

Submitted to

The Special Rapporteur on the Right to Adequate Housing

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Regarding

***Israel's Disregard for International Norms and Standards:
Structural Discrimination and Forced Population Transfer inside the
E1 Corridor***

Submitted by

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Israel's Disregard for International Norms and Standards: Structural Discrimination and Forced Population Transfer inside the E1 Corridor

BADIL Resource Center for Palestinian Residency and Refugee Rights draws to the Special Rapporteur's attention the desperate situation of Palestinian Bedouin communities within Area C of the occupied West Bank; particularly inside the 'E1 corridor' on the outskirts of Jerusalem. Though - for reasons to be shortly addressed - this subject may not fit neatly within considerations of sub-national government, it does raise questions of extreme importance on the topic of Israeli accountability to international legal norms and standards.

Overview of Area C

The analytical lens of sub-national government is not one readily applicable to Israel's belligerent military occupation of the West Bank. Under the Oslo II Accord, full security and administrative control of Area C (a land classification accounting for more than 70 percent of West Bank territory) lies with the Israeli Civil Administration (the authority responsible for overseeing Israeli military rule in the oPt and the concomitant colonization of Palestinian land); itself part of the Coordinator of Government Activities in the Territories, which sits within the Israeli Defense Ministry.

Such unfettered control has resulted in the complete spatial domination of Palestinian land by the occupying power. Palestinian communities within Area C are subject to an oppressive legal framework consisting of selectively-deployed Ottoman, British Mandate and Jordanian-era land law, supported by an extensive web of Israeli military orders. It is a framework designed to serve the interests of the Israeli state; that is to effect the displacement of non-Jewish inhabitants - primarily through often arbitrary declarations of large swathes of land as belonging to the 'state' - and to replace them with illegal Jewish colonies.

In addition to declarations of state land, this initial phase of displacement is assisted by Israel's designation of land as closed military zones; areas under the jurisdiction of Israeli colonies; areas of existing and planned road networks, and the route of the Annexation Wall. The collective result of these classifications is that Palestinian construction is effectively prohibited in 70 percent of Area C. For the remaining 30 percent where Palestinian construction is - in theory at least - permitted, the applicable planning law is established by the Jordanian *Towns, Villages, and Building Planning Law* of 1966, subsequently modified by the Israeli *Military Order Concerning Towns, Villages and Buildings Planning Law (Judea & Samaria) No. 418 of 1971*.

This law requires the existence of a detailed and dedicated planning scheme before construction can take place, with Israeli Military Order No. 418 stripping Palestinian representation from any such process by way of annulment of Local Planning Committees. Instead, this responsibility was transferred to the Israeli Civil Administration's Local Planning and Licensing Sub-Committee. Similarly, the responsibility for the issuing of

building permits lies with the Secondary Planning Committee, which is also part of the Civil Administration.

Under international humanitarian law, the introduction of new legislation or the amendment of existing legislation in occupied territory is subject to strict stipulations. Accordingly, such actions are only permitted if they serve to restore/maintain public order; if they contribute to the genuine security of the occupation forces; if they assist the occupant in fulfilling obligations under IHL and/or IHRL; or if such actions enhance the civil life and wellbeing of the protected population during prolonged occupation.ⁱ This is manifestly not the case in Israel's removal of any appreciable Palestinian influence from the planning process within Area C, particularly where Bedouin populations are concerned. Furthermore, as will be demonstrated, neither these local communities nor international actors are able to hold the Civil Administration to account for the latter's systematic perpetration of rights abuses.

The Case Study of E1

The two-pronged strategy of displacement and colonization which characterizes Israel's occupation of the Palestinian territory is laid bare through consideration of the case of the E1 corridor; a geographically significant parcel of land which lies between Jerusalem and the illegal Israeli colony of Ma'ale Adummin. For years, Israel has continuously sought to transfer its own citizens into this section of occupied territory, in direct contravention of Article 49 of the Fourth Geneva Convention and with the strategic intention of merging Jerusalem and Ma'ale Adummin. In doing so, Jerusalem would become surrounded by a bank of Jewish colonies, making Palestinian access to the intended national capital virtually impossible, whilst the West Bank would be effectively severed in two, ending any remaining hope of a contiguous geographic entity.

Such plans can only be achieved if preceded by the displacement of the resident Bedouin communities, more than 85 percent of whom are refugees as a result of the creation of Israel in 1948 and the subsequent displacement which has followed.ⁱⁱ In 1997, over 150 families were evicted – some forcibly - and relocated to a site close to the Abu Dis garbage dump, along with its many associated health risks.ⁱⁱⁱ This relocation site would, in itself, appear to be a clear breach of Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, which afford to individuals the right to the highest attainable standard of mental and physical health. Meanwhile, Ma'ale Adummin continues to expand.

The Bedouins of E1 – predominantly of the Jahalin tribe - who have thus far avoided eviction now number roughly 3000.^{iv} As Israel refuses to acknowledge any claim of the Bedouin to land title, only half of these communities have been connected to the public water network, none have been connected to the public electricity network. For the same reason, applications for building permits are typically refused, and between 2008 and 2012, 97.7 percent of building permit applications in Area C submitted by Palestinians were rejected by Israeli authorities.^v The refusal to acknowledge Bedouin land title,

combined with a virtually complete prohibition of new construction has resulted in the vast majority of Bedouin homes in E1 being subject to pending demolition orders.

Furthermore, in April 2014, Israel demolished 18 emergency residential structures which had been provided to Bedouin communities in Jabal al-Baba by the European Union-funded humanitarian division, ECHO.^{vi} In addition, access to crucial grazing land is made increasingly problematic through a combination of physical and legal barriers, as well as persistent threats of violence from colonizers. The cumulative result is the artificial creation of an entirely desperate living environment.

During this period, the colonist movement has repeatedly petitioned the Israeli courts seeking the execution of demolition orders against Bedouin property. The state has advised that such orders will be stayed in anticipation of the creation of the resettlement sites. This is therefore merely a temporary reprieve, and according to the Coordinating Office of Government Activities in the Territories (COGAT), once the resettlement plans are finalized and building plots allocated, all 'illegal' Bedouin construction "will be dealt with in accordance with the law". The Israeli NGO, BIMKOM, has suggested alternative relocation sites in E1 for Bedouin communities, but these have been rejected out of hand by the state. This rejection highlights the lack of key procedural safeguards – such as the legal concept of rationality¹ - for Palestinians within the existing Israeli-implemented legal system.

In collaboration with the leveraging of these artificially created "push factors", Israel intends to relocate the remaining Bedouin from E1 and across the West Bank to three separate townships, all located in Area C, with the two largest of these sites - Nu'eimeh North and Armonot Hashmonaim – to be built near Jericho, and to house up to 6000 Bedouin from a range of tribes. These plans – put forward under a pretense of improving Bedouin quality of life – are in clear breach of international humanitarian law, have not been based on any form of adequate consultation with those affected (in violation of the recommendation of Israel's own Supreme Court) and show complete disregard for Bedouin culture and tradition. This latter point represents a clear contradiction of established international standards on the rights of indigenous people. For instance, Article 8 of the United Nations Declaration on the Rights of Indigenous People requires states to:

"Provide effective mechanisms for prevention of, and redress for [...] any action which has the aim or effect of dispossessing them of their lands, territories or resources [...] [and] any form of forced population transfer which has the aim or effect of violating or undermining any of their rights."^{vii}

Should these Israeli plans be realized, the human impact would be devastating, whilst UN Secretary General, Ban Ki-Moon, has previously stated that their implementation would amount to forced transfer; prohibited under international humanitarian and human rights law.^{viii} It should be noted, however, that even in the event of a transfer conducted in breach

¹ Public authorities are entitled to choose between different alternatives; the key is that they must offer a clear and lucid explanation - with a clear record of the chain of reasoning - as to why they chose one and not the other. At no point in the administrative process is the concern for restraint of arbitrary power more significant than in connection with land use plans, planning and regulation.

of international law, a number of legal obligations remain applicable, and Article 27 of the Fourth Geneva Convention states:

“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.”

Furthermore, General Comments 4 & 7 of the Committee on Economic, Social and Cultural Rights outline a number of procedural safeguards which states should implement to protect communities against the effects of forced eviction. These include adequate consultation with affected communities, consideration of alternative plans, the need for fully-informed consent as to any relocation site and adequate provision of legal services and remedies. In addition, provisions must be made that allow for displaced communities to continue in their traditional ways of life. In Israel’s execution of its powers as occupier, it has so far failed each of these requirements in turn.

This initial phase of forced population transfer is to be followed by the widespread transfer of Israeli-Jewish colonizers. The details of this phase can be found within Plan 420/4 - the E1 master plan drafted in 1995 and subsequently approved in 1999 – which lays out in express terms the intended future of this land.

Those lands designated as belonging to the state have been incorporated into the jurisdiction of the Ma’ale Adummin colony. Palestinians wishing to enter this area are required to be in possession of the necessary permit, though this ruling is typically only enforced in built up areas. The planned construction of some 3000 housing units adjacent to Ma’ale Adummin north of Route 1 and West of Route 417 (as provided by Plan 420/4) will prevent Palestinian access to these areas, and transform the existing road network – currently used by both Palestinians and colonists alike – into a series of thoroughfares available only to the latter. In addition, the borders of this jurisdiction roughly align with the intended route of the Israeli Wall. Should this planned route of the Wall be reflected in fact, the result would be the de facto annexation of some 4800 hectares (48 km²). This land grab would also include parcels of privately-owned Palestinian land with the result that even areas to which the Civil Administration has been unable to exert a claim would still effectively be confiscated, with their owners denied access.

Delayed by strong international condemnation, the E1 plans have not yet been put fully into effect, though construction of the *Judea and Samaria Police District Headquarters* has taken place, along with an extensive road and infrastructure network to serve as the foundation for the aforementioned housing units.

Concluding Comments and Recommendations

Housing policy has thus become another tool with which the State of Israel carries out an entirely cynical dual agenda of population transfer and colonization. This represents a clear and grave breach of key principles of international law, as well as a brazen disregard for a range of other important legal norms and standards. Yet despite condemnation from the international community, as well as from the United Nations, numerous NGOs and other significant actors, these discriminatory and unlawful practices against Bedouin populations in E1 and further afield continue largely unchecked. To the contrary, the applicable legal

system in both its conception and implementation contains an inherent structural bias towards the interests of the state and its illegal colonies. Israeli accountability therefore exists in no effective form, and the result is the continued displacement and suffering of indigenous communities.

BADIL, therefore, makes the following recommendations:

1. The Special Rapporteur must condemn the illegality of Military Order No. 418 - the application of which directly contravenes Article 43 of the Hague Conventions and Article 63 of the Fourth Geneva Convention – and advocate for control of planning in Area C to be brought back within Palestinian jurisdiction
2. The Special Rapporteur must, in line with the comments of the UN Secretary General, condemn in the strongest possible terms Israel’s policies which directly result in forced population transfer
3. The Special Rapporteur must draw attention to the need for the implementation of practical measures to ensure respect for – and protection of - Palestinian Bedouins Rights both in Israel and the occupied Palestinian territory
4. Third party states and international organizations must hold the state of Israel accountable for the grave human rights abuses it perpetrates through the Civil Administration

ⁱ Article 64. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

ⁱⁱ OCHA. *Area C Vulnerability Profile*

ⁱⁱⁱ Maan News. 10.03.13. *Experts probe reach of toxins from West Bank landfill*. Available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=573286>

^{iv} OCHA. *Area C Vulnerability Profile*

^v Civil Administration’s response to written query from B’Tselem, 2013

^{vi} Applied Research Institute – Jerusalem. Report on the Israeli Colonization Activities in the West Bank & the Gaza Strip. Volume 189 , April 2014 Issue. Available at: http://www.arij.org/files/arijadmin/April_2014.pdf

^{vii} UN General Assembly, “United Nations Declaration on the Rights of Indigenous Peoples: Resolution / Adopted by the General Assembly,” October 2, 2007, UN Doc. A/RES/61/295,

^{viii} Report by the UN Secretary General to the UN General Assembly, A/67/372, 14/09/2012, para.37