

Human Rights Council: written statement (18th session)

Since 1967, Israel as occupying power, has systematically violated its obligations under international humanitarian and human rights law in the OPT by establishing a regime of *apartheid*¹ and implementing a policy of *population transfer*. Since 1967, Israel as occupying power with the intention and result of *de jure* and *de facto* permanent requisition and annexation of occupied Palestinian land. This regime and policy have caused massive dispossession and displacement among the occupied Palestinian population and have prevented the exercise of the right to self-determination, independence and sovereignty of the Palestinian people in the OPT.

All Israeli governments, in conjunction with the World Zionist Organization, have developed and implemented plans for the implantation of Jewish settlers and the integration of large sections of the OPT into Israeli state territory.

Population growth within settlements is not natural. As approximately 1/20th of Israel's Jewish population, the settlers' numbers have grown by over 5% a year, some three times the national average. In 1977, the West Bank's Jewish population was barely 7,000. By 1988, it had grown to 63,000; by 1993, to 100,000; by 2006, to 230,000; and continued construction ensures that this rate of growth continues through 2011.²

Recent Developments in Israeli Settlement Expansion in Area C and East Jerusalem

On Monday, August, 15, Israel approved the building of 277 new settler homes in Ariel, already the largest settlement in the West Bank lying over the largest water aquifer in the West Bank, now taking the total to more than 2,700 new settler homes approved in the first two weeks of August. This newly approved project is the largest settlement project approved by the Israeli government in years, demonstrating that Israel's settlement are only accelerating and expanding.³

Ma'aleZeitim is an Israeli settlement in Ras al-Amud, a Palestinian neighborhood in East Jerusalem, and has now become the largest Israeli settlement in any East Jerusalem Palestinian neighborhood.⁴ According to Peace Now, initial construction began on fourteen housing units inside the new settlement Ma'aleh David, a planned housing complex inside the Ras al-Amud neighborhood, in May of 2010.⁵ According to current building plans as of March 2011, "the two settlements of MaaleZeitim and Maale David will eventually be connected by a bridge to create a settlement complex housing over 1000 Jewish settlers in the middle of Ras al-Amud, a few hundred meters from the Temple Mount/Haram al-Sharif, the most explosive core of the Israeli-Palestinian

¹ Apartheid is defined and constitutes an international crime under the 1976 Convention on the Suppression and Punishment of the Crime of Apartheid and the 2002 Rome Statute of the ICC.

² Halkin, Hillel, *What To Do With the Israeli Settlements*, The Wall Street Journal (Feb. 4, 2010), available at <http://online.wsj.com/article/SB10001424052748704259304575043101789714506.html>.

³ Lewis, Ori, *Israel to Build 277 Homes in Ariel Settlement in West Bank*, Reuters (Aug. 15, 2011), available at <http://www.reuters.com/article/2011/08/15/us-israel-palestinians-settlements-idUSTRE77E33E20110815>.

⁴ IrAmim, *Un-neighborly Neighbors: The MaaleZeitim Settlement's War of Attrition against the Hamdallah Family* (Mar. 2011), available at <http://www.ir-amim.org.il/eng/?CategoryID=254>. [Hereinafter "IrAmim"]

⁵ Selig, Abe, *Ras el-Amud construction begins*, Jerusalem Post (May 11, 2010), available at <http://www.jpost.com/MiddleEast/Article.aspx?id=175221>.

conflict.”⁶

However, the Israeli government views the settlements as an innocuous extension of their housing policies. Netanyahu's office issued a statement Tuesday that said "Jerusalem is not a settlement; it is the capital of the state of Israel," and insisted there was "no link" between the peace talks and its development plans for the city.⁷

Israel's position runs counter to long-established international law, namely UN Security Council Resolution 242, which deems East Jerusalem as Occupied. The world's highest judicial authority, the ICJ, reiterated and reaffirmed this prohibition in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory when it concluded that “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”⁸

In his report of the 16th Session of the Human Rights Council, the Special Rapporteur to the OPT, Richard Falk underscores the application of this framework in described Israel's policies in East Jerusalem as amounting to an effort to complete its de-facto illegal annexation by pursuing a “policy designed to achieve the ethnic cleansing of Palestinians.”⁹

International political opposition to Israeli expansionism

The international community has responded with a universal outcry against Israel's settlement activity, land confiscation and annexation, and forced expulsion of Palestinians off of their lands.

EU foreign affairs chief Catherine Ashton strongly condemned Israel's settlement expansion and reaffirmed their illegality under international law.¹⁰

Even the United States, normally a staunch supporter of Israel and Israeli actions, condemned Israel's settlement activity and its implications on the peace process. Secretary of State Clinton called the proposed construction of 1,300 apartments "counterproductive" and an obstacle to restarting peace talks with the Palestinians.¹¹

White House Press Secretary Robert Gibbs joined in condemning Israel's settlement activity, and expressed President Obama's description of the settlements as illegitimate and his call for the cessation of settlement expansion.¹²

⁶ *TrAmimsupra* note 12.

⁷ Burns, Roberts, *Hillary Clinton Blasts Israel Settlement Expansion Plans*, Huffington Post (Nov. 10, 2010), available at http://www.huffingtonpost.com/2010/11/10/hillary-clinton-israel-settlement-expansion_n_781846.html.

⁸ See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, p. 120. [Hereinafter “ICJ”]

⁹ A/HRC/16/72 at para. 17.

¹⁰ AFP, *EU's Ashton Slams Israeli Settlement Approval* (Aug. 17, 2011), available at <http://www.google.com/hostednews/afp/article/ALeqM5hXzgKYB6FS0EqFDFGpD5In1iXcJw?docId=CNG.0f536b3f87ac380c93fc984fd8fcf6c4.3f1>.

¹¹ Burns, Robert, *Hillary Clinton Blasts Israel Settlement Expansion Plans*, Huffington Post (Nov. 10, 2010), available at http://www.huffingtonpost.com/2010/11/10/hillary-clinton-israel-settlement-expansion_n_781846.html.

¹² The Washington Times, *Israeli Settlement Expansion Angers U.S.* (Sept. 4, 2009), available at

Settlement expansion fits within the meaning of forced population transfer

East Jerusalem, the West Bank, and the Gaza Strip remain occupied territories and are governed by international humanitarian law, particularly, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Times of War (“FGC”). As such, Israel’s so-called housing policies in East Jerusalem and Area C are illegal pursuant to article 49 of the FGC which prohibits the Occupying Power from “deport[ing] or transfer[ing] parts of its own civilian population into the territory it occupies.”

The widespread and systematic forcible internal displacement of Palestinians by the Israeli occupying power for the purpose of acquiring land and altering the demographic composition of the territory amounts to a forcible transfer of population. Forced population transfer has been defined as the “systematic, coercive and deliberate ... movement of population into or out of an area ... with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.”¹³

Forced population transfer is prohibited under international humanitarian law,¹⁴ a violation of customary international law,¹⁵ is a grave breach of the Fourth Geneva Convention,¹⁶ and may amount to a war crime pursuant to the Rome Statute.¹⁷

Forced population transfer and settler implantation also violates human rights including the right to self determination (common art. 1 to ICCPR, CESCR), the principle of non discrimination (see art 2 of ICCPR and ICESCR and art. 1 CERD), and the right to leave a country and to return to one’s country (art. 12 ICCPR).¹⁸ Moreover, the right to work (art. 6 CESCR), to education (art. 13 CESCR), and to adequate housing (art. 28 CESCR) may be also violated.¹⁹

BADIL urges the Human Rights Council to:

1. Condemn Israel’s plans to build 277 new settler homes in Ariel and a total of 2,700 new settler homes in the Occupied West Bank, including East Jerusalem.
2. Reiterate the illegality of Israel’s unilateral annexation of East Jerusalem and affirm its occupied status in international law;

<http://www.washingtontimes.com/news/2009/sep/04/israeli-plan-settlement-building-angers-us/>.

¹³ See: The human Rights Dimensions of Population Transfer including the Implantation of Settlers, Preliminary Report prepared by A.S. al-Khawasneh and R. Hatano. Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth Session, 2-27 August 1993, E/CN.4/Sub.2/1993/17, 6 July 1993, paras.15 and 17

¹⁴ *ICJ supra* note 9 at para. 101.

¹⁵ See rule 129 and 130 of ICRC 2005 study on Customary International Humanitarian Law.

¹⁶ Unlawful deportation or transfer constitutes a grave breach under Art.85(4) AP I

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¹⁸ See also ICCPR General Comment 27, paras. 8-11.

¹⁹ For the applicability of Human Rights Treaties ratified by Israel within the oPt, see *supra* fn. 4, ICJ Legal Consequences of the Construction of a Wall paras. 102-113.

3. Urge High Contracting Parties of the Geneva Convention to sanction Israel's settlement enterprise by refusing to engage in any commerce or trade that benefits the settlement economy or otherwise facilitates its expansion; and
4. Commission a study to interrogate whether Israel's settlement expansion and settler implantation for the purpose of acquiring land and altering the demographic composition of the territory amounts to forcible transfer of population.