



BADIL's Written Submission to the United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context on:

Protecting the right to adequate housing during and after violent conflict in the Situation of the Palestinian People

06 May 2022

To the attention of Mr. Balakrishnan Rajagopal, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, to inform his report to the 77th session of the General Assembly presented in October 2022.

In the prospect of the Special Rapporteur's 2022 report to the General Assembly, BADIL Resource Center for Palestinian Residency and Refugee Rights presents the following written submission focusing on Israeli colonial-apartheid policies that infringe on the Palestinian people's equal enjoyment of the right to adequate housing during and after violent conflict. Domicide, land confiscation and denial of its use, and discriminatory zoning and planning have been some of the main policies used historically and currently by Israel to annex Palestinian land, create a coercive environment, forcibly displace and transfer Palestinians, and segregate, fragment and isolate them - thus undermining their ability to exercise their inalienable right to self-determination and constituting one of the root causes of the ongoing Nakba.¹

Policy 1: Land Confiscation and Denial of Use and Restitution

The Israeli policy of land confiscation, enacted through an array of mechanisms designed to transfer Palestinian ownership or rights of ownership to Israeli bodies or Zionist proxy-organizations, such as the Jewish National Fund, and Jewish-Israeli individuals,² violates the Palestinian people's right to adequate housing. These policies undermine the accessibility dimension of the right to adequate housing mechanisms, and can be divided into two types: *de facto* and *de jure* confiscation.³ From 1950 onwards, the Israeli apartheid-colonial regime has systematically implemented discriminatory land confiscation and redistribution policies, instituting laws such as the 1950 Development Authority Law, the 1953 Land Acquisition Law, and the 1960 Israel Lands Administration Law, which all aimed at facilitating the mass expropriation and privatization of Palestinian-owned land.⁴

Simultaneously, Israel denies the 9.1 million Palestinian refugees and internally displaced persons (IDPs) their right to property restitution through a series of discriminatory laws, such as the 1950 Absentee Property Law. Through such laws, Israel continues to declare the property of all forcibly displaced Palestinians as 'absentee property' in order to utilize and privatize the properties, undermining the security of tenure dimension of the right to adequate housing, namely Palestinians' ownership rights.⁵

Policy 2: Discriminatory Zoning and Planning

Israeli zoning and planning policies aim to contain the growing Palestinian population, causing thousands of Palestinian families to live in overcrowded and unsafe conditions because they are prevented from using their land or accessing public land. While Jewish-Israeli localities are developed

¹ See BADIL, "Forced Population Transfer: The Case of Palestine – Segregation, Fragmentation and Isolation", February 2020. https://badil.org/cached_uploads/view/2021/04/19/wp23-sfi-1618823935.pdf

² See BADIL - Al Majdal, "The Jewish National Fund: A Para-State Institution in the Service of Colonialism & Apartheid", Issue No. 43, 2010. https://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-43.pdf.

³ See BADIL, "Forced Population Transfer: The Case of Palestine - Land Confiscation and Denial of Use", October 2017. https://www.badil.org/cached_uploads/view/2021/04/19/wp21-lc-1618823891.pdf.

⁴ BADIL, "Denial of Palestinian Use and Access to Land: Summary of Israeli Law and Policies", February 2022. https://www.badil.org/cached_uploads/view/2022/03/16/summary-denialof-use-access2land-eng-1647430431.pdf.

⁵ See BADIL, "Forced Population Transfer: The Case of Palestine - Denial of Reparations", October 2018. <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP22-Reparations-of-Reparations.pdf>.

through various means, Palestinians with Israeli citizenships, who make up 20 percent of Israel's population, are deliberately excluded from decision-making processes, and most of their communities lack proper planning procedures and thus the needs of their populations are not met. Similarly, Palestinian local communities that submit building plans and zoning proposals face high rejection rates and unreasonable delays in getting them approved.⁶

As for the West Bank, Palestinian communities in Area C (comprising 60 percent of the oPt) are particularly subject to an oppressive zoning and planning framework consisting of selectively-deployed Ottoman, British Mandate and Jordanian-era land laws, supported by an extensive web of Israeli military orders. In east Jerusalem, Israeli zoning policy allows for the construction of residential buildings on only 9 percent of the land,⁷ and the Planning and Building Law of 1965 prohibits the issuance of building permits for areas not zoned for construction or lacking a planning scheme.⁸ Left without a “legal” option, 28 percent of Palestinian homes in east Jerusalem are built without permit and thus at risk of demolition.⁹

Policy 3: Home Demolitions and Denial of Access to Resources

The right to adequate housing of Palestinians on both sides of the Green Line is additionally violated by Israeli policies and practices affecting access to water, natural resources, and services. The struggle of the Palestinian Bedouins living in the Naqab provides a chilling example of the impact of these policies on Palestinians with Israeli citizenships.¹⁰ Israel's Planning and Building Law 5275-1965 designated Palestinian Bedouin villages in the Naqab as ‘unrecognized villages’, allowing the government to deny them access to basic services such as water, electricity, telecommunications, sewage systems, healthcare, education and proper infrastructure. In addition, the vast majority of these villages’ civilian structures have demolition orders pending against them, using the pretexts of their “unrecognized status”, or of their designation as military zones, natural reserves and parks, or state land. For example, the Palestinian Bedouin village, Al-Araqib, was demolished 199 times since 2010, due to it being ‘unrecognized.’¹¹

Israel's discriminatory policies are further evident in the two-tier legal system applied to the provision of services in the West Bank, including east Jerusalem, which provides preferential treatment for Israeli-Jewish colonizers residing near Palestinian villages and towns, while simultaneously creating coercive environments for Palestinians living in the exact same areas.¹² Additionally, Israel places oppressive

⁶ Furthermore, Palestinians are at a significantly larger risk of forced eviction in the name of urban redevelopment and infrastructure projects. See UN Habitat, “The Right to Adequate Housing”, Fact Sheet No.21(Rev.1), 4. <https://unhabitat.org/sites/default/files/download-manager-files/Right%20to%20adequate%20housing.pdf>.

⁷ This is due to Israel's oppressive and discriminatory requirement for a ‘demographic balance’ in Jerusalem, consisting of 70% Jewish-Israelis and 30% Palestinians.

⁸ For this reason, Israel has yet to approve a Local Town Planning Scheme for east Jerusalem.

⁹ See BADIL, “Forced Population Transfer: The Case of Palestine - Discriminatory Zoning and Planning”, December 2014. <https://www.badil.org/phocadownload/pap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf>.

¹⁰ Hazem Jamjoum, “Al-Naqab: The Ongoing Displacement of Palestine's Southern Bedouin” (Badil - Al Majdal), 2009, 27-31. https://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-39-40.pdf.

¹¹ Interview with Human Rights Defender from Al Araqib village, Al-Shabaka.

¹² For example, Israel controls all water resources in the West Bank; Palestinians are only able to use around 14%, whereas Israeli colonizers are allocated 86%, despite the fact that the Palestinian population is five times greater than the Israeli colonizer population in the West Bank. See BADIL, “Forced Population Transfer: The Case of Palestine - Denial of Access

restrictions on Palestinians' access to housing construction. More than 94 percent of building permit applications from Palestinians in Area C are rejected, leading to the demolition of both private and public Palestinian-built structures, while Jewish-Israeli colonies in the same area have continued to expand since 1967. In 2021 alone, the Israeli occupation demolished 177 civilian structures in east Jerusalem under the pretence of lacking a permit, and 1,360 structures were demolished for the same reason between January 2009 and August 2020, forcibly displacing 2,462 Palestinian people.¹³ Just one day ago, the Israeli Supreme Court approved the mass expulsion of 2,400 Palestinians from their 12 villages in Masafer Yatta based on the Israeli military's arbitrary designation of the area as a 'military firing zone,' giving the greenlight for one of the largest single mass expulsions.

In Gaza, Israel prohibits Palestinians from accessing their land and resources through the creation of land and naval buffer zones that violently impede Palestinians' ability to farm and fish within those zones. Furthermore, Israel's suffocating blockade on the entry of construction materials curbs the reconstruction of the region, whose infrastructure and private buildings are recurrently damaged during Israel's aggressions.¹⁴

Policy 4: Attacks on Civilian Structures and Collective Punishment

Israel's bureaucratic and 'legalized' system of deprivation of Palestinian right to adequate housing is accompanied with its devastating attacks on and mass destruction of civilian infrastructure. During Israel's most recent attack on the Gaza Strip in May 2021, the Israeli forces deliberately destroyed 1,313 housing units and partially damaged 57,168, and internally displaced more than 113,000 people at the height of its assaults—¹⁵ most of which had already been displaced and rendered homeless in previous Israeli aggressions.¹⁶

Collective punishment also occurs through Israel's policy of punitive demolitions, whereby the homes of Palestinian political prisoners or those who are considered 'security threats' are demolished, displacing their families in the process.¹⁷

to Natural Resources and Services", September 2017. <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp20-DANRS.pdf>.

¹³ This stands in stark contrast with the Israeli occupation authorities' approval in 2021 of the construction of more than 12,000 colonizer units, most of them in Jerusalem. See OCHA, "West Bank Demolitions and Displacement: An Overview", 16 March 2021. https://reliefweb.int/sites/reliefweb.int/files/resources/Demolition_Monthly_report_Nov-Dec_2021.pdf.

¹⁴ See BADIL, "Forced Population Transfer: The Case of Palestine - Land Confiscation and Denial of Use", October 2017. https://www.badil.org/ cached_uploads/view/2021/04/19/wp21-lc-1618823891.pdf.

¹⁵ Palestinian Centre for Human Rights, "House Demolitions in the Israeli Military Aggression on the Gaza Strip May 2021", 17 November 2021. <https://pchr.org/en/pchr-launches-report-house-demolitions-in-the-israeli-military-aggression-on-the-gaza-strip-may-2021/>.

¹⁶ Israel's assault on Gaza in 2008 unleashed the complete destruction of 170 residential buildings, and some 3,540 homes were severely damaged. Similarly, in its attacks on Gaza in 2014, Israel destroyed 32,028 residential homes, and 485,000 Palestinians were internally displaced at the peak of the attacks. See Human Rights Watch, "'I Lost Everything': Israel's Unlawful Destruction of Property during Operation Cast Lead", 13 May 2010. <https://www.hrw.org/report/2010/05/13/i-lost-everything/israels-unlawful-destruction-property-during-operation-cast-lead>; Al-Haq, "Divide and Conquer - A Legal Analysis of Israel's 2014 offensive against the Gaza Strip", 2015. https://www.alhaq.org/ cached_uploads/download/alhaq_files/publications/DIVIDE.AND.CONQUER.pdf.

¹⁷ Since 1967, Israel - and often with the express approval of the Israeli Supreme Court - has carried out the punitive demolition of more than 2,000 homes, displacing thousands. See UNGA, "Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on collective punishment", A/HRC/44/60, 22 December 2020. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/352/94/PDF/G2035294.pdf?OpenElement>.

Recommendations:

This pattern of grossly discriminatory practices against Palestinians must be addressed as a matter of the utmost urgency. Failure to do so not only deprives thousands of victims from obtaining the justice to which they are entitled under international law, but also sets a hugely dangerous precedent whereby states - and individuals acting on behalf of states - are free to perpetrate grievous rights violations with complete impunity. **Thus, we call on the Special Rapporteur to:**

- Acknowledge the illegality of the Israeli colonial-apartheid regime and its impact on the Palestinian people, and join forces with other UN agencies and bodies to highlight that Israel's laws and practices amount to war crimes and crimes against humanity of forcible transfer and emphasize state accountability for the perpetration of these crimes;
- Call on the UNHRC and its member states to fulfil their responsibilities by embracing both positive and negative practical measures to bring Israel into compliance with international law. This includes not only condemning Israel's wrongful acts, but more importantly ceasing any aid and assistance, imposing a military embargo, and exerting economic and diplomatic sanctions in line with Chapter VII of the UN Charter to bring Israel into compliance with its international responsibilities;
- Adopt accurate and legally-grounded terminology when referring to Israeli acts, policies and laws. Specifically, apply the analytical lenses of forcible population transfer, colonialism and apartheid in any review of Israeli actions;
- Implement practical measures to ensure respect for and protection of Palestinian communities, as a necessary action in the face of Israel's systemic absence of effective remedies provided to Palestinians;
- Emphasize the importance of ensuring that, when such violations cease, full reparations must be made to all affected Palestinian individuals and communities;
- Denounce Israel's ongoing refusal to cooperate with the Special Rapporteur and the United Nations as a whole, and to call on States and the UN to provide their utmost support and facilitation for all independent investigatory bodies and mechanisms.