of an all-encompassing 'Israeli' nationality. In *Tamarin v. the State of Israel*, decided in 1972, the petitioner demanded to be registered as "Israeli" in the population registrar. In ruling against the petitioner, justice Agranat of the Supreme Court argued that no Israeli nation exists separately from the Jewish nation. To recognize an Israeli nation implies a "separation from the Jewish nation" and the creation of a "separate Israeli nation" (Supreme Court, 1972). In 2008, the Supreme Court rejected an appeal submitted by Jewish and Palestinian citizens of Israel, who requested to be registered as Israelis, based on the same reasoning of Tamarin (Supreme Court, 2013).

Depriving '48 Palestinians of the right to self-determination amounts to the *de facto* downgrading of their legal status to permanent residents. Indeed, suffrage rights constitute the principal distinguishing marker between citizens and non-citizen residents, even if some States have expanded rights for non-citizens, such as allowing permanent residents to participate in municipal elections (Garcia, 2012). But the suffrage rights of '48 Palestinians are utilized as a tool to reproduce them as aliens, not as citizens.

Citizenship regimes can play a pivotal role in the institutionalization of the settlers' privileges and in the political erasure of the natives. In anglophone settler-colonial societies, citizenship was "tied to a civilizational assimilative mission" (Tatour, 2019: 8), forcing the indigenous peoples to relinquish their indigenous status (Ibid). But most importantly, in settler-colonial States, such as the United States and Australia, only when the natives no longer posed a demographic threat to the settler-colonial project,

citizenship status was extended to all members of the indigenous communities. In the United States, only with the adoption of the Indian Citizenship Act of 1924, citizenship was granted to all native Americans. When the act was adopted, natives were reduced to less than one percent of the population (Boulos & Sorek, 2024). New Zealand followed a similar path; only when the Maoris were reduced to a minority, they were able to obtain a British Citizenship in 1865 (Ibid).

In Apartheid South Africa, the Citizenship Act of 1949 conferred citizenship to all South Africans; however, Black, Indian and colored South Africans were denied basic political rights linked to citizenship, including voting rights (Moosa, 2021). Racial policies were further cemented with the enactment of several laws, including The Bantu Authorities Act of 1951, which formalized separate development policies for the natives by establishing tribal, regional and territorial authorities for each specific ethnic groups in ‘reserves’, and The Promotion of Bantu Self-Government Act of 1959, which intended to create “self-governing Bantu units” that would eventually gain their independence (Dugard, 1980). By 1970s, the mounting international pressure on South Africa prompted the Apartheid regime to enact Bantu Homelands Citizenship Act of 1970 with aim of denationalizing a large number of Black South Africans to prevent them from participating in future elections. First, the law granted Black South Africans an additional citizenship of the Bantustan to which they belonged by birth, domicile, or cultural affiliation (Ibid). Once a homeland was formally declared independent, its citizens lost their South African citizenship. By 1981, four out of the ten established homelands were declared independent (Hobden, 2018).

In the case of Israel, the assimilation of Palestinians was never an option for the Zionist settler-colonial project, which viewed assimilation as a threat to the Jewish collective identity (Wofle, 2006; Cohen & Gordon, 2018). Tatour (2019: 14) argues that citizenship served as “an instrument of ethnic cleansing, a way of seeking to deny Palestinians the right to return to their land”. The Citizenship Law of 1952 granted '48 Palestinians Israeli citizenship. In doing so, Israel sought to consolidate the outcomes of the *Nakba*, namely to deny ethnically cleansed Palestinians, who constituted 85 percent of the Palestinians living in the territory of the newly established State, the right to return to their homeland (Tatour, 2019; Robinson, 2013).

Caroline Elkins and Susan Pedersen (2005) distinguish between a high institutionalization of settler privileges and a low institutionalization of settler privileges in settler-colonial projects. They argue that the level of institutionalization depends, considerably, on the relative size and power of the settler community. When settlers formed a majority, or were capable of thwarting threats to their dominance, their privileges were less institutionalized, and vice versa. Changes in power balance and demography between the settlers and the natives can alter the level of institutionalization of settler privileges. The enactment of the Nation State Law could be understood as a response to two transformative processes that altered the dynamics between the colonizer and the colonized: the loss of a clear Jewish demographic majority due to the erosion of the Green Line, and the rise of national awareness and collective demands of '48 Palestinians (Boulos & Sorek, 2024). The adoption of the Nation State Law was a watershed moment as it represents a move from “defensive”

policies against decolonial politics and *praxis* among '48 Palestinians (such as the enactment of the Nakba Law to make to discipline the commemoration of the Nakba punitive) to an outright "offensive" settler-colonial policy (ibid).

Denying '48 Palestinians the right to self-determination by the Nation State Law builds on the same logic of denationalization. In giving a seal of approval to the Nation State Law, Justice Hayut argued that law deals with "the national aspect of the country externally", or in other words, it focuses on external self-determination that is unique to the Jews. According to her, the law does not categorically negate the possible recognition of collective rights for non-Jewish minorities in Israel. Ironically, she cites the same institutions that were designed to hinder the consolidation of a Palestinian national identity, namely, autonomy for religious communities in family law matters and the establishment on an Arab educational system, as evidence of the *de facto* existence of some form of 'cultural' self-determination at the communal level benefiting minorities (HCJ, 2021). This logic follows the Bantustans' logic; it denies the native of the right to self-determination under the pretext that the natives enjoy pockets of self-governance.

Justice Mintz rejected altogether self-determination entitlements of Palestinians, claiming that "[t]he State of Israel is a State that maintains a clear affinity to one nation - the Jewish people. A democratic state does not have to be, conceptually, a neutral state, from a national point of view" (ibid: 69). The (Palestinian) judge Karra was the only judge opposing this view, arguing that "[d]emocracy is a principle according to which the sovereignty of a country is vested in the hands of all its citizens" (ibid: 181). Instead, the Nation State Law "associates the State with the Jewish majority group, which alone has the right to self-determination" (ibid: 179).

What are the legal implications of downgrading the status of an indigenous people to *de facto* residency? In its AO, the ICJ reached the conclusion that Israel's policies and practices pursue the following illegal goals: undermining the integrity of the Palestinian people; depriving Palestinians of the right to self-determination; and denying them sovereignty over their natural resources (ICJ, 2024). In the West Bank, this goal is pursued, *inter alia*, through annexation, the expansion of the settler colonial enterprise, the construction of the segregation wall, the imposition of restrictions on the free movement of Palestinians, and the demolition of property (ibid). Israel pursues similar goals in relation to '48 Palestinians, albeit using different legal constellations.

In addressing specific Israeli policies and practices in the West Bank, such as residency permit policy in East Jerusalem, restriction on freedom of movement of Palestinians in the West Bank, and the demolition of property, the ICJ classified these practices as "systemic discrimination based on, inter alia, race, religion or ethnic origin" (ibid: para. 223). The land regime inside the Green Line is also based on the systematic discrimination of '48 Palestinians. While Israel does not limit the freedom of movement of '48 Palestinians, it introduced racially motivated laws to control the demographic growth of Palestinian communities inside the Green Line. For example, in 2003, the Knesset enacted the Citizenship and Entry to Israel Law (Temporary Order)–2003, which imposed a sweeping prohibition on family reunification when the spouse of an Israeli citizen (almost always a '48 Palestinian) is a Palestinian form the Occupied Palestinian

Territory (hereinafter OPT). The law made it impossible for these Palestinian families to live together legally inside the Green Line (Masri, 2018).

Beyond the physical separation between Palestinian communities and Jewish settlers in the West Bank, the ICJ addressed the juridical separation resulting from “the partial extension of Israeli law to the West Bank and East Jerusalem, settlers and Palestinians are subject to distinct legal systems in the Occupied Palestinian Territory” (ICJ, 2024: para. 228). This dual segregation (physical and legal) led the ICJ to conclude that Israel’s legislation and measures constitute a breach of Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter CERD), which prohibits racial segregation and Apartheid.

Unlike the West Bank, the physical segregation between '48 Palestinians and Jewish communities is not pursued through segregation walls and restriction on freedom of movement; instead, other laws have been enacted to hinder the access of '48 Palestinians to Jewish localities, pushing them to live in underdeveloped towns and impoverished segregated neighborhoods in ‘mixed cities’. As for legal segregation, denying '48 Palestinians any form of self-determination, including as “Israelis”, creates a racialized citizenship regime with aim of establishing Jewish supremacy. As Victor Kattan (2024) highlights, the denial of the right to self-determination is a key feature of Apartheid regimes. Smadar Ben Natan (2022) highlights the distinction between Apartheid as a political regime and Apartheid as an international crime.

As a political regime, Apartheid consists in the “domination by one racial group of persons over any other racial group of persons and systematically oppressing them” (UN, 1973b: Art. II), or the establishment of an “institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups” (UN, 1988: 7(2)(h)). As an international crime, Apartheid consists in the commission of inhuman acts, such as murder, imprisonment, persecution, preventing a racial group from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group, segregation and so forth with aim to establishing or maintaining an apartheid regime (UN, 1973b: Art. II; UN, 1988: 7(2)(h)).

Debates on the nature of the Apartheid regime imposed by Israel on Palestinians are gradually expanding the geographical scope of the discussion to include '48 Palestinians. For example, in its 2021 report “A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution”, Human Rights Watch (hereinafter HRW) argued that an Apartheid regime exists from the Jordan River to the Mediterranean Sea. Denying all Palestinians living between the Jordan River and the Mediterranean Sea the right to self-determination, and the promotion of the principle of Jewish settlement, played a key role in concluding that Israel’s Apartheid regime extends to '48 Palestinians. However, HRW concluded inhuman acts that aim at maintain this regime are committed only in the OPT (HRW, 2021).

In its 2022 report “Israel’s apartheid against Palestinians: Cruel system of domination and crimes against humanity”, Amnesty International (hereinafter AI) argued that:

> Israel has established and maintained an institutionalized regime of oppression and domination of the Palestinian population for the benefit of Jewish Israelis – a system of apartheid – wherever it has exercised control over Palestinians' lives since 1948 […] the State of Israel considers and treats Palestinians as an inferior non-Jewish racial group. The segregation is conducted in a systematic and highly institutionalized manner through laws, policies and practices, all of which are intended to prevent Palestinians from claiming and enjoying equal rights to Jewish Israelis within the territory of Israel and within the OPT, and thus are intended to oppress and dominate the Palestinian people. (AI, 2022: 33)

To exercise this domination, "Israeli policies aim to fragment Palestinians into different geographic and legal domains of control not only to treat them differently, or to segregate them from the Jewish population, but also to treat them differently from each other in order to weaken ties between Palestinian communities, to suppress any form of sustained dissent against the system they have created, and ensure more effective political and security control over land and people across all territories" (ibid:17). AI too viewed the Nation State Law as the ultimate manifestation of the institutionalized discrimination and subordination of Palestinians.

Unlike HRW's report, AI's report concluded that inhuman acts are committed on both sides of the Green Line to maintain the Apartheid regime dominating the lives of Palestinians. In relation to '48 Palestinians, those include "expropriating land, imposing military government on Palestinian citizens of Israel until 1966, anchoring the Jewish character of the State in legislation, and placing legal barriers on challenging this definition" (Ben Natan, 2022). Even if this argument is a contested legal claim, the existence of a legal system of racial domination between the Jordan River and the Mediterranean Sea is hard to dispute, especially after the adoption of the Nation State Law.

As Dugard (2023) highlights, Israel is a serial violator of international law. Israel's seven-decade long impunity constitutes one of its key colonial privileges. By holding Israel accountable for the violation basic principles of international law, the AO opened set in motion a process that ha the potential to dismantle Israel's settler-colonial regime. In the AO, the ICJ found Israel responsible for violating *erga omnes* obligations that consist of legal obligations that all States have an interest in upholding. Among the *erga omnes* obligations violated by Israel in the OPT is the prohibition on systematic discrimination, racial segregation and Apartheid. The ICJ highlighted that Israel was under the obligation to repeal laws, policies and practices that violate *erga omnes obligations*.

But most importantly, the AO contributes to decolonization efforts by clearly stating that Israel's continuous violation of *erga omnes* norms has legal implications for the United Nations and for Third States. *Erga omnes* obligations stem from the peremptory character of the legal norms involved, such as the prohibition on systematic discrimination and apartheid (International Law Commission, 2019). A peremptory norm, known also as *jus cogens* norm, is defined as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (UN, 1969: Art. 53). The Articles on

Responsibility of States for Internationally Wrongful Acts (ARSIWA) make it clear that Third States are under the obligation not to recognize as lawful a situation created by a serious breach of a *jus cogens* norm, nor to render aid or assistance in maintaining it (International Law Commission, 2001: Article 41). Finally, States are under the obligation to cooperate in order to bring to an end any serious breach of a peremptory norm (ibid).

If Israel’s laws, policies and practices pursue the same goals on both sides of the Green Line (namely undermining the integrity of the Palestinian people; depriving Palestinians of the right to self-determination; and denying them sovereignty over their natural resources) the legal remedies established for violations of jus cogens norms in the West Bank should equally apply to the subjugation of '48 Palestinians. As a bare minimum, this requires Third States to officially recognize the existence of an Apartheid-like regime that controls the lives of all Palestinians living between the Jordan River to the Mediterranean Sea. Third States that defend the exclusionary Jewish character of the State, built on the political erasure of '48 Palestinians, violate their obligations under international law. Beyond the duty not to recognize an Apartheid-like regime and to contribute to its maintenance, Third States are also under the obligation to assist the UN, or to act collectively or individually to bring an end to this *erga omnes* violation. The failure of many States to meet their obligations so far has normalized a seven-decade old regime, that is premised on the idea of Jewish supremacy and the political and physical erasure and dispossession of Palestinians.

Conclusions

Israel’s onslaught on Gaza has reignited debates on the colonial nature of Israel’s domination over Palestinians. As expected, these debates focused on the genocidal violence inflicted on Gazans, and to a lesser extent the colonial violence deployed against Palestinians in the occupied West Bank. Less attention was paid to the oppression of the '48 Palestinians. The aim of this article is to revisit the question of the citizenship regime imposed on '48 Palestinians through the prism of the right to self-determination. Depriving Palestinians of the right to self-determination is a key feature of Israel’s settler-colonial regime. Recognizing the self-determination of the natives stands in contradiction to the settler-colonial logic that “strives for the dissolution of native societies” to erect “a new colonial society on the expropriated land base” (Wolfe, 2006: 388).

However, in discussing the different ways in which Israel’s settler-colonial project continues to deny the Palestinian people the right to self-determination, '48 Palestinians remain visibly absent. Even the literature that draws on the settler-colonial paradigm to theorize the citizenship granted '48 Palestinians, does not engage with self-determinationof '48 Palestinians as a legal principle.

This article attempts to close this gap by pursuing two goals. First, to article demonstrates how legally depriving '48 Palestinians of the right to self-determination forms part of the settler colonial logic of elimination. The article concludes that the

Nation State Law is a watershed moment in Israel's settler-colonial project since it was enacted with the aim of reshaping both the Jewish settler-colonial privileges and the political elimination of '48 Palestinians. This was achieved by downgrading the status form settler-colonial citizens to *de facto* permanent residents. This, in turn, elucidates how denying '48 Palestinians of the right to self-determination expands the territorial reach of Israel's Apartheid regime, covering all the area between Jordan River to the Mediterranean Sea.

Second, by using the language of self-determination in relation to '48 Palestinians, the article aims to challenge the legal and political implications of the geographical fragmentation of the Palestinian people by resituating the struggle of '48 Palestinians within a broader Palestinian emancipatory agenda. By arguing that Israel's laws, policies and practices pursue the same goals on both sides of the Green Line, mainly undermining the integrity of the Palestinian people; depriving Palestinians of the right to self-determination; and denying them sovereignty over their natural resources, the legal remedies attached to violations of jus cogens norms in the West Bank could equally be applicable to the subjugation of '48 Palestinians.

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