

Agenda Item #2

Written statement submitted by BADIL Resource Center for Palestinian Residency and Refugee Rights
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The International Community Must Include Israel's Violations of Palestinian Refugees' Rights in its Accountability Framework and Measures

By the end of 2018, about 41 percent of the total Palestinian population of the Occupied Palestinian Territory of the West Bank and Gaza Strip (OPT) were registered refugees - amounting to 1,197,679, - in addition to 344,599 internally displaced persons (IDPs).¹ Palestinian refugees and IDPs have been primary victims of Israel's international crimes since its creation in 1948, and continue to be so through Israel's active denial of their rights as displaced persons and its pursuance of apartheid policies and practices aimed at bolstering a coercive environment and fostering protracted displacement. Ensuring accountability and justice in the OPT according to applicable international humanitarian and human rights law must uphold Palestinian refugees and IDPs' rights.

Responsibility: The Obligation to Recognize Israel's Violations of Refugee Rights

Since 1948, Israel has been pursuing its enterprise of widespread and systematic policies and practices of forcible displacement and transfer of the Palestinian people, which is a crime of customary international law, prohibited under the Fourth Geneva Convention, and constitutes a crime against humanity under the Rome Statute. It departs from the active denial of Palestinian refugees' right of return and other durable solution set forth in UN General Assembly Resolution 194(III) of 1948, starting with barring refugees from returning to their original homes (1950 Law of Return), mass denationalization against Palestinian refugees (1952 Israeli Citizenship Law), confiscation of private property (1950 Absentees' Property Law), and followed by contemporary smear campaigns against UNRWA to encourage its defunding. It persists until today through the implementation of distinct policies and practices aimed at fostering a coercive environment for the Palestinian people. Such policies and practices include: denial of residency rights, installment of a permit regime, land confiscation and denial of use, discriminatory zoning and planning, segregation, denial of natural resources and access to services, suppression of resistance and state complicity with non-state actions.²

Reparations and Durable Solutions: Israel's Obligation to Respond for Israel's Violations of Palestinian Refugee and IDPs Rights

Israel has strived to limit the scope of durable solutions to local integration and resettlement, actively denying Palestinian refugees' right of return. Palestinian refugees and IDPs are entitled as per international refugee law to voluntary return to their homes as a primary durable solution to their displacement, which is a human right enshrined in customary international law that must be accompanied by Israel's recognition of their nationality. Returning refugees should enjoy full civil and social rights upon return. Palestinian refugees and IDPs are additionally entitled as per international law to real or in-kind property restitution - whether personally or to his or her lawful successors, financial and in-kind compensation for displacement, loss of property and use, rehabilitation and guarantees of non-repetition. The primary durable solution for Palestinian refugees and IDPs is voluntary return, together with housing and property restitution, and compensation for loss of or damage to property. Local integration in the host state or resettlement in third countries are durable solutions contingent upon the principle of refugee's free choice not to return to his/her place of origin.

¹ BADIL, Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018, Vol. ix (2019), 21, 26, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/survey/survey2016-2018-eng.pdf>

² See BADIL, Series on Forced Population Transfer: The Case of Palestine, working papers no. 15 - 23, available at: <https://www.badil.org/en/publication/research/working-papers.html>

Enforcement: The Obligation to Enforce Sanction for Israel's Violations of Refugee Rights

Accountability for human rights violations in the OPT lies in the international community's responsibility to ensure respect by Israel of their obligations towards Palestinian refugees and IDPs in the OPT. Under international law, third states hold a negative duty not to encourage, aid or assist Israeli policies and practices of apartheid aimed at fostering ongoing forcible displacement and transfer of Palestinians from and within the OPT; as well as a positive duty to prevent and put an end to Israel's ongoing displacement of Palestinians.

Palestinian refugees residing in the OPT are entitled to a special protection as refugees, as well as human rights and humanitarian protection as civilians living under military occupation. The Human Rights Council should not only give due regard to the rights of 41 percent of OPT residents who are refugees, but must consider them in setting accountability mechanisms. Failure to ensure accountability for Israel's crimes towards Palestinian displaced persons buttresses its impunity and the international community's complicity in Israel's violations of international law.

It remains third party states' responsibility to ensure Israel's accountability through:

- Requesting the Special Rapporteur on the OPT to conduct a fact-finding mission into crimes of international human rights and humanitarian law that fosters the ongoing forcible transfer and displacement of the Palestinian people in the OPT;
- Condemning Israel's wrongful acts, ceasing any aid and assistance, imposing a military embargo, exerting economic and diplomatic sanctions in line with Chapter VII of the UN charter to bring Israel into compliance with its international obligations towards Palestinian refugees, in particular ensuring their access to effective remedies and reparation, and the realization of their right of return, as protected under international refugee law and relevant United Nations resolutions.
