



BADIL's Submission to the Universal Periodic Review, June 2017

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Introduction

1. BADIL¹ appreciates the opportunity to report the contemporary status of Israel's human rights record as part of the Universal Periodic Review. In its previous report of 30 September 2013, BADIL highlighted Israel's ongoing violation of Palestinian refugees' right to reparations.² Palestinian refugees and IDPs are the largest and longest-standing case of protracted forced displacement in the world, numbering 7.4 million people.³ Rather than ensuring their right to reparations,⁴ Israel continues its ongoing forcible displacement and transfer of Palestinians on both sides of the Green Line. As such, the denial of the right of return serves as a basis for understanding how Israel has developed its colonial and discriminatory policies in the occupied Palestinian territory (oPt) today.
2. The present report focuses on Israel's colonization policies in the oPt implemented under the guise of belligerent occupation for 50 years since 1967.⁵ In doing so, Israel violates its obligations as an occupying power and illegally assumes sovereign power through the *de jure* and *de facto* annexation of land⁶ and by denying Palestinians their right to self-determination.⁷

Colonization

3. Colonization is defined as a practice whereby the acts of a State have the cumulative outcome of annexing or unlawfully retaining control over a territory, and thus permanently denying self-determination to its indigenous population.⁸ Colonization is fundamentally contrary to core values of the international legal order and triggers obligations on third-party states. Namely, colonization contradicts the UN Charter and impedes world peace and cooperation.⁹
4. Israeli colonization in the oPt can be identified through three main policies that are completely prohibited, amount to grave breaches, crimes against humanity and/or war crimes, as well as breaches of peremptory norms. Israeli policies and practices of demographic manipulation, annexation, and domination over Palestinians are not mere violations of the laws of occupation, but fulfill the recognized components of colonization. The outcomes of these policies and practices are

¹ BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent human rights organization based in Palestine. It works to promote a rights-based approach to the issues of Palestinian refugees and internally displaced persons (IDPs). BADIL is registered as a Palestinian non-governmental organization and has special consultative status with ECOSOC. For further information, please see: www.badil.org.

² BADIL, "Report to Universal Periodic Review", 2013.

³ *Survey of Palestinian Refugees and Internally Displaced Persons 2013-2015 Volume VIII. BADIL.*

⁴ UNGA Resolution 194, Article 11. 11 December 1948; UN Security Council Resolution 237, Paragraph 1, 14 June 1967; The right of return is also enshrined in the UDHR, ICCPR, ICERD, International Convention on the Suppression and Punishment of the Crime of Apartheid, the Hague Regulations Concerning the Laws and Customs of War on Land, and the Fourth Geneva Convention.

⁵ Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960.

⁶ Declaration on the Granting of Independence to Colonial Countries and Peoples, Article 6, 1960.

⁷ *Ibid*; Common Article 1 of International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966; Common Article 1 of International Covenant on Economic, Cultural, and Social Rights Adopted by General Assembly resolution 2200A (XXI) of December 1966.

⁸ Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960; International Court of Justice, 2004, Legal Consequences of a Wall in the Occupied Palestinian Territory (Request for advisory opinion), Note 12, paragraph 188.

⁹ *Ibid*.

permanently changing the status of the oPt, imposing sovereignty of the occupying power and endangering the very existence of the Palestinian people.

a. Changing Demographic Composition

5. Changing the demographic composition of an occupied territory is fundamental to colonial practice. In continuing its demographic manipulation of the oPt, Israel not only denies more than 7.4 million Palestinian refugees and IDPs their fundamental right to reparations since 1948, but also continues to forcibly displace and transfer the occupied Palestinian population, and transfer Jewish-Israeli civilians into the oPt, including Jerusalem. Both practices constitute grave breaches of international human rights law, Article 49 and 146 of the Fourth Geneva Convention and multiple UN resolutions. The forcible transfer of the occupied civilian population out of the territory and the population transfer of the civilian population into the occupied territory constitute a crime against humanity and/or war crime under Articles 7 and 8, respectively, of the Rome Statute of the ICC.
6. Israel, the occupying power, has illegally established and/or supports the construction of 227 colonies including 100 outposts in the oPt.¹⁰ These colonies and outposts host around 590,000 Jewish-Israeli colonizers, a number that has doubled in the last 20 years and is expected to keep increasing.¹¹
7. The existence of colonies and their associated regime is inextricably connected to the ongoing dispossession and forcible transfer of Palestinians. The denial of use and access to land due to colony construction and expansion results in the loss of livelihood, denial of freedom of movement, impeded access to essential services, and forced evictions. The obstacles and hardships derived from colonies facing Palestinians create a coercive environment causing the illegal displacement of the Palestinian population. Involuntary displacement resulting from a coercive environment, when taking place without grounds permitted under international law, constitutes the serious crime of forcible population transfer.¹²
8. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court's Preparatory Commission¹³ establish that forcible transfer can occur through a coercive environment¹⁴ which stems not only from physical force but from fear and coercion where there is "no choice but to

¹⁰ B'tselem, "Land Expropriation and Settlements, 11 May 2017.

¹¹ Oxfam, 20 Facts: 20 Years Since The Oslo Accords, 2013. Available at <https://www.oxfam.org/sites/www.oxfam.org/files/oxfam-oslo-20-factsheet.pdf>

¹² The Rome Statute Elements of Crimes, Article 6(e).

¹³ Report of the Preparatory Commission for the International Criminal Court, UN Doc PCNICC/2000/1/Add.2 (2 November 2000), p. 7 (fn 5); as referred to in Prosecutor v. Kristić, Case No. IC-98-33-T, ICTY Trial Chamber, Judgment, 2 August 2001, para. 529; see also Prosecutor v. Popović, Case No. IT-05-88-T, ICTY Trial Chamber, Judgment, 10 June 2010, para. 896; Prosecutor v. Krajisnik, Case No. IT-00-39-T, ICTY Appeal Chamber, Judgment, 17 March 2009, para. 319; Prosecutor v. Stakić, Case No. IT-97-24-T, ICTY Appeals Chamber, Judgment, 22 March 2006, para. 281; Prosecutor v. Krnojelac, Case No. IT-97-25, ICTY Appeals Chamber, Judgment, 17 September 2003, para. 229 and 233. See also: International Criminal Court, Elements of Crimes, Article 6(e), p. 3 (fn 5)

¹⁴ For detailed analysis see *Coercive Environments: Israel's Forcible Transfer of Palestinians in the Occupied Territory*, BADIL, February 2017.

leave”,¹⁵ thereby rendering consent [to relocate] valueless.¹⁶ The following characterize examples of coercive environments found in the oPt:

9. In the H2 area of Hebron¹⁷ the pressures facing Palestinians include intense insecurity due to the militarization of the area, excessive use of force, raids, harassment by the Israeli military and colonizers, restrictions on movement and access, and compromised education, healthcare, livelihood, and social life.¹⁸
10. In Area C of the West Bank,¹⁹ Israel is currently planning to forcibly relocate 7,500 Palestinian Bedouin, evict 1,000 Palestinians in Massafar Yatta, and relocate communities in several villages of the Hebron Governorate. Under discriminatory zoning and planning procedures harassment from colonizers and Israeli military, threats, exposure to excessive use of force including lethal force, collective punishment and denial of access to essential services and humanitarian assistance compose a coercive environment that leads to temporary and permanent forcible transfer.²⁰
11. In East Jerusalem,²¹ the Secretary-General, the High Commissioner for Human Rights, and the Special Rapporteur on the situation of human rights in the oPt point to the seizure of homes, forced evictions and pending eviction orders, administrative and punitive demolitions, colonizer violence, movement and access restrictions, frequent violence and harassment, excessive use of force, arbitrary arrests and detention, colony expansion, and revocations of residency status and family unification composing a coercive environment.²² Such policies are introduced by Israel - the Occupying Power - with a view to altering the demographic composition of the city. According to official records, Israel seeks to achieve a Palestinian: Jewish-Israeli population ratio in East Jerusalem of 30:70.²³
12. In the context of the ongoing blockade of Gaza, the violence from Israel’s 2014 military offensive killed 2,251 Palestinians, injured 11,231, impacted over 142,000 homes and destroyed or severely damaging 14,534, displacing 500,000 people, 75,000 of whom are still displaced.²⁴ Palestinians are denied access to natural resources such as natural gas, fishing waters and agricultural lands as well as living under an ongoing electricity crisis and lack of fresh water due to the inadequate and severely damaged sewage system and treatment facilities. Severely limited electricity means that hospitals serving

¹⁵ The Rome Statute Elements of Crimes, Article 6(e)

¹⁶ Prosecutor v. Krajisnik, Case number IT-00-39-T, ICTY Trial Chamber, Judgment, 27 Sep 2006, para. 724. See also: “Forcible Transfer: Essential Legal Principles – A Reference Guide for Practitioners and Policy-Makers”, BADIL, July 2015.

¹⁷ In 1997 the city of Hebron was divided into two areas: H1 and H2. While H1 shifted to Palestinian Authority control, H2 is under Israeli military rule. The few hundred colonizers living in H2 are under Israeli civil rule. See: <https://www.ochaopt.org/content/isolation-palestinians-israeli-controlled-area-hebron-city-continues>; For detailed cases see: *Coercive Environments*, 13, BADIL.

¹⁸ A/71/355, Section IV.

¹⁹ See: *Coercive Environments*, 27. BADIL.

²⁰ Ibid.

²¹ See: *Coercive Environments*, 47-60, 73-84. BADIL.

²² A/71/364, para 67 and 72, A/HRC/31/40 para 31, and A/67/372 para 39.

²³ Israel. Jerusalem Municipality. Local Outline Plan No. 4: Jerusalem 2000 Master Plan. Compiled by Eitan Meir et al. Jerusalem, 2004

²⁴ Gaza Emergency. UNRWA. See also: *No Safe Place: Crimes Against Humanity and War Crimes perpetrated by High Level Israeli Officials in the Course of Operation Protective Edge*. BADIL.

patients are dangerously compromised. As such, the wait time for surgery is 18 months. On 19 June 2017, Israel began to reduce Gaza's electricity supply by another 35 percent.²⁵

13. In all of the above cases, Israel is violating its duties as an occupying power in order to deliberately change the demographic composition of the oPt through creating a coercive environment, forcibly transferring the Palestinian protected population, and transferring its own citizens into the oPt. These practices deny Palestinians political, economic, social, and cultural rights, ultimately depriving them of their right to self-determination and serving as a means to permanently alter the demography of the oPt.

b. Annexation

14. Israel's *de facto* and *de jure* annexation of land through discriminatory zoning and planning policies²⁶ reflect how Palestinian land is confiscated for the use of Jewish-Israeli only colonies and their infrastructure, the construction of the Wall, for the purpose of pillaging natural resources.²⁷ However, political freedom is an integral aspect of self-determination and requires that a geographic space exist where that freedom applies. The forceful acquisition of territory is prohibited in the UN Charter and constitutes a peremptory norm of international law from which no derogation is permitted.²⁸ Israel continually violates Palestinians political freedom through the forceful acquisition of territory.
15. Israel began its *de facto* annexation of occupied territory with the incorporation of 70,000 dunums in East Jerusalem (including 28 Palestinian villages) into the municipality, and 'legalized' that annexation in 1980²⁹ in contravention of international law.
16. On 6 February 2017, the Israeli Knesset passed the 'Regularization Law', 'legalizing' around 4,000 housing units in 53 colonial outposts built on private Palestinian land in the oPt.³⁰ An Israeli Government Minister claimed the bill is "[t]he first step towards complete regulation, namely, applying Israeli sovereignty over Judea and Samaria."³¹ This law retroactively recognized as lawful any colonial outposts built on private Palestinian land, effectively allowing the illegal expropriation of private Palestinian lands and cementing colonization within the Israeli judicial system.

c. Domination

²⁵ "(PHROC) denounces the decision to reduce the power supply to the Gaza Strip and warns of a humanitarian disaster". PHROC. 20 June 2017.

²⁶ See BADIL's Forced Population Transfer: The Case of Palestine, Discriminatory Zoning and Planning, Working Paper #17, December 2014.

²⁷ See BADIL, Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities, June 2013.

²⁸ Article 2 (4) of the UN Charter.

²⁹ Basic Law: Jerusalem, the Capital of Israel

³⁰ "PHROC calls for immediate action by international community on Israel's Regularization Law". Al Haq. 9 February 2017.

³¹ Israeli name for the West Bank; Carey and Emanuella Grinburg, Israel's Parliament Passes West Bank Outposts Bill, CNN, February 2017, <http://edition.cnn.com/2017/02/06/middleeast/israel-knesset-west-bank-outposts-bill/>

17. While annexation and demographic manipulation serve to alter the sovereignty of the occupied territory, domination of Palestinians through an illegally imposed discriminatory legal system, fragmentation of land and communities, suppression of resistance, and the pillage of natural resources are also colonial policies aiming at the subjugation of the Palestinian population, and ultimately deny Palestinians their right to self-determination.
18. Israel's discriminatory legal system on both sides of the Green Line has continually been used to annex territory and establish domination over Palestinians. In the oPt, Israel has imposed a two-tier system, whereby Israeli civil laws are extraterritorially applied to Jewish-Israeli colonizers, while Palestinians are subjected to military rule. In all cases, this legal subjugation imposes a clear discriminatory regime favoring Jewish-Israeli colonizers and is a constant denial of the right to self-determination of the Palestinian people.³² The obligations of the occupying power require that it respect the laws in force in the territory it occupies.³³
19. Although Israel claims to abide by the *Hague Regulations Respecting the Laws and Customs of War on Land of 1907*, by respecting prior jurisprudence in the oPt, it has continually manipulated existing laws in order to colonize occupied territory in violation of Article 43 of the Regulations and discriminate against Palestinians while favoring the expansion of Jewish-Israeli colonies.
20. For example, Israel changed the Jordanian Planning Law and adopted Military Order No. 418, in the process eliminating the Palestinian presence in planning committees that existed under the Jordanian law and transferring their powers to the Israeli Military Commander, thereby also removing Palestinians' ability to participate in and petition Israeli planning decisions.³⁴ In implementing discriminatory zoning and planning procedures, Israel restricts and prohibits the existence of Palestinian communities already in existence in order to favor Jewish-Israeli colony expansion.³⁵
21. In Israel, the Palestinian minority is suppressed and dominated through a number of laws that grant rights to the Jewish-Israeli population (including those in the colonies in the West Bank) while denying them those same rights. Some of these laws include (but are not limited to): the Law of Return (1950), the Absentee Property Law (1950), The Citizenship (Nationality) Law (1952), Prevention of Infiltration Law (1954) and the 2001 Entrenchment of the Negation of the Right to Return Law.³⁶
22. Furthermore many of these laws were extended to the oPt in the form of military orders such as Military Order 1650 on infiltration, the denial of residency, restrictions on family unification and registration of children, as well as a military order on Absentee Property. These discriminatory laws and military orders have provided for further legalized discrimination and laws which rule over nearly every aspect of Palestinian life on both sides of the Green Line.

³² United Nations General Assembly Resolution A/HRC/16/72, 2011, para. 32(b).

³³ The Hague Regulations Respecting the Laws and Customs of War on Land, The Hague, 1907, Article 43; Article 64 Fourth Geneva Convention.

³⁴ "A Guide to Housing, Land and Property Law in Area C of the West Bank", Norwegian Refugee Council, February 2012, 55.

³⁵ See BADIL's Forced Population Transfer: The Case of Palestine, discriminatory Zoning and Planning, Working Paper #17, December 2014.

³⁶ BADIL, "Report to Universal Periodic Review", 2013.

23. Colony construction is accompanied by an associated regime of security zones, bypass roads, and physical barriers that contributes to the fragmentation of Palestinian society. Israel's bypass roads' construction not only involves land confiscation, but also impedes Palestinians' freedom of movement and spatial and social cohesion. Dividing and secluding Palestinian communities in the oPt from one another, roads also deny Palestinians access to essential services such as education or healthcare, or to access work and sources of livelihood and subsistence. The denial and/or harsh restriction of Palestinian movement between the Gaza Strip and the West Bank has rendered these two areas completely isolated from each other, and from Palestinians in East Jerusalem.
24. The West Bank has been fragmented through a regime of military checkpoints, and the construction of the Annexation and Separation Wall and its associated permit and closure system, separating East Jerusalem from the rest of the West Bank, as well as the division of the West Bank into Areas A, B, and C during the Oslo Accords. The Israeli practices of blockade, closure, and checkpoints impede the Palestinian population from preserving and developing their social fabric and national identity.
25. Israel has developed a system of control and suppression in the oPt³⁷ in order to weaken Palestinian resistance and resilience in the face of colonization. It is the Palestinian peoples' lawful right to resist occupation and colonization, as recognized in several UNGA Resolutions, in order to exercise their right to self-determination.³⁸ Additionally, obligations require that the occupying power cease all "armed action or repressive measures" in order to respect the right to self-determination.³⁹
26. While carried out as a general policy, Israel also suppresses Palestinian resistance as a mechanism of forcible transfer, as in the case of its transfer of Palestinian prisoners to the Gaza Strip or their deportation to prisons inside Israel or abroad. Likewise, suppression of the occupied Palestinian population is one type of pressure facing Palestinians, forming an integral part of the coercive environment.
27. Israel engages in illegal punitive retaliation⁴⁰ such as extrajudicial and targeted killings in violation of the right to life,⁴¹ attacks against protesters and demonstrators in violation of the right to assembly,⁴² the excessive use of force and threats,⁴³ and the imposition of collective punishment, in violation of its duties to protected persons.⁴⁴ It continues policies of illegal arbitrary arrests and administrative

³⁷ See Forced Population Transfer: The Case of Palestine – Suppression of Resistance, BADIL, December 2016.

³⁸ UNGA Resolution A/RES/3070 (XXVIII). See also: UNGA Resolution A/RES/3246 (XXIX; 29 November 1974), UNGA Resolution A/RES/33/24 (29 November 1978), UNGA Resolution A/RES/34/44 (23 November 1979), UNGA Resolution A/RES/35/35 (14 November 1980), UNGA Resolution A/RES/36/0 (28 October 1981).

³⁹ Declaration on the Granting of Independence to Colonial Countries and Peoples. 4.

⁴⁰ Additional Protocol to the First Geneva Convention, Articles 20 and 51 (6); Customary International Law, Rule 146, International Committee of the Red Cross.

⁴¹ The Universal Declaration of Human Rights (UDHR) accords the right to life to every individual and which Israel violates through carrying out targeted and extrajudicial killings and using lethal force against Palestinians.

⁴² Universal Declaration of Human Rights, Article 20.

⁴³ Israel's excessive use of force also violates international law enforcement and hostilities paradigms.

⁴⁴ Israel's policies of suppression of Palestinian resistance violate its obligations as an Occupying Power under Articles 27 and 33 of the Fourth Geneva Convention, which require that protected persons should not be subject to acts of violence, threats, or collective punishment and Article 43 of the 1907 Hague Regulations which states that the occupying power must ensure the safety of the protected population and Article 46, which states that it should respect "the lives of persons".

detention; solitary confinement and isolation; torture and ill-treatment such as force feeding; the transfer or deportation of prisoners; conditional release; the detention and imprisonment of women and children; and the suppression of Palestinian civil society, identity and culture.⁴⁵ While Israel equates all forms of Palestinian resistance with terrorism and justifies its policy as self-defense and counterterrorism, as the occupying power, it has no such recourse or justification for its suppressive policies in the oPt.⁴⁶

28. Israel must abide by Articles 50 and 56 of the Fourth Geneva Convention in guaranteeing the rights of the protected population, namely those to education, food, medical care, health, and hygiene. Furthermore, the non-discriminatory access to services is protected in Article 25 of the ICCPR and in Articles 6, 11, and 12 of the ICESCR. The Committee on Economic, Social, and Cultural Rights has determined that the ability to access services and infrastructure is a basic aspect of the right to adequate housing.⁴⁷
29. Not only do Israeli policies prevent Palestinians from accessing their natural resources and severely reduce the enjoyment of basic services, Israel takes advantage of this coercive environment of its own creation to exploit Palestinian resources. The Occupying Power does not have the right to gain sovereignty or title to the occupied territory,⁴⁸ and is prohibited from gaining permanent control over the natural resources of that territory.⁴⁹
30. By exploiting Palestinian natural resources, including consuming over 86 percent of the water within the West Bank⁵⁰ and denying Palestinians access to resources, including to over 85 percent of Gaza's fishing waters, Israel is acting as a de facto sovereign power. A recent UNGA draft resolution affirmed that a part of the right to self-determination is the right of the Palestinian people to permanent sovereignty over their natural wealth and resources.⁵¹ Additionally, the denial of access to natural resources and services can and does form part of the coercive environment leading to the forcible transfer of Palestinians.

Conclusion

31. Analysis of the practices of demographic manipulation, annexation, and domination described here concludes that Israel has transitioned from a temporary administrator of occupied territory into a

⁴⁵ IHRL also necessitates that Israel abide by the UN treaties it has ratified, namely the ICESCR, ICCPR, CAT, CRC, and ICERD, which Israel violates through its ongoing torture of Palestinian prisoners, the illegal detention of minors, and the discriminatory application of force against the Palestinian people.

⁴⁶ Its application of lethal force is a violation of law enforcement and hostilities paradigms and international policing principles; and its imposition of its own language on the occupied population a violation of ICESCR.

⁴⁷ UN Committee on Economic, Social and Cultural Rights, "The right to adequate housing," General Comment No. 4, UN Doc. HRI/GEN/1/Rev.7 (1991), paragraph. 7.

⁴⁸ International Committee of the Red Cross (ICRC), "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)", 12 August 1949, Art. 8.

⁴⁹ Ibid. Articles 53 and 33; The Hague Regulations (1907)

⁵⁰ "Summer 2016 – Israel cut back on the already inadequate water supply to Palestinians". B'Tselem. 27 September 2016.

⁵¹ United Nations General Assembly, "Right of the Palestinian People to Self-Determination", A/HRC/25/L.36, 24 March 2014.

colonial sovereign power whose policies demonstrate the denial of Palestinians' inalienable rights, particularly the rights of self-determination and reparations (repatriation, property restitution, compensation and non-repetition). Israel is operating in clear and grave breach of its duties as an occupying power. These breaches of peremptory norms of international law do not merely blur the distinction between administrator and sovereign, but obliterate it.

32. While BADIL aims to demonstrate the current status of Israel's human rights record, these policies should come as no shock to the international community, as the UN General Assembly expressed its concern as early as 1974 about the colonization of the oPt.⁵² BADIL emphasizes that the international community should abide by the terminology outlined in this report and in the Declaration on the Granting of Independence to Colonial Countries and Peoples⁵³ as it is only through identifying and labeling practices of colonization that appropriate and legally enforceable channels of redress can be opened.
33. BADIL emphasizes that the international community, including third party states and international organizations, should use all available measures to end Israel's colonization of the oPt and its illegal denial of the Palestinian peoples' right to self-determination and reparations.

⁵² UNGA Resolution 3240 of 1974, paragraph 6.

⁵³ Adopted by the General Assembly in Resolution 1514 (XV) of 14 December 1960