

*A Series of Working Papers*

# FORCED POPULATION TRANSFER: THE CASE OF PALESTINE

## INTRODUCTION

Working Paper No. 15

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**ISBN:** 978-9950-339-35-4

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Forced Population Transfer: The Case of Palestine

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March 2014

#### **Credit and Notations**

Special thanks to Brona Higgins, for her help drafting the first versions of this publication, and many thanks to all who have supported BADIL Resource Center throughout this research project.

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BADIL Resource Center working papers research durable solutions for Palestinian refugees and internally displaced persons as well as strategies of ending impunity for human rights abuses as part of a just and permanent solution to the Palestinian/Arab-Israeli conflict. Working papers do not necessarily reflect the views of BADIL.

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BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, community-based non-profit organization works to defend and promote the rights of Palestinian refugees and internally displaced persons (IDPs). Our vision, missions, programs and relationships are defined by our Palestinian identity and the principles of international law, in particular international human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

# Table of Contents

Introduction.....	5
Forced Population Transfer under International Law.....	9
Historic Context: The Case of Palestine.....	15
Policies of Forced Population Transfer .....	29



## Introduction

This Introduction Paper is the first of a ten-paper series on *Forced Population Transfer: The Case of Palestine*. This Series of working papers constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series will utilize an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of oppression in Palestine.

This Introduction Paper will clarify and define the fundamental terms, timeframes and processes embedded in the overall endeavor of forced population transfer of Palestinians. Successive Working Papers will delve deeper into specific Israeli policies of forced population transfer and their mechanisms.

The concept of forced population transfer – and recognition of the need to tackle its inherent injustice – is by no means a new phenomenon, nor is it unique to Palestine. Concerted efforts to colonize foreign soil have underpinned displacement for millennia, and the “unacceptability of the acquisition of territory by force and the often concomitant practice of population transfer”<sup>1</sup> was identified by the Persian Emperor, Cyrus the Great, and subsequently codified in the Cyrus Cylinder in 539 B.C. - the first known human rights charter. Almost two thousand years later, during the Christian epoch, European powers employed population transfer as a means of conquest, with pertinent examples including the Anglo-Saxon displacement of indigenous Celtic peoples, and the Spanish Inquisition forcing the transfer of religious minorities from their homes in the early 16th century.

Through the late 19th and early 20th century, criticism of forced population displacement and transfer was expressed through a number of declarations and international treaties, though it was not until the atrocities performed

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<sup>1</sup> Schechla, Joeseeph. *Prohibition, Prosecution and Impunity for the Crime of Population Transfer*, Al-Majdal 2013, available at: <http://www.badil.org/en/al-majdal/item/1764-art4>.

by Nazi Germany that the legislative opposition to these practices became explicit. The Nuremberg Trials which followed the Second World War laid the legal foundations for what would go on to be enshrined within Article 49 of the Fourth Geneva Convention: that population transfer and colonization of occupied territory is considered both a war crime and a crime against humanity. This position was to be further reinforced five decades later under The Rome Statute on the International Criminal Court (1998).<sup>2</sup>

Today, forced population transfer is considered one of the gravest breaches of international law. According to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights:

The essence of population transfer remains a systematic coercive and deliberate [...] movement of population into or out of an area [...] with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.<sup>3</sup>

Therefore it includes strong elements of colonialism which is the “subjection of peoples to alien subjugation, domination and exploitation.”<sup>4</sup> Colonialism “constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.”<sup>5</sup> Based on European colonial history, “[s]ettlers sought to construct communities bounded by ties of ethnicity and faith in what they persistently defined as virgin or empty land,” and:

[...] insofar as there was a logic to their approach to the indigenous populations, it was a logic of elimination and not exploitation: they wished less to govern indigenous people or to enlist them in their economic ventures than to seize their land and push them beyond an ever-expanding frontier of settlement.<sup>6</sup>

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2 Articles 7 and 8, respectively.

3 A.S. Al-Khawasneh and R. Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth Session* (Bethlehem, Palestine, August 2, 1993), 27–32.

4 Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Resolution 1514 (XV), 14 December 1960, para. 1.

5 *Ibid.*

6 Caroline Elkins and Susan Pedersen “Settler Colonialism: A concept and Its Uses” in *Settler Colonialism in the Twentieth Century, Projects, Practices, Legacies*, Caroline Elkins and Susan Pedersen (eds.), New York: Routledge, 2005, p.2.

Grant Farred explains that the settler:

[...] stands as the spearhead of colonial aggression – incarnating the determination of the colonizing power to reorder, through sheer force, and redistribute, through the imposition of colonial law, the land – to make the land, like the colonized, first subject and then productive [...] This process frequently requires the deracination of the native populace so that it might be relocated to best serve the interests of colonial capital or security [...].<sup>7</sup>

There is a strong relation between colonialism and apartheid which can be found in what Caroline Elkins and Susan Pedersen describe as the, “pervasive inequalities, usually codified in law, between settler and indigenous populations.”<sup>8</sup> These inequalities are the expression of the intent of one racial group (the settlers) to dominate and oppress another (the indigenous population) and the continued violation of the fundamental rights of the latter.

Colonization violates the inalienable rights of peoples, “to complete freedom, the exercise of their sovereignty and the integrity of their national territory.”<sup>9</sup> Further, colonialism prevents peoples from exercising their right to self-determination by denying them their right to “freely determine their political status and freely pursue their economic, social and cultural development.”<sup>10</sup>

*The United Nations Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations* affirms that states have a duty to refrain from forced actions that deprive peoples of their right to self-determination, freedom and independence, and that peoples who resist such forced actions in pursuit of their right to self-determination, “are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”<sup>11</sup>

This contemporary legal environment is thus born of two converging motivations.<sup>12</sup> The first relates to the need to protect the sovereignty of states from external aggressors, whilst the second relates to protection of

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7 Grant Farred, “The Unsettler” (2008) *The South Atlantic Quarterly*, vol. 107, no. 4, p. 797-798.

8 Caroline Elkins and Susan Pedersen “Settler Colonialism: A concept and Its Uses” in *Settler Colonialism in the Twentieth Century, Projects, Practices, Legacies*, Caroline Elkins and Susan Pedersen (eds.), New York: Routledge, 2005, p.4.

9 Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Resolution 1514 (XV), 14 December 1960, preamble.

10 *Ibid*, para. 2.

11 Declaration of Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, UN GAOR, 25<sup>th</sup> Sess., Supp. No.28, at 121, U.N. Coc. A/8028 (1970).

12 Schechla, Joespeh. *Implementing States’ Obligations to Combat Population Transfer*, Al-Majdal 2013, available at: <http://www.badiil.org/en/al-majdal/item/1936-art4>.

the individual citizen, specifically in relation to their inalienable human rights, including that of self-determination. Though the first motivation has commonly prompted individual states and international community to respond,<sup>13</sup> the second, tragically, has all too often failed to garner the same response.

The mere presence, therefore, of appropriate legal mechanisms is, in itself, insufficient to tackle the long-recognized humanitarian catastrophe of forced population transfer. Instead, what is required is that these mechanisms be coupled with the necessary political will to ensure that they are deployed consistently, not just for the benefit of states within a politicized framework of international relations, but in the protection of the fundamental human rights of vulnerable communities.

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<sup>13</sup> For example: the Falkland War, First Gulf War, Russian Annexation of the Crimea.



# Forced Population Transfer under International Law

International law sets clear rules prohibiting forced population transfer, including in the United Nations Charter, through the specific branches of international humanitarian law, international human rights law, international criminal law and international refugee law. Both internal (within an internationally recognized border) and external displacement are regulated.

## International humanitarian law

In broad terms, international humanitarian law defines a range of prohibitions which seek to address some of the main triggers for displacement. These include, but are not limited to, strict prohibition of attacks targeting civilians, ill treatment and sexual violence. In addition, parties to a conflict must – as a minimum standard – facilitate and grant access to humanitarian relief for those in need.

In international armed conflict, an occupying power is strictly prohibited from deporting and/or forcibly transferring the civilian population of an occupied territory. The prohibition includes individual and mass transfer, and transfer within an occupied territory. This prohibition is set out in Article 49 of the Fourth Geneva Convention and confirmed as customary international law by Rule 129 of the International Committee of the Red Cross Customary International Law Study.<sup>14</sup>

The prohibition of forced transfer appears robust and unequivocal under Article 49 where individual or mass forced transfer is prohibited regardless of the motive. Elements of forced transfer include:

- The occurrence of acts or omissions to forcibly remove civilians from their residence, or from areas where they were present, to a place outside of that area;
- Involvement of protected persons;
- The removal not serving the security needs of the population, or representing an imperative military necessity.

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<sup>14</sup> Practice Relating to Rule 129. The Act of Displacement.

It is important to note that the forcible dimension in the term forcible displacement:

[...] is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.<sup>15</sup>

Even in cases of “consent” of the victim to leave, case law of the International Criminal Tribunal for the former Yugoslavia had a clear position on this, asserting that consent may be rendered “valueless” given the actual context in which it takes place.<sup>16</sup> For instance, this would be the case if individuals or groups find themselves within a coercive environment and/or being subject to systematic discrimination.<sup>17</sup> In such a scenario, the displacement would still clearly be considered a forced transfer. The determination as to whether a transferred person has a genuine choice must be made in the context of all relevant circumstances.

In non-international armed conflict, however, the protection against displacement is less explicit, but the Practice Relating to Rule 129 makes it clear that parties may not order the displacement of civilian populations, in whole or in part, for reasons related to the conflict.

### **International human rights law**

Numerous human rights protections, laid out within key legal instruments, have direct or indirect implications for the issue of preventing displacement. These include: the right to life, right to health, right to food, right to adequate housing, freedom from discrimination and the right to development.

Furthermore, the final report of Special Rapporteur on The Human Rights Dimensions of Population Transfer to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, concluded that, “[...] the right to live and remain in one’s homeland, i.e. the right not to be subjected to forcible displacement, is a fundamental human right and a prerequisite to the enjoyment of other rights.”<sup>18</sup> In addition, the report emphasized that:

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<sup>15</sup> The Rome Statute Elements of Crimes, Article 6(e).

<sup>16</sup> See *Kristic* case, Judgment – Part III, para. 530.

<sup>17</sup> For an explanation of the regulations as related to ethnic or political minorities who might have suffered discrimination or persecution (not by the occupying power) on such accounts and might therefore leave the occupied territory, see Commentary to the GC IV, at 279.

<sup>18</sup> E/CN.4/Sub.2/1997/23, section 12, available at: <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.1997.23.En?OpenDocument>.

[...] population transfers violate [...] rights contained in several important international human rights instruments, in particular the international covenant on civil and political rights, the international covenant on economic, social and cultural rights, the convention on the elimination of all forms of racial discrimination and the convention on the rights of the child. Moreover, population transfers are incompatible with norms of “soft law” such as the declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, the draft code of crimes against the peace and security of mankind, and certain resolutions adopted by the sub-commission on prevention of discrimination and protection of minorities, i.e. Resolutions 1992/28, 1994/24, 1995/13, and 1996/9.<sup>19</sup>

### **International criminal law**

In addition to being prohibited under various bodies of law, certain acts of displacement are deemed to be some of the most serious violations of international law, and as a result are criminalized – meaning that individuals can be held criminally responsible.

Forced transfer and unlawful deportation are listed under Article 147 of the Fourth Geneva Convention as grave breaches and are listed under the Rome Statute of the International Criminal Court as war crimes. Unlawful deportation or transfer are universally accepted to be war crimes under the grave breaches regime (during international armed conflict). In situations of non-international armed conflict, ordering the displacement of the civilian population for reasons related to the conflict amounts to a war crime unless the security of the civilians involved or imperative military reasons so demand.

Moreover, unlawful transfer may also amount to a crime against humanity when committed as part of a widespread or systematic attack against a civilian population. In addition, displacement of individuals when undertaken on discriminatory grounds may amount to persecution, another crime against humanity.

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<sup>19</sup> E/CN.4/Sub.2/1997/23, section 14, available at: <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.1997.23.En?OpenDocument>.

## International refugee law

The 1951 Convention Relating to the Status of Refugees,<sup>20</sup> which provides the main legal framework for protection and assistance for refugees. According to this Convention, refugees are those who have been forced, or have no other option but to flee their homes, and have crossed an international border:

The inspiration for the Convention was the strong global commitment to ensuring that the displacement and trauma caused by the persecution and destruction of the war years would not be repeated.<sup>21</sup>

According to the 1951 Convention Relating to the Status of Refugees, the term “refugee” shall apply to any person who:

[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

## Internally displaced persons

The United Nations Guiding Principles on Internal Displacement defines internally displaced persons to be, “[...] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of

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20 The majority of Palestinian refugees fall under a different legal framework. At the time of the drafting of the 1951 Refugee Convention, there were already two UN agencies providing protection and assistance to Palestinian refugees and searching for durable solutions: the United Nations Conciliation Commission for Palestine (UNCCP) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The United Nations High Commissioner for Refugees (UNHCR) was mandated to serve as an alternative – i.e., a safety net – if protection or assistance provided by UNCCP and UNRWA would “cease for any reason” (Article 1D of the 1951 Refugee Convention), in order to ensure continuity of protection for the Palestinian refugees. As stated by the High Commissioner for Refugees: “While paragraph 1 of Article 1D is in effect an exclusion clause, this does not mean that certain groups of Palestinian refugees can never benefit from the protection of the 1951 Convention. Paragraph 2 of Article 1D contains an inclusion clause ensuring the automatic entitlement of such refugees to the protection of the 1951 Convention if, without their position being definitively settled in accordance with the relevant UN General Assembly resolutions, protection or assistance from UNRWA has ceased for any reason.” Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees. Available at: <http://unispal.un.org/UNISPAL.NSF/0/68C845ADCF3671A85256C85005A4592>; For more information, see: BADIL Resource Center for Residency and Refugee Rights, Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention.

21 UNHCR, REFUGEE PROTECTION: A Guide to International Refugee Law, at foreword, available at <http://www.refworld.org/pdfid/3cd6a8444.pdf>.

habitual residence [...], who have not crossed an internationally recognized State border.”<sup>22</sup>

Internally displaced persons are not the subject of a specific treaty adopted at the universal level, and fall outside of the scope of the 1951 Convention. This is on account of their remaining within an internationally recognized border. The one document most regularly referred to is that of the Guiding Principles on Internal Displacement.<sup>23</sup> These are a set of guidelines based on binding international human rights and humanitarian law, and they define the basic notions concerning internal displacement. The Principles are considered to be, “an important international framework for the protection of internally displaced persons [... that] take effective measures to increase the protection of internally displaced persons.”<sup>24</sup> The Principles are designed to aid governments in the formulation of their own policies and legislations.

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<sup>22</sup> Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4 /1998/53/Add.2 (Feb. 11, 1998).

<sup>23</sup> *Ibid.*

<sup>24</sup> G.A. Res, 60/1, U.N. Doc. No. A/RES/60/1 (Oct. 24, 2005).



## Historic Context: The Case of Palestine

Five major periods or episodes of forcible displacement transformed Palestinians into the largest and longest-standing unresolved refugee case in the world today. By the end of 2012, an estimated 7.4 million (66 percent) of the global Palestinian population of 11.2 million are forcibly displaced persons.<sup>25</sup>

### The British Mandate (1922-1947)

During the First World War, the Allied Forces under British command occupied Palestine. Palestine was then one of several Arab territories ruled by the Ottoman Empire. The British government had secretly come to terms with France and Tsarist Russia in the Sykes-Picot Agreement of 1916, determining that parts of Palestine would fall under its sphere of influence with the anticipated decline of the Ottoman Empire.<sup>26</sup> Additionally, in November 1917, the British cabinet issued the Balfour Declaration, a one-page letter from the British Secretary of Foreign Affairs, Arthur Balfour, to Lord Rothschild, head of the British Zionist Federation. The Balfour declaration granted explicit recognition of, and support for, the idea of establishing a Jewish “national home” in Palestine through immigration and colonization.<sup>27</sup>

In 1920, the League of Nations entrusted the temporary administration (“Mandate”) of Palestine to Great Britain, as a “Class A” Mandate – a categorization closest to independence.<sup>28</sup>

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25 BADIL Resource Center for Residency and Refugee Rights. *Survey of Palestinian Refugees and Internally Displaced Persons, 2010-2012*. Vol. VII. Bethlehem, Palestine, 2012.

26 The British were allotted direct rule over Haifa and Akka, and the south of the country was to be part of the “Arab state under British protection.” The heartland of Palestine was to be under the control of all three powers.

27 The Balfour Declaration is reprinted in *Survey of Palestine*, Vol. I, prepared in December 1945 and January 1946 for the information of the Anglo-American Committee of Inquiry. Reprinted in full with permission from Her Majesty’s Stationery Office. Washington, DC: Institute for Palestine Studies, 1991, p. 1. Prior to issuing the final Declaration, the British obtained the assent of the United States. The U.S. Congress subsequently adopted a resolution on June 30, 1922, “[f]avoring the establishment in Palestine of a national home for the Jewish people.” McCarthy, Justin, *The Population of Palestine: Population Statistics of the Late Ottoman Period*. New York: Columbia University Press, 1990, p. 21.

28 The Mandate did not come into force until 29 September, 1923. Class A Mandates was designated for areas deemed to “have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.” The Mandate for Palestine, 24 July, 1922, is reprinted in *Survey of Palestine*, Vol. I. Washington, DC: Institute for Palestine Studies, 1991, p. 4–11.

“[I]n the case of the ‘independent nation’ of Palestine,” observed the British Secretary of Foreign Affairs privately, “we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country,” as was required by the League of Nations. Arthur Balfour, British Secretary of State for Foreign Affairs, stated in 1919 that:

Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.<sup>29</sup>

The British Mandate in Palestine was thus based on an inherent contradiction: the simultaneous establishment of an independent state of Palestine for all its citizens on the territory of Mandate Palestine, and a Jewish national home within or on that same territory.

The British administration in Palestine promulgated new laws, including the 1925 *Citizenship Order* and the 1928 *Land (Settlement of Title) Order*, which enabled Jews from around the world to acquire citizenship and immigrate to Palestine. Thousands of Palestinian Arabs who were abroad at the time were unable to acquire citizenship under the 1925 law.<sup>30</sup>

In early 1947, the British government informed the newly-established United Nations of its intention to withdraw from Palestine, ending nearly three decades of British rule. The UN General Assembly subsequently appointed a special committee to formulate recommendations concerning the future status of Palestine. The Assembly rejected requests by Arab states to obtain an advisory opinion from the International Court of Justice (ICJ) concerning the appropriate legal outcome of the British decision to terminate the Mandate in Palestine, as well as the legal authority of the UN to issue and enforce recommendations on the future status of the country.<sup>31</sup>

In September 1947, the UN Special Committee on Palestine (UNSCOP) presented its final report, which included majority and minority proposals that reflected the inability of the Committee members to reach consensus

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29 Statement by Arthur Balfour, British Secretary of State for Foreign Affairs, *Foreign Office No. 371/4183* (1919), quoted in *The Origins and Evolution of the Palestine Problem 1917–1988*, Part I. New York: United Nations, 1990.

30 Out of 9,000 citizenship applications from Palestinians outside the country, British officials approved only 100. Based on an average family size of six persons, more than 50,000 Palestinians may have been affected. *Palestine Royal Commission Report*, Cmd. 5479. London: HMSO, 1937, p. 331. For a description of the problem facing Bethlehem families, see Musallam, Adnan A., *Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917–1948*. Bethlehem: WIAM – Palestinian Conflict Resolution Center, 2002.

31 For the proposed texts of the questions to be submitted to the ICJ, see Iraq (UN Doc. A/AC.14.21); Syria (UN Doc. A/AC.14/25); and Egypt (UN Doc. A/AC.14/14).



on the future status of the country.<sup>32</sup> The majority opinion supported the partition of Palestine into two states, one Arab and the other Jewish. The minority proposal called for one federal state for Arabs and Jews. Committee members of the minority were clear in their warnings of the consequences of partition:

Future peace and order in Palestine and the Near East generally will be vitally affected by the nature of the solution decided upon for the Palestine question. In this regard, it is important to avoid an acceleration of the separatism which now characterizes the relations of Arabs and Jews in the Near East, and to avoid laying the foundations of a dangerous irredentism there, which would be the inevitable consequences of partition in whatever form. [...] Partition both in principle and in substance can only be regarded as an anti-Arab solution. The Federal State, however, cannot be described as an anti-Jewish solution. To the contrary, it will best serve the interests of both Arabs and Jews.<sup>33</sup>

Despite the warnings, on 29 November 1947, the UN General Assembly passed Resolution 181(II) recommending the partition of Palestine.<sup>34</sup> This Resolution proposed two states, one Arab and one Jewish, in which all persons were to be guaranteed equal rights.<sup>35</sup> The proposed Jewish state was allotted 56 percent of the land, even though the Jewish community comprised less than one-third of the population of Palestine at the time and owned no more than 7 percent of the land, including 714 km<sup>2</sup> acquired by Zionist colonization associations mostly from large landowners who did not live in Palestine.<sup>36</sup> The dispersal of the Arab and Jewish populations in the country also meant that nearly half the population of the proposed Jewish state consisted of Palestinian Arabs, who owned nearly 90 percent of the land.<sup>37</sup>

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32 Report of the UN Special Committee on Palestine, *The Question of Palestine*. UN Doc. A/364, 3 September, 1947. Committee members unanimously approved 11 general recommendations, including a UN-supervised transition period, protection of religious and minority rights, and citizenship and property rights.

33 *Ibid.*, Chapter VII Recommendations (III), paragraphs 10 and 11. Incidentally, the United States State Department, the Department of Defense, the Joint Chiefs of Staff, staff of the National Security Council and the newly established Central Intelligence Agency (CIA) were united in warning of the dangers partition might inflict to strategic US interests. In public and private statements they also explained that the UN partition proposals were not workable and in contravention to international law and the UN Charter: in Loy Henderson, State Department Office of Near Eastern and African Affairs, 22 September, 1947, quoted by Donald Neff, "Truman Overrode Strong State Department Warning Against Partitioning of Palestine in 1947" *Washington Report*, Sept./Oct. 1994.

34 GA Resolution 181(II), 11 November 1947, UN GAOR, 1<sup>st</sup> Sess., UN Doc. A/64 (1947).

35 *Ibid.*, para. 10(d).

36 McCarthy, Justin, *The Population of Palestine: Population Statistics of the Late Ottoman Period*, New York: Columbia University Press, 1990, p. 37. For Jewish landownership, see Lehn, Walter, *The Jewish National Fund*, London: Kegan Paul International, 1988, p. 74.

37 Report of the UN Special Committee on Palestine, *The Question of Palestine*. UN Doc. A/364, 31 August, 1947. State land comprised less than 3% of the proposed Jewish state.

During the British Mandate in Palestine (between 1922 and the end of 1947), an estimated 100,000-150,000 Palestinians, nearly one tenth of the Palestinian Arab population were expelled, denationalized or forced to leave their homes. Tens of thousands of Palestinians were internally displaced as a result of Zionist colonization, the eviction of tenant farmers, and punitive home demolitions by the British administration.

### **The Nakba (1947-1949)**

The UN recommendation to partition Palestine triggered armed conflict between local Palestinians and Jewish colonizers. This fostered an environment in which the Zionist movement could induce massive Palestinian displacement so as to create the Jewish state.

In November 1947 fighting erupted in Jerusalem<sup>38</sup> and other localities of Palestine. The first Palestinian village to be ethnically cleansed was Qisarya (Caesarea) on 15 February 1948, together with four other villages in the area.<sup>39</sup> The success of these operations led to the formulation and adoption of Plan D (or Plan Dalet) in March 1948 – two months before the British Mandate was set to end. The plan provided guidelines for the ethnic cleansing of Palestinian communities and was designed “to achieve the military *fait accompli* upon which the state of Israel was to be based.”<sup>40</sup>

Plan D resulted in the greatest outflow of refugees in April and early May 1948, before the start of the first Arab-Israeli war. In accordance with plan D, Zionist forces deliberately employed tactics of violence aimed at forcibly removing Palestinians from their homes and encouraging flight. A massacre of more than 100 men, women and children committed by Zionist forces in the Palestinian village of Deir Yassin on 9 April 1948 is just one example of a violent strategy designed to sow fear and panic amongst the indigenous population, thus helping to facilitate their mass displacement.<sup>41</sup>

The unilateral declaration of the establishment of the state of Israel by the Zionist movement in Tel Aviv on 14 May 1948 coincided with the withdrawal of British forces from Palestine and the collapse of the UN partition plan. The subsequent entry of Arab forces into Palestine on 15 May 1948 marked the beginning of the first Israeli-Arab war. Palestinians fled their homes as a

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38 “The Fall of the New City” Nathan Krystall, *Jerusalem 1948 the Arab Neighbourhoods and their Fate in the War*, Salim Tamari (ed.) Badil Resource Center & the Institute of Jerusalem Studies, 1999, p.92-153

39 See Pappé, Ilan, *The Ethnic Cleansing of Palestine*, (One World: Oxford), 2006 p.75.

40 “Plan Dalet: Master Plan for the Conquest of Palestine,” Khalidi, Walid., *Journal of Palestine Studies*, (Autumn 1988), p. 8.

41 Leaders of Zionist militia organizations at the time reported that 245 people had been killed in the village. These reports were broadcast by Arab and foreign media. For a study of the massacre, see Khalidi, Walid, *Dayr Yassin: Friday, April 9 1948* [Arabic], Beirut: Institute for Palestine Studies, 1999.

result of attacks on civilians by Israeli forces, massacres, looting, destruction of property and other atrocities. At least 70 massacres took place throughout the Nakba.<sup>42</sup> The choice of a village was not random. Often there existed a clear relationship between the timing of a massacre in an outlying village and the assault on a major nearby town or city.<sup>43</sup>

Palestinians fleeing their villages in search of temporary refuge were fired upon to ensure their departure. Incidents like these occurred in major cities throughout the country, including Haifa, Jaffa, Akka, Ramle, Lydd and Jerusalem, as well as in many villages.<sup>44</sup> Many sought temporary refuge elsewhere after hearing news of atrocities against the civilian population.<sup>45</sup> This included a spate of nine reported massacres in October 1948, in which Palestinian Arab villagers were raped, bound, executed and dumped in mass graves.

The Israeli military systematically destroyed hundreds of Palestinian villages during the war. A “Retroactive Transfer” plan approved in June 1948 by the Israeli Finance Minister and Prime Minister to prevent Palestinian refugees from returning to their homes.<sup>46</sup> The destruction of homes and entire villages included large-scale looting.<sup>47</sup>

Between 750,000 and 900,000 Palestinians (55 to 66 percent of the total Palestinian population at the time) were displaced between the end of 1947 and early 1949. Half of these were displaced before 15 May 1948, when

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42 Abdel Jawad, S., 2007, “Zionist Massacres: the Creation of the Palestinian Refugee Problem in the 1948 War”, in Benvenisti, E., Gans, C. and Hanafi, S., *Israel and the Palestinian Refugees*, Berlin, New York: Springer, p. 59-127.

43 For example the massacre in Nasir el-Dien was just a few days before Tiberias was besieged. The multiple massacres in Ein Zaytoun were used to ‘soften up’ Safad before the final assault on that city. Cited in *Ibid*.

44 See Morris, Benny, *The Birth of the Palestinian Refugee Problem, 1947–1949*, Cambridge: Cambridge University Press, 1987; Also see Abdel Jawad, S., 2007.

45 This included massacres in Mansurat al-Khayt (18 January 1948), Dayr Yassin (9 April 1948), Khirbat Nasir el-Din (12 April 1948), Hawsha (15 April 1948), Khirbeh Wa’ra al-Sawda (18 April 1948), Husayniyya (21 April 1948), Balad ash-Sheikh (25 April 1948), Ayn az-Zaytun (2 May 1948), Burayr (12 May 1948), Khubbayza (12 May 1948), Abu Shusha (14 May 1948), Tantoura (21 May 1948), al-Khisas (25 May 1948), Lydda (10 July 1948), al-Tira (16 July 1948), Ijzim (24 July 1948), Beer Sheeba (21 October 1948), Safsaf (29 October 1948), al-Dawayima (29 October 1948), Khirbeh as-Samniyya (30 October 1948), Saliha (30 October 1948), Sa’sa (30 October 1948), Eilaboun (29 October 1948), Jish (29 October 1948), and Majd al-Kroum (29 October 1948). For accounts of these massacres, see Morris, Benny, *The Birth of the Palestinian Refugee Problem*.

46 “Retroactive Transfer, A Scheme for the Solution of the Arab Question in the State of Israel,” a memorandum signed by Yosef Weitz, Ezra Danin and Elias Sasson, cited in Morris, Benny, *The Birth of the Palestinian Refugee Problem*, p. 136.

47 For descriptions of incidents of looting and destruction of property, see Morris, Benny, *The Birth of the Palestinian Refugee Problem*. Also see Segev, Tom, 1949: *The First Israelis*, New York: The Free Press, 1986. Looting was so widespread that Ben Gurion described it as “the mass robbery in which all parts of the population participated.” Israel designated a “Custodian of Abandoned Property”, to oversee warehouses in which Palestinian property from 45,000 homes and apartments, 7,000 shops and business, 500 workshops and industrial plants, and 1,000 warehouses was stored away and eventually redistributed or sold off. This aside from the enormous agricultural wealth left behind from over 800,000 acres of orchards and fields.

the first Arab-Israeli war began. Ultimately, 85 percent of the indigenous Palestinian population who had been living in the territory that became the state of Israel were displaced.<sup>48</sup> Most refugees fled to what became the West Bank and Gaza Strip (22 percent of historic Palestine) or in neighboring Arab countries following the cessation of hostilities.

### **Israeli Military Rule (1949-1966)**

After the war, more Palestinians were expelled from their homes and lands primarily during military operations which aimed to optimize Israel's demographic and strategic positioning, border corrections resulting from armistice agreements, and by policies and practices of the Israeli military rule. Palestinian communities in the Galilee, the Naqab, the "Little Triangle" (an area ceded to Israel under the armistice agreement with Jordan), and those in villages partially emptied during the war were amongst those most significantly affected by internal population transfer and expulsion.

The war ended in 1949 and armistice agreements were signed with Egypt in February, Lebanon in March, Jordan in April, and Syria in July. Within days of the signing of the Egyptian-Israeli General Armistice Agreement, between 2,000 and 3,000 Palestinians from the villages of Fallujah and Iraq al-Manshiya were beaten, robbed and forced to leave their homes by Israeli forces, despite stipulations in the armistice agreement that nothing would befall their population after the Egyptian troop withdrawal.<sup>49</sup>

In 1950, Israeli forces expelled the remaining 2,500 Palestinian residents of the city of al-Majdal (today's Ashqelon) into the Egyptian-controlled Gaza Strip.<sup>50</sup> More than 20,000 Palestinian Bedouin were expelled from their traditional tribal areas between 1949 and 1956.<sup>51</sup> The majority of these were from the Naqab in the south; some 5,000 Palestinian Bedouin's in the north were expelled to Syria.

Israeli police carried out raids on Palestinian villages searching for refugees who had returned to their homes or lands. Returnees (referred to as "infiltrators" by Israel) were subsequently transported to the border and expelled.<sup>52</sup> In January 1949, for example, refugees from the Palestinian towns and villages

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

<sup>49</sup> Morris, Benny, *The Birth of the Palestinian Refugee Problem*, p. 243.

<sup>50</sup> Morris, Benny, *1948 and After: Israel and the Palestinians*. Oxford: Clarendon Press, 1990, p. 257–69.

<sup>51</sup> Israeli Foreign Ministry reports indicate that some 17,000 Bedouin were expelled from the Naqab between 1949 and 1953. "Investigation Report," Simon and Vermeersch, UNA DAG-13/3.3.1–18, cited in Morris, Benny, *Israel's Border Wars*, p. 170.

<sup>52</sup> Reviewing official Israeli government documents, Morris estimates that 30–90,000 Palestinian refugees attempted to return to their homes and villages between the middle of 1948 and 1953. Most were expelled. Morris, Benny, *Israel's Border Wars*, p. 152, p. 39.

of Shafa'amr, Ma'ilya and Tarshiha who tried to return to their homes were met with hostility as Israeli forces detained them, confiscated their passports and money, and loaded them on trucks, drove them to the border, and forced them to cross into Jordan.<sup>53</sup> Israeli forces transferred other Palestinians to new areas within the state in order to break up the concentration of Palestinian population centers, and to open up further areas for Jewish settlement. Many of the government records from this period remain sealed.

Following the 1948 War, Israel imposed military rule in the Galilee, the "Little Triangle," the Naqab, and the cities of Ramleh, Lydd, Jaffa, and Majdal-'Asqalan to control the Palestinian population remaining inside Israel and prevent the return of Palestinian refugees.<sup>54</sup> In contrast, a civilian government managed the affairs of the Jewish population. Freedom of expression was severely restricted, and Palestinians were confined to controlled areas. For example, Palestinians leaving their towns and villages needed written permission from the military commander.<sup>55</sup> A web of new land laws was adopted to facilitate both the expropriation of refugee property and its transfer to the state and the Jewish National Fund (JNF).

Between 1949 and 1966, Israel expropriated some 700 km<sup>2</sup> of land from Palestinians who remained within the territory of the new state. In this period, Israel displaced 35,000 to 45,000 Palestinians. Tens of thousands of Palestinians lost their homes and lands, the majority during the 1950s. By the mid-1950s, Israel expelled 15 percent of the Palestinian population in Israel, and approximately 195,000 Palestinians remained.<sup>56</sup>

## The 1967 War

The 1967 War witnessed Israel launching a surprise attack against Egypt, Jordan and Syria.<sup>57</sup> Israeli plans to control and colonize the remainder of British Mandatory Palestine (Jordan controlled the West Bank, including East Jerusalem, and Egypt controlled the Gaza Strip), existed since 1948, and preparations for instituting a military rule there had been ongoing since 1963.<sup>58</sup>

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53 State Archives, Foreign Ministry, Arab Refugees 2444/19, cited in Segev, Tom, *1949: The First Israelis*. New York: The Free Press, 1986, p. 19.

54 For a detailed description, see Jiryis, Sabri, 1976.

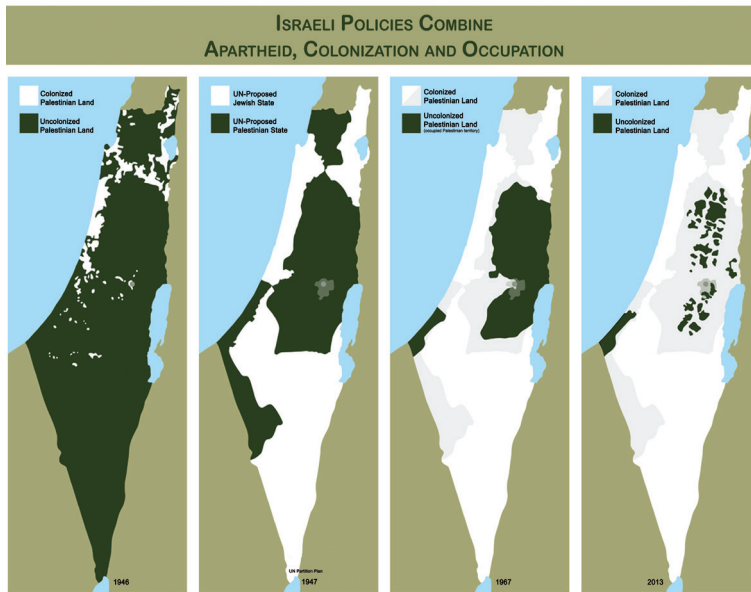
55 *Ibid.*, p. 16.

56 Israel Central Bureau of Statistics, *Statistical Abstract of Israel*, No. 52 (2001).

57 "To Live or Perish: Abba Eban 'Reconstructs' the June 1967 War," in Finkelstein, Norman *Image and Reality of the Israel-Palestine Conflict* (London: Verso, 2001), p.123-49. Also see "Rethinking Israel's David-and-Goliath past", Sandy Tolán, *Salon* 4 June 2007.

58 See Segev, *1967 Israel, the War, and the Year that Transformed the Middle East*, Metropolitan Books, 2007, p.458.

## Palestinian Loss of Land 1946-2014



The classic paneled map of Palestine contains three dimensions of ongoing displacement: spatial, temporal and human. (© BADIL Resource Center)

As in 1948, Israeli military forces attacked numerous Palestinian civilian areas that had no military significance.<sup>59</sup> The Guardian and The London Times reported that “Israeli aircraft frequently strafed the refugees on the road from Jerusalem to Jericho, destroying and burning.”<sup>60</sup> The refugee camps of Ein as-Sultan and Aqbat Jabr in Jericho were bombed by the Israeli air force, leading to an exodus of tens of thousands of refugees.<sup>61</sup>

Palestinians were also driven from their homes by Israeli military forces.<sup>62</sup> Others were transferred out of the West Bank on buses and trucks provided by the military.<sup>63</sup> In some cases, young Palestinian men were forced to sign

59 For a description of specific incidents, see, e.g., Masalha, Nur, “The 1967 Palestinian Exodus,” in *The Palestinian Exodus 1948–67*, Karmi, Ghada and Cotran, Eugene (eds.), London: Ithaca Press, 2000, p. 94; Neff, Donald, *Warriors for Jerusalem: Six Days that Changed the Middle East*, New York: Linden Press/Simon and Schuster, 1984, p. 228–29; and Dodd, Peter and Barakat, Halim, *River without Bridges: A Study of the Exodus of the 1967 Palestinian Arab Refugees*, Beirut: Institute for Palestine Studies, 1969, p. 40–42.

60 Masalha, Nur, *A Land without a People: Israel, Transfer and the Palestinians*. London: Faber & Faber, 1997.

61 “According to UNRWA, the population of Aqbat Jaber refugee camp decreased from 28,008 in June 1967 to 4,991 in September 1967. Likewise, the population of ‘Ein as Sultan refugee camp decreased from 19,042 to 2,310 between June and September 1967.” *Under the Pretext of Security: Colonization and Displacement in the Occupied Jordan Valley*, Ramallah, Negotiations Affairs Department, Palestinian Monitoring Group, July 2006, p. 3.

62 For descriptions of specific incidents, see, e.g., Masalha, Nur, *A Land without a People: Israel, Transfer and the Palestinians*. London: Faber & Faber, 1997, p. 81, 85, 87 and 91–94.

63 Dodd, Peter and Barakat, Halim, *River without Bridges: A Study of the Exodus of the 1967 Palestinian Arab Refugees*, p. 40; and Masalha, Nur, *A Land without a People: Israel, Transfer and the Palestinians*, p. 92.

documents stating that they were leaving voluntarily. A former Israeli soldier recalled, “[w]hen someone refused to give me his hand [for finger-printing] they came and beat him badly [...] Then I was forcibly taking his thumb, and immersing it in ink and finger-printing him [...] I have no doubt that tens of thousands of men were removed against their will.”<sup>64</sup>

By the time the 1967 War came to an end, Israel had occupied the West Bank, including East Jerusalem, and the Gaza Strip (as well as the Syrian Golan Heights and the Egyptian Sinai Peninsula). More than one-third (400,000 to 450,000) of the Palestinian population of that area were displaced during the war. Half of them (193,500) were refugees since 1948, thus displaced for a second time, while 240,000 were displaced from the West Bank and Gaza Strip for the first time.<sup>65</sup> Almost 95 percent of these displaced persons fled to Jordan, while some found refuge in Syria and Egypt. Israel expropriated 849 km<sup>2</sup> of Palestinian land, including more than 400 km<sup>2</sup> owned by Palestinians who had been displaced from the West Bank and Gaza Strip during the war.

### **Occupation, Apartheid, Colonization (1967-2014)**

Since 1967, Israel has extended its colonial apartheid regime to the occupied Palestinian territory by way of belligerent occupation and therefore Israel effectively controlled the entire territory of Mandate Palestine. Modeled on its military rule of 1949-1966, a second Israeli military rule was established in the 1967 occupied Palestinian territory in order to control and oppress the Palestinian population. With more than 1,200 military orders issued since 1967, Israel as the occupying power has altered the administrative and legal situation in the occupied Palestinian territory in violation of international humanitarian law. East Jerusalem, which was an integral part of the West Bank, was annexed by Israel immediately after the 1967 war in violation of international law.<sup>66</sup>

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64 Quoted in: Masalha, Nur, *The Politics of Denial, Israel and the Palestinian Refugee Problem*. London: Pluto Books, 2003, p. 203.

65 In Syria, more than 115,000 people were displaced when Israeli forces occupied the Golan Heights and the Quneitra area. Among them were some 16,000 Palestinian refugees who were uprooted for the second time. Many moved towards Damascus and some to Dera'a further south. Takkenberg, Lex, *The Status of Palestinian Refugees in International Law*, Oxford: Clarendon Press Oxford, 1998, p. 17.

66 See Shehadeh, Raja, *Occupier's Law: Israel and the West Bank*. Washington, DC: Institute for Palestine Studies, 1985, p. 63–75. See also UNSC Resolution 478 of 20 August 1980, affirming that “the enactment of the ‘basic law’ by Israel constitutes a violation of international law and does not affect the continued application of the Fourth Geneva Convention of 12 August 1949 Relative to the Protection of Civilian Persons in Time of War in the Palestinian and other Arab territory occupied since June 1967, including Jerusalem” and “[d]etermines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith.” See also Security Council Resolutions 267 (1969); 298 (1971); 446 (1979); 465 (1980); 476 (1980); 605 (1987).



Since then, Israel developed a legal, political and military rule over the Palestinian people that combines occupation, apartheid and colonization,<sup>67</sup> and facilitates the forced displacement of Palestinians on both sides of the Green Line, which is the Armistice Line of 1949. Former UN Special Rapporteur on the Situation of Human Rights in the occupied Palestinian territory, John Dugard, identified the existence of these overlapping regimes throughout the occupied Palestinian territory, and underscored the consensus of the international community around them “as inimical to human rights.”<sup>68</sup> Furthermore, he states that Israel’s occupation contains elements of apartheid, manifested in a host of laws and practices that discriminate against Palestinians in favor of Jewish-Israeli settlers (colonizers).<sup>69</sup> Israeli practices in the occupied territory include the exercise of sovereignty, annexation of land, implanting of settlers (colonizers), fragmentation of the territory, forcible displacement of civilians and so forth.

### 1. Belligerent occupation

Belligerent occupation is accepted as a possible consequence of armed conflict though under the law of armed conflict (international humanitarian law), it is intended to be a temporary state of affairs. Israel has a *de facto* authority to administer the occupied Palestinian territory, but is not allowed to exercise sovereignty over it. International law prohibits the unilateral annexation or permanent acquisition of territory as a result of the threat or use of force. Israel is to enforce existing laws in the territory, but has no right to change or annuling them. Moreover, Israel is obliged to abide by the relevant rules of the law of armed conflict — principally the provisions of the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 — in its administration of the territory.

### 2. Colonization

Colonization is a practice of colonialism, defined in the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) as a state in which the acts of a State have the cumulative outcome that it annexes or otherwise unlawfully retains control over territory and thus aims permanently to deny its indigenous population the exercise of its right to self-determination. Colonialism is considered to be a particularly serious breach of international law because it is fundamentally contrary to core values of the international legal order.

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67 For analysis of Israel’s apartheid, colonialism and occupation, see the study of the Human Sciences Research Council of South Africa (HSRC): “Occupation, Colonialism, Apartheid? A Re-Assessment of Israel’s Practices in the Occupied Palestinian Territories under International Law”, Capetown, South Africa, May 2009. See also: Davis, Uri *Apartheid Israel, Possibilities for the Struggle Within*, Zed Books, London, 2003.

68 “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Dugard, John, Implementation Of General Assembly Resolution 60/251 Of 15 March 2006”, A/HRC/4/17, 29 January 2007.

69 [GA/SHC/3893](#), 24 October 2007.



Colonialism “constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.”<sup>70</sup> Struggle in the pursuit of the right to self-determination is lawful and legitimate for people whose right to self-determination is denied because of their subjugation, domination and exploitation by a foreign power.<sup>71</sup>

Israeli colonialism utilizes settlements (colonies) as a means of subjugation and domination: spatially, legally, socially and economically. According to Richard Falk, UN Special Rapporteur on the Situation of Human Rights in the occupied Palestinian territory:

To sustain indefinitely an oppressive occupation containing many punitive elements also seems designed to encourage residents to leave Palestine, which is consistent with the apparent annexationist, colonialist and ethnic-cleansing goals of Israel, especially in relation to the West Bank, including East Jerusalem.<sup>72</sup>

Spatial domination manifests in the ever increasing and expanding settlements (colonies) on Palestinian lands. Legal subjugation is present in legislation that targets or excludes the Palestinian citizens based on their ethnicity, the separate military law for Palestinians in the occupied Palestinian territory (excluding East Jerusalem) and civil law for Jewish-Israelis, and the enforcement of exile and denial of displaced Palestinians’ right of return while privileging Jewish immigration in addition to the constant denial of the right to self-determination.<sup>73</sup> Social subjugation is apparent in the traumatized and frayed social relations of Palestinians and the extinction of indigenous ways of life. Economic domination exists through Israel’s monopoly over Palestinian resources, such as agricultural lands and much-needed water supplies, and exclusion of Palestinians from markets.

### 3. Apartheid

Apartheid is one of the most severe forms of racism, “a political system where racism is regulated in law through acts of parliament.”<sup>74</sup> Article 3 of the *Convention on the Elimination of Racial Discrimination* (CERD) defines apartheid as a form of racial segregation. *The Convention on the Suppression and Punishment of the Crime of Apartheid* (1976) defines apartheid as:

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70 Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Resolution 1514 (XV), 14 December 1960, para. 1.

71 See Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli, “Illegal Prolonged occupation: Framing the occupies Palestinian Territory”, 2005, 23 Berkely Journal of Interntional Law 551, pp. 565-566.

72 A/HRC/25/67, 13 January 2014, paragraph 4.

73 See i.e. A/HRC/16/72, para. 32(b).

74 Davis, Uri, *Apartheid Israel: Possibilities for the Struggle within*, 2003, p. 37.

the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them, in particular by means such as segregation, expropriation of land, and denial of the right to leave and return to their country, the right to a nationality and the right to freedom of movement and residence (Article II).

The Rome Statute defines apartheid as inhumane acts “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” Apartheid constitutes a crime against humanity. Members of organizations and agents of an apartheid state are subject to criminal prosecution, irrespective of the motive involved, and whenever they commit, participate in, directly incite or inspire, directly abet, encourage or cooperate in the commission of the crime of apartheid (Article III, 1976 anti-Apartheid Convention). All states are obliged to condemn, suppress and punish those involved in the crime of apartheid.<sup>75</sup>

John Dugard among others,<sup>76</sup> identified elements of apartheid in the Palestinian context, and underscored the fact that the international community’s continuing acquiescence in this area is “inimical to human rights.”<sup>77</sup> Dugard further concluded that:

[...] on the basis of the systemic and institutionalized nature of the racial domination that exists, there are indeed strong grounds to conclude that a system of Apartheid has developed in the occupied Palestinian territory. Israeli practices in the occupied territory are not only reminiscent of – and, in some cases, worse than – Apartheid as it existed in South Africa, but are in breach of the legal prohibition of Apartheid.<sup>78</sup>

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75 See, for example: Clark, Roger S., “Apartheid”, International Criminal Law, Second Edition, Volume I, Edt. Bassiouni, M. Cherif, 1991, p. 645.

76 See A/HRC/16/72, para. 8, A/HRC/4/17, p. 3; Russell Tribunal on Palestine, Cape Town Session, <http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%9494-full-findings/cape-town-session-summary-of-findings>; The Human Sciences Research Council, [http://www.alhaq.org/attachments/article/236/Occupation\\_Colonialism\\_Apartheid-FullStudy.pdf](http://www.alhaq.org/attachments/article/236/Occupation_Colonialism_Apartheid-FullStudy.pdf); A/HRC/25/67, 13 January 2014, p. 20.

77 “Israel is clearly in military prolonged occupation of the occupied Palestinian territory. At the same time elements of the prolonged occupation constitute forms of colonialism and of Apartheid, which are contrary to international law.” “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Dugard, John, Implementation of General Assembly Resolution 60/251 Of 15 March 2006”, A/HRC/4/17, 29 January 2007.

78 John Dugard and John Reynolds, *Apartheid, International Law, and the Occupied Palestinian Territory*, *The European Journal of International Law* Vol. 24 no. 3 EJIL (2013), Vol. 24 No. 3, pp. 867–913.

Racial discrimination against the indigenous Palestinian people was formalized and institutionalized at an early stage through the creation by law of a “Jewish nationality” that is distinct from Israeli citizenship. Significantly, there is no such thing as “Israeli” nationality. The 1950 *Law of Return* is an effective nationality law, because it entitles all Jews, regardless of their geographic location, the rights of nationals, namely the right to enter “Eretz Israel” (Israel and the occupied Palestinian territory) and immediately enjoy full legal and political rights. “Jewish nationality” under the Law of Return is an extra-territorial status and therefore contravenes international law norms pertaining to nationality.<sup>79</sup> It includes Jewish citizens of other countries, irrespective of whether they wish to be part of the collective of “Jewish nationals,” and excludes “non-Jews” (i.e., Palestinians) from nationality rights in Israel.<sup>80</sup> In combination with the 1952 Citizenship Law,<sup>81</sup> Israel has created a discriminatory two-tier legal system whereby Jews hold nationality and citizenship, while the remaining indigenous Palestinian citizens hold only citizenship<sup>82</sup> and Palestinian refugees hold no legal status at all.

Palestinians are not expressly identified as a racial/national group in laws and public documents of the State of Israel. Palestinians are designated by the term “persons outside the scope of the Law of Return” in Israel’s laws. Other designations used by the administration, Israel’s Central Bureau of Statistics and the official media are “minorities” or “Arabs.” Such designations reflect the denial of Palestinians as a national group and serve to hide the discriminatory character of Israeli laws and policies.

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79 Thus, for example, former Israeli Prime Minister Golda Meir explained: “the frontier [of Israel] is where Jews live, not where there is a line on the map.” BADIL and COHRE, *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine*, Center on Housing Rights and Evictions (COHRE) and BADIL, 2005, p.72.

80 See Mallison, W., “The Zionist-Israel juridical claims to constitute ‘the Jewish people’ nationality entity and to confer membership in it. Appraisal in public international law”, 32 *George Washington Law Review*, 1964, p. 983-1075; also: Tekiner, Roselle, “Race and the Issue of National Identity in Israel”, *Journal of Middle East Studies*, 23 (1991), 39-55; and, Adalah, “Institutionalized Discrimination Against Palestinian Citizens of Israel”, Report to 2001 WCAR, Durban, August/September 2001.

81 In the official translation into English, this law is misleadingly called “Law of Nationality.”

82 Tekiner, Roselle, “Race and the Issue of National Identity in Israel”, *Journal of Middle East Studies*, 23 (1991).



## Policies of Forced Population Transfer

Alongside the five main periods of colonial forcible displacement outlined above, there exist a multitude of discriminatory practices and means employed by Israel which seek to control all aspects of Palestinian life, and ultimately change the demographic composition of the country. There are at least nine individual policies aimed at forcibly transferring the Palestinian population. This Series discusses each policy separately in order to clarify Israeli laws and other mechanisms which facilitate the displacement of Palestinians.

Despite its urgency, the forced displacement of Palestinians rarely receives an appropriate response from the international community. While many individuals and organizations have already discussed the policies of forced population transfer, civil society lacks an overall analysis of the system of forced displacement that continues to oppress and disenfranchise Palestinians today. BADIL therefore spearheads targeted research on forced population transfer and produces critical advocacy and scholarly materials to help bridge this analytical gap.

BADIL seeks to present this Series of Working Papers in a concise and accessible manner to its designated audiences: from academics and policy makers, to activists and the general public. Generally, the Series contributes to improving local, regional and international actors' understanding of the human rights situation in Palestine. We hope that the Series will inform stakeholders, and ultimately enable advocacy which will contribute to the dismantling of a framework that systematically violates Palestinian rights on a daily basis.

**Geographical Note:** The reach of the Israeli regime is not limited to the Palestinians living in the occupied Palestinian territory, but it is also targeting Palestinians who live on the Israeli side of the "1949 Armistice Line" as well as those living in forced exile.

Statistics show that 60 percent of registered refugees live in exile in Arab host countries. Of this 60 percent, 40 percent live in Jordan, 10 percent live in Syria and 9.2 percent live in Lebanon. As a result of their ongoing forced displacement and exile, Palestinian refugees have sought refuge worldwide.

The Series of Working Papers will address nine main Israeli policies aiming at forced population transfer of Palestinians. They are:

**Denial of residency:**

Paper Number One will detail the policy of denying Palestinians residency. The policy includes the revocation of residency, denial or hindrance of child registration, denial or hindrance of family unification, and denial or hindrance of change of residence. The combined impediments to residency aim to undermine normal family life and tear at the social fabric of Palestinian society.

**Installment of a permit regime:**

Paper Number Two will outline Israel's overall permit regime. Permits regulate and interfere with various facets of life such as travel, work, development and transporting goods and assets. The permit regime exceeds a mere restriction on - or regulation of - the freedom of movement. Instead, the regime commonly results in the complete denial of access to land, work, health facilities and so on.

**Land confiscation and denial of use:**

Paper Number Three will look into Israeli state practices of land confiscation and the denial of use of land to Palestinians. The overall policy is pursued through the registration of land into categories. In addition to the actual confiscation of land (*de jure*), Israel employs different means to restrict or completely deny the use and access of land – effectively appropriating large areas (*or de facto* confiscating them, as the owners are unable to use them freely, if at all).

**Discriminatory zoning and planning:**

Paper Number Four will look into issues of urban and rural zoning and planning. The policy targets Palestinians by containing the growing population through municipal planning. As a result, thousands of Palestinian families live in overcrowded and unsafe conditions because they are prevented from using their land or accessing public land. The natural growth in population, in addition to the lack of modern facilities and infrastructure, leaves many families in substandard, underdeveloped living conditions.

**Segregation:**

Paper Number Five will highlight Israel's attempt to divide the Palestinian populace by geographical borders in order to isolate communities. The ultimate aim is to erase Palestinian national identity while creating an

exclusively Jewish space. The policy is executed on the macro level by denying freedom of movement within the occupied Palestinian territory, Israel and the *Shatat* (exile communities), and on the micro level by sub-dividing locales into neighborhoods, suburbs and restricted areas.

**Denial of natural resources and access to services:**

Paper Number Six will deal with the denial of natural resources, focusing on the access to water. Israel seeks to control the fresh water sources through military and political mechanisms. In the case of the West Bank, Israel controls the drilling in the largest underground water reserves, prohibits Palestinian use of wells and establishes settlements (colonies) in the occupied Palestinian territory with privileged access to fresh water. In the case of the Gaza Strip, Israel denies access to fresh water that includes intentional destruction of purification facilities and contamination of coastal aquifers and public plumbing infrastructure.

**Denial of refugee return:**

Paper Number Seven will analyze the denial of Palestinian refugees' right to return and citizenship. This legally and militarily enforced policy constitutes a violation of Palestinian individual and collective rights.

**Suppression of resistance:**

Paper Number Eight examines Israel's suppression of resistance. The policy includes systematic and mass incarceration, torture and the suppression of the freedom of expression and assembly, as well as criminalizing acts of civil opposition or disobedience.

**Non-state actions (with the implicit consent of the Israeli state):**

Paper Number Nine will detail the epidemic of Jewish-Israeli civilian violence against Palestinians and property, and their impunity. The policy includes the discretionary power of parastatal organizations such as the Jewish National Fund and its ideological role for the Israeli state.

Israel executes the nine policies through the use of military force and police, legislation and court rulings, and *de facto* state actions carried out by private individuals or institutions with the State's consent.

## **Methodology**

This Series of Working Papers on forced population transfer is intended to provide a forum for debate, and to stimulate discussion and critical comment. Since Israeli policies comprising forced population transfer are not static, but ever-changing in intensity, form and area of application, this Series will require periodic updates. The ultimate aim of the Series is to unpick the complex web of legislation and policies which comprise Israel's overall system of forced population transfer. The series is not intended to produce a comprehensive indictment against the state of Israel, but to illustrate how each policy fulfills its goal in the overall objective of forcibly displacing the Palestinian people while implanting Israeli Jewish settlers (colonizers) throughout Palestine.

Each paper will be advocacy-focused, and will adopt a rights-based approach to analyzing forced population transfer in Palestine. Although there may be slight variations in the methodology used, all papers will consist of both field and desk research.

Field research will consist of case studies drawn from individual and group interviews with Palestinians affected by forced population transfer, or professionals (such as lawyers or employees of organizations) working on the issue. The geographic focus of the Series will include Israel, the occupied Palestinian territory and Palestinian refugees living in forced exile. Where appropriate, we will also use data from previous fieldwork. Most of the data used will be qualitative in nature, although where quantitative data is available – or can be collected – it will be included in the research.

Desk research will contextualize policies of forced population transfer by factoring in historical, social, political and legal conditions in order to delineate the violations of the Palestinian people's human rights. International human rights law and international humanitarian law will be central to our research, and analysis will be supplemented with secondary sources such as scholarly articles and reports.



This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series will utilize an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of oppression in Palestine.