

Submitted to

**The United Nations Special Committee to Investigate Israeli
Practices Affecting the Human Rights of the Palestinian People
and Other Arabs in the Occupied Territories**

July 2011

Regarding

**Self-determination, access to land
and ongoing forcible transfer of Palestinians**



Submitted by

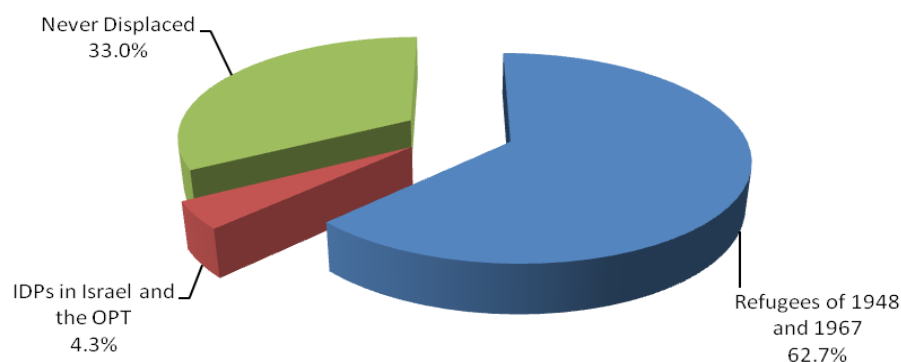
BADIL Resource Center for Palestinian Residency and Refugee Rights

Self-determination of the Palestinian people

As a result of ensuing wars, hostilities, and events of forced displacement, the Palestinian people have defined themselves as the indigenous people of Mandate Palestine comprised of three main sectors: those living under occupation since 1967; those displaced during war in 1948 and 1967 who now constitute a 6.5 million refugees, and Palestinian citizens of Israel. These people, the Palestinian people in their entirety, are entitled to self-determination.

Approximately 4 million Palestinians live in the occupied Palestinian Territories, thereof 2.5 million in the West Bank and 1.5 million in the Gaza strip. Israel's population amounts of approximately 7.3 million. The Palestinian minority in Israel counts about 1.1 million and constitutes approximately 20% of the population. At least one fourth of this population are IDPs, refugees and their descendants who were displaced from their original villages in 1948 and were forced to settle in other places in Israel. Over 50% of Israel's Jewish population lives in central Israel, while over 70% of its Palestinian population lives in the Naqab and the Galilee.

More than 1.9 million of the Palestinians living in the oPt are registered refugees, in Gaza the refugees make up an estimated three-quarter of the population. In total, including the refugees in Jordan, Syria and Lebanon, there are 4,820,229 Palestinian refugees which are registered with UNRWA. According to BADIL's Survey on Palestinian refugees: around 67% of the Palestinian population are forcibly displaced persons.¹ This includes the number of registered refugees and non-registered refugees.



Today, the Palestinian right to self-determination is unequivocal as noted by the International Court of Justice, the world's highest judicial authority, in its 2004 Advisory Opinion on the legal consequences of Israel's wall in the Occupied Palestinian Territory (OPT). The Court also found that "Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law.

The United Nations has affirmed the right to self-determination in common article 2 of the International Covenant of Civil and Political Rights and the International Covenant of Economic Social and Cultural Rights. With regard to the Palestinian People, the United Nations has recognized this right forthrightly in 1974 when the UN recognized the Palestine Liberation Organization (PLO) as the representative of

¹ BADIL Resource Center, Survey of Palestinian Refugees and Internally Displaced Persons 2008-2009 (2009), p. 63.

the Palestinian people, granted it observer status and explicitly recognized that Palestinians constitute a people entitled to self-determination.

Numerous General Assembly Resolutions have affirmed this right as particularly applicable to the Palestinian people, including Resolutions 2535 (10 Dec. 1969);⁷ 2649 (30 Nov 1970)⁸; 3236 (22 Nov 1974); 43/177 (15 Dec. 1988); and 48/94 (20 Dec. 1993). Of particular note is Resolution 3236, which reaffirms and specifies the inalienable rights of Palestinian people in Palestine as including: a) the right to self-determination without external interference; b) the right to national independence and sovereignty; and, the c) “inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted.” The Resolution emphasizes that “full respect for and the realization of these inalienable rights of the Palestinian people are indispensable for the solution of the question of Palestine.”

Whereas Palestinians insist that they are entitled to define and exercise their right to self-determination without external interference, interpretations of the practical meaning of this right have been shaped in response to the international political environment and the Israeli policies that continue to change the reality on the ground. Despite the international community’s inaction and the severity of the human rights violations borne by Palestinians as a result of Israel’s policy of population transfer and its discriminatory regime, most Palestinians understand their right to self-determination to encompass the following:

1. National independence and sovereignty in the OPT, including East Jerusalem;
2. Free exercise of the Palestinian right to return to their homes and properties in Israel; and
3. Collective national representation in Israel for its indigenous Palestinian citizens.

Whether it be in its refusal to end its occupation over the Palestinian territories it occupied in 1967, its failure to extend equal rights to its Palestinian citizens, or in its denial of the right to return for Palestinian refugees, Israel continues to subvert the Palestinian right to self-determination. **Of particular concern is the continued failure of the UN and its agencies to promote and to protect the rights of Palestinian refugees to return to their homes and its failure to take practical measures to end and prevent the ongoing forcible displacement of Palestinians.**

Access to land

The Palestinian population’s access to land is closely connected to the issue of Jewish settlements in the West Bank (including East Jerusalem). Since the Israeli occupation of the Golan Heights, Gaza and the West Bank in 1967 Israel has established, financed and protected Jewish settlements on occupied territory and encouraged Israeli citizens and industries to move into them. Presently there are 135 Israeli settlements in the occupied territories and dozens of additional “outposts” – settlements not yet officially recognized by the Israeli government. These house over 562,000 (20,000 in the Golan Heights).²

Settlements are a major obstacle to peace in the region. First, they virtually foreclose the possibility of a viable Palestinian state as they – together with the road system connecting them and the building of a the ‘security barrier’ that does not follow the ‘green line’³ – destroy the territorial integrity of a future Palestine and occupy more than 45% of the West Bank area. Secondly, settlements are the center

² http://www.whoprofits.org/Involvements.php?id=grp_inv_settlement

³ The armistice line from 1949 separating West Bank and Gaza from Israel

around which massive human rights violations take place in the form of denial of right and access to land, water and security in the form of settler attacks and violence at checkpoints, military installations and against rural Palestinian communities.

Another obstacle to peace is the West Bank Wall/barrier which constitutes an important element in the continuous process of land confiscation as only twenty % (20%) of the Barrier's length runs along the Green Line. The total area located between the current barrier route and the green line is 10 % of the West Bank and East Jerusalem and includes settlement groups deep into Palestinian land, including the Qedunim settlement group, Ariel and Ma'ale Adunim.

Access for Palestinians to land between the wall/barrier and the green line is gradually but systematically being restricted, whereby the Israeli authorities are creating a 'seam zone' of land confiscated as part of the construction of the barrier. Together with the apparent creation of another 'seam zone' west of the Jordan Valley, a buffer zone made up of fences and ditches and following the natural topography of mountains and cliff tops, the wall/barrier effectively cuts the West Bank into 3 separate Palestinian enclaves with hardly any territorial contiguity. Thus, in recent years UN agencies have reported an intensifying Israeli policy of squeezing Palestinian residents geographically and economically and of restricting the entry of other West Bank residents who have land holdings or economic activities in the Jordan Valley. Such moves are strongly reminiscent of Israeli measures in the seam zone where the wall/barrier and the gate and permit regime stultifies the economic and social life of the 'permanent residents' while endangering the livelihoods of communities on the Palestinian side by isolating their land and its potential for natural growth. By 2009, 498,000 Palestinians in 92 West Bank communities live in segregated areas, including 263,200 people in 81 communities who are caught in the so-called "closed areas and seam zones." All of them face the risk of forced displacement.⁴

Forced Population Transfer and Settler Implantation

An increasingly salient discussion is emerging among UN agencies and human rights practitioners in the OPT regarding the nature and the forms of practices leading to ongoing forcible displacement in the OPT and, specifically, given the pattern and scope of forced displacement, whether an Israeli policy of forced population transfer exists. The premise that forcible transfer is occurring in the OPT has already been tacitly accepted by a number of NGO's and human rights practitioners whose programs to support communities to prevent displacement is premised on the realization that a conscious policy aimed at transferring Palestinians exists and/or that factors triggering displacement cumulatively indicate a policy of forced population transfer.

Forcible population transfers and deportations in the context of occupation is prohibited under IHL.⁵ Unlawful deportation or transfer,⁶ is a grave breach of the Fourth Geneva Convention,⁷ and may constitute a war crime under the Additional Protocol I to the IV Geneva Convention⁸ and the ICC

⁴ *Source OCHA 2009; B'Tselem 2008.*

⁵ See the Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 49. para. 1, art. 2 and art. 6, U.N.T.S. 287, entered into force Oct. 21, 1950. (Hereinafter GC IV).

⁶ According to the ICRC Commentary on art. 147 of the GC IV: "unlawful deportation or transfer (...) refers to breaches of the provisions of article(s) 49 of GC IV". See Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, pp 283.

⁷ See *supra* fn. 5, article 147 of the IV GC.

⁸ See article 85 (4) (a) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) of 8 June 1977, which entered into force 7 December

Statute.⁹ It may also constitute a crime against humanity, when committed as part of a widespread or systematic attack directed against any civilian population¹⁰.

As per Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court, the war crime of forced transfer can occur “directly or indirectly”, as such, the prohibition on forcible transfer extends beyond cases where a military force directly and physically relocates a population under its control to cases where life is rendered so difficult that the population are forced to leave. Policies in the OPT leading to displacement include: (1) the construction of the Wall inside occupied territories and its associated gate and permit regime; (2) Home demolitions, evictions and restrictive zoning and planning; (3); Impunity for settler violence and harassment; (4) Residency rights revocation; (5) Individual and mass deportations of Palestinians.

This policy is most evident in Area C of the West Bank, an area in which ten out of 13 communities recently visited by OCHA reported that “families are leaving because policies and practices implemented there make it difficult for residents to meet basic needs or maintain their presence on the land.”¹¹ Similarly, as a Human Rights Watch report states “In several cases documented.....and also documented in numerous media and NGO reports, these [Israeli] policies have made life so difficult for Palestinian residents of Area C that they have had to abandon their homes and livelihoods.”¹²

In many cases, the extent of the past and ongoing displacement remains as yet unknown. For example, a 2011 freedom of information request by the Israeli organization HaMoked revealed that between 1967 and 1994 Israel revoked the residency of 140,000 West Bank Palestinians. Comparative figures have yet to be made public as are the latest statistics for revocation of residency rights in Jerusalem, with the latest available figures from 2008 revealing the revocation 4,500 ID cards from Palestinians living in Jerusalem in that year.¹³

In his report submitted to the 16th Session of the UN Human Rights Council, UN Special Rapporteur Professor Richard Falk, in examining Israeli policies in Jerusalem, concluded that, “There is no question that, with its policy of Palestinian expulsion and dispossession in Jerusalem, Israel continues to be responsible for a gradual, incremental, yet cumulatively devastating policy designed to achieve the ethnic cleansing of Palestinians.”¹⁴

Another aspect of Israeli policies and practices which aim to change the demographic composition of the occupied territory is Israel’s continued support to the implantation of Jewish Israeli settlers into the oPt through the continued land seizure for settlements and outposts,¹⁵ and through policies encouraging the transfer of parts of Israeli (Jewish) civilian population.¹⁶ The transfer by the Occupying Power of

1979.

9 See, Art. 8. 2. (a) (vii). Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, which entered into force July 1, 2002 (hereinafter Rome Statute).

10 Ibid, Art. 7 (1) (a) Rome Statute.

11 http://www.ochaopt.org/documents/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf

12 Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories, Human Rights Watch, 2010.

13 See OCHA Special Focus Report on East *Jerusalem, Key Humanitarian concerns*, March 2011 and B’Tselem statistics at: http://www.btselem.org/jerusalem/revocation_statistics, visited 28 June, 2011.

14 Page 11, paragraph 19 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/101/90/PDF/G1110190.pdf?OpenElement>

15 See pra fn. 1, BADIL, *Survey of Palestinian Refugees (2008-2009)*, pp. 27 and B’tselem, *By Hook and by Crook, Israeli Settlement Policy in the West Bank*, July 2010.

16 Different benefits including financial benefits and incentives to encourage Jewish citizens to migrate to the West Bank are provided by 8 Israeli Ministries: the Ministry of Construction and Housing; the Israel Lands Administration; the Ministry of Education; the Ministries of Industry and Trade, Tourism and Agriculture; The Ministry of Labour and Social

parts of its own civilian population into the territory it occupies is prohibited under international law,¹⁷ and constitutes a war crime under the Optional Protocol I to the GC IV and the Rome Statute.¹⁸ As noted by the International Court of Justice in the 2004 Advisory opinion on the construction of the Wall, “since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the oPt, (including East Jerusalem), contrary to the terms of article 49 paragraph 6 (of the IV GC) and in breach of international law.”¹⁹

Despite the Israeli government proclaiming a 'building freeze' on settlements in the 10 months to September 2010, this period saw the initiation of construction of over 600 new units in over 60 different settlements.²⁰ In the eight months to May 2011, the Israeli government approved permission for the construction of 800 new units²¹ bringing the figure of Israeli settlements that can be constructed without any further permission to 13,000 units²².

Recommendations to the Special Committee:

- **To reaffirm that the right of self-determination of the Palestinian people constitutes the full spectrum of collective and individual rights to which the Palestinian people are entitled as stipulated in UN General Assembly Resolution 2326 including the right to return of Palestinian refugees.**
- **The Committee should support a resolution by the General Assembly taking concrete steps to sanction Israel until it dismantles the Wall, ends the occupation, allows refugees to return to their homes and properties in areas under Israeli jurisdiction and repeal legislation contradicting the fundamental precepts of international law.**
- **To recognize Israeli practices as constituting a policy of forced population transfer and to encourage, through UN agencies and partners working in Palestine, the initiation of a study which examines whether Israeli practices resulting in systematic displacement amounts to a policy of forced population transfer.**

Affairs. See *Ibid*, B'tselem, *By Hook and by Crook*, pp. 37-49.

17 See *supra* fn. 5, Article 49 paragraph 6, IVGC.

18 See *supra* fn.8. Article 85 (4) (a) Optional Protocol I, and *supra* fn. 9 Article 85 (2) (b) (viii) of the Rome Statute.

19 See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 120.

20 <http://peacenow.org.il/eng/node/99>

21 <http://peacenow.org.il/eng/content/interim-report-settlement-activity-end-moratorium-0>

22 <http://peacenow.org.il/eng/node/332>