

## **Badil's Written Report in Response to Israel's Fourth Periodic Report to the UN Human Rights Committee (CCPR/C/ISR/4)**

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## Table of Contents

<b>I. INTRODUCTION .....</b>	<b>3</b>
<b>II. APPLICABILITY OF THE ICCPR .....</b>	<b>3</b>
<b>III. LEGAL EQUALITY .....</b>	<b>5</b>
• Israel’s Discriminatory Laws toward Palestinian citizens of Israel.....	5
• Military orders and Israel’s legal regime in Palestinian territory.....	6
• Legal discrimination in East Jerusalem .....	7
<b>IV. FORCED POPULATION TRANSFER.....</b>	<b>7</b>
• Denial of Palestinian refugees’ right to reparation (return, property restitution and compensation) .....	7
• Revocation of residency status .....	8
• Denial of family unification .....	8
• Land Confiscation.....	9
• Restrictions on use and access to land .....	10
• Home demolitions.....	11
• Implantation of colonies in Palestinian territory .....	12
<b>V. RECOMMENDATIONS FOR CONCLUDING OBSERVATIONS.....</b>	<b>12</b>

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### **I. INTRODUCTION**

1. Badil Resource Center (Badil) is an independent human rights organization based in Palestine. It works to promote a rights-based approach to the issues of Palestinian refugees and internally displaced persons. Badil is registered as a non-governmental organization in the OPT, and has consultative status with ECOSOC. For further information, please see: [www.badil.org](http://www.badil.org).
2. Badil appreciates the opportunity to submit information to the UN Human Rights Committee (HRC) with regard to Israel's implementation of the International Covenant on Civil and Political Rights (ICCPR), in response to Israel's Fourth Periodic Report (CCPR/C/ISR/4).
3. This written report is organized by, and seeks to draw the attention of the HRC to, core issues that were not satisfactorily addressed by Israel's Fourth Periodic Report, namely: the applicability of the ICCPR in West Bank and Gaza, in violation of the decision of International Court of Justice on the matter and disrespecting this Committee's call on Israel to do so; the inclusion of the principle of equality in Israel's *Basic Law: Human Dignity and Liberty (1992)* and the repeal of discriminatory laws; and Israel's institutionalized discriminatory policies that cause the forced transfer of Palestinian population.

### **II. APPLICABILITY OF THE ICCPR**

4. Badil notes with deep concern that Israel has maintained its position that the International Covenant on Civil and Political Rights (hereinafter "ICCPR" or "the Covenant") is *not applicable* in West Bank and Gaza, arguing that:
  - (i) such territories are ruled by the Law of Armed Conflict, which, the State party argues, excludes the possibility of applying Human Rights Law mechanisms, such as the Covenant;<sup>1</sup>
  - (ii) the Convention is territorially bound and, therefore, "does not apply, nor was it intended to apply, to areas beyond a state's national territory".<sup>2</sup>
5. Badil supports the view, in accordance with the International Court of Justice's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the occupied Palestinian territory (oPt), that the ICCPR, along with other human rights instruments, is applicable outside national territory and, specifically, in West Bank and Gaza.<sup>3</sup> Such position was also supported by the UN Human Rights Committee (HRC) in its previous concluding observations,<sup>4</sup> according to which "the applicability of the regime of international humanitarian law during an armed

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1 UN Human Rights Committee (HRC), "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant pursuant to the Optional Reporting Procedure - Fourth Periodic Report: Israel. Submitted on 14 October 2013. ('Israel's Fourth Periodic Report')," December 12, 2013, para. 47, CCPR/C/ISR/4.

2 Ibid., para. 48.

3 International Court of Justice, "Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion)," July 9, 2004, 137.

4 UN Human Rights Committee (HRC), "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Concluding Observations on Israel's Initial Report," August 18, 1998, para. 10, CCPR/C/79/Add.93; UN Human Rights Committee (HRC), "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Concluding Observations on Israel's Second Report," August 5, 2003, para. 11, CCPR/CO/78/ISR; and, most recently, UN Human Rights Committee (HRC), "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Concluding Observations on Israel's Third Periodic Report," September 3, 2010, para. 5, CCPR/C/ISR/CO/3.

conflict, as well as in a situation of occupation, does not preclude the application of the Covenant”.<sup>5</sup>

6. Badil also observes that Palestine’s recent accession to the ICCPR should not be taken as releasing Israel from its obligations under the Covenant, given that the situation of occupation persists, and Israeli security forces continue to “exercise [...] effective *jurisdiction* [our emphasis]”<sup>6</sup> in Palestinian territory, thus, falling under article 2, paragraph 1, of the Covenant.<sup>7</sup>
7. Israel has been systematically using its erroneous interpretation of the applicability of the Covenant in Palestinian territory as an excuse to avoid accountability for violations of the rights of Palestinians. Notably, the State party has invoked such interpretation as it did not answer:
  - (i) question 5 of the “List of issues prior to the submission of the fourth periodic report of Israel” (hereinafter, “2012 List of issues”),<sup>8</sup> pertaining to the inclusion of the principle of equality in Israeli Law and its application to Palestinians and Israeli settlers;<sup>9</sup>
  - (ii) question 6(a) and (b), regarding the practice of collective punitive demolitions and discriminatory planning, respectively, in West Bank;<sup>10</sup>
  - (iii) questions 6(d) and 13, concerning the access to health services, education, adequate housing, water and sanitation in the context of the blockade on Gaza, as well as its lifting, respectively;<sup>11</sup>
  - (iv) question 9, pertaining to the access by all residents of Palestinian territory to natural resources such as agricultural lands and adequate water supplies;<sup>12</sup>
  - (v) question 17, regarding the practice of administrative detention;<sup>13</sup>
  - (vi) question 18, concerning settler violence;<sup>14</sup>
  - (vii) question 20, pertaining to issuance of permits for long-term residents in the West Bank and expulsion such persons to Gaza;<sup>15</sup>
  - (viii) question 21, regarding the establishment of settlements;<sup>16</sup> and
  - (ix) question 25, concerning the rights of the child and equality before the law.<sup>17</sup>
8. Israel’s denial to answer for such violations has great impact on its accountability for the forced transfer of Palestinian population, to which many of the issues mentioned in the previous paragraph contribute, as will be addressed by item IV.
9. Furthermore, by rejecting the applicability of the Covenant in West Bank and Gaza, Israel is refusing to accept the Palestinian people’s right to self-determination, which has been omitted in

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<sup>5</sup> UN Human Rights Committee (HRC), “Concluding Observations on Israel’s Third Periodic Report,” para. 5.

<sup>6</sup> UN Human Rights Committee (HRC), “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Concluding Observations on Israel’s Initial Report,” para. 10.

<sup>7</sup> “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction [our emphasis] the rights recognized in the present Covenant”. UN General Assembly, “International Covenant on Civil and Political Rights,” December 16, 1966, A/RES/2200(XXI)[A-C], Article 2(1).

<sup>8</sup> UN Human Rights Committee (HRC), “List of Issues prior to the Submission of the Fourth Periodic Report of Israel (CCPR/C/ISR/4) Adopted by the Human Rights Committee at Its 105th Session, 9-27 July 2012,” August 31, 2012, CCPR/C/ISR/Q/4.

<sup>9</sup> UN Human Rights Committee (HRC), “Israel’s Fourth Periodic Report,” para. 53 and 56.

<sup>10</sup> See UN Human Rights Committee (HRC), “Israel’s Fourth Periodic Report,” para. 64 and 81, respectively.

<sup>11</sup> See *ibid.*, para. 111 and 338., respectively.

<sup>12</sup> See *ibid.*, para. 256.

<sup>13</sup> See *ibid.*, para. 398.

<sup>14</sup> See *ibid.*, para. 400.

<sup>15</sup> See *ibid.*, para. 407.

<sup>16</sup> See *ibid.*, para. 408.

<sup>17</sup> *Ibid.*, para. 460 and 461.

Israel's previous accounts on article 1 of the Covenant<sup>18</sup> and has been completely absent from the 2012 List of issues, which Badil notes with regret.

### III. LEGAL EQUALITY

10. The principle of equality and prohibition of discrimination remain not guaranteed in Israel's *Basic Law: Human Dignity and Liberty (1992)*, which serves as Israel's Bill of Rights. As a consequence, and coupled with the absence of a definition of racial discrimination in Israeli legislation, in accordance with Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Israel's legal system "undermine[s] the protection afforded to all persons under [its] jurisdiction [...] for equal access to human rights",<sup>19</sup> allowing the perpetuation of institutionalized racial discrimination, in violation of Israel's obligations under international human rights law, including Articles 2(1) and 26 of the Covenant.
11. Badil is also particularly concerned with Israel's statement that "[t]here shall be no violation of rights under this Basic Law *except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required* [our emphasis]",<sup>20</sup> which explicitly denotes an understanding that supports the enactment of discriminatory laws.
12. Moreover, such values, based on a definition of "the State of Israel as a Jewish and democratic State",<sup>21</sup> are the basis of a legal framework that gives first-class rights and benefits to Jews while second-class status is afforded to all others.<sup>22</sup>
13. As noted in Badil's previous reports to this Committee,<sup>23</sup> and also in a written statement to the United Nations Human Rights Council,<sup>24</sup> Israel's *Law of Return (1950)* and *Citizenship Law (1952)* and its amendments create a discriminatory and dualistic arrangement whereby Jews hold nationality and citizenship, and non-Jews (Palestinians) hold only citizenship. Such dual legal system implements a "systematic discrimination and Jewish preference inside Israel and in the oPt [that] meet the definition of a regime of apartheid".<sup>25</sup>

#### Israel's Discriminatory Laws toward Palestinian citizens of Israel

14. As Badil has noted in a previous publication,<sup>26</sup> Israeli legal system embodies discrimination through laws that: allow or actively establish unequal opportunities of **employment** and access to **education** for Palestinian citizens of Israel; discriminate against Palestinian **land** owners; curb Palestinian **political participation** in Israel; limit the **freedom of speech** and **cultural rights** of Palestinians.<sup>27</sup> Moreover, as of June 2013, there were at least 20 pending bills that could further

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<sup>18</sup> UN Human Rights Committee (HRC), "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Initial Report of States Parties Due in 1993: Israel (Addendum)," June 2, 1998, para. 36-39, CCPR/C/81/Add.13; UN Human Rights Committee (HRC), "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Third Periodic Report of States Parties Due in 2007: Israel," November 21, 2008, para. 9, CCPR/C/ISR/3.

<sup>19</sup> UN Committee on the Elimination of Racial Discrimination (CERD), "Consideration of Reports Submitted by States Parties under Article 9 of the Convention - Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel," March 9, 2012, para. 13, CERD/C/ISR/CO/14-16.

<sup>20</sup> UN Human Rights Committee (HRC), "Israel's Fourth Periodic Report," para. 51.

<sup>21</sup> *Ibid.*, para. 263.

<sup>22</sup> See Roselle Tekiner, "Race and the Issue of National Identity in Israel", *In. J. Middle East Stud*, 23 (1991), 39 – 55.

<sup>23</sup> INT/CCPR/NGO/ISR/99/9203 (2009) and INT/CCPR/NGO/ISR/99/9195 (2010).

<sup>24</sup> UN Human Rights Council, "Written Statement Submitted by BADIL Resource Center for Palestinian Residency and Refugee Rights, a Nongovernmental Organization in Special Consultative Status," May 27, 2011, A/HRC/17/NGO/55.

<sup>25</sup> *Ibid.*, 2.

<sup>26</sup> BADIL, *Occasional Bulletin No.26: Israel's Discriminatory Laws* (Bethlehem, Palestine: BADIL Resource Center for Residency and Refugee Rights, 2012), <http://www.badil.org/en/press-releases/142-2012/3609-press-eng-42>.

<sup>27</sup> See also Adalah, *Inequality Report: The Palestinian Arab Minority in Israel*, February 2011; and Adalah, *New Discriminatory Laws and Bills in Israel*, October 2012, especially pp. 7-10.

restrict land and planning rights, economic, social and cultural rights, and civil and political rights of Palestinian citizens of Israel.<sup>28</sup>

15. In addition, Israel has enacted several laws which discriminate against “security prisoners” and “security persons”, who are overwhelmingly Palestinians.<sup>29</sup> There are also pending bills that could further such discrimination.<sup>30</sup>
16. The number of discriminatory laws and, most importantly, the perpetuation of the enactment of new such laws irrefutably indicate that Israel’s legal system carries out systematic, institutionalized discrimination against its Palestinian citizens.

### **Military orders and Israel’s legal regime in Palestinian territory**

17. Reiterating a previous report by Badil,<sup>31</sup> the legal regime imposed by Israel on West Bank is discriminatory in its essence, as Palestinians are ruled primarily by *military orders*, while settlers have exclusive preferential rights extended to them by Israeli *domestic law*.
18. Concomitantly, Israel has “expanded the concept of Israeli citizenship so as to include settlements constructed throughout OPT”, by claiming that settlements were not part of it.<sup>32</sup>
19. Badil reiterates its concern over *Order regarding Prevention of Infiltration (1650)*, which changes the definition of “infiltrator” from an enemy of the state to anyone in the West Bank without a permit, and *Order regarding Security Provisions (1649)*, which provides for a military committee to review deportations appeals without specifically granting the right to appeal or to legal counsel, and allowing deportation within 72 hours. Both orders put thousands of Palestinians at risk of arrest, prosecution, and deportation based on “unclear criteria and without adequate judicial review”.<sup>33</sup>
20. Most recently, in June 2014, in the context of Operation Brother’s Keeper, Israel “raided a number of Islamic associations, allegedly linked to Hamas, confiscated computers and other equipment, and shutdown some by military order”.<sup>34</sup> In addition, in August 2014, Israel has issued a military order seeking the forcible transfer of Palestinian Legislative Council Member Khalida Jarrar from her residency in Ramallah to Jericho for a period of six months, under the allegation that she poses a threat to the general security of the area.<sup>35</sup>
21. Israel’s military orders, amounting to over 2,500, regulate every aspect of Palestinian life in the Palestinian territory – from regulations on how Palestinians can plant decorative flowers (*Military Order #818*)<sup>36</sup> to the authorization, to Israel, to hold Palestinians in administrative detention for up to six months without charge or trial (*Military Order #1229*)<sup>37</sup> – embodying a dual legal system clearly discriminatory in Palestinian territories. More importantly, Israel’s

<sup>28</sup> Adalah, “Index of Currently Pending Discriminatory Bills in the 19th Israeli Knesset,” June 24, 2013, 1–6.

<sup>29</sup> Adalah, *New Discriminatory Laws and Bills in Israel*, 10–12.

<sup>30</sup> Adalah, “Index of Currently Pending Discriminatory Bills in the 19th Israeli Knesset,” 6–7.

<sup>31</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 34.

<sup>32</sup> Ramy Aly and Michael Collyer, “Migration Legislation, Institutions and Policies in the Euromed Region (Euromed Migration II),” 2011, 254, [http://www.enpi-info.eu/library/sites/default/files/attachments/MigrationLegislation,InstitutionsandpoliciesintheEUROMEDregionEN\\_eng.pdf](http://www.enpi-info.eu/library/sites/default/files/attachments/MigrationLegislation,InstitutionsandpoliciesintheEUROMEDregionEN_eng.pdf).

<sup>33</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 34.

<sup>34</sup> OCHA - Occupied Palestinian Territories, “Protection of Civilians - Weekly Report - 17-23 June 2014,” June 26, 2014, 2, [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_report\\_2014\\_6\\_26\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_6_26_english.pdf).

<sup>35</sup> See <http://www.alhaq.org/advocacy/topics/population-transfer-and-residency-right/846-re-forcible-transfer-of-palestinian-legislative-council-member-khalida-jarrar>

<sup>36</sup> Israeli Committee Against House Demolitions-USA, “Is Israel an Apartheid State? - Rhetoric or Reality,” April 8, 2014, 13, <http://icahdusa.org/multimedia/2014/04/08.01-Apartheid-State.pdf>.

<sup>37</sup> *Ibid.*, 14.

military orders adapt the legal code to the changes in the political situation, serving Israeli policies toward Palestinian territories.<sup>38</sup>

### **Legal discrimination in East Jerusalem**

22. The *Citizenship and Entry into Israel Law (Amendment) (2007)* constitute a discriminatory law that not only affects Palestinian citizens of Israel, but also those living in East Jerusalem, by prohibiting them from obtaining Israeli citizenship or residency permits for spouses from West Bank and Gaza Strip. The measure discriminatively denies Palestinians their right to freely enter and establish residency in Jerusalem, and, thus, also impedes family reunification.<sup>39</sup>

## **IV. FORCED POPULATION TRANSFER**

### **Denial of Palestinian refugees' right to reparation (return, property restitution and compensation)**

23. The displacement of Palestinians constitutes a main goal of Israel's colonial strategy aiming at perpetuating illegal control over Palestinians and their land and changing the demographic composition of the territory. It is pursued by Israel through denying Palestinian refugees and IDPs right to reparation (return, restitution and compensation) as well by its discriminatory official policies, such as revocation of residency status, denial of family unification, land confiscation, restrictions on use and access to Palestinian land, home demolitions and continued implantation of colonies in Palestinian territory.
24. Palestinian refugees are the largest and longest-standing displaced population in the world today. Out of 11.2 million Palestinians worldwide, 7.4 million are displaced of whom 5.8 million are 1948 refugees, more than one million are 1967 refugees, and 519,000 are IDPs on both sides of the armistice line (in Israel and oPt).<sup>40</sup> In violation of Article 12 (paragraph 4) of the ICCPR, the State of Israel is blocking Palestinian refugees from returning to their homes of origin based on the discriminatory basis of nationality.
25. The Palestinian refugees are excluded from the Law of Return(1950) which entitles only Jews to enter "Eretz Israel". The Citizenship Law (1952), has denationalized the 1948 Palestinian refugees and their descendants (5.8 million) in a discriminatory fashion based on their national origin, and de facto denied them their right to return, readmission to their homes of origin within the territory that became Israel in 1948. The State of Israel denies not only the right of the 1948 Palestinian refugees to return but also the right of the 1967 Palestinian refugees (1,022,546 displaced persons) to return to their country of origin, namely the oPt.<sup>41</sup>
26. In an attempt to prevent Palestinian refugees from returning to their homes Israel retains the authority to make the final determination on permanent residency, including those related to issues of family reunification of Palestinians not registered in the 1967 census, and controlling the return/ entry/ admission of Palestinians to the oPt. Also, in an attempt to prevent Palestinian refugees from and repossessing their property, Israel expropriated their property in an illegal,

<sup>38</sup> Defence for Children International (DCI) - Palestine Section, "Military Courts & Orders - A Maze of Injustice," August 2001, 1, <http://www.dci-pal.org/english/camp/freedom/pdf/courtsord.pdf>.

<sup>39</sup> Civic Coalition for Defending Palestinian Rights in Jerusalem (CCDPRJ), "Israeli Laws and Policies Denying Palestinians the Right to Freely Enter and Establish Residence in Occupied East Jerusalem: Instruments of Population Transfer, Apartheid and Colonialism," June 6, 2013, [http://civiccoalition-jerusalem.org/system/files/documents/brief\\_-\\_population\\_transfer\\_in\\_occupied\\_jerusalem.pdf](http://civiccoalition-jerusalem.org/system/files/documents/brief_-_population_transfer_in_occupied_jerusalem.pdf).

<sup>40</sup> Badil Resource Center, Survey of Palestinian Refugees and IDPs 2010-2012.

<sup>41</sup> See: Badil's Written Report in Response to Israel's Third Periodic Report to the UN Human Rights Committee (CCPR/C/ISR/3), 30 September 2009 available at: [file:///C:/Users/Dell/AppData/Local/Temp/badil%20written%20report%20to%20the%20hrcom\\_final\\_%20sep%202009.pdf](file:///C:/Users/Dell/AppData/Local/Temp/badil%20written%20report%20to%20the%20hrcom_final_%20sep%202009.pdf). Badil Resource Centre Supplement to Badil's Written Report in Response to Israel's Third Periodic Report to the UN Human Rights Committee (CCPR/C/ISR/3), available at: <file:///C:/Users/Dell/AppData/Local/Temp/hrc%2010%20badil%20update%20to%20the%20hrc%20june%202010-1.pdf>

discriminatory and arbitrary manner before and/or during exile, subsequently allocating most of the refugees' property to Jewish users and settlements. The property of the Palestinian refugees, displaced persons IDPs was classified as "absentees' property" under the *Absentees' Property Law (1950)* or abandoned property under the *Order Regarding Abandoned Property (private property), Judea and Samiria, 5727- (1967)*.<sup>42</sup>

### **Revocation of residency status**

27. Israel's residency system permits the revocation of residency status of those who travel abroad and fail to return before the expiry of their permit. Indeed, from 1967 to 1994, Israel stripped the residency rights of some 140,000 Palestinians living in the West Bank, amounting to over 10 percent of the population, and another 108,878 living in the Gaza Strip. As of 2013, 40,000 to 50,000 Palestinians live in Gaza without a residency status recognized by Israel.<sup>43</sup>
28. Israel's *Entry into Israel Law of 1952* allows the automatic revocation of residency status of Palestinian residents of East Jerusalem who leave Israel to live elsewhere. As of August 2013, such practice, increased in the 90s, had caused the loss of residency status of more than 14,000 Palestinians from East Jerusalem.<sup>44</sup>
29. In addition, reiterating Badil's previous concerns,<sup>45</sup> Israel's *Nationality Law (Amendment No. 9) (Authority for Revoking Citizenship)* permits the revocation of citizenship on the grounds of "a breach of allegiance to the state", which includes the act of naturalization or obtaining permanent residency status in states defined as "enemies", as well as in the Gaza Strip. Over the years, Israel has applied this law to Palestinian citizens, but never to Jewish Israelis.<sup>46</sup>
30. Badil understands that revoked residency is equivalent to expulsion, in flagrant violation of article 12 of the ICCPR, and constitutes a policy tool aimed at controlling the demographic composition of the territory, as well as at pursuing the declared intention of limiting the Palestinian population of Jerusalem fewer than 28 percent.<sup>47</sup>

### **Denial of family unification**

31. With the introduction of closures and checkpoints, as well as with the construction of the Annexation Wall and its associated regime, Palestinians find it increasingly difficult to enter East Jerusalem and Israel, which has prompted an exponential rise in the number of applications for family unification. Notwithstanding, such initiatives have been facing Israel's increasingly restrictive policies, which render it extremely difficult, and often even impossible, for Israeli citizens and residents married to Palestinians from the Palestinian territory to obtain family unification.<sup>48</sup>
32. Israel's *Citizenship and Entry into Israel Law (Temporary Provision) (2003)* prevents Palestinians with West Bank or Gaza Strip IDs, or residents of "enemy states" (Lebanon, Syria,

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<sup>42</sup> See: Badil Resource Center, *Israel Land Grab and Forced Transfer of Palestinians*, June 2013.

<sup>43</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Denial of Residency*, April 2014, 18–19, [http://badil.org/phocadownload/Badil\\_docs/publications/wp16-Residency.pdf](http://badil.org/phocadownload/Badil_docs/publications/wp16-Residency.pdf).

<sup>44</sup> *Ibid.*, 21–22.

<sup>45</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 60.

<sup>46</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Denial of Residency: Working Paper No. 16*, 25–26.

<sup>47</sup> *Ibid.*, 22.

<sup>48</sup> *Ibid.*, 35.

Iran and Iraq), from gaining Israeli citizenship or permanent residency by way of marriage to an Israeli citizen.<sup>49</sup>

33. Prevention from acquiring permanent residency with their families in Israel or East Jerusalem, Palestinians from Gaza and the West Bank must make the impossible choice between living separately from their spouses and children, living illegally with their spouse in Israel or East Jerusalem – in constant fear of arrest and deportation – or having their spouse moving with them, which is also illegal according to a military order prohibiting Israelis from entering Palestinian territories.<sup>50</sup>
34. In East Jerusalem, Israel has been imposing increasingly discriminatory procedures for the registration of children. In the situation of a child being born to parents only one of whom is a resident of East Jerusalem does not receive an identity number at the hospital like other children; rather, the parents must submit a “request to register a birth” and present proof that their life is centered in Jerusalem, such as rental lease agreement, home ownership documents, water and electricity bills, or payment of the municipal tax (*Arnona*).<sup>51</sup>
35. Furthermore, Israeli legislation’s Second Amendment provides for permits to be granted to otherwise ineligible persons in the event of special humanitarian reasons. However, the amendment specifies that being married to who is lawfully present in Israel or East Jerusalem – and the consequent need for family unification – does not qualify as such special humanitarian condition.<sup>52</sup>
36. Likewise, the above-mentioned amendment has also rendered it more difficult, if not impossible, to promote family unification through relocation from Gaza to West Bank, because the unification of parents and children or spouses does not constitute, according to Israeli legislation, special humanitarian reasons that justify the grant of family unification permits in the West Bank. Reiterating Badil’s previous statement, Israel’s definition of “humanitarian” under the new procedures would prohibit an orphaned child in the Gaza Strip from uniting with his parent in the West Bank if there were any relative in Gaza who could care for him. This policy represents another Israeli effort to deepen the gulf between the West Bank and the Gaza Strip.<sup>53</sup>
37. The family life of the Palestinian population has come to be used as a political bargaining chip by Israel, as a means to pressure the Palestinian Authority. More importantly, it has the wider impact of making life so difficult for Palestinians within the oPt that many feel they have little option other than leaving and abandoning their ancestral homeland.<sup>54</sup>

### **Land Confiscation**

38. As previous stated in Badil’s report to this Committee,<sup>55</sup> Israel occupies the entire surface of the oPt (some 6,225 km<sup>2</sup>) and has confiscated or *de facto* annexed more than 4,100 km<sup>2</sup> (70%) of the West Bank for the exclusive benefit of the Jewish settlers/population. It is important to note that total expropriation of Palestinian land relates not only to land taken by Israel in the oPt since 1967, but expropriation that began before 1948. The Palestine Central Bureau of Statistics

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid., 36.

<sup>51</sup> Ibid., 39–40.

<sup>52</sup> Ibid., 37.

<sup>53</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 60.

<sup>54</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Denial of Residency: Working Paper No. 16*, 33.

<sup>55</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 9.

(PCBS)<sup>56</sup> records that 85% of historic/Mandate Palestine is now under Israeli control. Palestinian property confiscated by Israel continues to be for the sole purpose of constructing or expanding Jewish settlements/colonies, or for the exclusive use of Jews, and, under the law, Palestinians are permanently denied use of or access to their expropriated land.

39. Israel carries out land confiscation:<sup>57</sup>

- (i) under the justification of “**military needs**”;<sup>58</sup>
- (ii) by declaring a given land as “**state land**”, in accordance with *Military Order No. 59 Concerning Government Property*, of 1967;
- (iii) by defining any property whose owner and holder left the West Bank before, during, or after the 1967 war as an **abandoned property**, following the *Order Regarding Abandoned Property (Private Property) (Judea and Samaria) 5727-1967*, of 1967;<sup>59</sup>
- (iv) under the justification of “**public purpose**”, which includes “purposes of development, settlement, and security”, according to the *Land Acquisition (Validation of Acts and Compensation) Law (1953)*, and the establishment of nature reserves and national parks,<sup>60</sup> pursuing *Military Orders 363 and 373*, respectively. In addition, in 2010 Israel passed an Amendment to the *Land Ordinance (Acquisition for Public Purposes) (1943)* that includes “the establishment and expansion or development of towns” as a public purpose, allowing the Finance Minister to confiscate land without the need to use it for its original purposes for seventeen years, thus giving the landowner no right to demand its return if it was confiscated for one purpose but used for another.

40. Furthermore, the *Israel Land Administration Law (Amendment No.7) (2009)* allows the privatization of lands “owned” by the State of Israel, the Jewish National Fund (JNF) and the Development Authority, both within Israel and the oPt, authorizing the sale of settlements units and areas confiscated for settlement construction from Palestinians to private Jewish owners, including Palestinian land in occupied East Jerusalem.<sup>61</sup>

### **Restrictions on use and access to land**

41. In addition to land confiscation, numerous laws and policies in the West Bank, Gaza, and Israel, including East Jerusalem, restrict Palestinian landowners’ access to and use of their land. Even though ownership, in these cases, is not legally transferred from the Palestinian landowner to the State of Israel, the owners are forbidden from accessing or using their land altogether or in the absence of a special permit. Thus, although the Palestinian land owner still holds *de jure* ownership of the land, their *de facto* ownership has been transferred to Israel.

42. Israel’s restrictions on use and access to Palestinian land, often times amounting to *de facto* confiscation, are the result of:

<sup>56</sup> See <http://www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=1111&mid=3171&wvversion=Staging>.

<sup>57</sup> See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2013), <http://www.badil.org/en/badil-news/1454-story-3>.

<sup>58</sup> In *Dweikat v. Government of Israel*, the Israeli High Court of Justice refused to use “military necessity” as a justification for land confiscation to build settlements; nonetheless, “military necessity” can still be used as a justification to confiscate land for purposes other than colonies.

<sup>59</sup> The Order also extends to include property owned by a resident of an enemy country or corporation owned by residents of an enemy country

<sup>60</sup> To date, there are 114 areas designated as ‘nature reserves’ and ‘national parks’ in the occupied Palestinian territory (BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 70).

<sup>61</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 16.

- (i) **The annexation wall** does not track with the 1949 Armistice Line, or Green Line, which is the internationally recognized border between Israel and the West Bank and has 85% of its planned route running inside the West Bank.<sup>62</sup> The path of the Wall has resulted in *de facto* annexation of 9.4% of West Bank.<sup>63</sup> Consequently, thousands of Palestinian farmers have been cut off from their farmland, and must rely on “agricultural gates” to access their own land. Obtaining a permit to cross at these gates is difficult, and the number of permanent permits to use the gates dropped by 83% between 2006 and 2009.<sup>64</sup>
- (ii) **Seam zones** are enclaves corresponding to the area between the Wall’s illegal route and the Green Line, and affect both Palestinians who reside within the seam zones, and Palestinians who reside outside the seam zone, but own land within it. Accessing a seam zone, or simply continuing to reside in a seam zone, requires a special permit issued by the Israeli military. The Israeli permit regime is increasingly complicated and arbitrary. Currently, 30% of permit applications for residence in and access to the seam zones are denied by the Israeli military.<sup>65</sup>
- (iii) **Closed military zones.** Israeli *Military Order 1651*, Article 318, empowers the Military Commander to declare an area or place “closed” if that land is deemed to be “necessary for military training.” Since 1967, 18% of land in the West Bank has been confiscated under the designation of “closed military zones.” This is more than the 17.7% of land in the West Bank that is under the Palestinian Authority control.<sup>66</sup>
- (iv) **Firing zones,** a form of closed military zones started in 1970, work as *de facto* confiscation of land because Palestinians are forbidden from being present in these zones, even though they still retain ownership of the land. Although there have been significant changes in the security situation over the years, the firing zones remain largely the same since their establishment.<sup>67</sup>

### Home demolitions

- 43. The majority of demolitions in Area C of the West Bank fall within three overlapping categories of legal and rhetorical justification: security, administrative and deterrence, which correlate, in effect, to the practice of military, discriminatory and punitive demolition.
- 44. **Military home demolitions** for “security” purposes are based on *Military Order 1651 (Section 332)*. In the vast majority of cases, residents were not even accused by Israel of committing any security offenses.<sup>68</sup>
- 45. With regards to **administrative home demolitions**, a lack of building permits is the key administrative factor the Israeli Civil Administration uses to criminalize structures and slate them for demolition. Although the process is embedded in planning and zoning, both law and practice

<sup>62</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 18.

<sup>63</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 58.

<sup>64</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 19.

<sup>65</sup> HaMoked, *The Permit Regime: Human Rights Violations in West Bank Areas Known as the “Seam Zone”* (HaMoked - Center for the Defence of the Individual, March 2013), [http://www.hamoked.org/files/2013/1157660\\_eng.pdf](http://www.hamoked.org/files/2013/1157660_eng.pdf).

<sup>66</sup> OCHA - Occupied Palestinian Territories, *The Humanitarian Impact of Israeli-Declared “firing Zones” in the West Bank*, August 2012, 1, [http://reliefweb.int/sites/reliefweb.int/files/resources/ocha\\_opt\\_firing\\_zone\\_factsheet\\_august\\_2012\\_english.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ocha_opt_firing_zone_factsheet_august_2012_english.pdf).

<sup>67</sup> *Ibid.*

<sup>68</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities*, 98.

show that houses are not demolished in the course of normal town planning operations, but are instead demolished in a discriminatory manner.<sup>69</sup>

46. The policy of **punitive demolitions** varies; however, its declared objective is deterrence through harming relatives of Palestinians who carried out, are suspected to have carried out, or are expected to carry out (future-reprisal) attacks on Israeli citizens or military infrastructure. Regulation 119 (1) of the Defense (Emergency) Regulations empowers a Military Commander to order the punitive demolition or sealing of a house.<sup>70</sup>
47. Badil restates its concern on Israel's "wide range of measures to restrict and deny Palestinians freedom of movement and residence in the oPt. As with its other policies, such measures apply almost exclusively to Palestinians, and not to Jewish settlers or Jewish citizens of Israel. The severe barriers to freedom of movement are also continuing to cause forcible displacement among the Palestinian population. These policies and practices constitute violations of Articles 12 and 2 since they are carried out on a discriminatory basis. Such measures, carried out exclusively on the basis of nationality and ethnicity, also fit within the definition of apartheid."<sup>71</sup>

### **Implantation of colonies in Palestinian territory**

48. Home demolitions and forced evictions of Palestinian-owned property fit in the pattern of planned expansion of Jewish-only colonies throughout the West Bank and East Jerusalem, constituting a deliberate, institutionalized form of discrimination that reinforces the apartheid nature of 'separate and unequal' treatment of Jews and Palestinians.<sup>72</sup>
49. Most recently, while Israel carried out Operation Protective Edge in Gaza, a campaign of repression, mass arrests and settlement building took place in the West Bank. A report by the PLO highlighted that, during the summer, 1,472 new settlement homes were approved, slated to house around 6,000 settlers. On August 25-26, 2014 just as the ceasefire in Gaza was achieved, three different projects were announced.<sup>73</sup>
50. Near Bethlehem, Israel declared 1,000 acres of land as "state land", allegedly in response to the kidnapping of the three Jewish teenagers in June 2014 in the area. If the State party does not reverse its decision, that will be the biggest settlement built in the last 30 years.<sup>74</sup>

## **V. RECOMMENDATIONS FOR CONCLUDING OBSERVATIONS**

- 1-** BADIL' calls on the HRC to conclude that Israel has failed and unwilling to respect and/or implement its human rights obligations under the ICCPR in relation to the Palestinian population in the oPt, Palestinians with Israeli citizenship and Palestine refugees and internally displaced persons,
- 2-** Badil calls on the HRC to insist that UN bodies, agencies and mechanisms are required to act immediately in order to:
  - a.** Ensure the right of the Palestinian people to self-determination;
  - b.** End of the Israeli prolonged occupation which amounts to colonization;
  - c.** Criminalize Israel 's institutionalized system of discrimination which amounts to apartheid, including Israel's breach of the principles of equality and non-discrimination, as well as its citizenship/ nationality, re-entry and land policies and laws.

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<sup>69</sup> Ibid., 100.

<sup>70</sup> Ibid., 103.

<sup>71</sup> INT/CCPR/NGO/ISR/99/9195 (2010), para. 51.

<sup>72</sup> Ibid., para. 58.

<sup>73</sup> See <http://mondoweiss.net/2014/08/watched-announced-settlements.html>.

<sup>74</sup> See <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/11067466/Israel-announces-construction-of-biggest-settlement-in-30-years.html>.

- 3-** Badil urges the HRC to call upon all state parties to the ICCPR to institute sanctions against Israel until it complies with its obligations under the ICCPR and immediately lifts its discriminatory policies and practices that directly or indirectly result in the dispossession and forcible displacement of Palestinians on both sides of the green line (1949 armistice line), in particular land confiscation, isolation and segregation of Palestinian communities, construction of the Wall, siege and sanctions on Gaza Strip, collective punishments, expansion of colonies and implantation of settlers, denial of and/or restrictions on residency, eviction and home demolition.