

Follow-Up Information Submitted to the
Committee for Economic, Social and Cultural Rights

Regarding

CESCR's 1998 and 2001 "Concluding Observations"

on

**Israel's Serious Breaches of the ICESCR-Protected Rights of
Palestinian Refugees and Internally Displaced Persons**

Prepared for the May 2003 Convening of the Committee
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This submission will discuss Israel's policies regarding the denial of the right to return, land expropriation, the discriminatory administration of this expropriated land, and the denial of compensation and restitution.¹ The focus will be on the 1948 Palestinian refugees. The submission takes into account the Committee's Concluding Observations of 1998 and 2001, and the list of issues to be addressed by Israel's current second periodic report. Given the absence of detailed information in Israel's second periodic report, this submission aims to update the Committee about the extent of damage caused by Israel's ongoing violations of Palestinian refugees' Covenant protected rights and about new developments in Israel's policies and in relevant international law. BADIL asks the Committee to strengthen its 1998 Concluding Observations regarding Israel's obligations towards its Palestinian refugees. A set of recommendations for explicit language the Committee should use is included in the final section of this submission.

I. Factors That Make Israel's Return and Land Laws and Policies Particularly Troubling

Israel's return and land policies are particularly urgent issues given the extent of the damage caused by Israel's actions, given the ongoing character of this damage, and given the recent developments in Israeli policies and in international law.

1. Scope/Extent of Damage

First, it is important to note the enormous effect that Israel's actions have had on Palestinians. Israel's actions have caused the displacement of many Palestinians who are

still forbidden from returning to their original homelands. Today there are approximately 5 million Palestinian refugees worldwide.² Many of these live in refugee camps in the West Bank, Gaza, Lebanon, Syria, and Jordan.³ Israel has taken extensive amounts of land of these refugees. Since 1948 Israel has expropriated more than 17 million dunums (17,000 sq. km.) of Palestinian refugees' land.⁴ This figure includes almost 1 million dunums of land that was owned by Palestinians inside Israel.⁵ The contrast between what Palestinians possessed in 1948 and what Palestinians possess today is astounding. In 1948 Palestinians owned more than 90 percent of historic Palestine.⁶ By the end of the war 77.94% of Palestine was under Israeli control.⁷ Today Palestinians only own and control approximately 10 percent of the land in Israel and in the 1967 occupied territories.⁸ Palestinians only own less than 3% of the land within the State of Israel.⁹ The State of Israel controls 93% of the land today in Israel.¹⁰ Much of this land was expropriated according to the laws and policies described in the attached annex. The effect of this land confiscation is that over three-quarters of the Palestinian population have been displaced either outside or inside their homeland and more than half of the Palestinian population has been displaced outside the borders of their original homeland.¹¹

2. Ongoing Character of this Damage

The confiscation of land and destruction of homes continues to occur both inside Israel and in the 1967 Israeli occupied Palestinian territories. In 2002, Israel demolished more than 150 Palestinian homes within Israel in numerous areas including the areas of al-Araqib, al-Maqiman, Beir Hadag, al-Qaren **in the Naqab/Negev**, Majd al-Krum,

Sajour, Jaffa, Lydda, Ramle, and Kafr Qasem.¹² The effect of Israel's policies on Palestinians has been enormous and Israel continues to restrict land use and land ownership through its procedures. There is little hope of appeal within Israel and, as mentioned in the attached annex, there has been no reasonable compensation for these measures. Recent calculations assess the current market value of Palestinian land, housing and property stolen or destroyed at U.S. \$250 billion.¹³ Because of the extent of the damage and the continuing hardship faced by those Palestinians who were displaced in 1948 as well as the hardship faced by Palestinians still in Israel, Israel's policies are urgent matters that must be addressed by the Committee.

3. New Israeli Measures

There is an urgent need to address these land issues, because exceptional High Court decisions affirming the right of Palestinians to return to and gain access to their land have remained unimplemented and because Israel is taking new measures regarding the land it had confiscated from the Palestinian refugees. The High Court recognized the principle of non-discrimination and ruled that the State and the Israeli Lands Administration must give equal treatment to Jews and non-Jews regarding land use in *A'dal Ka'adan v. The Israel Lands Administration*.¹⁴ Unfortunately, this decision remains unimplemented.¹⁵ Other High Court decisions regarding the right of Palestinians to return to and gain access to their land also remain unimplemented, such as decisions regarding the villages of Ikrit and Biram.¹⁶

Israel has recently been taking new land measures. The Israel Lands Administration (ILA) has for years *leased* land to the Kibbutzim, to Moshavim, and to other Cooperatives in Israel, while reserving other land for military purposes and for

Jewish settlements.¹⁷ Much of the land leased to the Kibbutzim was no longer necessary to the Kibbutzim because of many desertions and not enough new recruits.¹⁸ Economically the Kibbutzim were not doing well.¹⁹ The Israeli government in the 1990s began to permit the rezoning of the agricultural land of the Kibbutzim so that commercial stores and apartments could be built.²⁰ Since 1997 the ILA started to sell the Palestinian refugees' land to the Kibbutzim who in turn sold it to developers.²¹ In 1998, 110 Kibbutzim were allowed to rezone their land and to sell it to any Jew.²² In June 2000, a bill was passed to rezone 4 million dunums (4,000 sq. km.) of land from agricultural to residential land.²³ This would allow the land that has been leased to Kibbutzim to be sold to developers for Jewish use.²⁴ This recent bill is important because of its size and timing.²⁵ This is of real concern to the Palestinian refugees who have been denied **their rights to return to, use, and be** compensated for this land. The sale to a third party will **complicate the return of land to its refugee owners.**²⁶ This is land that should be returned to the refugees. Israel should provide both restitution and compensation for this land. At the very least, though, Israel should **reserve** the money that is made by selling their land **for compensation to be paid to the refugees.**²⁷

4. New Developments in International Law

Finally, the Committee should pay particular attention to Israel's land violations because of international law precedent establishing a right to restitution and compensation for property expropriated by a state.²⁸ The European Court of Human Rights issued a decision in 1996 in the case of *Loizidou v. Turkey*.²⁹ In this case the Court considered a claim by a refugee from Kyrenia, an area in Turkey-occupied

Cyprus.³⁰ Turkey expelled more than 200,000 Greek Cypriots from their homes in 1974 and has not allowed these people to return to their land or homes.³¹ This is highly relevant to Israel's policies since Israel has similarly expelled and denied return rights, land and compensation to many Palestinians. The Court in the *Loizidou* case ruled that Turkey has been violating the European Convention for the Protection of Human Rights since Ms. Loizidou remains the legal owner of the property.³² By not allowing her to return to and to use her property, the state is interfering with her property rights.³³ The Court ordered Turkey to return her property and to compensate her for the interference with the enjoyment of her property.³⁴ While this addresses a violation of a member of the Council of Europe, this precedent is important in providing evidence that individuals have rights to property expropriated from them or destroyed and that such property must be returned and compensation provided for it. This case provides legal precedent for forcing a state to remedy its violations, particularly regarding land seizures by occupying states.

Thus, given the enormity of the problem, the continuing nature of the problem, the international law precedent to provide restitution and compensation to refugees under similar conditions to that of the Palestinian refugees, and the recent attempts to privatize the refugee's land and make restitution and compensation more complicated, the committee must assess this situation and strengthen its Concluding Observations regarding Israel's return and land policies.

II. Israel's Violations of the Covenant on Economic, Social and Cultural Rights and Other International Laws and Agreements

Israel is a signatory to the Covenant on Economic, Social and Cultural Rights (“the Covenant”). Israel’s actions including the denial of the right to return, its land expropriation schemes, its discriminatory administration of the expropriated land, and its denial of land restitution and compensation violate numerous provisions of the Covenant. The main provisions which Israel is violating are the right to non-discrimination (Article 2.2), the right to a means of subsistence (Article 1.2), the right to have rights restricted only when it promotes the general welfare (Article 4), the right to have no restrictions on fundamental rights recognized by law or convention (Article 5.2), the right to an adequate standard of living, including the right to housing (Article 11.1), and the right to enjoy the natural wealth and resources of a country (Article 25).³⁵

A. The Denial of the Right to Return

A-1. The Denial of the Right of Return Violates Covenant Articles 1.2, 2.2, 4, 5.2, 11.1 and 25

- Article 1.2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international law. *In no case may a people be deprived of its own means of subsistence.*
- Article 2.2: The States Parties to the present Covenant undertake to guarantee *that the rights enunciated in the present Covenant will be exercised without discrimination* of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Article 4: The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, *the State may subject such rights only to such limitations as are determined by law in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.*
- Article 5.2: *No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law,*

conventions or customs shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

- Article 11.1: The States parties to the present Covenant *recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
- Article 25: Nothing in the present Covenant will be interpreted as impairing *the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources*.³⁶

The denial of the right to return violates numerous Covenant articles. The right to return is a core right that is implied in the Covenant. There is a fundamental right to return and to acquire nationality in the Covenant because without the ability to return and acquire nationality, the other rights listed in the Covenant cannot be enjoyed. Since the Palestinian refugees cannot return, they cannot enjoy their land, their natural resources, their right to an adequate standard of living, and their right to housing. The refugees are forced into camps where resources are scarce and where living conditions are overcrowded.³⁷ Thus, by not allowing the Palestinian refugees to return, Israel is denying them such Covenant rights as the right to a means of subsistence (Article 1.2), the right to an adequate standard of living, including the right to housing (Article 11.1), and the right to enjoy the natural wealth and resources of a country (Article 25).³⁸

The denial of the right to return also violates Article 2.2 of the Covenant. Article 2.2 of the Covenant states that each party undertakes “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³⁹ As stated, the right of return and the ability to

receive citizenship are fundamental since they are key to enjoying any of the Covenant rights. These rights are therefore implied in the Covenant. As discussed in the attached annex, Israel's Law of Return allows all Jews to automatically return to Israel, while Israel's Nationality Law denationalizes Palestinian refugees.⁴⁰ Any Jew that returns to Israel then receives automatic citizenship.⁴¹ According to the Nationality Law, though, Palestinians may only become citizens through birth, residence, or naturalization.⁴² Thus, while it is nearly impossible for Palestinians to return to Israel, Jews can easily enter Israel and acquire citizenship. The obvious discrimination in these provisions is clearly against the non-discrimination provision in Article 2.2 of the Covenant and has been recognized as such by the Committee.⁴³

Finally, Israel's return policies violate Article 4 of the Covenant. According to Article 4, a State Party may not limit rights unless the limitation is compatible with the right and unless the limitation promotes the general welfare.⁴⁴ A return policy that favors Jews over non-Jews violates rights in the Covenant and is clearly not a limitation promoting the general welfare. This limitation only promotes the welfare of a defined group, the Jewish population. Thus, Israel also violates Article 4.

A-2. The Denial of the Right to Return Violates International Law

- General Assembly Resolution 194
- Law of Nationality, including:
 - Articles of Nationality of Natural Persons in Relation to Succession of States (drafted by the International Law Commission, adopted by the General Assembly)
- Human Rights Law, including:
 - The Universal Declaration of Human Rights, Article 13(2)
 - The International Covenant on Civil and Political Rights, Article 12(4)

- The International Convention on the Elimination on All Forms of Racial Discrimination, Article 5(d)(ii)
- Regional Agreements: 1994 Bosnia Agreement, 1995 Dayton Agreement, 1995 Croatia Agreement, and 1994 Guatemala Agreement
- Humanitarian Law, including:
 - Hague Regulations, Articles 20 & 43
 - Fourth Geneva Convention, Articles 4, 6(4) & 158(3)

The United Nations has recognized the right of the Palestinian people to return to their homeland. Resolution 194 of 1948 states that the General Assembly “[r]esolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date”⁴⁵ Israel, though, has refused to recognize the right of the Palestinian people to return to their homeland. By refusing to recognize the right of return, Israel is ignoring the decision of the UN.

Additionally, the denial of the right of return violates three bodies of international law including the law of nationality, human rights law, and humanitarian law. Israel is violating the Law of Nationality. The Law of Nationality requires that states allow their own nationals to return.⁴⁶ This is considered an obligation between states so that states do not burden other states with nationals they should admit.⁴⁷ Additionally, a state should not revoke the nationality status of its own nationals so **as to avoid their admission.**⁴⁸ Even when a change in sovereignty occurs, the new state must offer nationality to the inhabitants of the territory.⁴⁹ This is supposed to apply regardless of whether the inhabitants of the territory are physically present when the change of sovereignty occurs.⁵⁰ Thus, inhabitants of the original state should be offered nationality status by the new state. The General Assembly has adopted the Articles of Nationality of Natural Persons in Relation to the Succession of States that clarify the rules regarding

state succession.⁵¹ These articles recognize that states must allow those who were forced to leave to return to their habitual residence.⁵² Additionally, these articles recognize a presumption that people having their habitual residence in a territory affected by succession will acquire the nationality of the successor state.⁵³ Israel has defined a set of conditions (namely physical presence in certain geographic areas prior to 1952), which prevent Palestinian return and access to nationality status, thereby violating the rules requiring states to allow nationals to return and to offer the nationality of the new state to the old inhabitants. Israel only allows Palestinians to become nationalized by birth or by fulfilling the residence or naturalization requirements.⁵⁴ Thus, Israel is treating Palestinians as denationalized citizens. This is contrary to the Law of Nationality.

Israel is also violating human rights law. Various human rights treaties recognize a right to return, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.⁵⁵ In fact, the International Covenant on Civil and Political Rights has been ratified by Israel.⁵⁶ The Covenant has both a right to return provision and a non-discrimination provision.⁵⁷ The return right under human rights law is now considered customary international law.⁵⁸ Regional agreements relating to refugees such as the 1994 Bosnia Agreement, the 1995 Dayton Agreement, Annex 7, the 1995 Croatia Agreement, and the 1994 Guatemala Agreement have also provided for return rights.⁵⁹ These agreements support the idea that the right of return has been accepted as a necessary part of international law. By not allowing Palestinian refugees to return, Israel is violating human rights law.

Finally, Israel is violating humanitarian law. Humanitarian law is the law regulating what states may do in wartime. There is a general right of return in humanitarian law. This was first codified in Article 43 of the Hague Regulations.⁶⁰ The Regulations state that an occupant must apply the law of the displaced sovereign during military occupation.⁶¹ This logically includes a right to remain in their homes and to return to their homes in the event of displacement. Article 20, which requires the repatriation of prisoners of war, would also logically incorporate the repatriation of civilians generally.⁶² Additionally, numerous provisions of the Fourth Geneva Convention provide for the right of return.⁶³ Moreover, in humanitarian law there is a general prohibition against mass forcible displacement and a subsequent right of return arises when this occurs.⁶⁴ By denying Palestinian refugees the right to return Israel has also been violating humanitarian law. Since the right of return exists in customary international law, Israel violates Article 5(2) of the Covenant by not allowing the refugees to return.⁶⁵

A-3. Israel Has Not Addressed the Committee's Concerns

In the Committee's 2001 Concluding Observations, the Committee stated that it "continues to be concerned that the State Party's Law of Return denies indigenous Palestinian refugees the right to return to their homes and properties."⁶⁶ In 1998 the Committee stated that it:

notes with concern that the Law of Return, which allows any Jew from anywhere in the world to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements which make it almost impossible to return to their land of birth.⁶⁷

The Committee then strongly recommended a review of reentry policies for Palestinian refugees in order to treat Palestinians on the same level as Jews are treated under the Law of Return.⁶⁸

In its second periodic report, Israel notes the Committee's previous observations and then defends its right to return policies. Israel states that the Law of Return "personifies the very essence of the Jewish state as a 'Jewish and democratic State'."⁶⁹ Israel discusses how its Law of Return gives expression to the creation of the Jewish state and the gathering of Jewish exiles.⁷⁰ Israel, though, has no right to ignore the Covenant and other international law provisions in order to create a Jewish state. Israel then states that its immigration policy is a domestic matter.⁷¹ Yet, it is not a domestic matter when its policies violate international obligations. Israel attempts to justify its Nationality law by stating that non-Jews can immigrate to Israel and apply for citizenship.⁷² The point, though, is that the return rights and citizenship rights of Jews and non-Jews are drastically different and that this discrimination violates international obligations. Israel ends by acknowledging that it will not allow Palestinians the same return rights as Jews receive under the law of Return.⁷³

B. The Expropriation of Palestinian Refugees' Land and Homes

B-1. The Expropriation of Refugee's Lands and Homes Violates Covenant Articles 1.2, 2.2, 4, 5.2, 11.1 and 25

- Article 1.2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international law. *In no case may a people be deprived of its own means of subsistence.*
- Article 2.2: The States Parties to the present Covenant undertake to guarantee *that the rights enunciated in the present Covenant will be exercised without*

discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- Article 4: The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, *the State may subject such rights only to such limitations as are determined by law in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.*
- Article 5.2: *No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions or customs shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*
- Article 11.1: The States parties to the present Covenant *recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.* The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
- Article 25: Nothing in the present Covenant will be interpreted as impairing *the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.*⁷⁴

Israel's expropriation of the Palestinian refugees' land and homes violates Article 1.2 (right not to be deprived of means of subsistence), Article 2.2 (right not to be discriminated against), Article 4 (the right to have rights restricted only to promote the general welfare), Article 5.2 (the right to have no restrictions on fundamental rights recognized by law or convention), Article 11.1 (right to an adequate standard of living including the right to housing), and Article 25 (right of all people to enjoy and utilize their natural wealth and resources).⁷⁵

Article 1.2 of the Covenant states that "[i]n no case may a people be deprived of its own means of subsistence."⁷⁶ Israel has expropriated the Palestinian refugees' land. These Palestinians are not allowed access to their land. By denying Palestinians their land they are denying them the ability to live in their homes and to use their land to grow

food. Housing and food constitute vital means of subsistence. Israel has denied these to Palestinians. Refugees have been forced into refugee camps where resources are scarce.⁷⁷ Additionally, these camps are severely overcrowded.⁷⁸ Thus, by expropriating land and homes, Israel has denied the refugees their means of subsistence in violation of the Covenant.

As explained above, Article 2.2 forbids a state from discriminating in respecting the rights outlined in the Covenant.⁷⁹ In the general comment on housing issued by the Committee on Economic, Social and Cultural Rights, the Committee states that the enjoyment of adequate housing must, in accordance with Article 2.2 of the Covenant, “not be subject to any form of discrimination.”⁸⁰ Israel has expropriated Palestinian **refugees’** homes and lands using the legal scheme explained in the attached annex. Israel has not taken the lands and homes of the Jewish population. In fact, the Jewish population benefits from the use of the refugees’ lands. Israel is only allowing Jews to enjoy adequate housing and is therefore discriminating against all non-Jews. This constitutes a discriminatory practice in violation of the Covenant.

Article 4 of the Covenant states that States Parties are only to limit rights in ways that are compatible with the rights and solely “for the purpose of promoting the general welfare in a democratic society.”⁸¹ By expropriating only the land of Palestinian refugees and by generally allowing only the Jewish population to use this land, Israel is in fact only promoting the welfare of a very defined group, the Jewish population. This is contradictory to Article 4 because this limit on Covenant rights does not promote the general welfare of society.

Article 11.1 of the Covenant states that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right⁸²

The general comment on the right to adequate housing issued by the Committee states that the right to adequate housing is of central importance for the enjoyment of all economic, social and cultural rights.⁸³ Thus, this is a right that is especially important for states to uphold. Israel has confiscated the lands and homes of Palestinians. Palestinians have been forced to live in refugee camps with inadequate housing conditions.⁸⁴ Additionally, these camps are overcrowded.⁸⁵ Without their own homes and lands, Palestinians are denied an adequate standard of living in violation of the Covenant.

Additionally, the Committee notes that forced eviction is “*prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”⁸⁶ The Committee defines forced eviction as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”⁸⁷ Israel forced many Palestinians out of their homes to acquire their land. This is forced eviction and is *prima facie* a Covenant violation. Thus, Israel’s expropriation of Palestinian homes and lands is *prima facie* a Covenant violation.

Article 25 of the Covenant states that “[n]othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”⁸⁸ Israel also violates this article. By taking

Palestinian land and denying Palestinians the right to use it, Israel denies Palestinians the ability to enjoy and utilize the natural wealth and resources from their land.

B-2. The Expropriation of Refugees' Lands and Homes Violates International Law

- Hague Convention (IV), Articles 23(g), 25, 28, 46, 47, 50, 52, 56
- Fourth Geneva Convention, Article 147
- Principles Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms (adopted by the Commission on Human Rights, Jan. 2000), Articles 21 & 22

Private property is protected under international law. The Hague Convention (IV) Respecting the Laws and Customs of War on Land states that it is forbidden to destroy an enemy's property unless it is a necessity in time of war.⁸⁹ Israel has ruled that the Hague Regulations are binding law.⁹⁰ Additionally, the Geneva Convention (IV) which Israel has signed, considers destruction and appropriation of property not necessitated by war to be a grave breach.⁹¹ Moreover, the United Nations Human Rights Commission adopted a resolution in 1998 stating that no one shall be arbitrarily deprived of property and possessions.⁹² The Universal Declaration of Human Rights also affirms the right to property.⁹³ According to international law, these property rights remain even when a state has undergone succession.⁹⁴ Thus, Israel's expropriation of Palestinians' lands and homes is a clear violation of the right to property under international law. Since the right to have one's property protected from expropriation is recognized under international law, Israel violates Article 5(2) of the Covenant by expropriating the refugees' land.⁹⁵

B-3. Israel Has Failed to Adequately Address its Expropriation Policies

The Committee in its 1998 Concluding Observations noted with grave concern that the large-scale and systemic confiscation of land was part of a practice constituting a

breach of Israel's Covenant obligations.⁹⁶ Israel has failed to adequately address the expropriation of lands and homes in its second periodic report.

C. The Use of the World Zionist Organization, the Jewish Agency, and the Jewish National Fund in Administering the Expropriated Land Violates Article 2.2 of the Covenant

- Article 2.2: The States Parties to the present Covenant undertake to guarantee *that the rights enunciated in the present Covenant will be exercised without discrimination* of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As discussed in the attached annex, Israel not only confiscates land in a discriminatory manner but, once confiscated, it often only allows Jews to use this land. This is in large part due to the **special status and role of** the Jewish National Fund (JNF) in administering this land. All JNF lands must only be leased to Jews.⁹⁷ Additionally, the JNF, whose purpose it is to acquire lands for Jews, influences the land-administration policies of the **Israel Lands Administration (ILA)** since it appoints members to the land administration body.⁹⁸ Moreover, as discussed in the attached annex, the World Zionist Organization and the Jewish Agency, according to the Jewish Agency (Status) Law, are recognized bodies to develop land and settle land within Israel, even though by mandate these organizations only assist the Jewish population.⁹⁹ Moreover, the Jewish Agency, in particular, has tremendous influence in planning and financing new settlements.¹⁰⁰ Yet, since the mandate of these organizations restricts them to assisting the Jewish population, they only develop and settle the Jewish population.¹⁰¹ The result of all of this is that Jews are able to use the land confiscated from the Palestinians while the Palestinian population is largely unable to do so. Article 2.2 of the Covenant forbids a state from discriminating

in the implementation of Covenant rights.¹⁰² According to these policies, Palestinians are denied the right to use the land and, therefore, denied an adequate standard of living. Since the Jewish population may use this land this is discrimination in violation of the Covenant.¹⁰³

The Committee has noted that the use of the World Zionist Organization/Jewish Agency and the Jewish National Fund in administering and controlling most of the land in Israel is a breach of Israel's obligations under the Covenant. In its concluding observations in 1998 the Committee wrote:

The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that these institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A state party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that largescale and systematic confiscation of land and the transfer of property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.¹⁰⁴

The Committee then urged Israel to review its relationship with the World Zionist Organization/Jewish Agency and the Jewish National Fund to remedy the problems the Committee identified.¹⁰⁵

Israel in its second periodic report noted that the recent decision of *A'dal Ka'adan v. The Israel Lands Administration* requires the ILA to give equal treatment to Palestinians regarding land use.¹⁰⁶ However, Israel acknowledged that in fact the case would only apply to the specific circumstances of the case and not to past allocations of state lands.¹⁰⁷ Also, Israel failed to report that the court decision has not yet been

implemented and that the Ka'dan family has remained unable to move into their home in the Katzir settlement.¹⁰⁸ Additionally, Israel does not specifically address the role of the World Zionist Organization/Jewish Agency or the JNF. Israel is thus ignoring the Committee's request that it review its relationship with these organizations.

D. The Denial of Restitution of Land and Compensation for the Denial of Land Use

D-1. The Denial of the Rights of Restitution and Compensation Violates the Covenant

The right of restitution of land and compensation for the inability to use this land are necessary remedies because of the **illegality of Israel's** expropriation of the Palestinian refugees' homes and land. As discussed above, Israel has violated numerous provisions of the Covenant by expropriating the refugees' land and keeping it from them. Such a wrong must be remedied. Without enforcing a remedy for rights violated, the rights under the Covenant are insignificant. The Committee on Economic, Social, and Cultural Rights stated in its comment on the right to adequate housing that "remedies or procedures should be provided to those affected by eviction orders. States Parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both real and personal, which is affected."¹⁰⁹ Thus, the Committee has recognized that remedies must be provided when rights are violated.

D-2. The Denial of Restitution Violates International Law

- General Assembly Resolution 194
- Customary Law Doctrine of "Acquired Rights" (P.C.I.J., German Settlers Advisory Opinion, 1923)
- Principles Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms (adopted by the Commission on Human Rights, Jan. 2000), Articles 21 & 22

Restitution has been recognized as a necessary remedy. The United Nations has recognized the right of Palestinians to restitution of property. Resolution 194 “*Resolves* that refugees wishing to return to their homes . . . should be permitted to do so.”¹¹⁰ Thus, the UN has recognized the need for property restitution. Generally, restitution has been recognized as an appropriate remedy under international law. In 1928 the Permanent Court of International Justice ruled that restitution was the preferred remedy for illegal property takings.¹¹¹ When territory has been illegally occupied, return of the land is the only appropriate remedy.¹¹² The United Nations Commission on Human Rights confirmed in 2000 that restitution is an important remedy for violations of international law and consists of returning one’s property and allowing return to one’s place of residence.¹¹³ Restitution has been regarded as necessary to ensure the durability of voluntary repatriation. UNHCR High Commissioner Ogata in 1999 stated that “[The] UNHCR recognizes the value of a clear legal framework that has equitable mechanisms to resolve issues such as restitution or compensation [which] will be crucial to the sustainable return of displaced people and central to any plan to heal the scars of communities riven by conflict.”¹¹⁴ The U.N. Security Council and General Assembly have previously called upon states to provide restitution.¹¹⁵ Additionally, numerous peace agreements call for restitution of refugee property.¹¹⁶

D-3. The Denial of Compensation Violates International Law

- General Assembly Resolution 194
- European Court of Human Rights: *Loizidou v. Turkey* (1996)

The need for compensation has also been recognized. The United Nations has recognized the Palestinian refugees’ right to compensation for property damaged or

destroyed in General Assembly Resolution 194.¹¹⁷ Additionally, as mentioned above, the European Court of Human Rights has recognized the right to compensation and restitution of land for the denial of land use.¹¹⁸ It is currently estimated that the value of economic losses to Palestinian refugees displaced in 1948 (without counting the losses to those internally displaced) due to the expropriation of their land is between \$173 billion and \$275 billion in year 2000 prices.¹¹⁹ This is a significant loss to the Palestinian refugee population. Compensation should be provided to refugees who choose not to return, whose property has been damaged, who have lost income streams, and who have suffered psychological damage.¹²⁰

III. Recommendations

The Committee should strengthen its 1998 and 2001 Concluding Observations and state:

A. Concerning Palestinian Refugees' Right of Return

1. The Committee should find that Israel's return policies constitute a "breach" of

Israel's Covenant obligations. The Committee should state that there has been a

"breach", rather than stating that it "notes with concern" that Israel's policies

discriminate, as the Committee stated in Observation 13 of its 1998 Concluding

Observations. Stronger language is needed in order to convey the seriousness of the

situation.

2. The Committee should conclude that the 1948 externally displaced Palestinians

should be extended actual nationality status or citizenship by Israel on terms equal

with Jews' ability to obtain automatic citizenship in Israel, as is currently found in

Israel's Law of Return.

3. The Committee should conclude that **Israel's Nationality Law of 1952 must be annulled or amended** to remove the bar prohibiting 1948 externally displaced Palestinians from returning to their state of origin, *i.e.* Israel. By amending the Nationality Law, Palestinian refugees should be granted the *right to return*.

B. Concerning Palestinians Refugees' Right of Restitution and Compensation

1. The Committee should conclude that **Israel's land confiscation policies constitute a "breach" of the Covenant** and reaffirm that the breach identified in Observation 11 of the Committee's 1998 Concluding Observations **has not been corrected**.

2. The Committee should specifically conclude that Israel's land confiscation laws as implemented, and in particular the Absentees' Property Laws, are **"illegal" under international law because they are structured and implemented to discriminate and *prima facie* violate the Covenant**. These laws are selectively applied against Palestinian landowners without being applied to Jewish landowners. Israel does not provide due process guarantees or fair market compensation for confiscated properties.

3. The Committee should require that **Israel immediately stop its current privatization program of Palestinian refugees' land**. These privatization measures could make it more difficult for the Palestinian refugees to **be restituted of** land that was unlawfully taken from them.

4. The Committee should conclude that Israel must offer **land and housing** restitution to all of the Palestinian refugees who have not been allowed to return to their land. Compensation should also be provided. **Fair** compensation, however, should not be provided as **substitute for** restitution.

6. The Committee should recommend that the **land records of both the government of Israel and the United Nations Conciliation Commission for Palestine (UNCCP) should be opened to the public for inspection and duplication.** This is especially important for Palestinian claimants seeking to reclaim their property.

C. Concerning the Discriminatory Administration of the Palestinian Refugees' Land

3. The Committee should conclude that all Israel's land confiscation laws based on discriminatory criteria must be repealed or amended. The amendments must make it illegal to expropriate land in a discriminatory manner. A list of such laws has been provided as an annex to this submission.

ENDNOTES:

¹ This submission will focus on the expropriations and the denial of the right of return affecting those refugees displaced in 1948.

² Badil: *Palestinian Refugees in Exile: Country Profiles*, 6 (March 2000).

³ *Id.*

⁴ Badil: *Palestinian Land Day 2003*, Press Release of 29 March 2003.

⁵ *Id.*

⁶ *Id.*

⁷ Badil: *Palestinian Towns and Villages Depopulated in 1948*, at <http://www.badil.org/Statistics/1948/pa148.htm> (last visited 20 March 2003).

⁸ Badil: *Palestinian Land Day 2003*, Press Release of 29 March 2003.

⁹ The Arab Association for Human Rights, *Land and Planning Policy in Israel*, at <http://www.arabhra.org/article26/factsheet2.htm> (last visited 29 March 2003).

¹⁰ *Id.*

¹¹ Badil: *Palestinian Land Day 2003*, Press Release of 29 March 2003.

¹² *Id.*

¹³ Scott Leckie, *Peace in the Middle East Article 42 at*, <http://www.badil.org>. This figure appears to include land destroyed or taken that is part of the occupied territories of the West Bank and Gaza.

¹⁴ A'dal Ka'adan v. The Israel Lands Administration, HCJ 6698/95.

¹⁵ The Arab Association for Human Rights, *Weekly Review of Arab Press in Israel*, No. 66 10-21 February 2002, at <http://www.arabhra.org/wrap/wrap66.htm> (last visited April 22, 2003).

¹⁶ The Israeli government has still not implemented the 1950 Supreme Court decision and the 1997 interministerial agreement that allow the villagers of Bir'em and Ikrit to return to their homes. The Israeli government has also ignored a November 2001 order of the High Court giving the government several

months to submit a detailed plan for compensating the displaced villagers of Ikrit and Bir'em. See Global IDP Project on Internally Displaced People, *Israeli Government Has not Solved Yet the Claims of Many Displaced* (2003), at <http://www.db.idproject.org/Sites/idpSurvey.nsf/wViewCountries> (last visited April 22, 2003); see also Shaml, *Israeli High Court Order Compensations to Residents of Ikrit, Biram*, at <http://www.shaml.org/ground/sharon/Israeli%20High%20Court.htm> (last visited April 22, 2003).

¹⁷ Salman Abu Sitta, *Selling Refugees Land*, in Action Alert: Protect Massive Israeli Sale of Refugee Lands, American Arab Discrimination Committee, at <http://www.adc.org/action/2000/5july2000.htm> (last visited April 5, 2003).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Loizidou v. Turkey*, REF00000593 European Court of Human Rights 00015318189, Reports 1996-VI, 18 December 1996; *Loizidou v. Turkey*, REF00000943 European Court of Human Rights 00015318189, Reports 1998-IV, 28 July 1998.

²⁹ *Id.*

³⁰ *Id.*

³¹ See Arjan El Fassed: Media Monitors Network, *Israel and Turkey: Partners in Crime and Perhaps Remedy*, at <http://www.mediamonitors.net/arjan12.html> (last visited 28 March 2003).

³² *Loizidou v. Turkey*, REF00000593 European Court of Human Rights 00015318189, Reports 1996-VI, 18 December 1996; *Loizidou v. Turkey*, REF00000943 European Court of Human Rights 00015318189, Reports 1998-IV, 28 July 1998.

³³ *Id.*

³⁴ *Id.*

³⁵ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976.

³⁶ *Id.*

³⁷ See Badil: *Palestinian Refugees in Exile: Country Profiles*, 11, 15 (March 2000) (explaining how Gaza refugee camps suffer from overcrowding and how camps in the West Bank have increasingly become congested); Dr. Salman Abu Sitta has noted that while the expelled pre-1948 population is crammed in refugee camps at a density of 5000 persons/sq. km., they are replaced today by immigrant settlers at a density of 6 persons/sq. km. Thus, camps are overcrowded, while their land is still effectively empty. Dr. Abu Sitta notes that this is the case from his Beer Sheba and Gaza Map of 1948 land, made in February 2003.

³⁸ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976, arts 1.2, 2.2, 4, 5.2, 11.1, & 25.

³⁹ *Id.*

⁴⁰ DAVID KRETZMER, *THE LEGAL STATUS OF THE ARABS IN ISRAEL* 36 (Westview Press 1990).

⁴¹ *Id.*

⁴² *Id.*

⁴³ The Committee in 1998 noted in Observation 13 that the Law of Return “discriminates against Palestinians in the diaspora” See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 4 December 1998. E/C.12/1/Add.27, Observation 13.

⁴⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976.

⁴⁵ G.A. Res. 194, U.N. GAOR, 3rd Sess., para. 11(1), U.N. Doc. A.810 (1948).

⁴⁶ See, e.g., RICHARD PLENDER, *INTERNATIONAL MIGRATION LAW* (1972), p.71 (“The proposition that every state must admit its own nationals to its territory is so widely accepted that it may be described as commonplace of international law.”).

⁴⁷ See, e.g., GUY GOODWIN-GILL, *INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES* (1978), p. 137 (“Considered simply an obligation between States, the duty to admit nationals is formerly fixed within the corpus of general international law.”).

⁴⁸ See, e.g., Alfred de Zayas, “Population, Expulsion and Transfer,” in Bernhardt (ed.), *Encyclopedia of Public International Law*, vol. 8 (1985), p. 438, at p. 442 (stating that nationals may not be denied re-admission on the rationale that they are no longer nationals); John Fischer Williams, “Denationalization,” *British Yearbook of International Law*, 8 (1927), p. 45, at p. 61 (“a state cannot, whether by banishment or by putting an end to the status of nationality, compel any other state to receive one of its own nationals whom it wishes to expel from its own territory. There will also be general agreement that a state is bound to receive back across its frontiers any individual who possesses its own nationality”); *ibid.* at p. 56 (“The duty of a state to receive back its own nationals is laid down by the accepted authorities in the most general terms and is in accordance with the actual practice of states”); Richard Plender, *International Migration Law* (1972), at p. 87 (“a state may not justify its expulsion or non-admission of its former nationals by drawing attention to the fact that it first took the precaution of denaturalizing them.”)

⁴⁹ See, e.g., L. Oppenheim, *International Law*, vol. 1 (7th ed., 1978), p. 598 (stating that “the inhabitants of the subjugated and the ceded territory acquire *ipso facto* by the subjugation or cession the nationality of the State which acquires the territory,” and referring to this rule as being “settled by the customary Law of Nations”); Ian Brownlie, “The Relations of Nationality in Public International Law,” 39 *The British Yearbook of International Law* 284, 320 (1963) (“the evidence is overwhelmingly in support of the view that the population follows the change of sovereignty in matters of nationality”); Charles Hyde, *International Law*, vol. 2 (1945), p. 1090 (“Whenever a State acquires from another part of its territory, the inhabitants of the area transferred, who were nationals of the former sovereign, are, in the absence of an agreement collectively naturalized.”); F.A. Mann, “The Effect of Changes of Sovereignty upon Nationality,” *Modern Law Review*, 5 (1941-2), p. 218 at p. 221 (“The modern rule of customary international law may be formulated as follows: The nationality of the predecessor state is lost and that of the successor state is acquired by such inhabitants of the ceded or annexed territory as were subjects of the superceded sovereign.”)

⁵⁰ See Report of the International Law Commission on the work of its Forty-Seventh Session, GAOR, 50th Session, Supplement No. 10, at pp. 271, 271-5 (Annex: Report of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons), UN Doc.A./50/10 (1995). The International Law Commission’s most recent formulation of this rule appears in Article 5 of the Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, 1999 *Yearbook of International Law Commission* 12 (Article 5: “[P]ersons concerned [i.e., nationals of a predecessor state] having their habitual residence in the territory affected by the succession of State are presumed to acquire the nationality of the successor state on the date of such succession.”). See also Gail J. Boling, “The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis,” [BADIL Resource Center, 2001](#).

⁵¹ See General Assembly Resolution A/RES/55/153 (12 December 2000), “Articles on Nationality of Natural Persons in Relation to the Succession of States”.

⁵² ILC Articles on Nationality/State Succession, art. 14.

⁵³ ILC Articles on Nationality/State Succession, art. 5.

⁵⁴ KRETZMER, *supra* note 40, at 36.

⁵⁵ See, e.g., The Universal Declaration of Human Rights, GA Res. 217A, Art. 13, para. 2, UN Doc. A/810, at p. 71 (1948) (“Everyone has the right to leave any country, including his own, and to return to his country”); The International Covenant on Civil and Political Rights, Art. 12, para. 4, *UN Treaty Series*, vol. 999, p. 171 (“No one shall be arbitrarily deprived of the right to enter his own country”) [hereinafter Covenant on Civil and Political Rights]; The International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(d)(ii), *UN Treaty Series*, vol. 660, p. 195 (guaranteeing a right “to enter one’s country” as an aspect of a State’s obligation to avoid discrimination based upon racial, ethnic, religious, or political criteria; accordingly, a state is forbidden to deny entry to a national on racial or ethnic grounds).

⁵⁶ See *Multilateral Treaties Deposited with the Secretary-General* (status as at December 1995), at 121 U.N. Doc. ST/LEG/SER.E/14 (1996) (entered into force for Israel Oct. 3, 1991); 999 U.N.T.S. 171; 6 ILM 368 (1967).

⁵⁷ Covenant on Civil and Political Rights, arts. 2.2, 12.

⁵⁸ See, e.g., LOUIS SOHN AND THOMAS BUERGENTHAL, *THE MOVEMENT OF PERSONS ACROSS BORDERS* (1992), at pp. 39-49; Stig Jagerskiold, “The Freedom of Movement,” in L. Henkin (ed.), *THE INTERNATIONAL BILL OF RIGHTS* (1981), p. 166, at p. 181-2; Hurst Hannum, *THE RIGHT TO LEAVE AND RETURN IN INTERNATIONAL LAW AND PRACTICE* (1987), at pp. 7-16.

⁵⁹ See Washington Agreement, Signed by Bosnian Prime Minister Haris Silajdzic, Croatian Foreign Minister Mate Granic, Bosnian Croat Representative Kresimir Zubak: Confederation Agreement Between The Bosnian Government and Bosnian Croats, Washington DC, March 1, 1994, Art. 5(2); The Dayton Peace Agreement, 21 November 1995, Annex 7 (between the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republic Srpska), Art. 1; The Erdut Agreement, Signed in Erdut, Croatia and in Zagreb, Croatia, November 12, 1995 (between Serbian and Croatian negotiators), Art. 4; Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, Oslo, 17 June 1994.

⁶⁰ Hague Convention (IV) Respecting the Laws and Customs of War on Land, and Annex: Respecting the Laws and Customs of War on Land, T.S. No. 539, 1 Bevans 631, signed at The Hague, 18 October 1907, entry into force 26 January 1910 [hereinafter “Hague Regulations”].

⁶¹ See Hague Regulations. Article 43: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in this country.

⁶² See Hague Regulations: art. 20.

⁶³ See Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UN Treaty Series 287 (entered into force 21 October 1950) [hereinafter “Fourth Geneva Convention”], art. 4, 6(4), and 158(3).

⁶⁴ See Fourth Geneva Convention, art. 45, 49, 147. See also Hague Regulations, art. 46(1).

⁶⁵ Covenant on Civil and Political Rights, arts. 4, 5.

⁶⁶ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 31 August 2001, Twenty-sixth session. E/C.12/1/Add.69. (Concluding Observations/Comments).

⁶⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 4 December 1998. E/C.12/1/Add.27. (Concluding Observations/Comments).

⁶⁸ *Id.*

⁶⁹ Israel’s Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/1990/6/Add.32, p. 25.

⁷⁰ *Id.* at, p.25.

⁷¹ *Id.* at, p.26.

⁷² *Id.*

⁷³ *Id.* at, p.28.

⁷⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976.

⁷⁵ *Id.*

⁷⁶ *Id.* at art. 1.2.

⁷⁷ See Badil: *Palestinian Refugees in Exile: Country Profiles*, 11, 15 (March 2000) (explaining how Gaza refugee camps suffer from overcrowding and how camps in the West Bank have increasingly become congested).

⁷⁸ Dr. Salman Abu Sitta has noted that while the expelled pre-1948 population is crammed in refugee camps at a density of 5000 persons/sq. km., they are replaced today by immigrant settlers at a density of 6 persons/sq. km. Thus, camps are overcrowded, while their land is still effectively empty. Dr. Abu Sitta notes that this is the case from his Beer Sheba and Gaza Map of 1948 land, made in February 2003.

⁷⁹ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976, art. 2.2.

⁸⁰ The right to adequate housing (Art. 11(1)): CESR General Comment 4, Sixth Session, 13 December 1991.

⁸¹ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976, art.4.

⁸² International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976, art.11.

⁸³ The right to adequate housing (Art. 11(1)): CESR General Comment 4, Sixth Session, 13 December 1991.

⁸⁴ See Badil: *Palestinian Refugees in Exile: Country Profiles*, 11, 15 (March 2000) (explaining how Gaza refugee camps suffer from overcrowding with many families in small shelters and without much furniture and how camps in the West Bank have increasingly become congested).

⁸⁵ Dr. Salman Abu Sitta has noted that while the expelled pre-1948 population is crammed in refugee camps at a density of 5000 persons/sq. km., they are replaced today by immigrant settlers at a density of 6 persons/sq. km. Thus, camps are overcrowded, while their land is still effectively empty. Dr. Abu Sitta notes that this is the case from his Beer Sheba and Gaza Map of 1948 land, made in February 2003.

⁸⁶ The right to adequate housing (Art. 11(1)): CESR General Comment 4, Sixth Session, 13 December 1991.

⁸⁷ The right to adequate housing (Art. 11(1)): Forced evictions: CESR General Comment 7, Sixteenth Session, 20 May 1997.

⁸⁸ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976, art. 25.

⁸⁹ Convention IV (Convention Respecting the Laws and Customs of War on Land, The Hague, October 18, 1907), Annex: Regulations Respecting the Laws and Customs of War on Land, art. 23(g). *See also* arts. 25, 28, 46, 47, 50, 52, & 56.

⁹⁰ *See Attorney-General of the government of Israel v. Adolf Eichmann* 36 *International Law Reports* 293 (29 May 1962).

⁹¹ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, August 12, 1949, entered into force October 21, 1950 (entered into force for Israel in 1951).

⁹² “Guiding Principles on Internal Displacement Submitted by Francis Deng, special Representative of the Secretary-General to the U.N. Commission on Human Rights,” Principle 21, Resolution 1998/50 of the United Nations Human Rights Commission, U.N. Doc. E/CN.4/1998/L.68.

⁹³ International Law Association, Committee on the Enforcement of Human Rights Law, Final Report on the Status of the Universal Declaration of Human Rights in National and International Law, *International Law Association, Report of the Sixty-Sixth Conference*, 525, 544-549 (Buenos Aires, 1994), reproduced in Richard B. Lillich and Hurst Hannum (eds.), *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 166, 169 (3d ed. 1995).

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- ⁹⁴ See Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland, 1923, P.C.I.J. (ser. B) No. 6 (Sept. 10).
- ⁹⁵ Covenant on Civil and Political Rights, arts. 4, 5.
- ⁹⁶ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 4 December 1998. E/C.12/1/Add.27. (Concluding Observations/Comments).
- ⁹⁷ KRETZMER, *supra* note 40, at 64.
- ⁹⁸ *Id.*
- ⁹⁹ *Id.* at 92-93, 96.
- ¹⁰⁰ *Id.* at 94.
- ¹⁰¹ *Id.* at 96.
- ¹⁰² International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession on 16 December 1966, entered into force 3 January 1976, art. 2.2.
- ¹⁰³ This also violates Articles 1.2, 4, 11.1, and 25 since Palestinians are denied an adequate standard of living and their means of subsistence. This treatment is unequal and obviously not for the “general welfare” of society.
- ¹⁰⁴ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 4 December 1998. E/C.12/1/Add.27. (Concluding Observations/Comments).
- ¹⁰⁵ *Id.*
- ¹⁰⁶ Israel’s Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/1990/6/Add.32, p.29.
- ¹⁰⁷ *Id.* at 31.
- ¹⁰⁸ The Arab Association for Human Rights, *Weekly Review of Arab Press in Israel*, No. 66 10-21 February 2002, at <http://www.arabhra.org/wrap/wrap66.htm> (last visited April 22, 2003).
- ¹⁰⁹ The right to adequate housing (Art. 11(1)): Forced evictions: CESR General Comment 7, Sixteenth Session, 20 May 1997.
- ¹¹⁰ G.A. Res. 194, U.N. GAOR, 3rd Sess., para. 11(1), U.N. Doc. A.810 (1948).
- ¹¹¹ See *Chorzow Factory Case* (Ger. v. Pol.) (Indemnity), 1928 PCIJ (ser. A) No. 17 (Judgment of Sept. 13, 1928), p.47.
- ¹¹² IAN BROWNLIE, SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY, PART 1, 210 (1983).
- ¹¹³ “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law,” adopted by the Commission on Human Rights of the United Nations Economic and Social Council on January 18, 2000, U.N. Doc. E/CN.4/2000/62, arts. 21, 22.
- ¹¹⁴ U.H. High Commissioner for Refugees, Sadako Ogata, The High Commissioner to the 55th Session of the U.N. Commission on Human Rights, Geneva, 24 March 1999.
- ¹¹⁵ See Susan M. Akram and Terry Rempel, *Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework*, THE PALESTINE YEARBOOK OF INTERNATIONAL LAW, Volume XI, 2000/2001 p.59 (listing numerous examples of the UN calling on states to provide restitution, including the UN Security Council Resolution calling on Cyprus to permit people to return. S.C. Res. 361, 20 August 1974).
- ¹¹⁶ See *id.* at 61-62 (listing numerous peace agreement that provide for the restitution of property, including the Protocol of Agreement Between the Government of Rwanda and the Rwandese Patriotic Front on the Repatriation of Rwandese Refugees and the Resettlement of Displacement Persons. Arusha Accords and the Protocol on repatriation on refugees and the resettlement of displaced persons of 9 June 1993).
- ¹¹⁷ G.A. Res. 194, U.N. GAOR, 3rd Sess., para. 11(1), U.N. Doc. A.810 (1948).

¹¹⁸ *Loizidou v. Turkey*, REF00000593 European Court of Human Rights 00015318189, Reports 1996-VI, 18 December 1996; *Loizidou v. Turkey*, REF00000943 European Court of Human Rights 00015318189, Reports 1998-IV, 28 July 1998.

¹¹⁹ See Atif Kubursi, PALESTINIAN LOSSES IN 1948: CALCULATING REFUGEE COMPENSATION (2001) (statistics summarized in 3 August 2001 press release announcing publication).

¹²⁰ See Atif A. Kubursi, *Palestinian Losses in 1948: Calculating Refugee Compensation*, at <http://www.palestinecenter.org/cpap/pubs/20010803ib.html> (last visited April 5, 2003).