



International Convention on the Elimination of All Forms of Racial Discrimination

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Consideration of communications submitted
under article 11 of the Convention

Findings and recommendations

Report of the ad hoc conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination*

Summary

The present report is submitted by the ad hoc conciliation commission established by the Committee on the Elimination of Racial Discrimination under article 12 (1) (b) of the International Convention on the Elimination of All Forms of Racial Discrimination in relation to the inter-State communication submitted by the State of Palestine against Israel. In the report, the commission addresses questions concerning the scope of the mandate, the compulsory nature of the conciliation procedure under the Convention, procedural history and applicable law. It also makes recommendations with a view to contributing towards an amicable solution to the dispute between the States concerned on the basis of respect for the Convention. The report is submitted to the Chair of the Committee pursuant to article 13 (1) of the Convention. The report is complemented by summaries of the allegations submitted by the State of Palestine and replies provided by Israel^a and the assessment made by the commission based on the available information.^b

^a CERD/C/113/3/Add.1.

^b CERD/C/113/3/Add.2.

* The present report was submitted to the conference services for processing after the deadline for technical reasons beyond the control of the submitting office.



I. Introduction

1. The present report is issued in completion of the conciliation proceedings initiated by the ad hoc conciliation commission established on 30 November 2021 by the Committee on the Elimination of Racial Discrimination in relation to the inter-State communication submitted on 23 April 2018 by the State of Palestine against Israel under article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination. The proceedings concerned a dispute between the States parties regarding violations of articles 2 (1), 3 and 5 of the Convention.

A. Scope of the mandate

2. In the conclusions contained in its decision of 30 April 2021 on the admissibility of the communication,¹ the Committee requested its Chair to appoint an ad hoc conciliation commission which was to make its good offices available to the States concerned with a view to an amicable solution of the matter on the basis of States parties' compliance with the Convention.²

3. Following an unsuccessful attempt to appoint members of the commission with the unanimous consent of the parties to the dispute, the Committee proceeded to elect the following members in accordance with article 12 (1) (b) of the Convention: Michał Balcerzak (Poland); Chinsung Chung (Republic of Korea); Gün Kut (Türkiye); Verene Shepherd (Jamaica) and Faith Dikeledi Pansy Tlakula (South Africa). In 2022 and 2023, the commission held three online meetings and six in-person sessions (see paras. 19–26 below), in order to fulfil its mandate. The commission made numerous attempts to engage with the parties, in particular to seek the views of Israel about the allegations submitted by the State of Palestine. However, Israel failed to participate in the proceedings of the commission. Notwithstanding the lack of cooperation from Israel, and given the compulsory nature of the proceedings, the commission proceeded with its mandate in order to produce clear recommendations towards an amicable solution for the settlement of the dispute between the parties.

4. The report covers allegations concerning the obligations of Israel under article 2 (1) of the Convention, namely allegations of past and continuous acts of racial discrimination, including allegations under article 3, concerning practices of racial segregation and apartheid; and under article 5, concerning policies regulating the life of Palestinians in the Occupied Palestinian Territory.³

5. The report is limited to allegations of racial discrimination committed by Israel in the Occupied Palestinian Territory, which consists of the West Bank, including East Jerusalem, and Gaza.⁴ In that regard, the commission observes that the position of the Committee differs from that of Israel regarding the application of the Convention. The Committee has considered that, as a matter of law and contrary to the position expressed by Israel, the Convention applies in the territories where Israel has effective control,⁵ that is, not only "Israel proper" but also the West Bank, including East Jerusalem, the Gaza Strip and the occupied Syrian Golan; the occupied Syrian Golan was not part of the communication.⁶ In that regard,

¹ See [CERD/C/103/4](#).

² *Ibid.*, para. 66.

³ [CERD/C/100/3](#), para. 9.

⁴ In reports submitted to the General Assembly and the Human Rights Council by the Secretary-General and the United Nations High Commissioner for Human Rights, the terminology used is the Occupied Palestinian Territory, which comprises the West Bank, including East Jerusalem and Gaza. See, for example [A/HRC/12/37](#) and [A/HRC/31/44](#). See also [CERD/C/100/3](#), para. 2.

⁵ [CERD/C/ISR/CO/14-16](#), para. 10.

⁶ Golan, a rocky territory, was captured from the Syrian Arab Republic by Israel in the context of the 1967 Six-Day War and annexed in 1981. The Security Council, in its resolution 497 (1981), decided that the occupation was illegal under international law.

the commission recalls the position of the Committee on the Elimination of Racial Discrimination, as well as that expressed by the International Court of Justice in 2004.⁷

6. In paragraph 8 of its submission dated 23 April 2018,⁸ the State of Palestine asserted that the sole focus of its communication under articles 11 to 13 of the Convention were violations of the Convention “currently being committed, and previously having been committed, by Israel in the OPT, i.e. in Gaza, as well as in the West Bank including East-Jerusalem”. The commission recalls the decision of the Committee on jurisdiction according to which “given that [Israel] became a contracting party to the Convention in 1979, the Committee should deal with any violations that have taken place since then” and that “articles 11 to 13 of the Convention do not indicate that the use of the mechanism established in those articles is limited to Convention breaches that have occurred after ratification by the State party that decides to make use of those provisions”.⁹

B. Compulsory nature of the conciliation procedure under the Convention

7. The commission takes note of the position of Israel not to take part in the proceedings, as expressed in several submissions since the introduction of the communication by the State of Palestine on 23 April 2018.¹⁰ The commission recalls that once the procedure is triggered by a State party under article 11 of the Convention and the commission is established pursuant to article 12, the commission has the obligation to fully consider the matter before producing a report and recommendations for the amicable solution of the dispute (art. 13), guided by the principles of impartiality, objectivity, fairness and justice.¹¹

8. The commission recalls the position of the Committee that unlike other human rights instruments, such as the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the American Convention on Human Rights, which provide for an optional complaint mechanism that is open for States to adopt or not, article 11 (1) of the Convention provides for an automatic inter-State complaint mechanism.¹²

9. The commission notes the compulsory nature of the inter-State procedure established under article 11 (1) of the Convention. In this regard, as States parties to the Convention, both Israel and the State of Palestine are obliged to participate in the proceedings in good faith. This obligation entails, in particular, that both States parties must cooperate with the commission, by being present at the meetings called by the commission, submitting written materials, and providing evidence for the amicable settlement of the dispute,¹³ and the States parties may submit proposals to that end.¹⁴ Given the compulsory nature of the inter-State procedure, the refusal of Israel to take part does not prevent the commission from performing its duties under articles 12 and 13 of the Convention, nor does it relieve the commission of those duties.

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

⁸ Submissions from the States parties are available at <https://www.ohchr.org/en/treaty-bodies/cerd/inter-state-communications>.

⁹ CERD/C/100/3, para. 14.

¹⁰ Correspondence dated 30 April 2018, 3 August 2018, 23 September 2018, 22 October 2021, 24 August 2022 and 30 August 2022. This was also expressed in an oral statement on 12 December 2019.

¹¹ Rules 2 (2) and 18 of the rules of procedure of the ad hoc conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination.

¹² CERD/C/100/5, para. 55.

¹³ Rule 15 of the commission’s rules of procedure.

¹⁴ Rule 14 (2) of the commission’s rules of procedure.

C. Methodology

10. The commission was not able to carry out fact-finding or in situ missions, owing to the lack of cooperation by Israel. In order to fully consider the matter, the commission used the information collated by the Committee during the first phase of the proceedings, and other relevant information supplied by the States concerned,¹⁵ including the responses provided by Israel on the facts submitted by the State of Palestine. The commission also considered information from other relevant sources, in particular the Committee's concluding observations and other United Nations documents, non-governmental organizations (NGOs) and academic institutions.¹⁶

11. The commission reiterates that the objective of its mandate is to seek an amicable solution to the dispute. For that purpose, the commission's report must embody its findings (*conclusions* in the official French translation of article 13 (1) of the Convention) on all questions of fact relevant to the issue between the parties and make appropriate recommendations. In this regard, given that it was impossible to carry out fact-finding activities in situ, the commission relied on available written sources. Consequently, the commission decided it was not in the position to apply the usual standard of proof used in United Nations reports.¹⁷ The commission considers, however, that the allegations submitted by the State of Palestine are particularly serious and should trigger an assessment supported by several sources, including reports and other documents of the United Nations, other international organizations, civil society organizations and academic research. This process of assessment has been conducted with due respect to the principles of impartiality, objectivity, fairness and justice.¹⁸ The commission also took into account the position expressed by the non-appearing State in several documents and statements provided during the jurisdiction and admissibility stages of the proceedings undertaken by the Committee.

12. The commission notes that, for the purposes of factual determinations, the allegations raised by the State of Palestine would have required further assessment facilitated by fully fledged fact-finding missions and the cooperation of both States concerned. Lack of cooperation on the part of Israel led to the commission being unable to conduct such missions. Nevertheless, those allegations have been documented by several entities, including United Nations entities and civil society organizations. The credibility of those entities is instrumental in assessing the facts submitted by the State of Palestine and in making recommendations to all relevant stakeholders with a view to ending the dispute with due respect for the Convention. The commission also notes that the present report is limited to the alleged violations submitted by the State of Palestine in the framework of the Convention.

II. Procedural history

A. Previous decisions

13. Upon reception by the Committee on 28 April 2018, the communication submitted by the State of Palestine was transmitted to Israel on the same day. In a note verbale dated 30 April 2018, Israel requested the Committee to reject the communication, given the objection Israel had submitted to the Secretary-General, in his capacity of depositary for the Convention,¹⁹ the absence of treaty relations between the two parties and the lack of jurisdiction in these circumstances. On 7 May 2018, the Committee invited each State concerned to submit to the Committee within three months written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State, pursuant

¹⁵ Article 12 (1) (a) and (8) of the Convention.

¹⁶ The commission acknowledges the contribution of Leiden University.

¹⁷ Office of the United Nations High Commissioner for Human Rights, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* (New York and Geneva, 2015), pp. 62 and 63.

¹⁸ Rule 2 (2) of the commission's rules of procedure.

¹⁹ See depositary notification No. 293 (2014). Depositary notifications are available at https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en.

to article 11 (1) of the Convention. Upon expiration of the three-month deadline, on 3 August 2018, Israel submitted its arguments and reiterated its objections against the jurisdiction of the Committee. On 30 August 2018, the State of Palestine presented its arguments regarding the jurisdiction of the Committee. On 23 September 2018, Israel reiterated its objections against the jurisdiction of the Committee and contested the admissibility of the communication.

14. On 7 November 2018, pursuant to article 11 (2) of the Convention, given that the matter had not been adjusted to the satisfaction of both parties, the State of Palestine referred the matter again to the Committee. On 14 December 2018, the Committee decided to request Israel to inform the Committee as to whether it wished to supply any relevant information on the issues of jurisdiction or admissibility; to examine the any preliminary question at its ninety-eighth session; and invite the representatives of each State party concerned to present their views.²⁰ In that regard, upon reception of several submissions from both parties on the issues of jurisdiction and admissibility, the Committee decided to hold separate oral hearings in camera with the representatives of the States parties concerned. On 29 April 2019, the secretariat shared the rules of procedure specific to the hearings.²¹ On 2 May 2019, during oral hearings held by the Committee, the State of Palestine presented its arguments. Israel did not attend the hearings.

15. On 12 December 2019, at the Committee's 100th session, Israel appeared before the Committee and presented its arguments. On the same day, the Committee decided that it had jurisdiction concerning the communication.²² On 30 April 2021, at its 103rd session, the Committee decided that the communication was admissible²³ and requested its Chair to carry appoint the members of an ad hoc conciliation commission in accordance with article 12 (1) (a) of the Convention. In September 2021, the Chair initiated consultations with the States parties concerned regarding the composition of the commission. On 30 September 2021, a list of experts was submitted to both States parties to the dispute. On 7 October 2021, the State of Palestine indicated its preferred candidates.

16. On 22 October 2021, Israel replied to the note verbale of 30 September 2021 and reiterated its disappointment with the Committee's decisions on jurisdiction and admissibility regarding the dispute. Israel also referred to the conciliatory nature of the ad hoc conciliation commission and stressed that such a commission would lack the fundamental legal basis required for its operation if established without the willingness of both States parties.

17. On 23 November 2021, the Committee noted that the States parties concerned did not unanimously agree on the list of candidates proposed by the Chair to take part in the commission as provided for in article 12 (1) (a) of the Convention. Having considered that there was no prospect of reaching an agreement between the parties on the matter, the Committee invoked article 12 (1) (b) and elected the members of the commission from among its members (see para. 3 above). On 2 December 2021, the Secretariat transmitted the composition of the commission to both States parties.

18. On 4 January 2022, through a note verbale, the State of Palestine invited the commission to undertake, as soon as possible, an in situ visit to the territory of the State of Palestine to gain a first-hand impression of the alleged violations of the Convention.

19. On 19 January 2022, the members of the commission held their first meeting online, during which each made the solemn declaration,²⁴ elected Mr. Kut as the Chair of the commission,²⁵ and adopted the commission's rules of procedure.²⁶ On 10 February 2022 and 4 April 2022, the commission held its second and third meetings online, focused on its

²⁰ CERD/C/100/3, para. 68.

²¹ In accordance with article 7.1 of those rules of procedure (A/74/18, annex II).

²² See CERD/C/100/3, CERD/C/100/4 and CERD/C/100/5.

²³ CERD/C/103/4.

²⁴ See article 5 of the commission's rules of procedure (CERD/C/507). Ms. Tlakula was absent during the first meeting and made her solemn declaration on 10 February 2022.

²⁵ See <https://www.un.org/unispal/document/un-committee-on-the-elimination-of-racial-discrimination-cerd-sets-up-ad-hoc-conciliation-commission-press-release/>.

²⁶ CERD/C/507.

methods of work, its road map and other organizational matters. On 25 April 2022, the Secretariat transmitted the commission's rules of procedure to the States parties concerned. On the same date, the commission invited the representatives of both States parties for an introductory meeting to be held on 4 May 2022.

20. On 4 and 5 May 2022, the commission held its first in-person session in Geneva. The State of Palestine appeared before the commission and provided it with updates regarding the allegations submitted in the communication. Israel did not appear.

21. On 6 May 2022, the commission transmitted to the States parties concerned the cost estimate for 2022 regarding the expenses of the members of the commission, which the States parties should share equally, in accordance with article 12 (6) of the Convention.

22. On 24 August 2022, the Secretariat invited both States parties to a meeting with the commission to be held in Geneva on 1 September 2022. On 30 August 2022, in a note verbale, Israel reiterated its refusal to take part in the proceedings.

23. On 31 August and 1 September 2022, the commission held its second in-person session in Geneva. On 1 September 2022, the State of Palestine appeared before the commission. Israel, having acknowledged the receipt of the invitation, did not appear. During the session, the representative of the State of Palestine delivered a statement.

24. On 17 October 2022, the commission transmitted its request to visit Israel during the first quarter of 2023 to the Permanent Mission of Israel to the United Nations Office and other international organizations in Geneva. Israel did not respond to the request.

25. On 5 and 6 December 2022, the commission held its third in-person session in Geneva and discussed, among other items, the methodological aspects in relation to the conciliation proceedings and the drafting of its report. On 1 and 2 May 2023, the commission held its fourth in-person session in Geneva on the same topics. From 1 to 6 September 2023, the commission held its fifth in-person session in Geneva and continued discussing the drafting of the report. On 11 and 12 December 2023, the commission held its sixth in-person session in Geneva concerning the finalization of its report. The presence of the States parties was not required in the latter two sessions.

26. During its final in-person session, the commission decided that its report would be complemented by summaries of the allegations of the State of Palestine and of the various responses submitted by Israel on the matter to the Committee and other United Nations bodies²⁷ and the assessment made by the commission on the basis of the available information.²⁸ The summaries and assessment, which will be available from the Secretariat, constitute an integral part of the report.

B. Attempts to seek an amicable solution to the dispute with the participation of both parties

27. The commission duly explored numerous avenues for engaging Israel to participate in conciliation proceedings and to make available its good offices. The commission also considered involving third parties in order to achieve progress in the fulfilment of its mandate. Members of the commission carried out informal meetings with potential facilitators to approach Israel with regard to the dispute. Those attempts did not result in tangible outcomes. As at the time of the drafting of the present report, the commission had repeatedly approached the Israeli authorities, to no avail.

28. The request of 17 October 2022 for a country visit to Israel specified that the visit would take place in Tel Aviv or other places in Israel agreed upon by the Israeli authorities. The purpose of such a visit was to engage in discussions with the Israeli authorities to secure more productive cooperation with the commission. Israel did not respond to the request.

29. On 8 June 2023, the commission invited Israel and the State of Palestine to a conciliation meeting to be held on 1 September 2023, during its fifth session. Through the

²⁷ CERD/C/113/3/Add.1.

²⁸ CERD/C/113/3/Add.2.

meeting, the commission wanted to seek the States parties' views on the settlement of the dispute. On 19 June 2023, the State of Palestine confirmed its participation in the meeting. On 24 July 2023, responding to the commission's correspondence dated 8 June 2023, Israel addressed a note verbale to the Committee reiterating its objections against its jurisdiction. Given the refusal by Israel, the commission decided to cancel the proposed meeting. On 13 December 2023, the commission issued a press release calling upon Israel and the State of Palestine to consider its services to be available at any time and as a matter of priority for an amicable solution of the matter on the basis of respect for the Convention.²⁹

30. Despite its refusal to take part in the proceedings, Israel regularly requested updates from the OHCHR secretariat regarding the activities of the commission through its Permanent Mission in Geneva. Israel also acknowledged receipt of several notes verbales received from the secretariat regarding the proceedings.

C. Non-appearance of Israel before the commission

31. The commission reiterates the compulsory nature of the inter-State proceedings under articles 11 to 13 of the Convention. The commission holds that the non-appearance by Israel does not constitute a legal impediment for the commission to fulfil its mandate, nor a reason to disregard the arguments made by Israel regarding the allegations made by the State of Palestine.

32. The commission applied the utmost diligence in assessing whether the assertions made by the State of Palestine were well-founded in fact and in law, proceeding in the manner it would if Israel were present.³⁰ Therefore, the commission also took into account the submissions of Israel at the preliminary stages of the proceedings and other relevant information from various reports and statements available to the Committee and the commission that shed light on the position of Israel, including its security concerns, regarding the allegations submitted by the State of Palestine.

III. Applicable law

33. Pursuant to article 11 (1) of the Convention, an inter-State communication may be submitted to the Committee if a State party considers that another State party is not giving effect to the provisions of the Convention. Pursuant to article 12 (1) (a) of the Convention, the commission established under article 12 is to make its good offices available to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention.

34. The commission notes that both Israel and the State of Palestine are party to seven of the nine core human rights instruments,³¹ including the International Convention on the Elimination of All Forms of Racial Discrimination.³² Israel ratified that Convention on 3 January 1979. The State of Palestine acceded to the Convention on 2 April 2014. On 22 May 2014, Israel deposited a notification with the Secretary-General of the United Nations in objection to the accession of the State of Palestine to the Convention. Israel stated that "Palestine" does not satisfy the criteria for statehood under international law and lacks the legal capacity to join" the convention, and that the request for accession was "without effect

²⁹ See <https://www.ohchr.org/en/press-releases/2023/12/israel-palestine-un-ad-hoc-conciliation-commission-urges-end-violence>.

³⁰ See, mutatis mutandis, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, paras. 29–31.

³¹ The seven human rights instruments are: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

³² Upon ratification of the Convention, Israel made a reservation to article 22 thereof.

upon Israel's treaty relations under the Convention".³³ The Committee held that the State of Palestine was a State party to the Convention³⁴ and based its decision on jurisdiction of 12 December 2019, inter alia, on the non-synallagmatic and *erga omnes* character of the obligations enshrined in the Convention "without consideration to bilateral issues between States parties".³⁵

35. The commission recalls the obligation set out in article 2 (3) of the Charter of the United Nations, namely that all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. The commission notes that in accordance with article 33 (1) of the Charter, the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

36. In fulfilling its mandate under articles 12 and 13 of the Convention, the commission took into consideration applicable international law, including the International Convention on the Elimination of All Forms of Racial Discrimination and the other human rights treaties to which both States concerned are parties, and the rules of international humanitarian law. The commission also considered the human rights guarantees under domestic law and other relevant aspects of Israeli legislation.

IV. Conclusions

37. **The commission recalls that since its establishment by the Committee on 30 November 2021, it has exhausted all available means to bring Israel and the State of Palestine together around the conciliation table. Although those attempts had been unsuccessful, the commission had continued to expect a shift in the position of Israel regarding the commission's offer to conciliate. However, on 7 October 2023, bringing the two States parties to the conciliation table became unrealistic. The commission notes that on 7 October 2023, armed militants of Hamas carried out indiscriminate attacks against Israel from Gaza, killing more than 1,000 Israelis and other civilians, including women, older persons and children, and taking more than 200 hostages. Many of the hostages were still being held at the time of the adoption of the present report. The commission also notes that in response to those attacks, the Israeli authorities decided to carry out military operations in Gaza against Hamas. Such operations led to the killing of more than 26,000³⁶ Palestinians and civilians of other nationalities, including women, older persons and children. Thousands of others have been displaced and have been subjected to very precarious living conditions.**

38. **The commission is of the view that the current situation is the consequence of a long political crisis between Israel and the State of Palestine for which the international community has failed to contribute to finding a lasting solution. The allegations of racial discrimination raised by the State of Palestine against Israel³⁷ are intrinsically linked to the nature of the conflict between the two States parties. Those allegations are also the consequence of systematic policies and discriminatory practices of Israeli authorities against the Palestinian population over decades in the occupied territories, as observed by the Committee in its relevant concluding observations.³⁸ However, the commission emphasizes that the conflict between Israel and the State of Palestine must not affect the application of the Convention and the duty to respect its provisions. Therefore, taking into account the current situation, the allegations raised by the State of Palestine**

³³ See depositary notification No. 293 (2014). Depositary notifications are available at https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en. See also CERD/C/100/3, para. 33.

³⁴ CERD/C/100/5, para. 26.

³⁵ Ibid., para. 67 (e).

³⁶ At the time of the finalization of the present report.

³⁷ The State of Palestine alleges the violation by Israel of articles 2, 3, 5 (a), 5 (d) (i), (ii), (iv) and (v) and 5 (e) (i), (iii), (iv) and (v) of the Convention.

³⁸ CERD/C/ISR/CO/14-16, para. 24; and CERD/C/ISR/CO/17-19, para. 22.

need to be urgently addressed. Furthermore, the implementation of the commission's recommendations requires the full support of all States parties and international organizations.

39. The commission notes that according to Israeli authorities, the special measures imposed on Palestinians by Israel are justified by the hostile security situation on the ground.³⁹ However, the commission remains convinced that the recourse to indiscriminate violence against civilians, such as that observed in the response to the brutal attacks carried out by Hamas on 7 October 2023 and its aftermath, will obstruct a favourable environment for dialogue between both States parties.

40. The commission recalls that the acknowledgement of the right of both the State of Palestine and Israel to exist as States is a fundamental factor in discussions regarding the serious allegations of racial discrimination submitted by the State of Palestine. At the same time, the commission recalls that the inherent right of Israel to individual self-defence, as enshrined in article 51 of the Charter of the United Nations, cannot be a justification to breach international human rights law. The commission also recalls that the prohibition of racial discrimination is a peremptory norm (*jus cogens*) of international law.⁴⁰ Such prohibition remains binding irrespective of the conditions of armed conflict. The commission is also of the view that a unified government in the State of Palestine operating in the framework of the rule of law is paramount to initiate dialogue with Israel on the allegations of racial discrimination raised in the communication.

41. The commission is of the view that the guarantee of self-determination⁴¹ for Palestinians is critical for sustainable peace between Israel and the State of Palestine and the full enjoyment of all the rights enshrined in the Convention by both communities. Israel, as the occupying Power,⁴² has the duty to ensure that there is no racial discrimination, precarity and lack of prospect for self-determination.

42. Respecting the rule of law and combating impunity in cases of racial discrimination are key elements in the process towards a solution of the dispute between the States parties. In this regard, the commission notes that, in addition to the serious allegations submitted by the State of Palestine regarding violence committed by Jewish settlers, new reports suggest that, since 7 October 2023, those settlers have continued to commit racially motivated violence against Palestinians in the West Bank and East Jerusalem with the alleged support of Israeli forces and authorities. The commission is of the view that addressing the security issue raised by Israel in its submissions⁴³ without guaranteeing the enjoyment of equal rights by all Palestinians, as well as Israelis, is unrealistic and not sustainable.

43. In the conduct of its military operations in the Occupied Palestinian Territory, Israel as the occupying Power has the utmost responsibility to protect civilians. In this regard, the commission warns against any form of non-distinction in the civilian population based only on the assumption that the population living in the areas affected by such military operations have ties with Hamas.⁴⁴ The commission is gravely concerned about the prevalence and magnitude of the civilian casualties resulting from indiscriminate acts of destruction in Gaza. The principles of distinction, precaution and proportionality are essential for the protection of civilians under international

³⁹ Submission from Israel dated 20 March 2019, para. 54.

⁴⁰ See commentaries to the articles on responsibility of States for internationally wrongful acts. *Yearbook of the International Law Commission, 2001*, vol. II, Part Two (United Nations publication, Sales No. E.04.V.17 (Part 2)), p. 85, as cited by the Committee in paragraph 40 of its Decision on jurisdiction ([CERD/C/100/5](#)).

⁴¹ See article 55 of the Charter of the United Nations. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*.

⁴² See [A/76/417](#).

⁴³ In particular the submission dated 20 March 2019.

⁴⁴ For example, the order given by the Defense Minister of Israel for a complete siege of Gaza following the Hamas attack of 7 October 2023.

humanitarian law.⁴⁵ The commission is deeply concerned by the position expressed by the Defense Minister of Israel, who stated that Israel was fighting “human animals”.⁴⁶

44. The commission, having considered the serious allegations raised by the State of Palestine under article 3 of the Convention regarding discriminatory practices and policies of racial discrimination and apartheid committed by Israeli authorities, recalls that in recommendations addressed to Israel, the Committee has urged the State party to take immediate measures to prohibit and eradicate such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention.⁴⁷ The commission agrees with the Committee, which has also urged Israel to eradicate all forms of segregation between Jewish and non-Jewish communities that affects Palestinians in Israel proper and in the Occupied Palestinian Territory.⁴⁸ The commission notes the severe consequences of such measures on populations living essentially in Gaza and other occupied territories in the context of armed conflict between Israel and Hamas along with other armed groups in Gaza. In the same vein, the commission recalls recommendations in concluding observations issued by several other treaty bodies, including the Human Rights Committee⁴⁹ and the Committee on Economic, Social and Cultural Rights⁵⁰ that Israel should amend the Basic Law: Israel – The Nation-State of the Jewish People, which institutionalizes discrimination against Palestinians.

45. The commission notes that the situation described by the State of Palestine in its communication with regard to freedom of movement and residence (article 5 (d) (i) of the Convention) and the right to housing (article 5 (e) (iii) of the Convention) of Palestinians living in the Occupied Palestinian Territory has further deteriorated since 7 October 2023. The commission is seriously concerned about reports indicating that as at 17 January 2024, more than 24,448 Palestinians had been killed in Gaza since 7 October 2023, and that nearly 1.7 million people had been displaced across the Gaza Strip.⁵¹ The commission also notes that the destruction of a large number of civilian buildings as a result of the Israeli military operations in Gaza is unprecedented and contrary to international humanitarian law.

46. The commission notes that in its submissions, Israel pointed to several legal provisions in its domestic legislation, which, if reviewed to bring them into line with the Convention, might help to address racial discrimination.⁵² The commission regrets that owing to the non-cooperation of Israel, the commission was not able to properly assess the application of anti-discriminatory legislation by Israel. The commission is also not in a position to conclude that decisions taken by the Israeli High Court of Justice⁵³ have been fully implemented. Furthermore, the commission cannot verify if the High Court of Justice rulings on military procedure in the West Bank to protect civilians from

⁴⁵ See articles 3, 4, 13 and 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), concerning the duty of a party to the conflict or occupying Power to protect civilians without any adverse distinction based on, inter alia, race, colour, religion or any other similar criteria. The Fourth Geneva Convention entered into force for Israel on 6 January 1952.

⁴⁶ “‘We are fighting human animals’ said Israeli Defence Minister Yoav Gallant”, No Comment TV (9 October 2023). Available at <https://www.youtube.com/watch?v=ZbPdR3E4hCk>.

⁴⁷ CERD/C/ISR/CO/14-16, para. 24. See also CERD/C/ISR/CO/17-19, para. 23.

⁴⁸ CERD/C/ISR/CO/17-19, para. 23.

⁴⁹ CCPR/C/ISR/CO/5, para. 11.

⁵⁰ E/C.12/ISR/CO/4, para. 17.

⁵¹ <https://www.unrwa.org/resources/reports/unrwa-situation-report-66-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

⁵² See for example The Basic Law: Human Dignity and Liberty of 1992 and CERD/C/ISR/17-19, para. 13.

⁵³ See, for example, *Morar and others v. IDF Commander in Judea and Samaria and Samaria and Judea District Commander, Israel Police*, Case No. HCJ 9593/04, Judgment of 26 June 2006.

military activities⁵⁴ and on the legality of the Israeli Defense Forces pre-emptive targeted killing of alleged terrorists⁵⁵ are duly applied.

47. The commission notes that in several submissions and statements, Israel relied on the rulings of the High Court of Justice to show its willingness to address the allegations of racial discrimination in the Occupied Palestinian Territory. In this regard, the commission considers that the case law of the High Court of Justice may be crucial in fulfilling the obligations of Israel under the Convention. The commission acknowledges the efforts made by the Court in deciding on several acts of racial discrimination committed by Israeli settlers or Israeli security forces. However, the commission is concerned by the proposed reform of the Supreme Court,⁵⁶ which can be perceived as a threat to democracy and the rule of law⁵⁷ in Israel. The commission notes that the proposed reform, if carried out, has the potential to further endanger the enjoyment by Palestinians of their rights under the Convention.

48. The commission recalls that the practice of colonization is in itself a negation of human dignity. The continuation of the colonization through settlements and outposts in Palestinian territories is in itself an obstacle to a possible amicable solution to the Israeli-Palestinian dispute. As long as the de facto policy of colonization continues and there are no concrete steps taken for a mutually agreed and lasting delimitation of borders between the States parties, it will not be possible to ensure equal protection of the rights of Israelis and Palestinians under the Convention. In addition, allowing new illegal constructions by Jewish settlers in Palestinian territories on the one hand and restricting building permits for Palestinians on the other, and continuing house demolition practices, contributes to a situation of systemic discrimination against Palestinians living in the Occupied Palestinian Territory. These realities, together with the restrictions of movement imposed on Palestinians through checkpoints, as well as limited access to roads, natural resources, land and basic social facilities, amount to a situation of racial segregation.

49. The commission recalls that the role of the international community is fundamental in enforcing the United Nations resolutions concerning allegations of racial discrimination committed by Israel. Despite more than 100 resolutions adopted by several United Nations bodies, including the General Assembly, the Security Council and the Human Rights Council, the situation of Palestinians facing acts of racial discrimination remains unchanged. In the current context, the commission recalls that all States parties to the Convention have the duty to effectively enforce the Convention. In article 2 (1) (b), the Convention states that each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations. Having regard to the above, tolerating Israeli policies and practices resulting in racial discrimination can engage the international responsibility of any State party. Eradicating racial discrimination is a shared responsibility of all States parties to the Convention. Therefore, all States parties to the Convention should support Israel and the State of Palestine in finding an amicable solution to the dispute concerning the application of the Convention.

50. The commission emphasizes that the only solution to settle the dispute between Israel and the State of Palestine is a frank and constructive dialogue between the States parties. This is why the commission has continuously called upon Israel to accept its good offices to settle the dispute amicably. Despite the non-participation of Israel in the conciliation proceedings, the commission invites both States parties to seriously

⁵⁴ See, for example, *Adalah and others v. GOC Central Command, IDF*, Case No. HCJ 3799/02, Judgment, 6 October 2005, as cited in the submission from Israel dated 20 March 2019.

⁵⁵ *Public Committee against Torture in Israel and the Palestinian Society for the Protection of Human Rights and the Environment v. Government of Israel and others*, Case No. HCJ 769/02, Judgment, December 2006, as referred to in the submission from Israel dated 20 March 2019.

⁵⁶ See communication ISR 2/2023, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27890>.

⁵⁷ "Israel: UN human rights chief expresses concern over proposed legislative changes, urges pause", press release, 21 February 2023.

consider implementing the recommendations addressed to them below. The commission recalls that article 11 of the Convention invoked by the State of Palestine relates to the collective enforcement of this instrument in good faith and can be triggered “independently from the existence of correlative obligations between the concerned parties”.⁵⁸

V. Recommendations

51. The commission recommends that the Government of Israel:

(a) Cooperate with any international or regional bodies or Governments willing to help in the settlement of the present dispute concerning racial discrimination, including through conciliation, good offices or any other method of peaceful settlement of disputes;⁵⁹

(b) Immediately end and refrain from all forms of indiscriminate attacks against civilians who are not taking part in active hostilities and of destruction of civilian objects, in full respect of the principles of distinction, precaution and proportionality;

(c) Immediately end all settlement activities in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the resolutions adopted by the Security Council in this regard, including Security Council resolution 2334 (2016);

(d) Revise its current position on its obligation to report to the Committee under article 9 of the Convention regarding the territories under its effective control;⁶⁰

(e) Establish an independent national entity to address all the allegations of racial discrimination raised by the State of Palestine in its communication;

(f) Consider establishing a high-level interministerial body against racial discrimination, which may include, inter alia, the ministries responsible for justice, social affairs, and defence, to engage in frank dialogue with the Committee and other United Nations entities and with Palestinian authorities with a view to taking concrete steps to address the issues raised in the communication;

(g) Ensure that all victims of racial discrimination enjoy full access to justice and reparation or satisfaction for any damage suffered, pursuant to article 6 of the Convention;

(h) Ensure that the ongoing justice system reform does not hinder the access of Palestinian victims of racial discrimination to courts;

(i) Ensure that restrictions of movement imposed on Palestinians for security reasons are applied only when strictly necessary and proportionate;

(j) Revise and rescind, as appropriate, all military orders⁶¹ that are or may be perceived to be discriminatory, or that have the potential to lead to discrimination against Palestinians;

(k) End the practice of administrative detention of and differentiated treatment between Israeli and Palestinian minors.

52. The commission recommends that the State of Palestine:

⁵⁸ See CERD/C/100/5, para. 67 (c).

⁵⁹ See article 33 (1) of the Charter of the United Nations, on means of peaceful settlement of disputes between States, which include negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement.

⁶⁰ CERD/C/ISR/CO/17-19, para. 9.

⁶¹ For example, Israel Defense Forces Order No. 101 (1967).

(a) **Condemn all forms of violence committed by Hamas and other Palestinian armed groups, including acts of violence based on racial motivations carried out against Israeli nationals or residents;**

(b) **Take measures to prevent all Palestinian armed groups from carrying out violent and indiscriminate attacks against civilians, particularly against women, children and older persons;**

(c) **Engage in frank dialogue with Israel concerning the issue of racial discrimination.**

53. **The commission recommends that the States parties to the Convention:**

(a) **Offer their good offices or any other applicable method of peaceful settlement of disputes towards achieving a mutually acceptable and lasting solution to the conflict between Israel and the State of Palestine;**

(b) **Call upon Israel to end all policies and practices that lead to discrimination against Palestinians and amount to segregation;**

(c) **Support all initiatives between Israel and the State of Palestine aiming at effectively addressing the allegations submitted by the State of Palestine in its communication;**

(d) **Ensure that their resources are not used to enforce or support discriminatory policies and practices against Palestinians living in the Occupied Palestinian Territory;**

(e) **Use their influence on Israel and the State of Palestine to encourage both parties to cooperate in initiatives aimed at settling the dispute;**

(f) **Take appropriate sanctions against any individual, group or entity inciting segregation, racially motivated violence, hate speech and racial discrimination in general that compromise the possibility of the peaceful coexistence of Israelis and Palestinians.**

54. **The commission recommends that the Security Council:**

(a) **Take a clear and unequivocal position in addressing the allegations of racial discrimination submitted by the State of Palestine, including through appropriate measures to put an end to the decades-long political crisis between the States parties that resulted in a humanitarian disaster;**

(b) **Consider establishing a high-level contact group, which may include members of the Security Council and other interested Member States to help solve the dispute between Israel and the State of Palestine, including through mediation, conciliation or any other appropriate means of peaceful settlement of disputes.**

55. **The commission recommends that the Committee on the Elimination of Racial Discrimination:**

(a) **Appoint a rapporteur or establish a working group to follow up on the above recommendations with both States parties and other stakeholders;**

(b) **Follow up on the allegations submitted by the State of Palestine in its communication and the recommendations made to Israel and the State of Palestine during the consideration of both States parties under article 9 of the Convention.**

56. **The commission recommends that civil society organizations in both States parties:**

(a) **Create a joint platform with Israeli and Palestinian human rights defenders to address questions of racial discrimination and hate speech in both communities;**

(b) **Promote common activities towards peace and reconciliation within the territories of both State parties and in the diaspora.**