

## **Badil's Written Report in Response to Israel's Fifth Periodic Report to the UN Human Rights Committee (CCPR/C/ISR/5)**

### **I. INTRODUCTION**

Badil Resource Center for Palestinian Residency and Refugee Rights (Badil) was established in 1998 to defend and promote the rights of Palestinian refugees and displaced persons regardless of where they reside or when they were displaced. Badil is guided by a firm belief in the principles of equality, justice and human rights as enshrined in international law and in the role of collective action by civil society in bringing about social and political change. Badil is registered as a non-governmental organization in the oPt, and has consultative status with ECOSOC. For further information, please see: [www.badil.org](http://www.badil.org)

Badil appreciates the opportunity to submit information to the UN Human Rights Committee with regard to Israel's implementation of the International Covenant on Civil and Political Rights (ICCPR), in response to Israel's Fifth Periodic Report (CCPR/C/ISR/5).

This written report is organized by, and seeks to draw the attention of the Committee to, core issues that were not satisfactorily addressed by Israel's Fifth Periodic Report, namely: the applicability of the ICCPR in the occupied Palestinian territory (oPt); the discriminatory nature of Israel's Nation State Law which constitutes part of a larger discriminatory legal system that denies the Palestinian people's right to self-determination; and Israel's apartheid pillars that cause the forcible transfer of Palestinians.

### **II. APPLICABILITY OF THE ICCPR IN THE OPT (ARTICLE 2)**

Badil supports the view, in accordance with the International Court of Justice's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the oPt, that the ICCPR, along with other human rights instruments, is applicable outside national territory, and specifically in the West Bank and Gaza.<sup>1</sup> Specifically, Israel is responsible for implementing its human rights obligations arising from the ICCPR, both within its borders and in the oPt.

Such a position was also supported by the UN Human Rights Committee in all its previous concluding observations, according to which it has recognized that the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the ICCPR.

It should also be noted that Palestine's accession to the ICCPR does not release Israel from its obligations under the Covenant, given that the situation of occupation persists, and Israel continues to exercise effective jurisdiction in the Palestinian territory, thus falling under article 2, paragraph 1, of the ICCPR.<sup>2</sup>

---

<sup>1</sup> International Court of Justice, "Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion)," July 9, 2004, para. 137.

<sup>2</sup> "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant." UN General Assembly, "International Covenant on Civil and Political Rights," December 16, 1966, A/RES/2200(XXI)[A-C], Article 2(1).

### III. ISRAEL'S NATION STATE LAW: DENIAL OF PALESTINIAN SELF-DETERMINATION (ARTICLE 1)

Self-determination, as a right owed to a people, allows them to “freely determine their political status and freely pursue their economic, social and cultural development”<sup>3</sup> on their land. As a peremptory norm, the recognition of a people and their consequent entitlement to the right to self-determination constitutes a foundational basis for independence, autonomy, and statehood in the land where they exist.

The United Nations has recognized the Palestinian people's right of self-determination in numerous resolutions, including Resolution 2672(XXV) of 1970, Resolution 3236 (XXIX) of 1974, Resolution 66/146 of 2012, and Resolution 67/158 of 2013.<sup>4</sup>

As noted by the International Court of Justice in its 2004 Advisory Opinion on the legal consequences of Israel's wall in the oPt, Palestinian self-determination is unequivocal, whereby the court 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.”<sup>5</sup>

The Israeli legal system embodies the denial of the Palestinian people's right to self-determination through laws that undermine and thwart Palestinian self-determination. Israel's *Basic Law: Israel – National State of the Jewish People 5778-2018* (hereinafter the Nation State Law) is a prime example of the role that Israeli law plays in denying Palestinian self-determination, which states that “[t]he exercise of the right to national self-determination in the State of Israel is *unique* to the Jewish people [our emphasis].”<sup>6</sup>

In its Fifth Periodic Report Submitted by Israel under Article 40 of the Covenant, Israel has reaffirmed that “[t]he purpose of this Basic Law is to enshrine in a Basic Law the character of the State of Israel as the nation-state of the Jewish people and the state in which the Jewish people uniquely exercise their right of self-determination.”<sup>7</sup>

---

<sup>3</sup> United Nations General Assembly [UNGA], International Covenant on Civil and Political Rights [ICCPR], 999 UNTS 171, 16 December 1966, art.1(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [accessed 30 January 2022]; UNGA, International Covenant on Economic, Social and Cultural Rights [ICESCR], 993 UNTS 3, 16 December 1966, art.1(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> [accessed 30 January 2022].

<sup>4</sup> See UNGA, United Nations Relief and Works Agency for Palestine Refugees in the Near East, A/ RES/2672(XXV), 8 December 1970, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/E7C4B66C913EC0DC852560DE006E8F1B> [accessed 30 January 2022]; UNGA, Question of Palestine, A/RES/3236(XXIX), 22 November 1974, available at: <https://unispal.un.org/unispal.nsf/0/025974039acfb171852560de00548bbe> [accessed 30 January 2022]; UNGA, Right of the Palestinian People to Self-Determination, A/RES/67/158, 26 February 2013, available at: <https://daccess-ods.un.org/tmp/684233.233332634.html> [accessed 30 January 2022].

<sup>5</sup> International Court of Justice, “Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion),” July 9, 2004, para. 149.

<sup>6</sup> Basic Law: Israel – the Nation State of the Jewish People, 5778-2018, unofficial translation by Dr. Susan Hattis Rolef, available at: <https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>

<sup>7</sup> United Nations Human Rights Committee, Fifth periodic report submitted by Israel under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019, CCPR/C/ISR/5, 30 October 2019.

Such justifications, based on a definition of “the State of Israel as a Jewish and democratic State,”<sup>8</sup> are the basis of a legal framework that enshrines territorial and national exclusivity for Jews at the expense of Palestinian self-determination, violating Israel’s obligations under Article 1 of the ICCPR.

As Badil has noted in a previous publication,<sup>9</sup> the Nation State Law further constitutionalizes the superiority of the Jewish people and preferences their priorities as a people, with the necessary corollary of this being the systematic inferiorization of Palestinians. Within this structure, the Palestinian people are explicitly denied their right to self-determination, excluded by omission and incompatibility with national priorities of settlement and return, and their language and other cultural identifiers diminished in standing or unacknowledged in entirety.

#### **IV. ISRAEL’S FORCED POPULATION TRANSFER LAWS AND POLICIES: CONSTITUTIONALIZED COLONIAL-APARTHEID REGIME**

The Nation State Law does not sit in isolation. It is part of a larger system of oppression and domination that is applied exclusively to Palestinians across the whole of Mandatory Palestine. Such a dual politico-legal system that implements systematic discrimination against Palestinians and promotes Jewish superiority inside Israel and the oPt meets the definition of apartheid, in violation of Israel’s obligations under international human rights law, including 2(1), and 26 of the Covenant. Altogether, this system works to prevent the possibility of Palestinian self-determination for the foreseeable future.

The denial of Palestinian self-determination constitutes a main goal of Israel’s colonial strategy aimed at perpetuating illegal control over Palestinians and their land and changing the demographic composition of the territory. This is pursued by Israel through both the displacement of Palestinians and the denial of their basic rights. Israel not only denies Palestinian refugees and IDPs their right to reparations (return, restitution, and compensation),<sup>10</sup> but also applies a myriad of discriminatory official forcible transfer policies, such as denial of residency, land confiscation, restrictions on use and access to land, and subjects Palestinians to fragmentation, segregation, and isolation.

#### **Denial of Palestinian refugee’s right to reparation (return, property restitution, compensation)<sup>11</sup>**

Palestinian refugees are excluded from the *Law of Return* (1950), which entitles only Jews to enter “Eretz Israel”. *The Citizenship Law* (1952) has denationalized the 1948 Palestinian refugees and their descendants in a discriminatory fashion based on their national origin, and de facto denied them their right to return, readmission to their homes of origin within the territory that became Israel in 1948. The State of Israel

---

<sup>8</sup> Ibid.

<sup>9</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *The Nation State Law: The Culmination of 70 Years of Israeli Apartheid and Colonization*, Position Paper (Bethlehem: BADIL, 2018), available at: [https://www.badil.org/cached\\_uploads/view/2021/04/20/nationstatelaw-positionpaper-badil-oct2018-1618905362.pdf](https://www.badil.org/cached_uploads/view/2021/04/20/nationstatelaw-positionpaper-badil-oct2018-1618905362.pdf)

<sup>10</sup> See the Law of Return, 5710–1950, 4 LSI 114 (1949–1950) (Isr.) and the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, 8 LSI 133, (5714-1953/54), (Isr.). The latter of which was immediately preceded by a 1948 military order to the same effect, which together served to deny Palestinian return.

<sup>11</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine — Denial of Reparations*, working paper no. 22 (Bethlehem: BADIL, 2018), available at: [https://www.badil.org/cached\\_uploads/view/2021/04/19/wp22-reparations-of-reparations-1618823911.pdf](https://www.badil.org/cached_uploads/view/2021/04/19/wp22-reparations-of-reparations-1618823911.pdf)

denies not only the right of 1948 Palestinian refugees to return, but also the right of the 1967 Palestinian refugees to return to their country of origin, namely in the oPt.

In an attempt to prevent Palestinian refugees from returning to their homes Israel retains the authority to make the final determination on permanent residency, including those related to issues of family reunification of Palestinians not registered in the 1967 census, and controlling the return/ entry/ admission of Palestinians to the oPt. Also, in an attempt to prevent Palestinian refugees from and repossessing their property, Israel expropriated their property in an illegal, discriminatory and arbitrary manner before and/or during exile, subsequently allocating most of the refugees' property to Jewish users and settlements. The property of the Palestinian refugees, displaced persons IDPs was classified as "absentees' property" under the *Absentees' Property Law (1950)* or abandoned property under the *Order Regarding Abandoned Property (private property), Judea and Samaria, 5727- (1967)*.

### **Denial of Residency<sup>12</sup>**

Israel's *Entry into Israel Law of 1952* allows the automatic revocation of residency status of Palestinian residents of East Jerusalem who leave Israel to live elsewhere, which is understood to be equivalent to expulsion constituting a policy tool aimed at controlling the demographic composition of the territory.<sup>13</sup>

In addition, Israel's *Nationality Law (Amendment No. 9) (Authority for Revoking Citizenship)* permits the revocation of citizenship on the grounds of "a breach of allegiance to the state", which includes the act of naturalization or obtaining permanent residency status in states defined as "enemies", as well as in the Gaza Strip. Over the years, Israel has applied this law to Palestinian citizens, but never to Jewish Israelis.

Badil understands that revoked residency is equivalent to expulsion, in flagrant violation of article 12 of the ICCPR, and constitutes a policy tool aimed at controlling the demographic composition of the territory, as well as at pursuing the declared intention of limiting the Palestinian population of Jerusalem fewer than 28 percent.

### **Restrictions on Use and Access to Land<sup>14</sup>**

Numerous laws and policies in the West Bank, Gaza, and Israel, including East Jerusalem, restrict Palestinian landowners' access to and use of their land. Even though ownership, in these cases, is not legally transferred from the Palestinian landowner to the State of Israel, the owners are forbidden from accessing or using their land altogether or in the absence of a special permit, transferring *de facto* ownership to Israel. Thus, although the Palestinian land owner still holds *de jure* ownership of the land, their *de facto* ownership has been transferred to Israel.

---

<sup>12</sup> See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine – Denial of Residency*, working paper no. 16 (Bethlehem: BADIL, 2014), available at: [http://badil.org/phocadownload/Badil\\_docs/publications/wp16-Residency.pdf](http://badil.org/phocadownload/Badil_docs/publications/wp16-Residency.pdf).

<sup>13</sup> Ibid.

<sup>14</sup> See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine – Land Confiscation and Denial of Use*, working paper no. 21 (Bethlehem: BADIL, 2017), available at: [https://www.badil.org/cached\\_uploads/view/2021/04/19/wp21-lc-1618823891.pdf](https://www.badil.org/cached_uploads/view/2021/04/19/wp21-lc-1618823891.pdf)

Israel's restrictions on use and access to Palestinian land, amounting to *de facto* confiscation, are the result of: the annexation wall, seam zones, closed military and firing zones, declaring a given land as state land, abandoned property, and/or public purposes.

### **Israel's Fragmentation, Segregation, and Isolation of the Palestinian People<sup>15</sup>**

Moreover, Israel applies policies which subject Palestinians to different legal regime, that disregard and disrespect their rights in distinct ways, to fragment the Palestinian population. In so doing, these laws and policies serve to weaken the cohesiveness, identity and capacity for self-determination as a Palestinian people.

Added to this, there is also a complex permit system keeps the Palestinian community segregated;<sup>16</sup> there are severe restrictions on the conferral of legal status by marriage or birth, which inhibit the capacity for formation of unified families and connections between Palestinians from different areas;<sup>17</sup> and tight economic and political controls and oppression constrain any opportunity for unity.

It is these long-standing laws and policies that establish the system of apartheid in Mandatory Palestine. What the Nation State Law does is to make an arguably debated state of apartheid, incontrovertible. This law embeds this apartheid reality into the foundation and character of the State, in that, as a constitutional law, it authorizes and requires all State institutions and decision-makers to operate within the framework of a now intrinsically discriminatory state structure.

By constitutionally declaring Israel to be a state for the Jewish people above all else, a legal declaration Israel had to-date resisted stating in law, if not in practice, Israel has become the only state to define its sovereignty based on the ethnicity of a people. In so doing, it has put the issue of whether or not it is an apartheid state beyond question.

Altogether, the Nation State Law lays bare the underlying intention of Israel, with regards to Palestine and its negotiations with Palestinians. More than facilitating annexation and grounding apartheid in the character of the State, the Nation State Law carries the fundamental hallmarks of a colonial enterprise. Territorial acquisition and control being one of the core features of colonization. The other being the denial of self-determination to the people of the land, to which the aforementioned policies of apartheid are explicitly directed.

---

<sup>15</sup> See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine – Segregation, Fragmentation, and Isolation*, working paper no. 23 (Bethlehem: BADIL, 2020), available at: [https://www.badil.org/cached\\_uploads/view/2021/04/19/wp23-sfi-1618823935.pdf](https://www.badil.org/cached_uploads/view/2021/04/19/wp23-sfi-1618823935.pdf)

<sup>16</sup> See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine – Instalment of a Permit Regime*, working paper no. 18 (Bethlehem: BADIL, 2015), available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp18-FPT-Israeli-permit-system.pdf>

<sup>17</sup> See BADIL, *Forced Population Transfer: The Case of Palestine – Denial of Residency*, working paper no. 16 (Bethlehem: BADIL, 2014), available at: [https://www.badil.org/cached\\_uploads/view/2021/04/19/wp16-residency-1618823152.pdf](https://www.badil.org/cached_uploads/view/2021/04/19/wp16-residency-1618823152.pdf)

Israel is failing to respect the Palestinian right to self-determination by denying them the possibility to govern themselves: a violation taking place under a regime of colonialism and apartheid with a central policy of forced population transfer.

## **V. RECOMMENDATIONS FOR CONCLUDING OBSERVATIONS**

Badil calls on the Human Rights Committee to conclude that Israel has failed and is unwilling to respect and/or implement its human rights obligations under the ICCPR in relation to the Palestinian population in the oPt, Palestinians with Israeli citizenship and Palestine refugees and internally displaced persons.

Badil calls on the Committee to insist that UN bodies, agencies and mechanisms are required to act immediately in order to:

- a. Ensure the right of the Palestinian people to self-determination;
- b. End of the Israeli prolonged occupation which amounts to colonization;
- c. Criminalize Israel's institutionalized system of discrimination which amounts to apartheid, including Israel's breach of the principles of equality and non-discrimination, as well as its citizenship/ nationality, re-entry and land policies and laws.

Badil strongly urges the Committee to take all necessary measures to fulfil its obligations to protect the Palestinian population and to bring Israel into compliance.