

Submission to the

Committee on the Elimination of Racial Discrimination

For the Convening of the Committee on its 80th Session from 13 February -9 March 2012

Regarding

Israel's Serious Breaches of its Obligations under the International Convention for the Elimination of Racial Discrimination



Submitted by

**BADIL Resource Center
for Palestinian Residency and Refugee Rights**

Contacts:

Badil Resource Center
PO Box 728, Bethlehem, Palestine
Tel/fax 972-2-274-7346
E-mail: info@badil.org
Website: www.badil.org

Rania Madi
BADIL Representative, Geneva
Email: Geneva@badil.org
Tel: 0041-79-6053905

Noura Erakat
BADIL Legal Advocacy Consultant, Washington, DC
Email: Legal@badil.org
with
Tamarra Elssayyad, J.D. Candidate 2013, Howard Law School
Temi Adekandabi, B.A. Candidate 2012, Lehigh University

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I. INTRODUCTION

- 1 Badil Resource Center was established in January 1998 based on recommendations issued by popular refugee conferences in the occupied West Bank and Gaza Strip. Badil is registered with the Palestinian Authority and legally owned by a General Assembly comprised of activists and human rights defenders in Palestinian national institutions and refugee community organizations.
- 2 Badil has had special consultative status with UN ECOSOC since 2006. Badil appreciates this opportunity to submit a report to the Committee on the Elimination of Racial Discrimination during its 80th session in response to Israel's Fourteenth to Sixteenth Periodic Reports concerning implementation of the *Convention to Eliminate Racial Discrimination* (CERD).
- 3 This report provides detailed information on Israel's continued policies and practices of institutionalized discrimination. In particular, it highlights how Israel's distinction between Jewish nationality, Israeli citizenship, and Palestinian Arabs status within Israel, the Occupied Palestinian Territory (OPT), including East Jerusalem, provides a basis upon which discriminatory policies are applied to the detriment of Palestinians, both within Israel and the OPT. The report will show that Israel and the OPT are in fact treated as one legal entity by Israel, which has two effects: (1) Jewish nationals, wherever they may reside, benefit from a range of legal rights and privileges afforded by Israel; and (2) Palestinian Arabs, wherever they may reside, are collectively exposed to a single coherent structure of apartheid and discrimination. In particular, Israel's institutionalized discrimination aims to privilege Jewish nationals, and abridge the right of Palestinian Arabs, with regard to residency rights, land ownership, freedom of movement, nationality, citizenship and the right to leave and return to one's country.
- 4 In this light, the Russell Tribunal concluded, "Israel's rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid."¹
- 5 Among its pillars is the policy of legal separation between Jewish nationality, Israeli citizenship and the status of Palestinian Arabs as well as the practice of forced population transfer: a practice aimed at displacing non-Jewish nationals (Palestinian Arabs) within Israel and the OPT. This report aims to demonstrate the application of forced population transfer towards Palestinian Arabs in East Jerusalem and those refugees in exile as a core element of Israel's apartheid regime. These policies and practices amount to flagrant violations of the ICERD.
- 6 The information herein demonstrates Israel's lack of compliance with the Committee's 2007 Concluding Observations and Recommendations (CERD/C/ISR/CO/13). *In particular, Badil notes Israel's failure to comply with Committee recommendations 17, 18, 20, 32, and 35.*

¹ Findings of the South African Session of the Russell Tribunal on Palestine, para. 5.45 at <http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session—full-findings>

7 Israel continues to deny the applicability of the Convention to the OPT despite several authoritative findings to the contrary. In particular, this Committee has affirmed the applicability to the Convention repeatedly,² most recently in its 2007 Concluding Observations.³ The Committee on Economic, Social, and Cultural Rights⁴ as well as the Human Rights Committee⁵ have also held that human rights law is applicable to the OPT. In its *Advisory Opinion on Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice also affirmed the applicability of human rights law to the OPT.⁶

II. ISRAEL'S INSTITUTIONALIZED RACIAL DISCRIMINATION DISTINGUISHES BETWEEN JEWISH NATIONALS AND CITIZENS AND PALESTINIAN ARABS IN VIOLATION OF ARTICLES 2, 3, AND 5

8 In its 2007 Concluding Observations, (CERD/C/ISR/CO/13), this Committee recommended that “the State party ensure that the definition of Israel as a Jewish nation State does not result in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights. The Committee would welcome receiving more information on how the State party envisages the development of the national identity of all its citizens.”⁷

9 Badil would like to highlight to the Committee that Israel has failed to develop such a program. To the contrary, its discriminatory legal regime has made the enjoyment of human rights contingent upon national origin as evidenced by the case of Palestinian refugees, and Palestinian Arabs in East Jerusalem. This racially discriminatory regime violates Articles 2, 3, and 5 of the Convention.

a. NO GUARANTEED RIGHT TO EQUALITY FACILITATES STRUCTURAL DISCRIMINATION

10 Equality is not mentioned as a constitutional right in Israel's *Basic Law: Human Dignity and Liberty* (1992), which serves as Israel's Bill of Rights.”⁸ In the absence of a constitutional right to equality, it is relegated to a secondary level-right, and is only considered if it can be derived from other rights granted by the Basic Law. Moreover, paragraph 10 of the Law, provides that, “[t]his Basic Law shall not affect the validity of any law in force prior to the commencement of the Basic Law.” A series of discriminatory laws adopted in the 1950s and 1960s thus continue to violate the fundamental right to equality of Palestinians.

² [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.45.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.45.En?Opendocument) at para. 12.

³ CERD/C/ISR/CO/13 (14 June 2007) [Hereinafter “2007 Recommendations”]

⁴ <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.90.En?Opendocument> at para. 15.

⁵ CCPR/C/0/78/1SR at para. 11 (“In the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.”)

⁶ <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&ca>, para. 102-115.

⁷ 2007 Recommendations supra note 3 at para. 17.

⁸ Passed on 12th Adar Bet, 5752 (17 March 1992); Published in Sefer Ha-Chikkun No. 1391 of the 20th Adar Bet, 5752 (25 March 1992).

- 11 **Israel's self-definition as a “Jewish and democratic state” also impedes equality of Palestinian Arabs.** The Jewish character of the state is defined by three inter-related components: (1) that Jews form the majority of the state; (2) that Jews are entitled to certain preferential treatment (e.g. the Law of Return); and (3) that a reciprocal relationship exists between the state and Jews outside of Israel.⁹
- b. **EXCLUSIVE CLAIMS TO NATIONALITY AND LIMITED ACCESS TO CITIZENSHIP STRUCTURALLY IMPEDE EQUALITY AMONG PALESTINIAN ARABS IN ISRAEL AND THE OPT**
- 12 In its 2007 Concluding Observations and Recommendations took issue with Israel’s assertion that it can distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on the basis of citizenship and recommended that **Israel “ensure[] that Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin.”**¹⁰
- 13 Badil would like to bring to the Committee’s attention that Israel continues to distinguish between its Jewish nationals, its Israeli citizens, and those Palestinian Arabs who do not have the benefit of either category. Moreover, Israel affords robust enjoyment of human rights only to those persons who possess both Jewish nationality and citizenship.
- 14 The Israeli Citizenship Law (Nationality Law, 5712-1952)¹¹: This law repealed the *Palestinian Citizenship Order* of 24th July 1925 under which the indigenous Palestinians were granted the status of citizens *and* nationals in their country; it resulted in the *de facto* “denationalization” of this entire population. It is important to note that the official English-language version of the Citizenship Law carries the falsely translated title “The Nationality Law”, as if it were the legal basis for a nationality right, which it is not.¹²
- 15 After the denationalization of all Palestinians, Israeli law proceeded on the basis that citizenship and nationality would be two separate and distinct statuses. Israel’s discriminatory legal regime that distinguishes between citizens and nationals underpins its land, residency, and housing policy both within Israel Proper as well as the OPT. It is in furtherance of its policy goal to create and maintain a Jewish majority that Israel has implemented an apartheid regime and a policy of forced population transfer of non-Jewish nationals (Palestinian Arabs).
- 16 The apartheid regime consists of the domination of one group, Jewish nationals and citizens, over another group, Palestinian Arabs, within Israel and the OPT. This regime grants a superior legal and political status to all Jewish nationals wherever they may reside - in Israel, in illegal settlements throughout the OPT, and even abroad. On the other hand, Palestinian Arabs have an inferior legal and political status regardless of whether they live within Israel

⁹ Ben Shalom vs. Central Election Committee, 43 P.D. IV 221 (1988).

¹⁰ 2007 Recommendations supra note 3 at para. 32.

¹¹ Nationality Law (5712-1952), available at http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf

¹² Joseph Schechla, The Consequences of Conflating Religion, Race, Nationality, and Citizenship, *Al Majdal*, Winter-Spring 2010, 14. [Hereinafter “Schechla”]

or in the OPT, while Palestinian refugees (approximately 6.6 million live in exile) have been denationalized and denied their right to reparation including repatriation/return) To facilitate this system, Israel's regime divides Palestinian Arabs into several distinct legal categories. These categories can be summarized as: Palestinian citizens of Israel; permanent residents of East-Jerusalem; West Bank ID holders; Gaza Strip ID holders; and approximately 6.6 million Palestinians refugees who live in forcible exile. Each category corresponds to a different set of rights under Israeli law. Still, they all endure systematic discrimination and inferior treatment relative to their Jewish national counterparts as a matter of Israeli policy within Israel, the OPT, and at Israel's points of entry and exit.

1. TWO-TIERED ISRAELI CITIZENSHIP: CITIZENSHIP PLUS NATIONALITY VERSUS CITIZENSHIP-ONLY

- 17 Israeli law thus distinguishes between citizenship and nationality in a manner that discriminates against Palestinians.¹³ Jewish people are “nationals and citizens” of Israel, whereas Palestinians can only attain the status of “citizen” of Israel. In practice, Jewish people all over the world are given “the automatic right, by virtue of being Jewish, to immigrate to Israel and acquire Israeli citizenship [but] Arab Palestinians, on the other hand, face restrictions in acquiring such citizenship.”¹⁴ Thus, under Israel's legal regime, *only* “Jewish nationals and citizens of Israel” constitute the privileged group of Israeli citizens who have full access to [human rights].
- 18 Palestinians who meet the criteria of the 1952 Citizenship Law are accorded the status of “citizens of Israel;” Citizenship is only available to them and their descendants if they were present in Israel between 1948 and 1952, which effectively excluded all the refugees who were forced out during the 1948 Nakba. Palestinians could not and cannot become “nationals” of Israel because they are not Jewish and because “Israeli nationality” is not recognized by Israeli law.¹⁵ The status of “citizen of Israel” is a second-class citizenship status with limited protection of [human rights]. Approximately 150,000 indigenous Palestinians who had not become refugees in 1948, and their descendants, hold this second-class citizenship status in Israel today; they comprise approximately 20% of Israel's population.¹⁶
- 19 Palestinians who **did** not meet the criteria of the 1952 Citizenship Law because they were outside the country or in territory controlled by Israeli-defined ‘enemy forces’ at certain cut-off dates, **are excluded from Israeli citizenship and consequently made stateless by the law.**¹⁷ At least 750,000 Palestinians and their descendants (approximately 6.6 million

¹³ Centre on Housing Rights and Evictions (COHRE) and Badil, Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine 56, available at: <http://www.cohre.org/store/attachments/COHRE%20Ruling%20Palestine%20Report.pdf> [Hereinafter Ruling Palestine].

¹⁴ Ruling Palestine at 56.

¹⁵ Id. at 57.

¹⁶ See Adalah: Historical Background, available at: <http://www.adalah.org/eng/backgroundhistory.php>.

¹⁷ See Haneen Na'amnih, “New Anti-Arab Legislation,” Adalah Newsletter, Volume 50, July 2008; See also “Israel begins revoking citizenship of four Arabs,” Haaretz, (6 May 2009); See also John Quigley, “Family Reunion and the Rights to Return to Occupied Territory,” Georgetown Immigration Law Journal, 6 (1992).

persons) suffer from statelessness and/or a lack of nationality (1948 Palestinian refugees) until today.¹⁸

- 20 **Israel continues to deny and violate the right of these refugees to return to their country of origin.** In 2001 the Israeli Knesset passed the *Entrenchment of the Negation of the Right to Return Law*.¹⁹ Section 2 of this law states that “refugees will not be returned to the territory of the State of Israel save with the approval of the majority of the Knesset Members.” Section 1 of the law defines a refugee as a person who “left the borders of the State of Israel at a time of war and is not a citizen of the State of Israel, including, persons displaced in 1967 and refugees from 1948 or a family member.” Furthermore, based on the 1954 *Prevention of Infiltration Law* and military orders 1649 and 1650²⁰ those Palestinians are prohibited from legally returning to Israel or the OPT as well.

2. DENYING ENTRY TO PALESTINIAN ARAB REFUGEES, ENCOURAGING ENTRY OF JEWISH NATIONALS

- 21 Under a regime of apartheid, “Jewish nationals” have the exclusive entitlement to the benefits of the Law of Return, including the right to enter Israel and obtain Israeli citizenship pursuant to the Citizenship Law. No such right to enter and obtain citizenship in their country exists for the de-nationalized indigenous Palestinians. Palestinian refugees of 1948, moreover, are not even entitled to apply for second-class citizen status in Israel, because as non-Jews, they are not entitled to Jewish nationality. In effect, Israel has institutionalized its exclusion of, and discrimination against, the indigenous Palestinian refugees who were forcibly displaced and denationalized.
- 22 The Law of Return (1950)²¹: this law provides that every Jewish person in the world is automatically entitled to “Jewish nationality” in Israel. Under the Law of Return, a Jewish national is “born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.”²²
- 23 The Law of Return Article 4(a) provides “The rights of a Jew under this Law and the rights of an *oleh*²³ under the Citizenship Law, (Nationality 5712-1952), as well as the rights of an *oleh* under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.”
- 24 Thus Jewish nationals enjoy the right to enter Israel even if they were not born in Israel and have no connection whatsoever to Israel. On the other hand Palestinians, the indigenous

¹⁸ Badil Resource Center for Palestinian Refugee and Residency Rights, “Palestinian Refugees and Internally Displaced Persons Survey of 2008 - 2009” (2009), p. 57. [Hereinafter “Badil Survey”]

¹⁹ *Entrenchment of the Negation of the Right to Return Law*, 5761—2001, S.H. 1772, p. 116.

²⁰ Al-Haq, “Al-Haq’s Legal Analysis of Israeli Military Orders 1649 & 1650: Deportation and Forcible Transfer as International Crimes” (April 2010), available at: <http://www.alzaytouna.net/english/Docs/2010/Al-Haq-April2010-Legal-Analysis.pdf>.

²¹ Passed by Knesset on 20th Tammuz, 5170 (5th July 1950) and Published in Sefer Ha-Chukkim No. 51 of the 21st of Tammuz.

²² Schechla supra note 12.

²³ An *oleh* is a Jewish term referring to a Jew who is immigrating to Israel

population of the territory, are excluded from the Law of Return on grounds that they are not of Jewish national origin, do not enjoy the legal status of nationals under any other Israeli law; and have no automatic right to enter the country.

3. ISRAELI APARTHEID REGIME EXTENDS TO OPT

25 Both the UN Special Rapporteur on Human Rights in the OPT and the South African Human Sciences Research Council 2009 Report on Occupation, Colonialism, and Apartheid systematically examined Israeli policies in the OPT, concluding that Israel is in gross violation of International Human Rights Law and International Humanitarian Law because of its practices of colonialism and apartheid:²⁴ “Israel’s rule in the OPT has assumed such a colonial character: namely, violations of the territorial integrity of occupied territory; depriving the population of occupied territory of the capacity for self governance; integrating the economy of occupied territory into that of the occupant; breaching the principle of permanent sovereignty over natural resources in relation to the occupied territory; and denying the population of occupied territory the right freely to express, develop and practice its culture.”²⁵ The Council went on to find, “[b]y examining Israel’s practices in the light of Article 2 of the Apartheid Convention, this study concludes that Israel has introduced a system of apartheid in the OPT.”²⁶

c. COMPREHENSIVE POLICY: FORCED POPULATION TRANSFER AS A PILLAR OF AN APARTHEID REGIME

26 **Population transfer**²⁷ as a coercive policy/set of policies (often also called “ethnic cleansing”) contains two elements within the Israeli regime: deportation or forcible transfer of Palestinian Arabs and implantation of Jewish settlers. Specific components of the policy of population transfer are expressly prohibited or criminalized by international legal instruments, including the Rome Statute (arts. 7 and 8), the Geneva Convention IV (arts. 49 and 147), Additional Protocol I (85(4) and (5)), and the Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention).

27 The Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights has clearly defined population transfer as:

the movement of people as a consequence of political and/or economic processes in which the State Government or State-authorized agencies participate. These processes have a number of intended or unintended results that affect the human rights of the transferred population, as well as the inhabitants of an area into which settlers are transferred. (...) The State’s role in population transfer may be active or passive, but nonetheless contributes to the systematic, coercive and deliberate nature of the movement of population into or out of an area. Thus, an element of official force, coercion or

²⁴ See, for example, the reports of the UN Special Rapporteur Prof. John Dugard to the Human Rights Council: A/HRC/4/17 and A/HRC/7/17. Also: Human Sciences Research Council, “Occupation, Colonialism, and Apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law,” May 2009, available at <http://www.hsrc.ac.za/Document-3227.phtml>

²⁵ Id.

²⁶ Id.

²⁷ Badil Resource Center for Palestinian Refugee and Residency Rights, “Badil Note on Forced Population Transfer,” (2 December 2010).

*malign neglect is present in the State practice or policy. The State's role may involve financial subsidies, planning, public information, military action, recruitment of settlers, legislation or other judicial action, and even the administration of justice.*²⁸

- 28 The essence of population transfer remains a systematic and discriminatory state policy whose purpose is an alteration of the demographic composition of an area by moving people into and/or out of the area.²⁹ The policy can be implemented in various ways by the state, such as by creating an overall untenable living situation which leaves the inhabitants with no other choice but to leave their homes. Sharett - one of the signatories of Israel's Declaration of Independence- adopted this approach when he stated “a policy based on minimal fairness should be adopted toward Arabs who were not inclined to leave”.³⁰ This deliberate and planned forcible displacement amounts to a policy and practice of forcible transfer of the Palestinian population, or ethnic cleansing. This ongoing *Nakba* has so far resulted in approximately 67% of the global Palestinian population being refugees and/or IDPs.³¹
- 29 Israel's discriminatory land laws constitute a core component of the policy of population transfer. All Israeli land laws legislated since the **Absentees' Property Law of 1950** have served to expropriate individually and communally owned Palestinian land, transfer title to the “Jewish state” of Israel or agencies affiliated with the World Zionist Organization/Jewish Agency, and to establish a land regime which reserves the right to the land for “Jewish nationals” as defined by the Law of Return.³² Indigenous Palestinian citizens and refugees have thereby been deprived of title, access and use of their land, and even of compensation. Today, ninety-three percent of the land in Israel is owned either by the state or by quasi-governmental Zionist agencies (such as the Jewish National Fund) and administered by the Israel Land Authority.
- 30 Israel's policy of forced population transfer within its borders as well as within the OPT is based on the legal separation of Jewish nationals and Palestinian Arabs whereby Palestinian Arabs are discriminated against in various fields in order to forcibly displace them. While on the other hand, the system aims at simplifying the migration of Jewish nationals to Israel and parts of the OPT as well as ensuring their dominant legal and political status.
- 31 Therefore, population transfer based on the separation of Jewish nationals and Palestinian Arabs constitutes a pillar of Israel's Apartheid regime. In the context of the resultant domination by the former racial group over the latter, this policy of population transfer, along with other policies based on this distinction, specifically violate **Article II(c)** of the Apartheid Convention which prohibits:

Any legislative measures and other measures calculated to prevent a racial group or groups... the deliberate creation of conditions preventing the full development of

²⁸ Conclusions of the special rapporteurs, Awn al-Khasawneh and Ribot Hatano, The Human Rights Dimensions of Population Transfer, including the implantation of settlers and settlements, UN DOCUMENT E/CN.4/SUB.2/1993/17 (6 July 1993) at 14-15.

²⁹ Simone O'Broin, “Applying International Criminal Law to Israel's Treatment of the Palestinian People”, BADIL WORKING PAPER NO. 12 (October 2011), p. 30.

³⁰ Nur Masalha, A Land without a People: Israel, Transfer and the Palestinians 1949-96 (Faber and Farber Limited 1997), p. 3.

³¹ See Badil Survey supra note 18 at 57.

³² The Absentees' Property Law, 5710-1950.

such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including... the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence...

32 And **Article II(d)** of the Apartheid Convention which forbids:

Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof.

III. CASE STUDIES DEMONSTRATING ISRAEL'S APARTHEID REGIME AND POLICY OF FORCED POPULATION TRANSFER: REFUGEES (ISRAEL) AND EAST JERUSALEM (OPT)

a. REFUGEES: ONGOING VIOLATION OF ARTICLE 5(D)(II) AND (V)

33 In its 2007 Concluding Observations, this Committee expressed its concern about the denial of the right of many Palestinians to return and repossess their land in Israel in compliance with Article 5(d)(ii) and (v) of the Convention. The Committee reiterated its position on the matter and urged Israel to **“to assure equality in the right to return to one’s country and in the possession of property.”**³³

34 Badil would like to highlight to the Committee that Israel has not only failed to comply with this recommendation but has also legislated several laws and enacted several new policies that have threatened equality and return of Palestinian refugees.

35 The total number of Palestinian refugees of 1948 and 1967 was estimated to be 6.6 million by the end of 2008.³⁴ No Palestinian refugees have been granted or even ensured return, restitution, and/or compensation to date.

36 In 2011, Israel passed a law criminalizing efforts aimed at promoting the concept of the right of return among Israeli society. In late March 2011, the Israeli Knesset passed a law that criminalized the commemoration of the historic and ongoing dispossession of Palestinians known in Arabic as the *Nakba*. The law that has come to be known as the *Nakba Bill*, stipulates that the government shall de-fund any organization, institution, or municipality that marks the day of Israel’s establishment as a day of mourning or loss.³⁵ The original version of the bill, subsequently changed in response to broad condemnation, stipulated that violators of the law shall be incarcerated for up to three years.³⁶ The bill is a fundamental challenge to equality, liberties of speech, and national rights. In particular it impedes the ability of Israel’s indigenous population to commemorate their enduring presence and

³³ 2007 Recommendations supra note 7 at para. 18.

³⁴ Badil Survey supra note 18 at Chapter Two.

³⁵ Stoil, Rebecca Ann, “Nakba bill passes Knesset in third reading,” *Jerusalem Post* (March 23, 2011) available at <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=213396>.

³⁶ D’Amours, “Israel criminalizes commemoration of the Nakba,” *THE ELECTRONIC INTIFADA* (March 29, 2011).

historical rootedness to the land. According to Israeli activist Eitan Bronstein, who is the founder and spokesperson of *Zochrot*, an organization dedicated to raising awareness about the Nakba within Israeli society:

*This law is part of a whole campaign to intimidate anyone who wishes to study, to remember, to mention, to have anything to do with the Nakba. In Israel, it mostly affects and it already affects, from what we see, Palestinian citizens from Israel.*³⁷

- 37 On 11th January 2012, Israel's High Court rejected a legal challenge, brought by Adalah, Association for Civil Rights in Israel (ACRI) and other Israeli human rights organizations, to one of the most blatant pieces of Israeli apartheid legislation: the **2003 Temporary Amendment to the Citizenship and Entry into Israel Law**. This law suspends the possibility of Palestinian citizens of Israel and Jerusalem ID-holders gaining permission, through family reunification, to legally live in Israel or occupied East Jerusalem with their spouses from the OPT or from purported "enemy states." In May 2002, Israel issued decision 1813, which froze the applications for all Israeli citizens or East Jerusalem residents that involved Palestinian spouses from the OPT, to prevent the possibility of a "creeping right of return" through the unification process. The Knesset institutionalized this policy through law in 2003 when it passed the *Temporary Law*. Since the overwhelming majority of Israeli citizens wishing to marry spouses from the OPT are Palestinians, the law is disproportionately discriminate against Palestinians and violates the right to family life. Moreover, the 2003 amendment does not change the situation for Israeli citizen spouses applying to be joined either by foreign spouses or Israeli settler spouses living in the OPT.
- 38 The Supreme Court decision directly contravenes this Committee's 2007 recommendation that Israel **"revoke the Citizenship and Entry into Israel Law (Temporary Order), and reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis. The State party should ensure that restrictions on family reunification are strictly necessary and limited in scope, and are not applied on the basis of nationality, residency or membership of a particular community."**³⁸
- 39 Similarly, the process of applying for family reunification by those living in the OPT (i.e. to bring their spouses in from outside the OPT) has been under Israeli control since the 1967 occupation. According to MIFTAH, while over 150,000 applicants in the OPT requested family reunification between 1973-2000, Israel has only granted a few thousand of them. Since 2000 the whole procedure has been officially frozen and only a few thousand more have been granted on the basis of "good will gestures."³⁹
- 40 This process aims at changing the demographics in Israel and the OPT as indicated by the Court's judicial reasoning that proclaimed, "human rights are not a prescription for national suicide." Knesset-member (MK) Otniel Schneller underscored this sentiment in his proclamation that "the decision articulates the rationale of separation between the (two) peoples and the need to maintain a Jewish majority... and character of the state" and by MK

³⁷ Id.

³⁸ 2007 Recommendations *supra* note 7 at para. 20

³⁹ Amnesty International, "Right to family life denied: Foreign spouses of Palestinians barred," MDE 15/018/2007 (21 March, 2007).

Yaakov Katz who said "... the State of Israel was saved from being flooded by 2-3 million Arab refugees."

- 41 Israeli legislation is also threatening the land rights of Palestinian citizens of Israel as well as those Palestinian refugees who are forcibly exiled. The **Land Acquisition for Public Purposes Ordinance (1943)** is a British-mandate era law that authorizes the Finance Minister to confiscate Palestinian lands for "public purposes" in perpetuity.⁴⁰ In February 2010, the Knesset amended the law to prevent Palestinian landowners from restoring land confiscated pursuant to the ordinance even if it was never used for the alleged public purpose for which it was originally confiscated. The Amendment allows the state not to use the land for the original intended purpose for 17 years and it prevents landowners from demanding restoration if the land has been transferred to a third party or if more than 25 years has lapsed since the confiscation.⁴¹ This impacts Palestinians collectively as Israel confiscated significant portions of their lands over 25 years ago and has since transferred them to third parties.
- 42 Rather than promote the concept of return for Palestinian refugees among its population, Israel's leading figures and its government institutions have made alarming and vitriolic comments about the return of Palestinian refugees. Consider that the Israeli Ministry of Foreign Affairs has not amended its legal and policy memo declaring that Palestinians do not have a right to return in international law. That memo, posted since January 2001, concludes "If Israel were to allow all [refugees] to return to her territory, this would be **an act of suicide** on her part, and no state can be expected to destroy itself."⁴² More recently, MK Avi Dichter has dismissed the possibility of return altogether. He stated "The 'right of return' will not be included in the peace process... Talk about the 'right of return' is meaningless. Everyone understands that there will not be a solution that includes 'return,' no matter who says what."⁴³
- 43 In contrast, the Jewish Agency found that Jewish immigration to Israel increased by nearly 20 % in 2011, totalling 21,300 persons.⁴⁴ The **increase in Jewish immigration** to Israel indicates that failure to permit return of Palestinian refugees reflects a racially discriminatory policy as opposed to logistical challenges.
- 44 Israel's ongoing forced displacement of indigenous Palestinian refugees is racially motivated. It reflects a policy to maintain a Jewish majority and is implemented by affording Jewish nationality to Jews, thus only precluding the enjoyment of immigration eligibility to indigenous Palestinian refugees. This policy reflects a pillar of Israel's Apartheid regime.

b. EAST JERUSALEM

- 45 In its 2007 Observations and Recommendations, the Committee noted that the route of Israel's Wall in the OPT cannot be justified by military exigencies and is therefore in

⁴⁰ Adalah, The Inequality Report: The Palestinian Arab Minority in Israel (March 2011), page 32.

⁴¹ Id.

⁴² <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Do+Palestinian+Refugees+Have+a+Right+to+Return+to.htm>

⁴³ <http://www.israelnationalnews.com/News/News.aspx/141494#.TyXmsnbTHYs>

⁴⁴ <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=239114>

violation of Articles 2, 3, and 5 of the Convention. The Committee recommended that "the State party cease the construction of the wall in the OPT, including in and around East Jerusalem..." In recommendation 35, the Committee reiterated its call for "**a halt to the demolition of Arab properties, particularly in East Jerusalem, and for respect for property rights irrespective of the ethnic or national origin of the owner.**"⁴⁵

- 46 Badil would like to highlight to the Committee, that since its last review of Israel, the State Party has dramatically increased home demolitions targeting Palestinian properties. More specifically, Israel has accelerated its ethnic cleansing policy of East Jerusalem in an effort to establish a solid Jewish majority.
- 47 Israel's policy of population transfer has shaped Jerusalem since 1948, both in terms of priority area for Jewish settlement, and in terms of forced transfer of the Palestinian population. Those policies aimed at achieving the forced population transfer of Palestinians include the denial of Israeli citizenship to, and the institutionalization of a vulnerable residency status of, Palestinian Jerusalemites; confiscation of land; discriminatory urban planning policies; and systematic home demolitions.

1. RESIDENTS NOT CITIZENS, AND ALWAYS VULNERABLE

- 48 Palestinians in the territory of 1967 occupied Jerusalem were given permanent residency rather than Israeli citizenship, which is a status that can be revoked based on time spent living outside the city. The residency status law was changed without warning in 1995, resulting in lost rights to enter and/or live in the city, and subsequent orders to leave their homes.
- 49 Revocation of Jerusalem residency can occur in one of three ways: (1) if municipal inspectors determine a Palestinian is living elsewhere (which can include habitual residence as close as the West Bank or as far as the United States); (2) being absent from Jerusalem for an extended period of time; or (3) if a Palestinian has acquired residency or citizenship elsewhere. This discriminatory practice of residency revocation only applies to Palestinians who have the legal/political status of a permanent resident of Jerusalem.⁴⁶
- 50 **Military Order 1650, the Order Regarding Prevention of Infiltration**, amending a 1969 law, defines an infiltrator as one present illegally in the West Bank or one who does not lawfully hold a permit. Order 1650 is ambiguous enough to include citizens of other states or time spent in prolonged incarceration. The legislation has been used to forcibly transfer Palestinian Jerusalemites out of Jerusalem.
- 51 The route of the Annexation Wall has worked to significantly isolate East Jerusalem. In December 2011, the Mayor of Jerusalem stated his intention to transfer the responsibility of neighborhoods on the "Palestinian" side of the Wall from the Jerusalem Municipality to

⁴⁵ 2007 Recommendations supra note 7 at para. 35.

⁴⁶ Mariam Houk, "Ethnic Cleansing Continues: Israeli Lawyers tell UN Palestinian Jerusalemites Targeted," JERUSALEM QUARTERLY, Issue 48 (Winter 2011).

Palestinian Authority control. If successfully implemented, this would revoke the residency rights of 55,000 Palestinian residents of East Jerusalem.⁴⁷

- 52 Between 1967 and 2010, Israel has revoked the residency rights of approximately **13,115 Palestinians through what has been deemed “silent deportation.”**⁴⁸

2. DISCRIMINATORY ZONING & PLANNING POLICIES

- 53 Israeli authorities’ **“Jerusalem 2000”** plan serves to systematically reduce the Palestinian population in by implementing a policy of population transfer. It further privileges Jewish nationals and citizens, while discriminating against Palestinian Jerusalem residents, by maintaining a 70 percent Jewish majority over a 30 percent Palestinian Arab minority. Moreover, because trends project a balance of 60:40 by the year 2020, the plan proposed a number of measures aimed at maintaining a ‘Jewish majority in the city while attending to the needs of the Arab minority.’⁴⁹ These policies take on two dimensions: the privileged treatment of Jewish nationals and citizens and/or the discriminatory treatment of Jerusalem’s Palestinian residents.

- 54 Despite their best efforts to secure building permits, the Jerusalem municipal government rejects Palestinian applications almost as a matter of policy.⁵⁰ By way of example, in 2008, Israeli authorities rejected 172 proposed Local Planning Schemes submitted by Palestinians in East Jerusalem.⁵¹ Moreover, while Israel provides the services of urban planners to its residents free of charge, several Palestinian neighborhoods have hired and paid for planners to develop plans intended for review by municipal authorities.

- 55 Discriminatory zoning policies have further **ghettoized** Palestinian villages. In the village of An Nabi Samwil, villagers are placed in a precarious situation through the discriminatory zoning policy which has placed part of the village in the West Bank and part of it within the Jerusalem governorate. Residents are completely restricted by the Al Jib checkpoint and movement into other parts of Jerusalem is prohibited in most cases for all residents. These restrictions further complicate villagers’ ability to access work, healthcare facilities, schools and clean water. Villagers who move out risk permanent exclusion from their homes and families.⁵²

3. CONFISCATION OF PALESTINIAN LANDS

- 56 The Office for the Coordination of Humanitarian Affairs (OCHA) has reported that Israel has designated the area of **Wadi Abu Hindi to be enclosed by the Annexation Wall around the Israeli settlement of Ma’ale Adumim.** The area has received “over 80 stop-work and demolition orders, leaving most structures at-risk of imminent demolition and their

⁴⁷ http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_01_19_english.pdf

⁴⁸ http://www.btselem.org/jerusalem/revocation_statistics

⁴⁹ Human Rights Watch, “Separate and Unequal: Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories,” (2010).

⁵⁰ Id.

⁵¹ Id. at 49.

⁵² OCHA, “Barrier Update: Seven years after the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem Area,” (July 2011).

inhabitants at-risk of displacement. They also have outstanding requisition orders for Barrier construction; if implemented, the route of the Barrier will run through the community.”⁵³

- 57 Before 1948 **Al Wallajeh** was comprised of 17,684 dunums of land. After 1948, the village retained only 25 percent of its original size, or 4,446 dunums. By 1980, Israel had annexed a further 2,490 dunums. Oslo II designated Al Wallajeh as Area B, which was to fall under the Palestinian National Authority (PNA) administrative control while Israel retained security control (113 dunums) and Area C, which was to fall under both Israeli administrative and security control (the remaining 1,956 dunums).⁵⁴
- 58 In 2006, Israel annexed an additional 40 dunums when it transformed the Al Wallajeh checkpoint into a border passage. The military confiscation orders for 2,218 dunums, which Israel has justified for security purposes for the Wall and border passage, go beyond the Jerusalem municipality boundaries, and constitute land mainly used by Palestinians for agricultural purposes, further evidencing the illegitimate confiscation of Al Wallajeh land.⁵⁵
- 59 Muhammad Ismayil Al-Sheikh (70 years old) and his family (numbering 23 people) live together in a 2-story house in Al Wallajeh that has recently been targeted. The Ministry of Interior brought suit against Al-Sheikh for the illegal construction of the second floor of the home. Al-Sheikh was able to receive a stay of proceedings order from the court pending trial. After receiving the order, Al-Sheikh hastily rushed to the demolition site where he was barred from reaching the inspector (authorities kept him at a distance of 100 meters) and producing the stay order. Israeli authorities subsequently demolished one wing of the home.⁵⁶

4. SYSTEMATIC HOME DEMOLITIONS

- 60 Israel has institutionalized the practice of Palestinian home demolitions, maintaining that residence in Jerusalem is a conditional privilege for Palestinians, limiting notice and hearing to contest such practices, and favoring Jewish nationals and citizens over Palestinian residents to maintain a demographic “balance”.
- 61 Demolition orders are made against the construction itself rather than served to the owner of the building, which contravenes basic principles of notice and hearing.⁵⁷
- 62 Further, Israeli law requires all notices to be both in Arabic and Hebrew, though if put up at all, are usually only in Hebrew. This practice clearly violates International case law (the right of minorities to use its own language).⁵⁸

⁵³ Id.

⁵⁴ PLO Negotiations Affairs Department, “The Nakba Continues: The Silent Transfer of Al Walajeh Community,” (May 2011)

⁵⁵ Id.

⁵⁶ <http://icahd.org.dolphin.nethost.co.il/wordpress/wp-content/uploads/2010/05/NoPlaceLikeHome.pdf>

⁵⁷ Al-Maqdese for Society Development, “Report of House Demolitions in East Jerusalem 2011.” [Hereinafter “Maqdese Report”]

⁵⁸ See IHC 4112/99, Adalah v. Municipalities of Tel-Aviv, Ramle, Lod, Acre, Upper Nazareth et al.

- 63 In 2008, Israel issued only 125 building licenses for 400 housing units when in fact natural population growth necessitated approximately 1,500 new units, thereby disproportionately harming Palestinians.
- 64 Since the beginning of 2010, 1,322 demolition orders have been issued in Jerusalem, which threatens the displacement of 3,655 people, including 1,699 children.⁵⁹
- 65 Since 2010, Israeli Authorities have implemented 50 home demolitions in East Jerusalem, displacing 75 people, including 40 children. Eight of the 50 demolitions constitute self-demolitions, where Palestinians are forced to demolish their own homes.⁶⁰
- 66 Israel implements forced population transfer of Palestinians in East Jerusalem through a confluence of policies including making tenuous Palestinian residency rights, implementing discriminatory zoning and planning laws, confiscating Palestinian land, and systematically demolishing homes belonging to Palestinians.

IV. PROPOSED RECOMMENDATIONS TO THE COMMITTEE

- 67 BADIL strongly urges the Committee to examine thoroughly Israel's system of institutionalized discrimination that distinguishes between Jewish nationals and citizens and Palestinian Arabs and extends from Israel Proper to the OPT and issue the ***strongest possible Concluding Observations including:***

- 67.1 A finding that there is no exception, nor acceptable case, for Israel's discriminatory system, even as applied to the Law of Return in contrast to this Committee's 2007 Concluding Observations in paragraph 17 where it noted that distinction between Jews and non-Jews is acceptable "with regard to determining the right to immigrate to Israel, according to the Law of Return.
- 67.2 A finding that Israel's settlement policy in the OPT amounts to population transfer and is driven by State interests..
- 67.3 A finding that Israel's policy towards the Palestinian Arab residents of East Jerusalem, aimed at displacing them from their home, amounts to forced population transfer.
- 67.4 A finding that Israel's policies aimed at excluding Palestinian Arab refugees from their homes of habitual residence, coupled with laws and policies aimed at diminishing the number of Palestinian Arabs within Israel, amounts to forced population transfer.

- 68 ***Badil urges the Committee to recommend to Israel:***

⁵⁹ Maqdese Report supra note 57.

⁶⁰ Id.

- 68.1 Reiterate its recommendation that Israel develop a program that ensures a shared national identity of all its citizens irrespective of religion, color, and national origin.
- 68.2 Incorporate the right to equality as a constitutional right that applies retroactively to those laws legislated before 1992.
- 68.3 Recognize and facilitate the right of Palestinian refugees to return to their homes, to compensation, and to restitution, by amending the discriminatory laws that permit only Jewish nationals to enjoy the benefits of the Law of Return.
- 68.4 Overturn the comprehensive and sweeping 2003 Amendment to the Citizenship and Entry into Israel Law (Ban on Family Reunification) that makes no intelligible distinction between security threats and all others residing in the OPT or purported “enemy states” and to allow Palestinian citizens of Israel and Palestinian residents of East Jerusalem to reside in their place of habitual residence with their spouses.
- 68.5 Amend the Land Acquisition for Public Purposes Ordinance (1943) to afford mechanisms for Palestinian refugees, who have been displaced from their homes and unable to claim their private lands, to make those claims.
- 68.6 Repeal its Nakba Bill that criminalizes education about the mass displacement of indigenous Palestinians in 1948 and promote such education among its public institutions.
- 68.7 Repeal Military Order 1650 in order to allow for the free movement of Palestinian residents of East Jerusalem in the OPT.
- 68.8 Dismantle the Annexation Wall and compensate and restitute those Palestinian residents who have been harmed by its construction. As an interim policy, ensure that those Palestinian residents of East Jerusalem who have been placed on the "Palestinian" side of the Wall retain their Jerusalem residency rights.
- 68.9 End restrictions on housing permits granted to Palestinian Arabs to build in East Jerusalem and the so-called Area C.
- 68.10 Amend the Jerusalem 2000 master plan to benefit the Palestinian Arab residents of East Jerusalem in a manner equal to the city's Jewish residents.
- 68.11 Cease the discriminatory and targeted destruction of Palestinian Arab homes in East Jerusalem.
- 68.12 Stop implementing the “Praver Plan ” which recommends the destruction of fourteen (14) villages in the Beer Sheba (Beer Al-saba’) district located in the Negev (Naqab), effectively displacing 30,000 Palestinians from their homes.

NATIONALITY AND CITIZENSHIP

In most countries both terms are interchangeable. **Israeli law is unique in its approach and separates the two into separate legal statuses**

Nationality

- **There is no such thing as 'Israeli' nationality.**
- Jewish Nationality, however, is recognized. It is governed by the *Law of Return (1950)* which automatically assigns "Jewish nationality" to every Jewish person in the world.
- The *Law of Return (1950)* states a Jewish national is:
 - born of Jewish mother *or* has become converted to Judaism **and** is not a member of any other religion.
- Rights of nationality are also vested in:
 - a child/grandchild of a Jew,
 - the spouse of a Jew,
 - the spouse of a child of a Jew,
 - or the spouse of a grandchild of a Jew **unless** they have been a Jew and voluntarily changed their religion.

Rights of Jewish Nationals

- Enter Israel at any time.
- Obtain citizenship at any time.
- Can live in Israel or in settlements in the West Bank.

No need to be born in Israel, reside in Israel or have any connection with Israel in order to enjoy these rights.

Jewish Nationals living in Israel

- ▶ Full civil and political rights, including the right to bring spouses into Israel
- ▶ Subject to Israeli civil and criminal law.
- ▶ Can bring spouses to settle in Israel, either from abroad or from settlements in the OPT.

Jewish Nationals living in the OPT

- ▶ Full civil and political rights, including the right to bring spouses into OPT
- ▶ Subject to Israeli civil and criminal law.
- ▶ Can bring spouses to settle in Israel, either from abroad or from settlements in the OPT.

Jewish Nationals living abroad

- ▶ Right to enter to Israel, including the right to bring spouses into Israel.
- ▶ Obtain citizenship.

Citizenship

- 'Israeli' citizenship is available to all Jewish Nationals, even those who hold citizenship of another state. **There is no such thing as 'Jewish' citizenship.**
- Citizenship for non-Jews is governed by the *Citizenship Law (1952)*.
- This law removed Palestinian nationality from all who remained inside Israel at the time of enactment.
- Israeli citizenship is available to non-Jews and their descendants present in Israel between 1948 – 1952.

Citizenship Available Palestinian East Jerusalem ID holders (permanent residents)

- ▶ No right to reside in the West Bank or Gaza.
- ▶ Subject to Israeli criminal law and military law.
- ▶ Housing and residency rights systematically abridged
- ▶ Tenuous residency rights subject to arbitrary revocation

Citizenship obtained: Palestinian Citizens of Israel

In practice Palestinian citizens of Israel are in an **inferior position** to their Jewish National counterparts

- ▶ Can only live in Israel not in the OPT.
- ▶ *Temporary Amendment to the Citizenship and Entry into Israel Law 2003* prevents residents of the OPT, who are married to Israeli citizens, from acquiring Israeli citizenship and residence permits. This does not apply to spouses of Jewish National-Israeli citizens – whether they are foreign or Jewish settler spouses from the OPT
- ▶ Rights are significantly abridged compared to the rights of Jewish Nationals.
- ▶ Subject to institutionalized discrimination in housing, employment, education and healthcare.

Citizenship Not Available

Those **not** within Israel or those present in territory controlled by Israeli-defined 'enemy forces' between those dates were precluded from obtaining citizenship.

1. **This has resulted in approximately 6.6 million Palestinians being ineligible for citizenship resulting in statelessness and/or denial of a nationality.**
2. Israel has refused to allow their return because they lack Jewish nationality.
3. The Land Acquisition for Public Ordinance (1943) precludes their legal claims for their private lands.
4. In addition the *Prevention of Infiltration Law 1954* and *Military Orders 1649 and 1650* provide that those Palestinians are **prohibited from legally returning** to Israel or the OPT.

Palestinian Gaza Strip ID holders

- ▶ No right to leave and enter Gaza
- ▶ No right to enter Israel or West Bank.
- ▶ Treated in Israel as Security Prisoners, subject to Israeli criminal law.
- ▶ Gazan ID holders subject to legal black hole-Israel denies their status as civilians in the meaning of GCIV and as citizens of a sovereign entity.

Palestinian West Bank ID holders

- ▶ No right to enter Israel or Gaza.
- ▶ Subject to Israeli military law.

Palestinian Refugees

- ▶ Israel denies their absolute right to return to homes in breach of international law.
- ▶ Many remain stateless and/or lack protection.