

*Follow-up Information Submitted to the*  
**Committee for the Elimination of Discrimination Against Women**

*For the Convening of the Committee on its 33rd Session from 5-22 July 2005*

*Regarding*  
**Israel's Serious Breaches of its Obligations under the International  
Convention for the Elimination of Discrimination Against Women  
(CEDAW)**



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## Table of Content

<b>1. Report Overview.....</b>	<b>4</b>
1.1 Introduction.....	4
1.2 The Focus of this Report: Vulnerable women - Article 14.....	5
1.3 Outline.....	6
1.4 Summary of Recommendations to the Committee.....	6
<b>2. Israel's International Responsibilities towards Refugees and Stateless Women.....</b>	<b>8</b>
2.1 The Right of Return and the Right to a Nationality.....	9
2.1.1 <i>Return of the 1967 refugees to the Occupied Palestinian Territories</i>	
2.1.2 <i>Return of 1948 Refugees to Israel.....</i>	10
2.2 Recent Legislation Affecting the Right of Return of Refugees.....	11
2.3 Proposed Questions and Recommendations to the Committee.....	12
<b>3. Jurisdiction .....</b>	<b>13</b>
3.1 Israel's Responsibility for the Internally Displaced Persons (IDP) under its Jurisdiction.....	13
3.2 Israel's Jurisdiction over the Occupied Palestinian Territories.....	13
3.3 Proposed Questions and Recommendations to the Committee.....	15
<b>4. Guarantee of Basic Human Rights and Fundamental Freedoms -Article 3.....</b>	<b>16</b>
4.1 The Right to Own Property Free From Illegal Governmental Interference and the Right to Enjoy Adequate Living Conditions.....	16
4.1.1 <i>In Israel.....</i>	16
4.1.2 <i>In the Occupied Palestinian Territories (OPTs).....</i>	17
4.2 Proposed Questions and Recommendations to the Committee.....	19
4.3 The Wall's Regime and its Effects on Palestinian Refugees.....	19
4.4 Proposed Questions and Recommendations to the Committee.....	23
<b>5. Citizenship, Residency and Nationality Rights -Article 9.....</b>	<b>24</b>
5.1 Residency/Citizenship Rights in Occupied Eastern Jerusalem and Israel.....	24
5.2 Proposed Questions and Recommendations to the Committee.....	26
<b>6. Case Studies.....</b>	<b>27</b>
6.1 The Case of Wallaja.....	27
6.1.1 <i>Forced Displacement and Land Confiscation.....</i>	27
6.1.2 <i>Annexation to Eastern Jerusalem.....</i>	27
6.1.3 <i>Demolition Orders.....</i>	27
6.1.4 <i>Wall and Residency Rights.....</i>	27
6.2 The Case of Shu'fat Refugee Camp in Eastern Jerusalem.....	28
6.2.1 <i>Unique Status of Shu'fat Camp.....</i>	28
6.2.2 <i>Route of the Wall and Access to Essential Services.....</i>	28
6.2.3 <i>Wall and Residency Rights.....</i>	29

# 1. Report Overview

## 1.1 Introduction

Although the occupied status of the Palestinian territories remains unchanged since 1967, new developments affecting the life of the Palestinian people have occurred, most prominently the second *intifada* and the construction of the Wall. In addition, the policies of land confiscation, property destruction, revocation of residency and denationalization create and maintain forced displacement, statelessness and homelessness. There are currently over 7 million Palestinian refugees in forced exile, of which approximately 3.3 million are stateless.

Moreover, new forms of displacement afflict Palestinians. During the second *intifada*, refugee camps have been under attack from the Israeli occupying forces; attacks that have resulted in homelessness and the forcible displacement of refugees for a second or third time. The construction of the Wall and its associated regime also engender forced eviction and displacement for both refugees and non-refugees, affecting around half a million Palestinians<sup>1</sup> and threatening the residency rights of approximately 70,000 Jerusalemites. For refugees forced to relocate due to the conflict or the construction of the Wall, it revives the trauma of exile, uncertainty and poverty.

Despite legal title to the land being vested with the Palestinians, Israel's *de facto* control and management of the land has compromised the territorial integrity and national sovereignty of a future Palestinian state and this, to the detriment of the realization of fundamental rights, social progress and development that would further equality between men and women. The Special Rapporteur on violence against women mentioned that a sustainable resolution to the conflict needs "...an effective response to the core of the conflict in the region -i.e. the dispossession of the Palestinian people from their land."<sup>2</sup>

In this sense, only the implementation of Palestinian rights; chiefly, the right to self-determination,<sup>3</sup> the right to return<sup>4</sup> and the right to restitution and compensation can

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<sup>1</sup> See statement by Prof. John Dugard, Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, Sixty-First Session of the Commission on Human Rights, 23 March 2005, p.3

<sup>2</sup> Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, E/CN.4/2005/72/Add.4, 2 February 2005, p. 2

<sup>3</sup> The United Nations has repeatedly recognized the Palestinian people's collective right to self-determination in numerous resolutions. See for instance, G.A. Res. 2649 of November 30, 1970; G.A. Res. 2672 C of December 8, 1970; G.A. Res. 3089 D of December 7, 1973; G.A. Res. 3236 of November 22, 1974; G.A. Res. 36/120 D of December 10, 1981.

<sup>4</sup> United Nations General Assembly Resolution 194, G.A. Res. U.N. GAOR, 3<sup>rd</sup> Session, UN. Doc. A/810 (1948) calls for three specific remedies which Israel should accord to 1948 Palestinian refugees pursuant to international law: (1) the right of return to their home, or repatriation; (2) the right of restitution of private property belonging to those displaced Palestinians returning under the right of return; and (3) the right of compensation for the use of property, damaged or destroyed

constitute a genuine and sustainable vector to human rights and women's empowerment. Until these core rights are fulfilled, the realization of women's fundamental freedoms and rights; education and health, participation in public life and the general advancement of women, can only be partially addressed.

## 1.2 The Focus of this Report: Vulnerable Women - Article 14

BADIL is an NGO dedicated to the question of refugee and residency rights. General Comment on Article 14 affirms that "...special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, *refugee and internally displaced women*... [Emphasis added]"<sup>5</sup> Hence, our report specifically responds to Article 14, which is concerned with the plight of vulnerable women. BADIL's report should also be read in conjunction with other reports submitted by Palestinian and Israeli NGOs.<sup>6</sup>

UNRWA confirms that "refugee camps are among the most vulnerable of all".<sup>7</sup> This fragility is imputable to the lack of coping mechanisms such as informal economic activities (generally available in cities) and access to land for subsistence (mainly in villages). Refugees residing in camps also have larger families, which "...increase the impact of income shocks, as it is not uncommon for one wage earner to support an extended family of six or more persons."<sup>8</sup> A Survey conducted by the Institute of Development Studies, University of Geneva found that the percentage of refugees depending on food assistance was threefold the percentage of non-refugees (13% versus 4% respectively).<sup>9</sup> As a result, refugees, especially the ones residing in camps (38% of hardship cases), are comparatively poorer than non-refugees living in cities and villages (22% and 15% respectively).<sup>10</sup>

The mental health of girls and children in camps is also particularly vulnerable; for instance, a study by the Gaza Community Mental Health Programme on the

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property, or for the property of Palestinians choosing not to return.

<sup>5</sup> CEDAW, General Recommendation (General Comments) 24, Background, para. 6

<sup>6</sup> On certain issues, reference will be made to other reports, such as the Report on Israel's Implementation of the United Nation Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) submitted by the Working Group on the Status of Palestinian Women in Israel and the NGO Alternative Report on Israel's Implementation of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in the Occupied Territories (OPT) submitted by Al Haq, Palestinian Centre for Human Rights (PCHR), and Women's Centre for Legal Aid and Counseling (WCLAC).

<sup>7</sup> UNRWA, Emergency Appeal, March-May 2001, Second Emergency Appeal to Provide Emergency Humanitarian Assistance to Palestine Refugees in the Gaza Strip and the West Bank.

<sup>8</sup> UNRWA, Emergency Appeal, March-May 2001, Second Emergency Appeal to Provide Emergency Humanitarian Assistance to Palestine Refugees in the Gaza Strip and the West Bank.

<sup>9</sup> Institute of Development Studies, University of Geneva (IEUD), *The Role of International and Local Aid During the Second Intifada*, Report VII, An Analysis of Palestinian Public Opinion in the West Bank and the Gaza Strip on their Living Conditions, August 2003 -February 2004, p. 247.

<sup>10</sup> Institute of Development Studies, University of Geneva (IEUD), *The Role of International and Local Aid During the Second Intifada*, Report VII, An Analysis of Palestinian Public Opinion in the West Bank and the Gaza Strip on their Living Conditions, August 2003 -February 2004, p. 236-237

prevalence of post-trauma stress disorder (PTSD) among children 10-19 years of age revealed significant differences between boys and girls in the acute level of PTSD whereby 57.9 per cent of girls developed the symptom, the percentage among the boys was 42.1 per cent. The study also indicated that children living in camps suffer more than children living in towns (84.1 per cent and 15.8 per cent respectively).<sup>11</sup>

BADIL's rationale is thus to emphasize the particular vulnerabilities of Palestinian women and girls as not only Israeli residents/citizens or protected persons under international humanitarian law, but also as refugees and IDPs entitle to specific rights. It is BADIL's belief that the Israeli government is accountable to more than 3.5 million Palestinian women and girl refugees around the world. This report is thus transnational and covers the state's party responsibility to ensure the realization of the fundamental rights of Palestinian women.

### 1.3 Outline

The second section, on international responsibilities, underlines Israel's obligation to implement durable solutions for Palestinian refugees; namely, the fundamental right of return to their homes. It also examines the legal and administrative system that has denationalized millions of Palestinians as well as the promulgation of a new law prohibiting the return of Palestinian refugees. The third section analyzes Israel's obligations towards internally displaced women as well as its failure to report on their situation in its periodic report. Furthermore, it reaffirms the application of CEDAW to the 1967 OPT and exposes Israel discriminatory application of human rights law to the 1967 OPT. The fourth section considers Israel's legal and administrative system and how it contravenes to the fundamental rights of Palestinians (in both Israel and the 1967 OPT); namely, the right to own property, the right to housing, the right to family life and freedom of movement. More precisely, it seeks to explain the policy of land confiscation, property destruction as well as the impacts of the Wall on forced displacement and residency rights in eastern Jerusalem. The fifth section studies the impact of discriminatory laws on family reunification in Israel and eastern Jerusalem and revocation of residency rights in eastern Jerusalem. Finally, the last section presents two case studies that embody the systematic nature of dispossession and lead to dispossession; land confiscation, demolition order, revocation of residency rights.

### 1.4 Summary of Recommendations to the Committee

BADIL requests the Committee on the Elimination of Discrimination Against Women (hereinafter: the Committee) to strengthen its position by acknowledging not only **Israel's jurisdiction over the Palestinian Occupied Territories (OPT)**, but also **Israel's serious violations of Palestinian refugee and IDP women's fundamental rights**. The Committee must clearly state that **the occupation is a violation of women's rights**. More particularly, **BADIL urges the Committee to**

<sup>11</sup>UNRWA, Annual Report of the Department of Health 2003, p.5

**condemn the Wall and its effects on women**, in accordance with the Advisory Opinion of the International Court of Justice (ICJ) who, nearly a year ago, demanded that Israel stop the construction of the Wall, return confiscated properties and pay compensation for the damages incurred.

BADIL also calls to the Committee to make specific suggestions demanding that **Israel implements its international obligations and legal remedies**, namely, **the collective right to self-determination of the Palestinian people, the collective and the individual right to choose to return and the individual right to restitution.**

## 2. Israel's International Responsibilities Towards Women and Girls

The total registered and non-registered Palestinian refugee population who remains in forced exile around the world is estimated at 7.5 million Palestinians. There are three principal groups of Palestinian refugees; 1948 refugees (5.8 million) who left as a result of the war; first time displaced refugees in 1967 (780,000) and Palestinian refugees who are neither 1948 nor 1967 refugees (838,000) but who are outside former Palestine and unable due to revocation of residency, denial of family reunification, deportation, etc. to return. As of march 2005, there was 4,255,120 registered refugees with UNRWA, of which more than 2 million ( around 49%) were women.<sup>12</sup>

Since its creation, Israel passed laws that denationalized approximately 5.7 million refugees<sup>13</sup> and unregistered refugees, of which 3.3 million are stateless refugees.<sup>14</sup> The denationalization policy is thus in clear violation of international human rights treaties, “for following the provisions of human rights conventions the onus is on States not to create stateless persons.”<sup>15</sup> Israel is thus responsible for the protracted refugee situation and the stateless status of millions of Palestinian refugees.

The right of return is a fundamental human right, central to the implementation of durable solutions.<sup>16</sup> However, the legal protection, including the search for durable solutions to which Palestinian women refugees are entitled, is non-existent. According to international law, Israel has the obligation to fulfill relevant United Nations Resolutions regarding Palestinian refugees and facilitate the implementation of durable solutions.<sup>17</sup>

Israel thus has a crucial role to play in the realization of durable solutions. Any durable solution to the Palestinian refugees should offer the voluntary choice to opt either for return to the original homes in Israel or 1967 OPT, the receiving state (integration) or a third state (resettlement to 1967 OPT or another state).

Return can never be complete without restitution and compensation. States ought to provide victims of international human rights and humanitarian law: "restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition." More precisely, restitution is defined as the “restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence' and restoration of

<sup>12</sup> UNRWA, Total Registered Refugees Per Country and Area, Table 1.0, 31 March 2005.

<sup>13</sup> UNRWA, Table 1.0, Total Registered Refugees Per Country and Area, 31 March 2005.

<sup>14</sup> This figure is an approximate indication of the number of stateless refugees. It was calculated by subtracting the total number of 1948 refugees, who are for the most part stateless, against the number of 1948 refugees holding Jordanian passport.

<sup>15</sup> Donner, Ruth. *The Regulation of Nationality in International Law*, 2<sup>nd</sup> Ed., New York; Transnational Publishers, 1994, p. 261-262.

<sup>16</sup> Of the three durable solutions -voluntary repatriation, absorption in the host county and resettlement in a third country-only return represents a fundamental right.

<sup>17</sup> See UNGA Resolution 194, 11 December 1948



employment and return of property.”<sup>18</sup> If restitution of the original property is judged impossible, then, extra compensation should be paid.

To summarize, the international community has acknowledged Israel's direct power over the realization of the core fundamental rights of the Palestinian people, namely, the collectively held right to self-determination as well as the individual and collective right of return and the individual right to restitution.<sup>19</sup> However, Israel has established a legal and administrative system that works against the realization of Palestinians' fundamental rights.

## 2.1 The Right of Return and the Right to a Nationality

In its states report, under the obligation to eliminate discrimination against women in section 2, Israel has omitted to mention the inherent discrimination to its *Law of Return and Citizenship Law*, which detrimentally impair the fundamental rights of Palestinian women.

### 2.1.1 Return to Israel (1948 refugees)

Israel's *Law of Return (1950)* allows Jews from anywhere in the world to return to and become national of the state of Israel, while the original nationals are denied their right of return and nationality.<sup>20</sup> In this sense, nationality status in Israel is unrelated to origin from, or residence in a territory, as is the norm in international law.<sup>21</sup>

Non-Jews, including Palestinian refugees, are subject to Israel's *1952 Citizenship Law*, which imposes stringent conditions to citizenship, *de facto* countering the return of 1948 Palestinian refugees.<sup>22</sup> Moreover, the Citizenship Law only establishes a civil

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<sup>18</sup> “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law,” adopted by the Commission on Human Rights of the United Nations Economic and Social Council on January 18, 2000. UN Doc. E/CN.4/2000/62.

<sup>19</sup> See for instance UNGA Resolution 3236 (XXIX), 22 November 1974 which stipulates the right to self-determination, national independence, return to their homes and property of the Palestinian people. See also UNGA Resolution 51/129 which recalls "resolution 394 (V) of 14 December 1950, in which it directed the Conciliation Commission, in consultation with the parties concerned, to prescribe measures for the protection of the rights, property and interests of the Palestine Arab refugees" and "call once more upon Israel to render all facilities and assistance to the Secretary-General in the implementation of the present resolution."

<sup>20</sup> The Committee on Economic, Social and Cultural Rights expressed its "...concer[n] about the status of "Jewish Nationality", which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees." The Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, para. 18.

<sup>21</sup> See Schechla, Joseph. "Jewish Nationality," "National Institutions" and Institutionalized Dispossession", *al Majdal*, Issue No.24, December 2004, p. 33

<sup>22</sup> Nationality Law, 5712/1952, 93 *Official Gazette* 22 (1952). For instance, former citizens of the Palestine Mandate of Arab origin could only qualify for Israeli nationality (citizenship) under the

status, which is distinct and inferior to the "Jewish nationality" status acquired through the *Law of Return*.<sup>23</sup> The law of nationality requires states to readmit their own nationals.<sup>24</sup> The Citizenship Law and Law of Return discriminate on the basis of religion and national origin because they keep in forced exile millions of Palestinian who have a strong "presumption" of nationality status according to the law of state succession.<sup>25</sup> Israel's *Law of Return* (1950) (exclusively for the return of Jews) and *Citizenship Law* (1952) need to be repealed or amended in order to allow for the undiscriminated return of Palestinians to Israel.

### 2.1.2 Return to the OPT (1967 refugees)

Palestinian refugees from 1967 are prevented from returning to the West Bank and Gaza Strip by the occupying power and remain in forced exile. Israel bases its refusal on the ground that 1967 refugees were not included in the 1967 population census and, therefore, are not citizen of the OPTs and have no right of residence in the West Bank or the Gaza Strip.<sup>26</sup> This situation affects around 780,000 1967 refugees, who approximately half are women. The prohibition against 1967 refugees to return to the occupied territories is a violation of Israel's obligation to allow refugees to return and this, while any Jews invoking the *Law of Return* can illegally settle in the OPTs. Israel cannot prevent residents of the OPTs to return on the unique basis that they were not included in the 1967 population census, as it contravenes the principle that an occupying power must protect the *status quo ante*.<sup>27</sup>

Moreover, the Fourth Geneva Convention relative to the Protection of Civilians

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1952 Nationality Law if they met the following stringent criteria under Section 3:

a) A person who immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under Section 2, shall become an Israel national with effect from the day of the establishment of the State if:

- 1) he was registered on the 4<sup>th</sup> Adar, 5712 (March 1, 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949; and
- 2) he is an inhabitant of Israel on the day of the coming into force of this Law; and
- 3) he was in Israel, or in an area which became Israel territory after the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period.

<sup>23</sup> See Schechla, Joseph. "Jewish Nationality," "National Institutions" and Institutionalized Dispossession", *al Majdal*, Issue No.24, December 2004, p. 33

<sup>24</sup> The rule of readmission rests upon the principle that a state may not choose to reject, or leave "stranded," one of its own nationals outside its borders by refusing readmission because such an action would impose an unacceptable corresponding burden on some other state to admit stranded individual.

<sup>25</sup> When territories undergo a change of sovereignty, the law of state succession requires that inhabitants of territory coming under new sovereignty must be offered nationality by the new state. The UN High Commissioner for Refugees has concluded that this rule has attained customary status and is thus binding on all states. "Comment: UNHCR and Issues Related to Nationality," *Refugee Survey Quarterly*, 14 (1995), no.3, p. 102.

<sup>26</sup> 1967 Palestinian refugees are subject to "Entry into Israel's Regulation" which does not grant them any residency rights in the OPTs and may not even allow them to visit their relatives.

<sup>27</sup> Sassoli, Marco and A.Bouvier, Antoine. *How Does Law Protect in War?*, International committee of the Red Cross, Geneva, 1999, p. 154.

specifically states in Article 45 that this provision: “shall in no way constitute an obstacle to the *repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.*” [Emphasis added]<sup>28</sup> The Additional Protocol (I) affirms: “...the following shall be regarded as grave breaches of this Protocol if committed willfully and in violation of the Conventions or Protocol: b) unjustifiable delay in the repatriation of prisoners of war or civilians.”[Emphasis added]<sup>29</sup> Similarly, the 1990 Turku Declaration declares in Article 7: “Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement *imperative* have ceased. [Emphasis Added]”<sup>30</sup> There is thus no doubt that Israel is in breach of its obligation to allow the return of 1967 refugees to the OPT since the conditions that have made their displacement imperative (hostilities) have long ceased.

## 2.2 Recent Legislation Affecting the Right of Return of Refugees

A recently approved law in Israel prohibits the right of return of Palestinians. On January 1, 2001, the Knesset passed the *Ensuring Rejection of the Right of Return Law*<sup>31</sup> which prevents refugees, defined as “a person who left the borders of the State of Israel at the time of war and is not a national of the State of Israel, including the persons displaced in 1967 and refugees of 1948 or a member of his family” to return “to the territory of the State of Israel except with the approval of a majority of members of Knesset.” This law is undoubtedly discriminatory as it specifically targets a national, religious and political group. It furthermore breaches Israel's obligation under international law as it stipulates that “the government of Israel will not make any commitment and will not enter into any agreement that is inconsistent with the provisions of this law.”

Israel is currently failing to recognize its responsibility for the refugee's fate and fulfill its obligations according to relevant international United Nations Resolutions. Women and girls refugees are particularly affected by this forced exile and difficult living conditions. It is not only crucial that they be granted adequate protection, but also the possibility to return to a dignified life. Palestinian women refugees and IDP are demanding the implementation of their right to choose to return to their homes of origin and be treated as full and equal citizen.

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<sup>28</sup> UN, Fourth Geneva Convention (IV) Relative to the Protection of Civilians, 12 August 1949, Article 45.

<sup>29</sup> UN, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 85 (4)(a)

<sup>30</sup> Even though the occupation persists, the hostilities between Jordan and Israel are now officially over. Turku Declaration, Declaration of Minimum Humanitarian Standards, UN Doc. E/CN.4/Sub.2/1991/55, December 2, 1990 in Sassoli, Marco and A.Bouvier, Antoine. *How Does Law Protect in War?*, International committee of the Red Cross, Geneva, 1999, p. 519.

<sup>31</sup> Sefer Hahukim (Laws of Israel), Booklet 1172 (10 January 2001), p.116 in Sultany, Nimer, *Citizens Without Citizenship*, Mada's First Annual Political Monitoring Report: Israel and The Palestinian Minority, 2000-2002, Israel, 2003, p. 19

### 2.3 Proposed Questions and Recommendations to the Committee

BADIL calls on the Committee to **urge Israel to recognize its international obligations towards Palestinian refugees**, as enshrined in United Nations Resolutions and international law. The Committee must therefore request that Israel **implements Palestinian refugees' fundamental rights; namely, return, restitution and compensation.**

BADIL requests the Committee to **condemn Israel's discriminatory laws; the *Law of Return (1950)* and *The Citizenship Law (1952)***, which deny the fundamental rights of Palestinian women to nationality and return to their homes. The Committee should **also condemn Israel for failing to respect international humanitarian law requiring it to allow the return of 1967 refugees.** The Committee should seriously question the State of Israel about the ***Ensuring Rejection of the Right of Return Law (January 2001)*** in regard to Israel's implementation of legislation that violates its international obligations and the fundamental rights of Palestinian women.

### 3. Jurisdiction

#### 3.1 Israel's Responsibility for the IDPs under its Jurisdiction

The main group of Palestinians who remained in the territory of what became Israel in 1948 consist of approximately 325,000 internally displaced persons. Since UNRWA transferred its registration files on internally displaced to the Israeli government in 1952, Israel has had the responsibility to provide assistance, protection and remedy to internally displaced women.

In its third periodic report, Israel has avoided the question of internally displaced Palestinian women and more importantly, how it intends to provide for return, restitution and compensation. The new Draft Guidelines on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons is, however, unequivocally clear: Palestinian IDP have the right to have "... restore[d] to them property of which they were deprived during displacement, or to be compensated for any property that cannot be restored to them."<sup>32</sup> Israel has omitted to report on the situation of internally displaced women in its state report and until now, has failed to provide adequate remedy to the victims of displacement.

#### 3.2 Israel's Jurisdiction over the refugees in the OPTs

There are currently 1.6 million registered refugees in the OPT, which represents approximately 42% of the Palestinian population in the OPT.<sup>33</sup> Of the total registered refugee population in the OPT, 53% live in camps in the Gaza Strip and 27% in the West Bank.<sup>34</sup> There is only one exception; the refugee camp of Shu'fat in eastern Jerusalem, which is located in annexed territory and is thus subject to Israeli Basic Law, albeit illegally (see the case study on Shu'fat camp 6.2.1).

In its 1997 Concluding Observation, the Committee suggested to the Government of Israel to "ensure that the convention was implemented throughout the territory under its jurisdiction."<sup>35</sup> Israel as refused to report to human rights treaty bodies on the protected persons in the OPT on the ground that they are already covered by humanitarian law.<sup>36</sup> Meanwhile, and as many human rights treaty bodies have

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<sup>32</sup> UN, "Draft Guidelines on Housing and Property Restitution in the Context of the Return of refugees and Internally Displaced Persons", Sub-Commission on the Promotion and Protection of Human Rights, Fifty-Sixth session, E/CN.4/Sub.2/2004/22, 2 June 2004, p.8

<sup>33</sup> UN OCHA, Review of the Humanitarian Situation in the occupied Palestinian territory for 2004, 3 April 2005, p.4

<sup>34</sup> UNRWA, Annual Report of the Department of Health 2003, p.1

<sup>35</sup> CEDAW, Concluding Observations of the committee on the Elimination of Discrimination Against Women: Israel, A/52/38/Rev.1, 12 August 1997, paras. 132-183, para. 170.

<sup>36</sup> See Diakonika. "Informal excerpts taken by advocate Netta Amar from the Israeli High Court of Justice Hearings on the Wall" (unpublished), Jerusalem, 9 may 2005.

recognized, Israel has jurisdiction over the Occupied Palestinian Territories (OPT) but fails to uphold and report on its human rights obligations.<sup>37</sup> Human Rights law has also been applied to the OPT in conjunction with humanitarian law by legal scholars, the General Assembly and Security Council resolutions.<sup>38</sup> More recently, the International Court of Justice (ICJ) has reaffirmed, in its advisory opinion concerning the consequences of the construction of the Wall in the OPT, the applicability of human rights law to the occupied territories and Israel's failure to abide by its obligations.<sup>39</sup> Thus as a state party to international human rights treaties, Israel has “the obligations to respect, protect and fulfill” the human rights of the Palestinian people.<sup>40</sup>

Moreover, Israel's definition of jurisdiction to the Occupied Palestinian Territories (OPT) is inherently discriminatory. Israel recognizes it has jurisdiction over the Jewish Israeli settlers who live illegally in the OPT, but denies it has jurisdiction over the Palestinian population inhabiting the same occupied territories. Hence, while Israel applies human rights law and reports to the human rights treaty bodies on the settlers living in the OPT, Israel refuses to do so for the Palestinian population.<sup>41</sup> In fact, Israel not only applies international human rights law to the settlers, but also the *Israeli Basic Law: Human Dignity and Freedom (1992)*, which is categorically prohibited under international humanitarian law as it changes the *status quo ante* of

<sup>37</sup> The Committee on the Elimination of Racial Discrimination reiterated in its Concluding observation that “the report of Israel should “encompass the entire population under the jurisdiction of the Government of Israel” CERD, Concluding Observations: Israel, CERD/C/304/Add.45, 30 March 1998, para. 12. See Also A/46/18, para. 368. The Human Rights Committee also expressed its concern “that Israel continues to deny responsibility to fully apply the Covenant in the occupied territories.” Human Rights Committee, Concluding Observations: Israel, CCPR/C/79/Add.93, 18 August 1998, para. 10.

<sup>38</sup> See for instance, UN, “Violations of the Right to Adequate Housing in the Occupied Palestinian Territories Increased Dramatically Since Build-Up to War in Iraq, Says Human Rights Expert,” *Press Release*, 16 May 2003 <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FC7C122F8E68E96BC1256D2800450F8C?opendocument>, United Nations, *Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13*, General Assembly, A/ES-10/248, 24 November 2003, p. 1-9, p.6.

<sup>39</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004. paras. 111, 112, 113, 149.

<sup>40</sup> “The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to *protect* requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to *fulfil* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.” United Nations, *The right to education (Art.13)*, *General Comments*, Economic and Social Council, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10, 8 December 1999, [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument)

<sup>41</sup> The Committee on Economic, Social and Cultural Rights also reiterated “its concern about the State Party's position that the Covenant does not apply to areas that are not subject to its sovereign territory and jurisdiction, and that the Covenant is not applicable to populations other than the Israelis in the occupied territories.” The Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, para. 15. See also the International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004. paras. 112.

the territory.<sup>42</sup>

Concretely, it means that Palestinian women are not protected by human right law while Jewish settler women are. In other terms, the extensive rights and freedoms enjoyed by settler women in the Occupied Palestinian Territories are denied to Palestinian women based on religion, political opinion and national origin.<sup>43</sup> This situation clearly contradicts Article 2(d) and(e) of the Convention that stipulates that state parties condemn discrimination against women, and to this end promise to: “refrain from engaging in *any act or practice* of discrimination against women...” and “take all appropriate measures to eliminate discrimination against women by *any person, organization or enterprise.* [Emphasis added]”<sup>44</sup>

### 3.3 Proposed Questions and Recommendations to the Committee

The Committee should request **the state party to report on the status of the internally displaced and look into avenues to fulfill the rights of the internally displaced in Israel.**

The Committee must also urge Israel to **apply human rights law to Palestinians in the OPT and report to the Committee** on its compliance with the Convention on the Elimination of All Forms of Discrimination Against Women. BADIL also recommends the Committee to question **Israel's discriminatory application of human right law and application of the *Israeli Basic Law: Human Dignity and Freedom (1992)* to the settlers in the OPT.**

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<sup>42</sup> Diakonia. "Informal excerpts taken by advocate Netta Amar from the Israeli High Court of Justice Hearings on the Wall" (unpublished), Jerusalem, 9 may 2005. It is interesting to note this Basic Law does not protect the right of equality for all. Hence, no statute protects the right to equality of the Arab minority in territories where Israel applies the Basic Law. For more information, see Adalah, *Legal Violations of Arab Minority Rights in Israel, A report on Israel's Implementation of the International convention on the Elimination of all Forms of Racial Discrimination, Israel, March 1998*, p. 19

<sup>43</sup> See Human Rights Committee, Concluding Observations: Israel, CCPR/C/79/Add.93, 18 August 1998, para. 13.

<sup>44</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 2 (d) and (e), 18 December 1979.

## 4. The Obligation of Israel to Guarantee Basic Human Rights and Fundamental Freedoms to the Palestinian People -Article 3

In light of the principle of justice, equality and mutual benefit, the Preamble of the Convention on the Elimination of Discrimination Against Women affirmed “*the rights of people under colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity...*” [Emphasis added]<sup>45</sup> as a form of social progress and development. States are obliged to respect and fulfill fundamental human rights as enshrined in Article 3, which mentions that states resolve to “... ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”<sup>46</sup> Many, however, of the fundamental rights and freedoms necessary for the achievement of equality between men and women are denied to Palestinian women.

### 4.1 The Right to Own Property Free From Illegal Governmental Interference and the Right to Enjoy Adequate Living Conditions

#### 4.1.1 In Israel

In Israel, a system of laws has been implemented in order to 'legalize' the confiscation and expropriation of land and private properties from refugees, IDPs, Palestinian citizens of Israel and residents of annexed eastern Jerusalem. The central issue to land confiscation is its discriminatory nature; laws and orders are framed and implemented to confiscate property from Palestinians owners (refugees and IDPs) for the exclusive use by Jews. Palestinians used to own 90 percent of Palestine under the British Mandate, but today, they own around 10 percent of their historic homeland. Since its creation, Israel has illegally confiscated most of the private property holdings of refugees and IDPs through its *Absentee Property Law and Emergency Regulations*. Through these regulations, massive amount of confiscated land belonging to private Palestinian owners have been transferred to parastatal national institutions; the World Zionist Organization (WZO), the Israeli Land Authority (ILA) and Jewish National Fund (JNF). These institutions now control 93 percent of the land in Israel for the exclusive use by Jews.

Palestinian IDPs, citizens and residents who remained in the State of Israel after its Declaration of Independence, but who were not in their original property have been considered “Present Absentee” and also had their property confiscated.<sup>47</sup> According

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<sup>45</sup> Convention on the Elimination of All Forms of Discrimination against Women, Preamble (CEDAW), para. 11, 18 December 1979.

<sup>46</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 3, 18 December 1979.

<sup>47</sup> The confiscation of Palestinian IDPs property is clearly illegal. Deng's “Guiding Principles on Internal Displacement” have affirmed:



to international law, it is the responsibility of the Israeli Government to “assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.”<sup>48</sup> Israel has failed to meet its international obligation to provide restitution to the internally displaced Palestinian.

Moreover, while land has been and continues to be confiscated in Israel, property demolition has also been a policy directed against Palestinians inside Israel. The body responsible for granting building licenses, the Planning and Building Authorities, rarely grants building permit to Arab-Palestinian Israelis. Families who decide to build properties on their land without the appropriate permit will normally receive demolition orders and have their houses destroyed.<sup>49</sup> The question of Arab property ownership can be exemplified by the recently racist and discriminatory comment proclaimed by Rabbi Eliyahu in a radio interview aired on Reshet Bet, who stated: “Arabs should not get houses to rent or to buy either.”<sup>50</sup>

#### 4.1.2 *In the Occupied Palestinian Territories*

In the OPT, the occupying power has utilized a complex web of "laws" (generally military orders) to take control of the land.<sup>51</sup> As a consequence of the Oslo Accords, the occupied territories have been divided into areas of jurisdiction. There are three

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced shall in all circumstances be protected, in particular, against the following acts:
  - (a) Pillage;
  - (b) Direct or indiscriminate attacks or other acts of violence;
  - (c) Being used to shield military operations or objectives;
  - (d) Being made the object of reprisal; and
  - (e) Being destroyed or appropriated as a form of collective punishment...

In addition, Deng's Principle 29 expressly mentions the right of the internally displaced to receive restitution of property which was left behind during the period of displacement, or, where this is factually not possible, fair compensation or some other form of “just reparation.”

Guiding Principles on Internal Displacement Submitted by Francis Deng, Special Representative of the Secretary-General to the UN Commission on Human Rights,” Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum: UN Doc. E/CN.4/1998/53/Add.2

<sup>48</sup> “Guiding Principles on Internal Displacement Submitted by Francis Deng, Special Representative of the Secretary-General to the UN Commission on Human Rights,” Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum: UN Doc. E/CN.4/1998/53/Add.2

<sup>49</sup> Arab Association for Human Rights (HRA), *Weekly Review of the Arabic Press in Israel*, No.220, April 29-May 6, 2005.

<sup>50</sup> Reshet Bet is one of the official Jewish radio stations in Israel, it was aired in August 2004. Arab Association for Human Rights (HRA), *Weekly Review of the Arabic Press in Israel*, No.220, April 29-May 6, 2005.

<sup>51</sup> The main laws are: (1) land declared “closed” for military purposes' (2) land requisitioned for military purposes; (3) Military Order No. 58 declaring unregistered owned by statutorily defined “absentees” to be “abandoned” (4) Military Order No.59 declaring unregistered land to be “state” land; (5) Military Order No.1091 amended Military Order No. 59 to expand the definition of “state” land; (6) land expropriated for public purposes.

areas, commonly called area A (Palestinian Authority (PA) autonomous rule) B (PA civil responsibility with Israeli control of security), and C (Exclusive Israeli rule). Theoretically, Palestinian Authority (PA) has full control of areas A and can determine the housing and building legislation in these areas. However, areas B and C, representing approximately 90% of the territory, are under Israeli jurisdiction, whereby the same "building permit" system imposed in Israel is applied.<sup>52</sup> However, since the second *intifada*, the delimitation set under the Oslo Accords have irrelevant.

Hence, Palestinians living in areas under Israeli jurisdiction must apply for building permit; however, the Israeli Authority generally refuses to grant building permits to Palestinians, thereby restricting the urban expansion of towns and villages to the benefit of colonies and by-pass roads. Due to demographic growth and overcrowding, Palestinians often build properties on their land in areas B and C without proper "building permit." As a result, numerous Palestinians face demolition orders. According to B'Tselem, as much as 1,392 houses have been destroyed for lack of building permit between 1999 and 2003, particularly affecting women and children.

In eastern Jerusalem, the practice of land confiscation and house demolition systematically target Palestinians to the benefit of Jewish settlers (see the case of Wallaja 6.1.3). By manipulating the demographic and religious composition of eastern Jerusalem, the occupying power establishes facts on the ground that *de facto* judaize the land. Land confiscation and property demolition create a shortage of housing and lack of services in Palestinian areas of eastern Jerusalem, which consequently lead to involuntary displacement (see Shu'fat Camp case 6.2.2).<sup>53</sup>

The continued policy of house demolition as collective punishment or for 'security' reasons during military incursions or for the construction of the Wall<sup>54</sup> has primarily affected the right to family life and housing of women and children. Since the beginning of the *intifada* in 2000, refugee camps have been at the centre of bombardment and fighting. According to UNRWA's statistics, since the beginning of the *intifada*, a total of 2,991 shelters, home to over 28,483 people have been demolished or damaged beyond repair in the Gaza Strip.<sup>55</sup> Peter Hansen, former Commissioner-General of UNRWA, estimates that the rate of house demolition in

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<sup>52</sup> PASSIA, Palestinian Academic Society for the Study of International Affairs, *The Palestine Question in Maps 1878-2002*, Jerusalem, August 2002, p. 84-85.

<sup>53</sup> The Committee on Economic, Social and Cultural Rights "reiterates its grave concern about the continuing practices by State party of home demolitions, land confiscations and restrictions on residency rights, and its adoption of policies resulting in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city." The Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, para. 26.

<sup>54</sup> Many properties are demolished or damaged as a result of the construction of the Wall; however, it is difficult to ascertain how many were demolished as a direct result of the construction of the wall because the Israeli Army usually justifies demolition orders on security grounds without specifying the reason of the confiscation. Further studies are needed to evaluate the total number of house and property that will be destroyed or damaged as a result of the construction of the Wall.

<sup>55</sup> UNRWA, New Shelter for Rafah Homeless, Press Release, No. HQ/G/02/2005, 03 February 2005.

2004 has been “unprecedented” with an average of 45 people a day being made homeless.<sup>56</sup> According to B'Tselem, between October 2001 and January 2005, there has been 666 houses demolished as punishment in the OPT.<sup>57</sup> Initial statistics from the Palestinian Central Bureau of Statistics on the destruction of properties as a direct result of the Wall estimates that 85 houses and 574 commerces have been destroyed or partially demolished while 925 businesses have been closed for an indeterminate period.<sup>58</sup>

## 4.2 Recommendations to the Committee

The Committee must strongly condemn **Israel's illegal acquisition of Palestinian land**. According to this principle, the Committee should come to the conclusion that Israel's illegal land confiscation laws based on ethnic, religious or political criteria must be repealed or amended. The Committee is urged to **criticize the destruction of Palestinian property due to so-called lack of "building permit"; an illegal and deeply discriminatory policy that specifically targets the Palestinian Arab minority in Israel and Palestinians possessing land in Area B and C of the OPT.** The Committee is encouraged to ask the state party **why are "building licenses" not being granted to Palestinian-Arab Israeli and why the state Party has not yet introduced a legislation against forced eviction?**

Only full control over one's resources, freedom of movement as well as a secured right to housing and ownership free from interference can provide the conditions essential to Palestinian women's empowerment. BADIL thus calls on the Committee to **reiterate the right of Palestinians to self-determination and the illegality of Israel's measures to acquire land in the OPT for colonial purposes and its policy of house demolition.**

## 4.3 The Wall's Regime and its Effects on Palestinian Refugee Women

While the occupation intrinsically frustrates the right to self-determination, the construction of the wall in the OPT has shown no consideration for the right to self-determination of the Palestinians or to Israel's obligation to “...promote the realization of the right of self-determination...”<sup>59</sup> Israel has, no doubt, the right to protect its

<sup>56</sup> Statement by Peter Hansen, Commissioner-General of UNRWA to the Special Political and Decolonization Committee, 1 November 2004, New York, p.4

<sup>57</sup> B'Tselem, "Statistics on punitive house demolition", from 2001-January 2005.

<sup>58</sup> Palestinian Central Bureau of Statistics (PCBS), Survey on the Impact of the Expansion and Annexation Wall on the Palestinian Localities that the Wall Passed Through, March 2004, p.6

<sup>59</sup> OCHA, “The Impact of Israel’s Separation Barrier on Affected West Bank Communities, Update On the Construction of the Barrier, Access, and Humanitarian Impacts,” UN Office for the Coordination of Humanitarian Affairs (OCHA) for the Humanitarian and Emergency Policy Group

citizens from terror attacks, however, and as John Dugard expressed,

"Israel claims that the Wall is a security measure. Had it followed the Green Line this might have been plausible. But the manner in which the Wall has been build to enclose settlements and fertile land leads inevitably to a more sinister conclusion."<sup>60</sup>

UNRWA estimates that as result of the construction of the first phase<sup>61</sup> of the Wall, 220,00 people will be affected to some degree, including 15,291 refugee families, or 76,455 individuals.<sup>62</sup> UNRWA estimates that of the total number of Palestinians affected by the first phase of the Wall, one-third are refugees.

In fact, the construction of the Wall and its concomitant regime have engendered new forced displacement affecting refugee communities. The UN Special Rapporteur on the situation of human rights in the occupied territories came to the same conclusion when he warned that the construction of the wall in the West Bank is creating a new generation of refugees and displaced persons.<sup>63</sup>

According to a survey made by the Palestinian Central Bureau in July 2004, 11,461 persons had already been displaced as a direct result of the construction of the Wall, of which approximately 4,000 are refugees and 8,000 are displaced for the first time.<sup>64</sup> For the families expropriated and forced to leave their homes, the construction of the Wall recalls events not unlike the 1948 and 1967 expulsions of Palestinians.

In eastern Jerusalem, numerous villages and neighbourhoods will be isolated from one another and from the centre of the city. It is estimated that around 70,000 Palestinian residents face loosing their residency rights in Jerusalem, thus drastically reducing the percentage of Palestinians in Jerusalem and de facto revoking residency rights.<sup>65</sup> The

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(HEPG), March 2004, <http://www.reliefweb.int/hic-opt/docs/UN/OCHA/Barrierupdate7mar04.pdf>

<sup>60</sup> Statement by Prof. John Dugard, Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, Sixty-First Session of the Commission on Human Rights, 23 March 2005, p.3

<sup>61</sup> The first phase course's starts at Salem checkpoint in Jenin and runs through Tulkarem and Qalqilya to the Masha village in Salfit.

<sup>62</sup> UNRWA, *The Impact of the First Phase or Barrier on UNRWA-Registered Refugees*, Summer 2004.

<sup>63</sup> Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with resolution 1993/2 A/. E/CB.4/2004/6, 8 September 2003.

<sup>64</sup> This number has been deducted from the Palestinian Central Bureau of Statistics, which estimates that 12,000 persons have been displaced as a result of the construction of the wall, of which we know, one-third are already 1948 refugees from UNRWA. This data is a general estimate as disaggregated data on newly forcible displacement as a result of the construction of the wall is still unavailable and a problematic aspect in assessing the number of refugees and non-refugees who have been or will be forcibly displaced. Palestinian Central Bureau of Statistics (PCBS), *Survey on the Impact of the Expansion and Annexation Wall on the Palestinian Localities that the Wall Passed Through*, March 2004, p.6

<sup>65</sup> The villages mostly affected include Al Ram, Dhaiet Al Barid, Bir Nabala, Kufr Aqab, Sameer Amis and other northern neighborhoods. See Sub Laban, Ahmad "Jerusalem Residents Scramble to Fight Wall", *Palestine Report*, May 18, 2005.

cases of Wallaja and Shu'fat camp demonstrate the impacts of the Wall on Palestinian Jerusalemites and their residency rights (see the cases of Wallaja 6.1.4 and Shu'fat camp 6.2.4).

While it is difficult to provide comprehensive data on the overall impact of the Wall on refugee communities, BADIL estimates that in villages which are or will be affected by phase IV (from Bethlehem southwards to Hebron) most have substantial refugee populations<sup>66</sup> while other villages have a population of more than 2,000 refugees.<sup>67</sup> For refugees forced to relocate, it's the revival of the trauma of exile, homelessness and uncertainty.

Most families affected by the Wall have already lost land as a result of the delimitation of the 1949 Armistice Line (see the case of Wallaja 6.1.1). According to BADIL, of those villages that lost land in 1948 and are affected by the Wall, there are 118,431 persons of whom one quarter are refugees (5,859 families). In other words, more than fifty percent of Palestinians affected by the Wall are from villages that already lost land to Israel due to the location of the 1949 Armistice Line.<sup>68</sup>

The current route of the Wall as published by February 2005 annexes 10.1% of the West Bank into Israel.<sup>69</sup> Upon completion and depending on whether the Wall will also be built along the Jordan Valley, it is estimated that up to 38% of the land of the West Bank could be located outside the Wall and be *de facto* annexed to Israel.<sup>70</sup>

More alarming, a recent report corroborates Israel's intention to annex confiscated Palestinian land.<sup>71</sup> In exchange for title to their land, Palestinians whose land has been seized for the construction of the Wall, are offered alternative land in the West Bank; land previously confiscated from Palestinian owners. This new policy confirms Israel's intention to *de facto* annex the territory confiscated during the construction of the Wall, in breach of international law and Palestinians' right to self-determination.

The wall also establishes a new discriminatory regime in the West Bank. As a result of the first phase of the Wall, 138,593 Palestinians, including 67,250 refugees will reside in enclaves, cut off from the rest of the West Bank.<sup>72</sup> 'Seam zones' or closed military areas institute a new regime whereby "no person will enter the seam zone or stay in it" unless he is "an Israeli" or "was given a permit by me [military

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<sup>66</sup> This includes Battir, Wadi Fukin, Husan, Nahalin, 'Arab al-Fureijatt, ar-Ramadin, Deir al-Asal, al-Tahta.

<sup>67</sup> Such as Beit 'Awwa, Surif, and al-'Azariya according to the Palestinian Central Bureau of Statistics (PCBS) 1997 Population Census.

<sup>68</sup> Rempel, Terry, "Are They New Refugees? The Hidden Reality Behind the Wall," *Al Majdal*, Issue No.23, Bethlehem, September 2004, p. 29.

<sup>69</sup> OCHA, West Bank Barrier Route Projections: Preliminary Overview, Jerusalem, 20 February 2005.

<sup>70</sup> PLO Negotiations Affairs Department, Map of The Wall and Israeli Colonies, May 2005.

<sup>71</sup> See Al Haq, "Al-Haq Open Letter", Ref. 13.2005E, 17 May 2005.

<sup>72</sup> UNRWA, *The Impact of the First Phase or Barrier on UNRWA-Registered Refugees*, Summer 2004.

commander] or on my behalf to enter the seam zone and stay in it...”<sup>73</sup> In other terms, Palestinians need a permit to travel and reside in enclaves or seam zones while Israeli colons can travel freely in and out of the seam zones and enclaves.

This permit system, solely imposed on Palestinians, is very complex. The system is a new measure whereby Palestinians living in closed military zones (enclaves and seam zones) now have to apply for an additional permit granting them a right to reside in their homes and travel in and out of their village. The permits for the closed zone have a green colour (thereafter ‘green permits’) which residents usually have to renew every six months. Green permits are also necessary for another 12 categories of visitors, including students, health workers, teachers, merchants, and international workers.<sup>74</sup> More specifically, each gate generally requires a specific permit, and some gates are open to Palestinians while others are not.<sup>75</sup> This new regime particularly affects Palestinian women and children, who are now “internally stuck persons” in enclaves and seam zones.

The Wall's regime, with its seam zones, enclaves and permit system further demonstrate the systemic nature of the colonial enterprise; namely, the continued acquisition of territory by force and the expansion of colonies and related infrastructure. These actions annex land to Israel and restrict the freedom of movement of Palestinians.<sup>76</sup> The confiscation of land and property for the construction of the Wall and its associated regime as well as the expansion of colonies are a scheme to prevent the national sovereignty and territorial integrity of a Palestinian state.<sup>77</sup> As the Special Rapporteur for Palestine, John Dugard, attested:

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<sup>73</sup> Israel Defense Force, “Declaration Concerning Closing an Area no. S/2/03 (Seam Zone),” Order Regarding Security Regulations (Judea and Samaria), No. 378, 5730-1970, 2 October 2003.

<sup>74</sup> “Currently green permits are not required for: children under 12 (with an adult holding a green permit), Palestinians possessing permits to enter Israel or work in settlements, Israeli citizens, tourists with valid visas, and those of Jewish descent.” OCHA, “The Impact of Israel’s Separation Barrier on Affected West Bank Communities, Update On the Construction of the Barrier, Access, and Humanitarian Impacts,” UN Office for the Coordination of Humanitarian Affairs (OCHA) for the Humanitarian and Emergency Policy Group (HEPG), March 2004, <http://www.reliefweb.int/hic-opt/docs/UN/OCHA/Barrierupdate7mar04.pdf>

<sup>75</sup> OCHA, “The Impact of Israel’s Separation Barrier on Affected West Bank Communities, Update On the Construction of the Barrier, Access, and Humanitarian Impacts,” UN Office for the Coordination of Humanitarian Affairs (OCHA) for the Humanitarian and Emergency Policy Group (HEPG), March 2004, <http://www.reliefweb.int/hic-opt/docs/UN/OCHA/Barrierupdate7mar04.pdf>

<sup>76</sup> Dugard, John, Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, Question of the Violation of Human Rights in the Occupied Palestinian Territory, Including Palestine, 66<sup>th</sup> Session, 23 March 2005, p.3

<sup>77</sup> It worth mentioning that the Wall annexes the vast majority of settlers to Israel. Indeed, “76% of the settler population (170,123 Israeli settlers) will live West of the barrier and be annex to Israel while another 170 000 Israeli settler in East Jerusalem will live between the Wall and the Green Line.” See OCHA, Office for the Coordination of Humanitarian Affairs, *Preliminary Analysis, The Humanitarian Implications of the February 2005 projected West Bank Barrier Route*, Jerusalem, 22 March 2005, p. 3

“They [*settlements*] are a product of occupation but they *have become colonies*. The protection and advancement of the interests of this *colonial empire* determines Israel's policies towards Palestine. Without settlements a two-state solution is possible; with them it becomes impossible. [Emphasis added]”<sup>78</sup>

The ultimate goal of the occupying power is to take control of the land for the exclusive use of Jewish settlers; a policy that erases the geographical entity called Palestine and amount to forced displacement and transfer similar to that witnessed since 1948. In this sense, the Advisory Opinion of the International Court of Justice on the consequences of the construction of the Wall is unequivocally clear: “the obligations erga omnes violated by Israel are the obligation to respect the right of the Palestinian people to self-determination ...”<sup>79</sup>

#### 4.4 Proposed Questions and Recommendations to the Committee

The Committee should **ask the state party to explain its discriminatory application of the building permit system**, whereby Israeli settlers can travel in and out of enclaves and seam zones while Palestinians are subject to a complex permit system and arbitrary gate opening; a situation seriously affecting children's access to schools and women's freedom of movement and right of residence.

It is crucial that the Committee **reiterates the position of the International Court of Justice and demand an end to the construction of the Wall as well as restitution and compensation for the damages incurred to Palestinians affected by the Wall and its associated regime.**<sup>80</sup> In this sense, “reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.”<sup>81</sup> In the same logic, an end to the occupation must also entail the full restitution and compensation to the rightful, original Palestinian owners of the land that has been confiscated for colonial expansion. Until Israel abides by international human rights law, the Committee should emphasize that ***de facto* control of the land and acquisition of territory by force will never constitute legitimate *de jure* sovereignty.**

<sup>78</sup> Dugard, John, Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, Question of the Violation of Human Rights in the Occupied Palestinian Territory, Including Palestine, 66<sup>th</sup> Session, 23 March 2005, p.4

<sup>79</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004. paras. 155.

<sup>80</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004. paras. 152

<sup>81</sup> *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47 in International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004. paras. 152

## 5. Residency and Nationality Rights -Article 9

### 5.1 Residency/Citizenship Rights in Occupied Eastern Jerusalem and Israel

The annexation of eastern Jerusalem has not been recognized by the international community,<sup>82</sup> yet Palestinian women continue to face forced displacement due to lost of residency rights.<sup>83</sup> Article 9 on the right to hold nationality affirms: “States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.”<sup>84</sup> Palestinian women resident of eastern Jerusalem are not national of Israel: they are stateless, yet, the Jerusalem ID allows them to reside in their house, travel and have access to essential services such as health and education.

However, the Israeli authorities have enforced measures to strip Palestinians holding Jerusalem ID of their right of residence and force them to relocate to the West Bank or outside the “Municipal Boundaries” of “Greater Jerusalem”.<sup>85</sup> Revocation of residency rights is done through the Law of Entry into Israel (1952), which applies exclusively to Palestinians holding Jerusalem ID in eastern Jerusalem or to Palestinian holding Israeli citizenship through the Citizenship Law who are married to a West Bank ID holder or to a citizen from an Arab country.<sup>86</sup> The Law of Entry into Israel

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<sup>82</sup> See Resolution 252 which “Considers that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status” and “Urgently call upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem” UNSC, Resolution 252, 21 May 1968, <http://ods-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/248/33/IMG/NR024833.pdf?OpenElement> and Resolution 478 that “Determines 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.” UNSC, Resolution 478, 20 August 1980, <http://ods-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/399/71/IMG/NR039971.pdf?OpenElement> See also Security Council Resolutions 267 (1969); 298 (1971); 446 (1979); 465 (1980); 476 (1980); 605 (1987).

<sup>83</sup> Donner, Ruth. *The Regulation of Nationality in International Law*, 2<sup>nd</sup> Ed., New York; Transnational Publishers, 1994, p. 157.

<sup>84</sup> CEDAW, General Recommendation 21 on Article 9

<sup>85</sup> Greater Jerusalem refers to the expansion of the municipal boundaries of Jerusalem to annex part of the West Bank under its jurisdiction and allow for the development of colonies.

<sup>86</sup> Since 2003, the Nationality and Entry into Israel Law (Temporary Order) bans Palestinians from the OPT from obtaining residency status or citizenship in Israel and this, even if they marry to an Israeli citizen. However, this policy has been informally applied since \*\*\*\*. For further information on the law banning family reunification, please, refer to the reports submitted by the Working Group on the Status of Palestinian Women in Israel (Adalah, the Arab Association for Human Rights, Women Against Violence...) under the chapter on Nationality and the report submitted by Al Haq, PCHR and WCLAC under the section Family Unification.



and *Citizenship Law*, which theoretically allow for family reunification for non-Jews, in reality, prevent women citizen of Israel or resident of eastern Jerusalem to reunify with their husband and children and violate the rights to family life and human dignity.

Moreover, since July 2003, the Knesset passed the *Law of Entry into Israel (Temporary Order- 2003)*, which imposed a ban on family reunification for Palestinian in eastern Jerusalem.<sup>87</sup> This order prohibits family reunification request as well as those already in the process of gaining residency (for eastern Jerusalem spouse) or citizenship status (for Israeli spouse). This decision limits the number of non-Jews, overwhelmingly Arabs, and discriminates on nationality and ethnic grounds. Recently, the Israeli government has amended the temporary order and now allows men over the age of 35 and women over the age of 25 to submit new application. However, the cases of those already in the reunification process will not be examined and their status will remain frozen.<sup>88</sup>

Hence, women with Jerusalem ID have to leave Jerusalem if they wish to maintain the unity of the family, therefore failing to meet the "Centre of Life" test (to preserve their Jerusalem ID, Palestinian residents are required to prove that they "reside, work and send their children to Jerusalem schools"). Once Jerusalemites fail to meet the "Centre of Life Test", they lose their right of residence in Jerusalem (see the case of Wallaja 6.1.4 and Shu'fat Camp 6.2.4). Revocation of residency right results in a further level of statelessness for Palestinians and denies them housing, property and land rights. Moreover, Israel has refused medical insurance to children of parents holding Jerusalem ID or citizenship on the ground that the child was born in the 1967 OPT<sup>89</sup> or that one of the parents is from the 1967 OPT.

It is important to note that the *Law of Entry into Israel* and the "Centre of Life" test are exclusively applied to Palestinians in eastern Jerusalem and not to Jewish settlers in eastern Jerusalem, who can invoke the *Right of Return Law* for family reunification and are not required to prove that Jerusalem is the centre of their life. The "Centre of Life" test thus discriminates on national and religious grounds.

Moreover, a new law is expected in July 2005 whereby Jerusalem ID holders will require a permit to enter the West Bank thus forcing Jerusalem ID holder to decide between moving to the West Bank and lose their right of residence in Jerusalem or

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<sup>87</sup> See also Chapter 9 on Nationality from the Report on Israel's Implementation of the United Nation Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) submitted by the Working Group on the Status of Palestinian Women in Israel.

<sup>88</sup> For more information on the new amendments to the emergency regulation read: Ilan, Shahrar. "Rule allows for new unification requests", *Haaretz*, 18 May, 2005 and Adalah, "Adalah to Israeli Government Ministers, AG: Proposed Amendments and Extension to Ban on Family Unification Law Do Not Remedy its Constitutional Violations, But Establish Even More Stringent Provisions", News Update, 10 May 2005.

<sup>89</sup> Arab Association for Human Rights (HRA), *Weekly Review of the Arabic Press in Israel*, No.220, April 29-May 6, 2005.

lose touch with their family and friends residing in the West Bank.<sup>90</sup> It is also an additional measure to further isolate eastern Jerusalem from the West Bank and integrate it to Israel.

As the Human Rights Committee rightly noted “the increasingly restrictive conditions for maintaining the right to permanent residence, the denial of requests for family reunification and the difficulty experienced by non-Jews in obtaining building permits and accommodation have resulted in increasing numbers being forced to move to the occupied territories.”<sup>91</sup> In its Advisory Opinion, the ICJ reiterated that “Israel measures to change the demography and status of East Jerusalem through expropriation of land and properties and transfer of populations aimed at incorporating the occupied land into its territory were illegal, null and void.”<sup>92</sup>

## 5.2 Proposed Questions and Recommendations to the Committee

The Committee must condemn Israel for its discriminatory Law of *Entry into Israel* that *de facto* bans family reunification and has detrimental consequences on residency rights. BADIL also requests the Committee to strongly denounce Israel's "Centre of Life" test, which is discriminatory, as solely applied to Palestinian residents of eastern Jerusalem. BADIL would like the Committee to question the Israeli government concerning the **new law** which will apparently require residents of Palestinians in eastern Jerusalem to have a permit to enter the West Bank.

The committee should inquire about the **situation of women and girls in Shu'fat camp and the impact of the Wall on their right to hold Jerusalem ID** in light of the “Centre of Life” policy and whether the Israeli Government has envisaged any relocation scheme inside the borders of Jerusalem. The committee may also wish to investigate the **impact of the Wall on West Bank ID holders who found themselves on the “Jerusalem side”** (see Su'fat Camp case 6.2.3): will residents of the West Bank become illegal residents and be forced to move to the West Bank or will they be granted Jerusalem ID?

<sup>90</sup> See Hass, Amira. "Palestinian Leadership Silent as East Jerusalem Encircled", *Haaretz*, 31 March 2005.

<sup>91</sup> Human Rights Committee, Concluding Observations: Israel, CCPR/C/79/Add.93, 18 August 1998, para. 23.

<sup>92</sup> ICJ Advisory Opinion, para. 75

## 6. Case Studies

### **6.1 The Case of Wallaja**

The case of Wallaja reflects the absurdity of policies underlying the occupation and the construction of the wall. Wallaja is a village of approximately 10 000 persons located near Bethlehem, between the West Bank and the municipal boundaries of Jerusalem. Some residents have Jerusalem IDs while others hold West Bank IDs.

#### *6.1.1 Forced Displacement and Land Confiscation*

At the end of 1948, most of the inhabitants of Wallaja were displaced and had their land confiscated. Many resettled on other parts of their village's land, which was subsequently occupied in 1967. All the land from where the inhabitants were displaced in 1948-1949 has been confiscated and there is now a colony (Moshav Aminadav) and a national park on the land where the inhabitants use to reside in 1948.

#### *6.1.2 Annexation*

Israel also annexed part of the village to "Greater Jerusalem". However, nobody was informed of the consequences of the annexation of part of their village to Israel. Today, more or less half the village, or more exactly 92 houses, is located within "Greater Jerusalem," and most of the residents of these houses have West Bank IDs. Israeli contends that the inhabitants of these 92 houses are illegal residents so the Israeli army has arrested people for illegally residing in Jerusalem. At least one resident in every household has been arrested. People were eventually released, but often heavily fined for illegally residing in their house.

#### *6.1.3 Demolition Orders*

Currently, 70 houses out of the 92 houses have received demolition orders. Recently, 17 orders for demolition have been approved and these houses could be destroyed anytime in a year from now. One family has already been evicted as a result of constant harassment from soldiers and relocated on the "West Bank" side of the village. The Israeli army also went to the 92 houses to ask residents to sign papers stating they were illegal residents in Jerusalem.

#### *6.1.4 Wall and Residency Rights*

The latest map from the Wall shows that the Wall will surround the village and include the 92 houses on the West Bank side. Confiscation orders for lands belonging to the village have already been given. According to recent information, access to Jerusalem will be blocked and the village will be completely cut off from Jerusalem. Persons who possess Jerusalem ID might lose their ID, as they will live

on the West Bank side and will fail to meet the “Centre of Life” test.

The future residency status of Wallaja's inhabitants is also unclear: will they be able to travel to Jerusalem, will the residents holding Jerusalem IDs be able to keep them? If the residents are unable to keep their Jerusalem ID and live in Wallaja, entire families holding Jerusalem ID may be forced to relocate for a second time in order to preserve their Jerusalem ID or lose it.

## **6.2 The Case of Shu'fat Refugee Camp in Eastern Jerusalem**

### *6.2.1 Unique Status of Shu'fat Camp*

Shu'fat is the only refugee camp under direct Israeli jurisdiction and is located within the Jerusalem municipal boundary. Shu'fat registered refugees, approximately 10,290 inhabitants, hold Jerusalem IDs.<sup>93</sup> The camp and its environs also provide accommodation to an additional 20 000 Jerusalem ID residents who can not find accommodation or afford the cost of housing in Jerusalem.<sup>94</sup> These people have moved to the camp in order to maintain their place of permanent residence within the Jerusalem municipal boundary, a condition imposed by the Israeli “Centre of Life” test.

### *6.2.2 Route of the Wall and Access to Essential Services*

The route of the Wall, as approved by the Israeli Government in June 2004, will completely cut off the camp from the rest of Jerusalem. Moreover, the 'gate' in the Wall will only be open on the West Bank side,<sup>95</sup> a situation which directly threatens refugees' right to residency and freedom of movement. A petition to the High Court to re-route the Wall in this area was rejected.

UNRWA anticipates that the Wall will “strongly impac[t] resident's access to education and health care services in town.”<sup>96</sup> As UNRWA also reports, “some common services enjoyed by Jerusalem residents may also start being denied to

<sup>93</sup> See UNRWA, *Camp Profile, Profile of Shufat Refugee Camp*, Reports on the West Bank Wall/Barrier, January 2004, p.1

<sup>94</sup> See BADIL, “Shu'fat Camp”, *Article 74*, No. 25, Bethlehem, September 1998, p. 8.

<sup>95</sup> “According to the planned path, the Barrier will only be open on the West Bank side, separating these communities from Jerusalem.” UNRWA, *Update: New Barrier Construction*, Reports on the West Bank Barrier, June 2004, p.3

<sup>96</sup> UNRWA, *Camp Profile, Profile of Shufat Refugee Camp*, Reports on the West Bank Wall/Barrier, January 2004, p.1 “Jerusalem town is an important centre for the provision of health care services to refugees. Construction of the barrier will directly affect access to the UNRWA Jerusalem Health Centre; two other UNRWA Health Centres and two Sanitation stores will be separated from surrounding areas (Shufat and Kalandia Camps); also access to secondary and tertiary care in Jerusalem hospitals will be severely hampered.” UNRWA, *Town Profile, Impact of the Jerusalem Barrier*, Reports on the West Bank Wall/Barrier, January 2004, p. 3

Shu'fat camp dwellers.”<sup>97</sup> UNRWA's report fears that “ambulances and other service providers will refuse to serve the area, on alleged security grounds.”<sup>98</sup> It is estimated that a “considerable proportion” of high school students, who after the 9<sup>th</sup> grade have to enroll in PA secondary schools or private schools, will be affected by the wall.<sup>99</sup> While no disaggregated data are available for university students, UNRWA envisages that access to Al-Quds, Bethlehem and Bir Zeit Universities will strongly be impeded.<sup>100</sup>

### 6.2.3 Wall and Residency Rights

Currently, residents are trying to move out of the camp in order to stay closer to Jerusalem and preserve their Jerusalem ID. Many, however, are unable to afford housing in Jerusalem and may lose their ID because they will fail to meet the “Centre of Life” test. Concretely, it means that the women and girls living in the camp may potentially lose their Jerusalem ID.

Moreover, “it is likely that West bank ID holders, whose place of residence is being included 'inside' [Jerusalem] will be classified as illegal residents, and required to move out.”<sup>101</sup> The wall may therefore have the effect of pushing away refugees holding Jerusalem ID to the West Bank while expelling West Bank ID holder who find themselves on the “Jerusalem side” of the Wall, a clear policy of forced displacement.

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<sup>97</sup> UNRWA, *Camp Profile, Profile of Shufat Refugee Camp*, Reports on the West Bank Wall/Barrier, January 2004, p.1

<sup>98</sup> UNRWA, *Camp Profile, Profile of Shufat Refugee Camp*, Reports on the West Bank Wall/Barrier, January 2004, p.1

<sup>99</sup> See UNRWA, *Town Profile, Impact of the Jerusalem Barrier*, Reports on the West Bank Wall/Barrier, January 2004, p. 2

<sup>100</sup> See UNRWA, *Town Profile, Impact of the Jerusalem Barrier*, Reports on the West Bank Wall/Barrier, January 2004, p. 2

<sup>101</sup> “Some early warning signs of such policy could be noticed in Nu'man village, where an IDF night-time operation gathered all young men from the locality and asked them to give up their title deeds to their land.” UNRWA, *Town Profile, Impact of the Jerusalem Barrier*, Reports on the West Bank Wall/Barrier, January 2004, p. 5