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Illegal Israel's Policies in oPt Amount to Colonization

1. On the commemoration of the 50-year anniversary of Israel's occupation of Palestinian territory, BADIL calls upon the international community to explore the illegal policies of Israel as an occupying power, which amount to colonization of the occupied Palestinian territory (oPt), and the corresponding obligations of states.
2. 1967 marks not only Israel's conquest of Palestinian lands, population centers and natural resources by force, but also population transfer,¹ the displacement of more than 400,000 Palestinian refugees (today numbering 1.1 million), and the commencement of both the transfer of Jewish settlers/colonizers into occupied territory by Israel as well as the continuous dispossession of Palestinian residents across the oPt.
3. Over the past 50 years, under the guise of a belligerent occupation, Israel has relentlessly implemented and expanded its colonial regime of institutionalized material discrimination throughout the oPt. These policies and practices have resulted in the forcible internal displacement of over 330,000 Palestinians and the illegal transfer of over 590,000 Israeli colonizers into the oPt.

Colonization

4. Colonization is defined as a practice whereby the acts of a State have the cumulative outcome of annexing or unlawfully retaining control over territory, and thus, permanently denying self-determination to its indigenous population.² The practice of colonization in the oPt can be identified through three main policies that are completely prohibited and amount to grave breaches, crimes against humanity and/or war crimes, as well as breaches of peremptory norms under international law. These policies of sovereignty change, demographic manipulation, coercion, apartheid, suppression and fragmentation are not mere violations of the laws of occupation, but aim at permanently changing the status of the oPt and erasure of Palestine as pillars of the Israeli colonial regime. Israeli colonization is fundamentally contrary to core values of the international legal order, and triggers obligations on third-party states.

¹ See "The human rights dimensions of population transfer, including the implantation of settlers," E/CN.4/Sub.2/1993/17, 6 July 1993, at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/142/08/PDF/G9314208.pdf?OpenElement>.

² Declaration on the Granting of Independence to Colonial Countries and Peoples(1960).

Changing Sovereignty

5. In addition to changing many laws in place in oPt before 1967 in contravention of international law,³ Israel is changing the sovereignty of the oPt by illegally imposing its own legal system in East Jerusalem in order to annex the territory. In the rest of the West Bank, Israel has imposed a two-tier system, whereby Israeli civil laws are extraterritorially applied to Jewish-Israeli colonizers (settlers), while Palestinians are subjected to military rule. 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.⁴
6. 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 on the oPt.⁵ The Israeli Government Minister claimed the bill is “[t]he first step towards complete regulation, namely, applying Israeli sovereignty over Judea and Samaria⁶.”⁷ This law retroactively legalizes any colonial outposts built on private Palestinian land under Israeli law, effectively allowing the illegal expropriation of private Palestinian lands and cementing colonization within the Israeli judicial system.
7. The “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is a grave breach under the Fourth Geneva Convention,⁸ and is also considered a war crime under the Rome Statute of the International Criminal Court (ICC).⁹ Israeli practices also directly contravene UN Security Council Resolutions 465 of March 1980 and 2334 of December 2016, which reaffirmed the illegality of Israeli colonies and the corresponding obligation of all states to engage in effective countermeasures.¹⁰

Changing the Demographic Composition

8. Israel has been forcibly transferring the occupied population, and transferring civilians into occupied territory in order to alter the demographic composition of the oPt, including Jerusalem, since 1967. Both practices constitute grave breaches of the Fourth Geneva Convention, and a crime against humanity and/or war crime under Articles 7 and 8, respectively, of the Rome Statute of the ICC.
9. Israel, the occupying power, has illegally established, backed, and/or supported the construction of 246 colonies¹¹ including 100 outposts in the oPt.¹² These colonies and outposts host around 590,000 Israeli colonizers, a number that has doubled in the last 20 years, and is expected to keep increasing.¹³

³ The Hague Regulations Respecting the Laws and Customs of War on Land, The Hague, 1907, Article 43.

⁴ United Nations General Assembly Resolution A/HRC/16/72, 2011, para. 32(b).

⁵ Peace Now, Legalization Law Will Stain Israel’s Law Book, January 2017, http://peacenow.org.il/en/legalization_law

⁶ Israeli name for the West Bank.

⁷ 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/>

⁸ Article 147 of the 1949 Geneva Convention IV. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule50

⁹ Article 8(2)(a)(iv) Rome Statute of the International Criminal Court.

¹⁰ <https://unispal.un.org/DPA/DPR/unispal.nsf/0/5AA254A1C8F8B1CB852560E50075D7D5>

¹¹ As of May 2017.

¹² Peace Now, Data, n.d., <http://peacenow.org.il/en/settlements-watch/settlements-data/population>

¹³ Oxfam, 20 Facts: 20 Years Since The Oslo Accords, 2013, <https://www.oxfam.org/sites/www.oxfam.org/files/oxfam-oslo-20-factsheet.pdf>

10. The existence of colonies and their associated regime is inextricably connected to the forcible transfer of Palestinians. The denial of use and access to and illegal confiscation of Palestinian land, essential steps in colony building, often lead to the direct forcible transfer of Palestinians via forced evictions.
11. In other cases, the denial of use and access to land results in the loss of livelihood, denial of freedom of movement and impeded access to essential services. This coercive environment derived from colony creation and/or expansion puts pressure on Palestinians to leave their homes. This involuntary displacement due to a coercive environment, when taking place without grounds permitted under international law, also constitutes the serious crime of population transfer.¹⁴

Coercion, Suppression and Fragmentation

12. A coercive environment does not only result from the physical establishment of colonies, but also from their associated regime of security zones, physical barriers and colonizers-only roads.
13. The presence of colonizers is often accompanied with physical and/or verbal attacks and harassment against Palestinians and destruction of their properties. As of 1 May 2017, settlers have perpetrated 46 violent incidents against the Palestinian people in the oPt.¹⁵
14. To facilitate implementing policies of colonization, including population transfer, Israel also has developed a system of control and suppression of Palestinians in the oPt. By suppressing Palestinian resistance through excessive use of force, unlawful killings, collective punishment, widespread arrests and other measures, Israel seeks to break Palestinian society's resistance to the implementation of Israel's colonization.
15. The infrastructure related to colonies and population transfer also results in fragmentation of the Palestinian people and their communities. Colonies across the West Bank are connected to Israel through settler-only roads built on Palestinian land. The creation of these roads does not only involve confiscation and denial of use of land for Palestinians, but also impedes the freedom of movement of Palestinians. They often divide and seclude Palestinian communities from one another, prohibiting them from reaching essential services such as education or healthcare, or to access work and sources of livelihood and subsistence. The denial of Palestinian's movement between the Gaza Strip and the West Bank has rendered these two areas completely isolated from each other, and from Palestinians inside Israel. The construction of the Annexation and Separation Wall and its associated closure system, separating East Jerusalem from the rest of the West Bank, also has intensified the fragmentation. The division of the West Bank into Areas A, B and C during the Oslo Accords and its associated system of military checkpoints perpetuate this fragmentation as well.

Conclusion and Recommendations

16. Israeli practices pertaining to the oPt and its Palestinian population cannot be regarded merely as a 'military occupation.' Objective consideration of these actions reveals an Israeli policy of territorial annexation and colonization. The reality on the ground reflects a drastic alteration of the demographic composition of a territory by way of removal of one ethnic group, replaced with a privileged other – as

¹⁴ The Rome Statute Elements of Crimes. Article 6(e).

¹⁵ OCHA oPt, Protection of Civilians Weekly Report, 4 May 2017, <https://www.ochaopt.org/content/protection-civilians-weekly-report-18-april-01-may-2017>

illustrated by the increase on the number of colonizers over the past two decades, leading to spatial domination of land and, finally, the permanent annexation of that territory.

17. In both their temporal duration and their systematic assault on a whole host of Palestinian rights—not least that of which is self-determination—Israeli actions are of a nature that renders such terminology inadequate. The UNHRC should address the situation in the oPt as one of colonization and assume a proactive role in urging other UN organs and agencies to adopt this same language and suitable analytical approach in their consideration of Israeli actions inside the oPt.
18. To address the situation in the oPt as one of colonization is not only a matter of terminology, but a decision with legal and practical consequences for third parties. Belligerent occupation does not accurately reflect the ongoing Israeli policies and, thus, it is more appropriate to adopt accurate and legally grounded terminology and apply the analytical lenses of population transfer and colonialism when reviewing Israeli actions affecting the oPt. This clarification also would emphasize the need for more concerted efforts from third-party states to put an end to this illegal situation and implement the rights of the Palestinian people.¹⁶

¹⁶ Falk, 13 January 2014. A/HRC/25/67. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (hereafter, 'Falk'). United Nations Human Rights Council. Para.7