



Submission to the
Committee on Economic, Cultural and Social Rights

For the Convening of the Committee on its 45th Session from 1-19 November 2010

Regarding
**Israel's Serious Breaches of its Obligations under the International Covenant on
Economic, Social and Cultural Rights (ICESCR)**

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Table of Contents

I. INTRODUCTION	3
II. EXECUTIVE SUMMARY	3
III. THE RIGHT TO SELF-DETERMINATION (ARTICLE 1) AND EQUALITY AND NON-DISCRIMINATION (ARTICLE 2)	4
A. Israel's Position on Compliance with Articles 1 and 2.....	4
B. Badil's Position on Israeli Compliance with Articles 1 and 2.....	5
i. The Legal Structure of Israel's Institutionalized Racial Discrimination:	7
ii. Israel's CDESCR Violations in the OPT: Institutionalized Racial Discrimination and Military Occupation	13
iii. Recent Developments: Discriminatory Israeli Policies and Practices Since Israel's Last Periodic Report.....	14
IV. BADIL'S CONCLUSIONS AND RECOMMENDATIONS TO THE COMMITTEE	25

I. Introduction

1. *Badil Resource Center for Palestinian Residency and Refugee Rights* (Badil) is an independent human rights organization based in the Occupied Palestinian Territory (OPT). It works to promote rights-based protection and durable solutions for Palestinian refugees and internally displaced persons (IDPs). Badil is registered as a non-governmental organization in the OPT, and has consultative status with the United Nations Economic and Social Council (ECOSOC). For further information please see www.badil.org.
2. Badil appreciates this opportunity to submit a report to the Human Rights Committee (HRC) in response to Israel's Third Periodic Report (E/C.12/ISR/3) concerning implementation of the *International Covenant for Economic, Social and Cultural Rights* (ICESCR).
3. This report provides detailed information on Israel's continued policies and practices of institutionalized discrimination, land expropriation and forced displacement directed against Palestinians inside Israel and in the OPT. These policies and practices amount to flagrant violations of the rights of the Palestinian people under the ICESCR, ongoing colonization of Palestine, and also constitute the crime of apartheid under international law.
4. This report aims to draw the attention of the HRC to Israel's pervasive violations of the ICESCR, specifically Article 1 (self-determination) and Article 2 (applicability of the covenant and non-discrimination). Information submitted in this report is based on the monitoring and documentation by Badil itself, of highly respected non-governmental organizations in Israel and the OPT, and also United Nations organizations with a mandate to monitor human rights conditions in the region.

II. Executive Summary

5. **The right of self-determination (Article 1):**

*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*¹

6. **The right to equality and non-discrimination (Article 2):**

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*²

7. Badil submits that the above two rights are “core” foundational rights as their realization is a condition for the enjoyment of all other ICESCR-enunciated rights, often referred to as “second-level” rights. Badil draws the attention of the Committee to Israel’s systematic and widespread violation of these core rights of the Palestinian people. Further, Badil emphasizes that Israel has deliberately deprived the Palestinian people of these basic human rights since its establishment in 1948.

8. Badil urges the Committee to recognize and address in the strongest possible terms Israel’s institutionalized racial discrimination and the systematic denial of the right to self-determination of the Palestinian people.

¹ International Covenant on Economic, Social, and Cultural Rights art. 1, Dec. 19, 1966, 993 U.N.T.S. 3.

² *Id.*

III. The Right to Self-Determination (Article 1) and Equality and Non-Discrimination (Article 2)

A. Israel's Position on Compliance with Articles 1 and 2

9. In its Third Periodic Report, Israel completely disregards its substantial violations of Articles 1 and 2 with regard to the Palestinian people.
10. Concerning Article 1, Israel's Third Periodic Report states that, "no change has occurred in this area since the second periodic report."³ Significantly, Israel's Second Periodic Report to the CESCR similarly concludes that, "no change has occurred in this area since the first periodic report."⁴ In the First Periodic Report, Israel states that while Israel is a state for Jews, "within the state, all citizens enjoy equal rights."⁵
11. Concerning Article 2, Israel contends in its Third Periodic Report that the "principle of equality is a fundamental principle in the Israeli legal system as portrayed both in legislation and adjudication."⁶ Israel's Third Periodic Report discusses various programs and plans to: "integrate" the Arab population into the national economy; increase Arab representation in business, government, and the judiciary; allocate government spending to Arab sectors; and increase Arab participation in the Civil Service, higher education and vocational training programs.⁷
12. Israel's Third Periodic Report does not address ongoing violations of ICESCR protected Palestinian rights inside the OPT, maintaining the longstanding Israeli position that it is not bound by human rights law, including the ICESCR, in the OPT.⁸ The Israeli position defies international consensus, the International Court of Justice, and this Committee's findings that Israel is bound by human rights law, including the ICESCR, in the OPT.⁹ Israel's failure to report on Israeli policy and actions in the OPT blatantly disregards this Committee's past Concluding Observations, which have repeatedly recognized that Israel's obligations under international human rights law extend to the OPT, and have condemned Israel's failure to report on the OPT in its previous reports to the Committee.¹⁰

³ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third Periodic Reports Submitted By States Parties Under Articles 16 and 17 of the Covenant: Israel*, ¶ 9, U.N. Doc. E/C.12/ISR/3 (July 12, 2010), available at <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E.C.12.ISR.3.doc> [hereinafter *Israel's Third Periodic Report*].

⁴ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second Periodic Reports Submitted By States Parties Under Articles 16 and 17 of the Covenant: Israel*, ¶ 9, U.N. Doc. E/1990/6/Add.32 (Oct. 16, 2001).

⁵ U.N. Doc. E/1990/5/Add.39 (20 January 1998)

⁶ *Israel's Third Periodic Report* at ¶ 25.

⁷ *Id.* at ¶ 39-81.

⁸ *Israel's Third Periodic Report* at ¶ 9.

⁹ See: International Court of Justice *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, (Jul. 9, 2004) at ¶106-112, (holding that Israel is bound by international human rights law, including the ICESCR, in the OPT).

¹⁰ See U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, ¶ 15, U.N. Doc. E/C.12/1/Add.90 (May 23, 2003), available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.90.En?Opendocument>.

B. Badil's Position on Israeli Compliance with Articles 1 and 2

13. The impact of recent Israeli developments upon Palestinians is best understood within a framework of Israel's ongoing and systematic violations. For more than 60 years, Israel's Knesset (Parliament) has enacted laws which discriminate against the indigenous Palestinian people on grounds of their national origin. This has put in place a system of laws, policies, and practices of institutionalized racial discrimination that denies Palestinians their right to self-determination, deprives them of all other ICESCR-protected rights, and constitutes the root cause of their massive and ongoing forced displacement.
14. Both, the UN Special Rapporteur on Human Rights in the OPT and the South African Human Sciences Research Council 2009 Report on Occupation, Colonialism, and Apartheid systematically examined Israeli policies in the OPT, concluding that Israel is in gross violation of IHRL and IHL because of its practices of colonialism and apartheid:¹¹ "Israel's rule in the OPT has assumed such a colonial character: namely, violations of the territorial integrity of occupied territory; depriving the population of occupied territory of the capacity for self governance; integrating the economy of occupied territory into that of the occupant; breaching the principle of permanent sovereignty over natural resources in relation to the occupied territory; and denying the population of occupied territory the right freely to express, develop and practice its culture."¹² The Council went on to find, "[b]y examining Israel's practices in the light of Article 2 of the Apartheid Convention, this study concludes that **Israel has introduced a system of apartheid in the OPT.**"¹³
15. Israel's Third Periodic Report does not address ongoing violations of the Palestinian Article 1 right to self-determination in the OPT.¹⁴ Israel has continued to illegally confiscate Palestinian land,¹⁵ demolish Palestinian property,¹⁶ enclose and segregate the Palestinian population, and expand Jewish settlements in the OPT.¹⁷ These systematic and pervasive policies not only violate the Palestinian right to self-determination under Article 1 of the ICESCR, but also constitute an ongoing colonization project and the crime of apartheid.¹⁸

¹¹ See, for example, the reports of the UN Special Rapporteur Prof. John Dugard to the Human Rights Council: A/HRC/4/17 and A/HRC/7/17. Also: Human Sciences Research Council, "Occupation, Colonialism, and Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law," May 2009, available at <http://www.hsra.ac.za/Document-3227.phtml>

¹² *Id.*

¹³ *Id.*

¹⁴ *Israel's Third Periodic Report* at ¶ 9.

¹⁵ Norma M. Hazboun, "Israeli resettlement schemes for Palestinian refugees in the West Bank and the Gaza Strip since 1967," Shaml Monograph Series 4, (1996).

¹⁶ Israeli Committee Against Home Demolitions, "Statistics on Home Demolitions (1967-2009).

¹⁷ See Compilation of data from "Impact of Annexation and Expansion Wall on Socio-Economic Conditions of Palestinian Localities which the Wall Passes Through," Ramallah: PCBS, 2003-2005.

¹⁸ Art. II of the Anti-Apartheid Convention states, in relevant part: "For the purpose of the present Convention, the term "the crime of apartheid"... shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: . . . (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part; (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association; d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or

16. Israel's systematic and widespread violations of ICESCR Article 1 and Article 2 affect—albeit in different ways—the entire Palestinian people, whether citizens of Israel, under occupation in the OPT, internally displaced persons (approximately 427,000), or refugees (approximately 6.6 million).¹⁹
17. Palestinians living both inside Israel and in the OPT are subject to a regime of institutionalized discrimination in violation of Article 2 of the ICESCR. Palestinians are subject to different laws than Jewish Israelis inside Israel and in the OPT.²⁰ Further, Palestinians are discriminated against in virtually all aspects of public life inside Israel, including access to education, health care, and work, which will be addressed below. Further, the laws and policies which systematically discriminate against Palestinians and/or privilege the Jewish population in Israel and in the OPT meet the definition of apartheid.²¹

i. The Legal Structure of Israel's Institutionalized Racial Discrimination:

a. Discriminatory Nationality and Citizenship Laws

18. Equality is not mentioned as a constitutional right in Israel's *Basic Law: Human Dignity and Liberty* (1992), which serves as Israel's Bill of Rights.²² In the absence of a constitutional right to equality, it is relegated to a secondary level-right, and is only considered if it can be derived from other rights granted by the Basic Law. Paragraph 10 of the Law, moreover, provides that, "This Basic Law shall not affect the validity of any law in force prior to the commencement of the Basic Law." A series of discriminatory laws adopted in the 1950s and 1960s thus continue to violate the fundamental right to equality of Palestinians.
19. The Law of Return (1950)²³: this law provides that every Jewish person in the world is entitled to "Jewish nationality" in Israel. Under the Law of Return, a Jewish national is "born of a Jewish mother or has become converted to Judaism and who is not a member of another religion."²⁴ Jewish nationals, citizens or nationals of any state in the world and their relatives are entitled under the law to enter Israel and obtain Israeli citizenship under the Citizenship Law (1952), discussed below. Jewish nationals enjoy the right to enter Israel even if they were not born in Israel and have no connection whatsoever to Israel. Palestinians, the indigenous population of the territory, on the other hand, are excluded from the Law of Return on grounds of their national origin, do not enjoy the legal status of nationals under any other Israeli law, and have no automatic rights to enter the country and obtain Israeli citizenship.

groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;...."

¹⁹ Badil, *Survey of Palestinian Refugees and Internally Displaced Persons (2008-2009)* 57, available at www.badil.org [hereinafter *Badil Survey 2008-2009*].

²⁰ See, generally, *Badil Survey 2008-2009* at 95; See also *supra* note 18.

²¹ See *Concluding Observations 2003* at ¶ 15.

²² Passed on 12th Adar Bet, 5752 (17 March 1992); Published in Sefer Ha-Chikkun No. 1391 of the 20th Adar Bet, 5752 (25 March 1992).

²³ Passed by Knesset on 20th Tammuz, 5170 (5th July 1950) and Published in Sefer Ha-Chukkim No. 51 of the 21st of Tammuz.

²⁴ Joseph Schechla, *The Consequences of Conflating Religion, Race, Nationality and Citizenship*, al Majdal magazine, Winter-Spring 2010.

20. Immigration to Israel, *i.e.*, the “right to return,” is a “nationality right” and therefore unavailable to Palestinians.²⁵ The Law, in essence, gives automatic nationality *and* citizenship only to Jews:

The Law of Return Article 4(a) provides “The rights of a Jew under this Law and the rights of an *oleh*²⁶ under the Nationality [sic] Law, 5712-1952, as well as the rights of an *oleh* under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.”

21. The Citizenship Law (Nationality Law, 5712-1952)²⁷: This law annulled the British Mandate Citizenship Law under which the indigenous Palestinians had held the status of citizens *and* nationals in their country; it resulted in the *de facto* “denationalization” of this entire population. It is important to note that the official English-language version of the Citizenship Law carries the falsely translated title “The Nationality Law”, as if it were the legal basis for a nationality right, which it is not.²⁸
22. Israeli law thus distinguishes between citizenship and nationality in a manner that discriminates against Palestinians.²⁹ Jewish people are “nationals and citizens” of Israel, whereas Palestinians can only attain the status of “citizen” of Israel. In practice, Jewish people all over the world are given “the automatic right, by virtue of being Jewish, to immigrate to Israel and acquire Israeli citizenship [but] Arab Palestinians, on the other hand, face restrictions in acquiring such citizenship.”³⁰ Thus, under Israel’s legal regime, *only* “**Jewish nationals and citizens of Israel**” constitute the privileged group of Israeli citizens who have full access to ICESCR-enunciated rights, as well as civil and political rights.
23. Palestinians who meet the criteria of the 1952 Citizenship Law are accorded the status of “citizens of Israel;” **Palestinians could not and cannot become “nationals” of Israel** because they are not Jewish and because “Israeli nationality” is not recognized by Israeli law.³¹ **The status of “citizen of Israel” is a second-class citizenship status with limited protection of ICESCR enunciated rights, as well as limited civil and political rights.** Approximately 150,000 indigenous Palestinians who had not become refugees in 1948 and their descendants hold this second-class citizenship status in Israel today; they comprise approximately 20% of Israel’s population.³²
24. Palestinians who did not meet the criteria of the 1952 Citizenship Law because they were outside the country or in territory controlled by Israeli-defined ‘enemy forces’ at certain cut-off

²⁵ *Id.*

²⁶ An *oleh* is a Jewish term referring to a Jew who is immigrating to Israel.

²⁷ Nationality Law (5172-1952), available at http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf

²⁸ Joseph Schechla, *The Consequences of Conflating Religion, Race, Nationality, and Citizenship*, Al Majdal, Winter-Spring 2010, 14.

²⁹ Centre on Housing Rights and Evictions (COHRE) and Badil, *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine* 56, available at: <http://www.cohre.org/store/attachments/COHRE%20Ruling%20Palestine%20Report.pdf> [hereinafter *Ruling Palestine*].

³⁰ *Ruling Palestine* at 56.

³¹ *Id.* at 57.

³² See *Adalah: Historical Background*, available at: <http://www.adalah.org/eng/backgroundhistory.php>.

dates, **are excluded from Israeli citizenship and made stateless by the law.**³³ At least 750,000 Palestinians and their descendants (approximately 5.7 million persons) have remained stateless 1948 Palestinian refugees until today.³⁴ **Israel continues to deny and violate the right of these refugees to return and to citizenship in their country of origin.**

25. Equality of Palestinian citizens is also **obstructed by Israel's self-definition as a “Jewish and democratic state.”** The Jewish character of the state is defined by three inter-related components: (1) that Jews form the majority of the state; (2) that Jews are entitled to certain preferential treatment (e.g. the Law of Return); and (3) that a reciprocal relationship exists between the state and Jews outside of Israel.³⁵

b. Discriminatory Land Laws, Property Confiscation, and Distribution of Resources

26. The Absentees’ Property Law (1950)³⁶: This law established the Israeli “Custodian of Absentee Properties and authorized it to confiscate the land of those persons deemed “absentees” and to transfer ownership to the Development Authority which was to be established for this purpose.³⁷ The law defined absentees as persons who traveled to Lebanon, Egypt, Trans-Jordan, Syria, Iraq, Saudi Arabia, the Yemen or stayed in territory of Palestine that was not under Israeli control at any time between November 29, 1947 and the enactment of the law.³⁸ This definition included Palestinians who had left their “habitual place of residence” at any time during that period, even if they never left the territory that became the state of Israel.³⁹ Tens of thousands of Palestinians who fled their “habitual place of residence” seeking safety in other villages during the 1948 conflict were thus deemed “present absentees” and their property was confiscated by the Custodian.⁴⁰ “Present absentees” include some 335,000 Palestinians who are living as internally displaced persons (IDP) in Israel today.⁴¹ At least half of that population resides in “unrecognized villages” that Israel refuses to legitimize, and thus are subject to demolition under Israeli law.⁴² The Absentees' Property Law has been enforced only against Palestinians and some foreigners, and not against Jews, resulting in the discriminatory confiscation of Palestinian land.⁴³
27. The Development Authority Law (1950): Israel established the Development Authority (DA) “to work with relevant Government agencies to acquire and prepare lands for the benefit of

³³ See Haneen Na'amnih, “New Anti-Arab Legislation,” *Adalah's Newsletter*, Volume 50, July 2008; See also “Israel begins revoking citizenship of four Arabs,” *Haaretz*, (6 May 2009); See also John Quigley, “Family Reunion and the Rights to Return to Occupied Territory,” *Georgetown Immigration Law Journal*, 6 (1992).

³⁴ *Badil Survey 2008-2009 at 57*

³⁵ *Ben Shalom vs. Central Election Committee*, 43 P.D. IV 221 (1988).

³⁶ Absentees’ Property Law, 5710-1950 [Hereinafter Absentee Property Law]

³⁷ *Ruling Palestine* at 41.

³⁸ Absentee Property Law, *supra* note 36.

³⁹ *Id.*

⁴⁰ *Ruling Palestine* at 41.

⁴¹ *Id.*

⁴² *Id.* citing sources which estimate that between 4,200 and 5,800 km² of Palestinian land were confiscated by means of the Absentees' Property Law. Other sources estimate that approximately 40% of land owned by Palestinians was expropriated by means of this law. See: Peretz, Don, *Israel and the Palestinian Arabs*, Washington DC: The Middle East Institute, 1958. According to the UN Special Committee on Palestine (UNSCOP), Palestinians owned 22,375km² of the total land area of 27,343km² in 1947. See: Hadawi, Sami, *Palestinian Rights and Losses in 1948*, London: Saqi Books, 1988.

⁴³ *Id.*

newly arriving Jewish immigrants.”⁴⁴ Under the law, the DA may transfer acquired land only to the State and the Jewish National Fund (JNF). Ownership of the vast majority of expropriated Palestinian land was subsequently transferred from the Custodian in this manner.⁴⁵

28. Over the past 62 years Israel has been engaged in a project of massive confiscation of Palestinian land, in particular from “absentees” (refugees) and IDPs (“present absentees”).⁴⁶ Through these land laws, Israel has transferred 93% of the land owned or collectively held by Palestinians before 1948 into ‘Israel lands,’ which can be held only by the state and designated Zionist organizations for the benefit of the ‘Jewish people’.⁴⁷
29. Zionist organizations such as the Jewish National Fund (JNF) enjoy quasi-public status under the law in Israel⁴⁸ while working for the exclusive benefit of the ‘Jewish people’ under their statutes. The organizations have played an integral role in obtaining and administering land in Israel for the exclusive benefit of Jews. Prior to 1948, the JNF controlled 600,000 dunums of land in Israel.⁴⁹ After 1948, the Israeli government transferred about 2 million dunums of confiscated land from “absentee” Palestinians to the JNF.⁵⁰ By the early 1950’s, the JNF controlled 13% of the land in Israel, which it deemed the “inalienable property of the Jewish people.”⁵¹ In 1960, the JNF land was integrated into the Israel Land Authority (ILA), which is a public institution administering 93% of the land in Israel.⁵² At that time, the JNF was granted the power to appoint 50% of the representatives on the ILA, giving the JNF extensive control over not only its own land, but the rest of ‘Israel Lands’.⁵³
30. Palestinians cannot obtain restitution of, own, or equally benefit from these lands in perpetuity under Israeli law. In particular, the Basic Law: Israel Lands of 1960, prevents the transfer of land to individuals. The chart below provides an overview of the discriminatory land laws and their consequences over time:⁵⁴

⁴⁴ *Development Authority (Transfer of Property) Law*. See Israel Law Resource Center citing “*Law of the State of Israel: Authorized Translation from the Hebrew, Volume 4*.” Government Printer, Jerusalem, Israel (1948-1987), p. 151-3 (*emphasis supplied*), available at <http://israellawresourcecenter.org/israellaws/fulltext/devauthoritylaw.htm>.

⁴⁵ *Id.*

⁴⁶ *Badil Survey 2008-2009* at 6.

⁴⁷ Adalah, *Report to the UN CERD In Response to the List of Issues Presented to Israel* at 2 (February 1, 2007).

⁴⁸ *World Zionist Organization-Jewish Agency (Status) Law (1952); Jewish National Fund Law (1953)*

⁴⁹ Al-Majdal, *The Jewish National Fund: A Para-State Institution in the Service of Colonialism and Apartheid*, at 31 Issue No. 43 (Winter – Spring 2010).

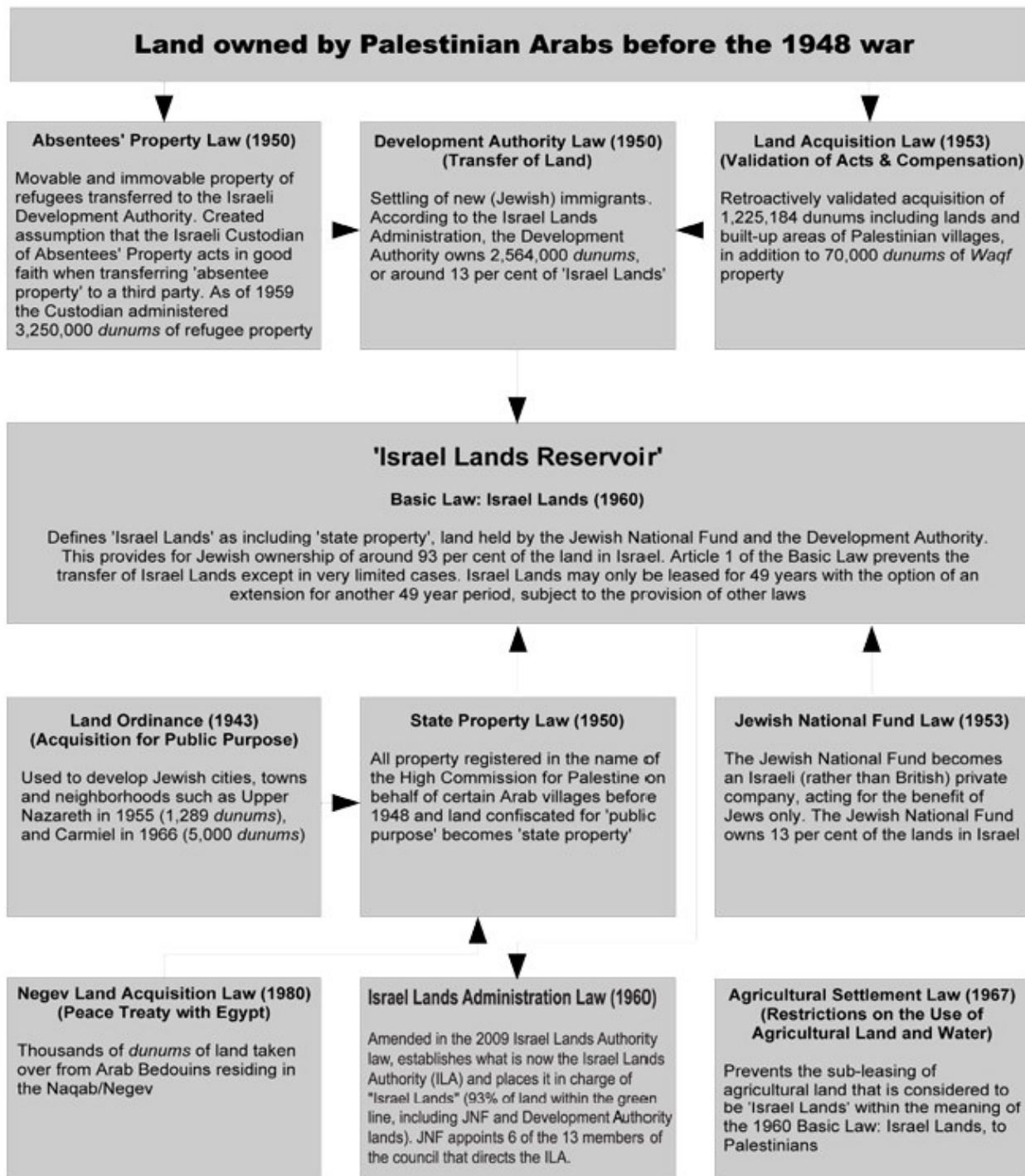
⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Usama Halibi Chart, *infra*; See, e.g., Absentees’ Property Law of 1950, the Development Authority Law of 1950, the Land Acquisition Law of 1953, the State Property Law of 1950, the Jewish National Fund Law of 1953, and the Basic Law: Israel Lands (1960).



This land regime has resulted in a situation where Palestinians who comprise 18 per cent of the population of Israel own 3 per cent of the land; tens of 'unrecognized (Arab) villages'; and at least 220,000 internally displaced Palestinians. Since 1948 the government has not established a single new Palestinian town on land held in the 'Israel Lands Reservoir'. *Source: Usama Halabi (LL.M).*

31. In Israel, Palestinians currently represent 20% of the Israeli population but use or control 3.4% of the land; 90% of land once owned by Palestinians has been confiscated by Israel, and 93% of the land in Israel has been nationalized, which “denies Palestinian citizens equal access to land and bars land restitution in court.”⁵⁵

⁵⁵ See Mossawa, the Advocacy Center for Arab Citizens in Israel, Report: “The Human Rights Status of the Palestinian Arab Minority, Citizens of Israel”, (October 2008); Adalah, Report to The UN CERD In Response To The List Of

32. Israel's system of discriminatory land laws and property confiscation constitutes gross violations of ICESCR Articles 1 and 2.

ii. Israel's CESCVR Violations in the OPT: Institutionalized Racial Discrimination and Military Occupation

33. In the OPT, institutionalized racial discrimination and its effects are compounded by the military occupation regime which Israel has maintained for 43 years over the occupied Palestinian population. Examples of illegal apartheid policies in the OPT include "road laws," "pass laws," and destruction of villages.
34. During the Oslo Peace Process, the West Bank was divided into three non-contiguous "areas", "Area A, Area B and Area C."⁵⁶ The Palestinian Authority was granted limited authorities in Area A and Area B, comprising 40% of the West Bank,⁵⁷ while Israel retained military control over both areas.⁵⁸ Israel was given exclusive control over Area C, which includes the territory where Israeli settlements are located, and comprise the majority (60%) of the territory of the occupied West Bank.⁵⁹
35. Inside the OPT there are two separate legal systems controlled by Israel; Palestinians are subjected to Israeli military law whereas Jewish Israeli settlers enjoy the full protection of Israel's domestic law.⁶⁰ This two-tiered legal regime facilitates the confiscation of Palestinian land in the OPT. Confiscation of Palestinian land in the OPT is accomplished by either Israeli military orders or extensions of previous British and Jordanian law.⁶¹ At the end of 2008, approximately 70% of the occupied West Bank, including East Jerusalem, had been confiscated, annexed, or "de-facto annexed" by Israel.⁶² In East Jerusalem, 1/3 of the land that Israel has confiscated has been used to build 12 Jewish settlements, housing almost 200,000 settlers.⁶³ Most of the remaining land has been re-zoned to effectively prevent Palestinian

Issues Presented To Israel, pg. 2, (1 February, 2007), (noting that after legal challenges by Palestinians citizens protesting their inability to bid for JNF land, for example, the Israeli state proposed in 2005 that JNF lands be available to Jews and non-Jews, though the Israel Lands Association (ILA) will compensate the JNF with substitute land for any plot purchased by a non-Jew. This allows the JNF to maintain its current hold over 2.5 million dunums of land); Usama Halabi, "Israel's Land Laws as a Legal Political tool: confiscating and Appropriating Palestinian Arab Lands and Creating Physical and Legal Barriers in order to Prevent future Property Restitution" Working Paper No.# 7, (December 2004).

⁵⁶ "Palestine in a Century" Applied Research Institute-Jerusalem (ARIJ) www.poica.org/pal-in-a-century.php

⁵⁷ Applied Research Institute – Jerusalem (ARIJ), "*Palestine in a Century*", available at: www.poica.org/pal-in-a-century/pal-in-centruy.php.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ The Israeli Knesset has issued legislation which extends Israeli law to the OPT as a matter of extraterritorial jurisdiction e.g., *Emergency Regulations (Offense Committed in Israeli-Held Areas)*, the *Knesset Election Law of 1969*, the *Income Tax Ordinance of 1978*, and the *Value Added Tax of 1978*.

⁶¹ These laws and military orders include: the 1943 Land (Acquisition for Public Purposes) Law; 1967 Military Order No. 59 (Government Properties); 1969 Military Order No. 364 (Government Properties) Amendment No. 4; 1953 Jordanian Land Law (Acquisition for Public Needs) as amended by 1969 Military Order No. 321 (Concerning the Lands Law – Acquisition for Public Needs); 1981 Military Order No. 949 (Concerning the Lands Law – Acquisition for Public Needs); 1967 Military Order No. 25 (Transactions in Real Property); 1974 Military Order 569 (Registration of Special Transactions in Land); and 1983 Military Order 1060 (Law on Registration of Unregistered Immovable Property) Amendment No. 2.

⁶² *Badil Survey 2008-2009* at 27; See also OCHA-OPT, "Planning Crisis in East Jerusalem," April, 2009).

⁶³ Al-Haq, 40 Years after the Unlawful Annexation of East Jerusalem: Consolidation of the Illegal Situation Continues Through the Construction of the Jerusalem Light Rail, (Jun. 28, 2007), available at: <http://www.alhaq.org/etemplate.php?id=326>.

use.⁶⁴ This dual legal regime also facilitates the restriction of Palestinian movement by means of a network of Israeli military checkpoints and roadblocks, while movement of Jewish Israelis, including settlers, is not equally restricted. As of September 2009, Palestinians were subjected to 592 checkpoints and “movement obstacles” that prevent movement between homes, jobs and schools.⁶⁵ Palestinians are prohibited from traveling on 137 kilometers of roads in the West Bank and require permits to travel on another 293 kilometers of roads in the West Bank.⁶⁶ Other examples of the separate legal systems such as the effects of the Wall on Palestinians and the demolition of Palestinian property in the West Bank will be discussed in detail in subsequent sections of the report.

36. This dual legal system institutionalizes discrimination against Palestinians in the OPT based on their ethnicity and nationality, and is a blatant violation of the ICESCR. The discriminatory legal system in the OPT allows for the confiscation of Palestinian land and destruction of property, which has resulted in mass transfer of the Palestinian population and the denial of Palestinian self-determination. Israeli actions during the reporting period that illustrate these discriminatory policies are discussed below.

iii. Recent Developments: Discriminatory Israeli Policies and Practices Since Israel’s Last Periodic Report

a. *Demolition and Destruction of Palestinian Property*

37. Demolition of Palestinian homes both inside Israel and in the OPT, including East Jerusalem, is one of many methods that Israel uses to forcibly displace the Palestinian population, in violation of the Palestinian right to self-determination. Demolitions are ongoing both in the OPT and inside Israel today.⁶⁷
38. Demolitions orders in the OPT are executed by Israeli “occupation authorities.”⁶⁸ The Israeli Committee Against House Demolitions (ICAHD) reports that during the period 2000-2010, 11,795 Palestinian homes have been demolished.⁶⁹ Reported demolitions occurred in the following categories: “Land clearing demolitions” or “demolitions for military purposes”, “administrative demolitions” and “punitive demolitions.”⁷⁰ Administrative demolitions are executed against buildings that lack proper permits as decided by Israeli occupation authorities.⁷¹ Punitive demolitions are executed against properties owned by alleged Palestinian “resistance fighters”, “including cases where the alleged militant is already imprisoned or killed.”⁷²

⁶⁴ *Badil Survey 2008-2009* at 27.

⁶⁵ OCHA OPT, “*Protection of Civilians*”, (2009), (noting that of the 592, there are: 69 permanently staffed checkpoints, 23 partial checkpoints and 500 un-staffed obstacles (earth mounds, road gates, roadblocks, earth walls, trenches and road barriers).

⁶⁶ B’Tselem, “*Restrictions On Movement*”, p.13.

⁶⁷ *See generally Badil Survey 2008-2009*.

⁶⁸ Israeli Committee Against House Demolitions (ICAHD), “*Statistics on House Demolitions (1967 – 2009)*”, (Jan. 19, 2009).

⁶⁹ Israeli Committee Against House Demolitions ICAHD, “*Statistics on House Demolitions (1967-2010)*”, available at http://www.icahd.org/?page_id=5508, accessed on Oct. 17, 2010, (note: this figure includes demolitions that occurred in the Gaza Strip during Operation Cast Lead in 2009).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*, Describing punitive demolitions as “houses demolished as punishment for the actions of people associated with the houses. The actions in questions have been everything from political organizing to attacks on Israeli civilians. This

39. 183 Palestinian homes were demolished between 2007 and the first half of 2009 in occupied East Jerusalem alone.⁷³ OCHA estimates that “at least 28 percent of all Palestinian homes in eastern Jerusalem were built without the required permit, making 60,000 people at risk of having their homes demolished.”⁷⁴ Currently, Israel is planning the demolition of 90 Palestinian structures in East Jerusalem in order to construct a “Jewish archeological park.”⁷⁵ Building permits are rarely granted in East Jerusalem, making it virtually impossible for Palestinians whose homes were demolished to re-build.⁷⁶
40. In “Area C” of the West Bank demolition orders were issued for 5,000 Palestinian owned structures between January 2000 and September 2007.⁷⁷ 1,600 of those structures were demolished.⁷⁸ Further, data indicates that demolitions of Palestinian structures in Area C are increasing; 221 Palestinian owned structures were demolished in the first half of 2009 alone.⁷⁹ Building permits in the same area are denied 94% of the time, and OCHA statistics indicate that for every building permit that is granted in Area C, 55 demolition orders are issued and 18 buildings are destroyed.⁸⁰ Further, more than 3,000 homes in the West Bank have outstanding demolition orders, which can be executed at anytime without notice.⁸¹
41. Israeli military operations have also caused massive destruction to Palestinian property, particularly in the Gaza Strip. Between 2000 and 2008 11,000 homes were destroyed in Gaza, not including the homes destroyed in Operation Cast Lead.⁸²
42. 3,540 Gazan homes were destroyed or irreparably damaged in the Israeli military operation code-named “Operation Cast Lead”, which took place from December 27, 2008 to January 18, 2009.⁸³ In its report on Operation Cast Lead, the UN Fact Finding Mission on the Gaza Conflict (The Mission) found that the Israeli military targeted and destroyed Gazan homes without military purpose.⁸⁴ The wanton destruction of civilian housing was the third phase of housing destruction in Operation Cast Lead, known as destruction for “the day after.”⁸⁵ An Israeli soldier stated that “the day after” demolition “. . . meant taking a house that is not implicated in any way, that its single sin is the fact that it is situated on top of a hill in the Gaza

policy was suspended by the IDF in February, 2005 after it reached the conclusion that rather than deterring attacks, punitive demolitions only enflame the people and lead to more attacks. The practice was resumed on 19 January 2009.”

⁷³ B’Tselem, *2008 Annual Report*, p. 25.

⁷⁴ OCHA Special Focus, *The Planning Crisis in East Jerusalem*, (April 2009).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ U.N.G.A., *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, U.N. Doc. A/63/273 (August 13, 2008), available at: <http://daccess-ods.un.org/TMP/497328.7.html>.

⁷⁸ *Id.*

⁷⁹ The Protection Sector OPT, 2010 CAP, Needs Analysis Framework.

⁸⁰ Peace Now, *Area C: Palestinian Construction and Demolition Stats* (February 2008), available at: www.peacenow.org.il.

⁸¹ OCHA, *Lack of Permit: Demolitions and Resultant Displacement in Area C* (May 2008).

⁸² UNRWA, *Situation Overview – Shelter Sector in Gaza* (July 2009).

⁸³ *Id.*

⁸⁴ U.N. Human Rights Council (HRC), *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, at 211, U.N. Doc. A/HRC/12/48, (25 Sept. 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>.

⁸⁵ *Id.* at 213.

Strip.”⁸⁶ The intentional destruction of civilian homes in Operation Cast Lead violated the Fourth Geneva Convention, and Article 11 of the CESCRC.⁸⁷

43. The Israeli military also deliberately destroyed factories, businesses, water installations and other civilian economic and infrastructure targets during Operation Cast Lead, without military purpose.⁸⁸ 324 factories were destroyed during Operation Cast Lead.⁸⁹ The Mission’s report notes that Gaza’s most important industries suffered the most damage.⁹⁰ Food supplies were also targeted and demolished, one third of all egg factories, Gaza’s only operating Flour Mill, and 30 hectares of greenhouses were destroyed.⁹¹ Further, water sanitation plants, wells and sewage pipes were targeted throughout the Gaza Strip, but water infrastructure was *completely destroyed* in Beit Lahia, Jabaliyah, Beit Hanoun, parts of Zeytoun and areas south of Rafah.⁹² The water infrastructure in these areas will have to be completely re-built.⁹³ The Mission found that these attacks on civilian economic and infrastructure targets were not justified by a military objective, and were part of the larger Israeli policy of the “disproportionate destruction of a significant part of Gaza’s infrastructure.”⁹⁴ The Mission concluded that the widespread devastation of the Gaza Strip during Operation Cast Lead “displayed a premeditated determination to achieve the objective of destruction.”⁹⁵
44. Gazans have been unable to rebuild the homes and businesses destroyed by Operation Cast Lead because of the devastating Israeli blockade on the occupied Gaza strip, which prohibits the import of construction materials and other essential goods.⁹⁶
45. House and structure demolitions carried out against Palestinians are not confined to the West Bank, but are Israeli policy inside Israel as well, particularly in the Naqab (Negev).⁹⁷ 463 Palestinian homes in the Naqab were demolished between 2005 and February 2008.⁹⁸ An estimated 45,000 Palestinian owned structures in the Naqab may be subject to demolition orders because they were built “illegally” – without proper zoning or building permits.⁹⁹ In some cases, entire villages are eligible for demolition.¹⁰⁰ There is no process for these towns to apply to become recognized localities, nor is there any criteria for establishing whether a particular locality *should* be recognized as legitimate.¹⁰¹
46. The systematic destruction of Palestinian property virtually ensures the forced displacement of the Palestinian population, in gross violation of the Palestinian right to self-determination, as well as the right to housing, right to work, and the right to an adequate standard of living.

⁸⁶ *Id.*

⁸⁷ *Id.* at 214.

⁸⁸ *Id.* at 215.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 216-217.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 218.

⁹⁵ *Id.*

⁹⁶ *Id.* at 262.

⁹⁷ See Regional Council of Unrecognized Villages, www.rcuv.net.

⁹⁸ “Off the Map,” Human Rights Watch, 2008.

⁹⁹ Mossawa, *The Human Rights Status of the Palestinian Arab Minority, Citizens of Israel* (October 2008).

¹⁰⁰ Adalah, *Adalah Demands that Court Prevent the Expulsion of 1,000 Arab Bedouin from their Homes and the Destruction of their Village in the Naqab in Israel*, Adalah Newsletter, Vol. 54, (November 2008).

¹⁰¹ Adalah, *Adalah’s Report to CERD In Response To The List Of Issues Presented To Israel* (February 1, 2007).

b. Closure and Segregation

The Wall:

47. In 2004 the International Court of Justice (ICJ) issued the *Advisory Opinion on the Legal Consequences Arising from the Construction of the Wall*. The opinion stated that construction of the Wall is a grave violation of human rights and humanitarian law, and ordered Israel to cease construction, dismantle what had already been constructed, and provide Palestinians who were affected by construction with restitution.¹⁰² Israel has continued construction of the Wall despite the Advisory Opinion of the ICJ, resulting in the displacement of thousands of Palestinians and the de-facto annexation of Palestinian land now on the western side of the Wall. Israel has ignored the ICJ opinion, including failing to compensate Palestinians for any of the confiscation or destruction of their lands and properties as a consequence of the construction of the Wall.
48. As of 2009, 60% of the Wall had been built and 10% was under construction.¹⁰³ 86% of the Wall is built in the West Bank, resulting in the forced displacement of thousands of Palestinians who are cut off from their homes, farmland, and the rest of the West Bank by the Wall.¹⁰⁴ For example, the towns of Qalqilya, Bil'in, Nil'in, and Tulkaram have been devastated as a result of the Wall. According to the Palestine Monitor, "[n]o town in the West Bank suffers more restrictions than Qalqilya."¹⁰⁵ The Wall surrounds residents of Qalqilya on all four sides, and they are separated from their sources of income, their children's schools, and adequate health care options.¹⁰⁶
49. Construction of the Wall has also resulted in the de-facto Israeli annexation of Palestinian land that used to fall in the West Bank and now falls on the western side of the Wall.¹⁰⁷ This includes 69 Jewish colonies, 12 of which are in East Jerusalem.¹⁰⁸
50. Thousands of Palestinians who are affected by the construction of the wall are likely to be forcibly displaced from their homes and land. 498,000 Palestinians live in areas now severed from the rest of the West Bank as a result of the Wall.¹⁰⁹ 263,200 of those 498,000 Palestinians are at risk of forced displacement because they now live in closed areas and the "seam zone", the area between the Wall and the Green Line.¹¹⁰ Palestinians living in the "seam zone" must apply for special permits to access their homes and land, as that area has been designated a "closed military area."¹¹¹

¹⁰² International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (July. 9, 2004).

¹⁰³ *Badil Survey 2008-2009* at 26.

¹⁰⁴ "The Olive Harvest in the West Bank and Gaza", United Nations Report, October 2008.

¹⁰⁵ "Qalqilya: Prison City," Palestine Monitor, October 3, 2009, available at: <http://www.palestinemonitor.org/spip/spip.php?article1103>.

¹⁰⁶ *Id.*

¹⁰⁷ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard A/HRC/7/17, 21 January, 2008.

¹⁰⁸ *Id.*

¹⁰⁹ B'Tselem, "Annual Report 2008", (2008).

¹¹⁰ *Id.*

¹¹¹ OCHA Protection Sector OPT, "2010 CAP, Needs Analysis Framework".

51. While the Wall forcibly removes thousands of Palestinians from their land, it consolidates Jewish controlled territory. 83% of the Jewish settler population now lives on the western side of the Wall, demonstrating the fact that the Wall has been used to annex Palestinian land and consolidate Jewish control over as much continuous territory as possible.¹¹²
52. The Wall separates 25% of Palestinians living in East Jerusalem from the rest of the city.¹¹³ In 2006, the UN Special Rapporteur noted, “the Wall in the Jerusalem area is being constructed to transfer many Palestinians with Jerusalem identity documents to the West Bank.”¹¹⁴

Blockade of Gaza:

53. Israel claims that it withdrew from the Gaza Strip in 2005 and no longer has any responsibility as the occupying power over Gaza. However, “[t]he test for determining whether a territory is occupied under international law is effective control, and not the permanent physical presence of the occupying Power’s military forces in the territory in question.”¹¹⁵ As such, “it is clear that Israel remains the occupying Power as technological developments have made it possible for Israel to assert control over the people of Gaza without a permanent military presence. . .”¹¹⁶ Israel has continued to exert effective control over Gaza since its claimed withdrawal in 2005 by completely controlling the airspace, land and sea borders, and all entry and exit of goods and services into and out of the Gaza Strip.
54. In 2007, Israel began a blockade of the Gaza Strip air-space, territorial waters and land border crossings.¹¹⁷ This blockade is a violation of the Palestinian people’s right to self-determination, as Israel has complete control over Palestinians living in the Gaza Strip and the entire economy of the Gaza Strip. Limited humanitarian access notwithstanding, the blockade of the Gaza Strip remains in full effect, having lasted now for three years, contributing to

¹¹² Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard A/HRC/7/17, 21 January, 2008.

¹¹³ Op. cit. UN Document A/HRC/7/17, 21 January, 2008. Also see “Creating a Semi-enclave: Focus on Anata, Jerusalem Governorate,” Special Report, Ramallah: Negotiations Affairs Department, Palestinian Monitoring Group, 15 June, 2006, p. 3.

¹¹⁴ U.N. Econ. & Soc. Council [ECOSOC], *Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine: Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, U.N. Doc. E/CN.4/2006/29, (January 17, 2006), available at: <http://daccess-ods.un.org/TMP/4152982.html>.

¹¹⁵ *Id.* at 5 (“Israel’s effective control is demonstrated by the following factors: (a) Substantial control of Gaza’s six land crossings: the Erez crossing is effectively closed to Palestinians wishing to cross to Israel or the West Bank. The Rafah crossing between Egypt and Gaza, which is regulated by the Agreement on Movement and Access entered into between Israel and the Palestinian Authority on 15 November 2005 (brokered by the United States, the European Union and the international community’s envoy for the Israeli disengagement from Gaza), has been closed by Israel for lengthy periods since June 2006. The main crossing for goods at Karni is strictly controlled by Israel and since June 2006 this crossing too has been largely closed, with disastrous consequences for the Palestinian economy; (b) Control through military incursions, rocket attacks and sonic booms: sections of Gaza have been declared “no-go” zones in which residents will be shot if they enter; (c) Complete control of Gaza’s airspace and territorial waters; (d) Control of the Palestinian Population Registry: the definition of who is “Palestinian” and who is a resident of Gaza and the West Bank is controlled by the Israeli military. Even when the Rafah crossing is open, only holders of Palestinian identity cards can enter Gaza through the crossing; therefore control over the Palestinian Population Registry is also control over who may enter and leave Gaza. Since 2000, with few exceptions, Israel has not permitted additions to the Palestinian Population Registry.”).

¹¹⁶ *Id.* at 5

¹¹⁷ *Id.*

deteriorating physical and mental health for 1.5 million persons.¹¹⁸ Moreover, the blockade of Gaza has led to the denial of CESCR rights, including the rights to work, education, family, standard of living, and health, which are further detailed below.

55. Israel has encircled the 1.5 million Palestinians living in the Gaza Strip into an open prison, preventing them from entering Israel or the West Bank, except for in grave humanitarian situations—and those only as a matter of Israeli whim.¹¹⁹ The blockade has crippled the economy of the Gaza Strip, because Israel does not permit exports and restricts imports to humanitarian aid.¹²⁰ Palestinian farmers living in the Gaza Strip are prevented from accessing their arable farmland close to the border, which has been designated a “Buffer Zone” by Israel.¹²¹ As a recent example, Haaretz reported on September 12, 2010 that an Israel Defense Forces shelling killed three Palestinians who were too close to the border between Israel and Gaza.¹²² Gaza medical works and witnesses claim that two of the Palestinians were farmers.¹²³
56. The blockade has reduced the availability of building supplies and electricity in the Gaza Strip. The United Nations Relief and Works Agency (UNRWA) has started to build mud houses for Palestinians made homeless by Operation Cast Lead.¹²⁴ The houses take three months to build and are a direct consequence to the absence of blockaded building materials, which includes cement, glass, and steel.¹²⁵ UNRWA plans to build 120 mud houses, and although a relief for many Palestinians, remains extremely small in relation to the thousands made homeless by Operation Cast Lead.¹²⁶ Furthermore, electricity supply has been cut to 25% below actual demand, and is only available for limited periods of time (8 hours per day, and only 4 days per week).¹²⁷ The electricity shortages have arisen in part from restrictions on the availability of spare parts of repair. The shortage of cooking fuel and electricity has also made it nearly impossible for businesses such as bakeries, factories, and greenhouse to operate normally, thereby worsening conditions of poverty and unemployment.¹²⁸
57. On May 31, 2010 Israeli naval warships attacked a flotilla in international waters carrying humanitarian aid to Gaza.¹²⁹ The flotilla was attempting to break the Israeli blockade of Gaza

¹¹⁸ U.N. Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Richard Falk, U.N. Doc. A/HRC/13/53/Rev.1, (June 7, 2010), *available at*: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/140/87/PDF/G1014087.pdf?OpenElement>.

¹¹⁹ U.N. Econ. & Soc. Council [ECOSOC], *Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine: Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, U.N. Doc. E/CN.4/2006/29, (January 17, 2006), *available at*: <http://daccess-ods.un.org/TMP/4152982.html>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Haaretz Service and Reuters, Reports: IDF Shelling Kills 3 Palestinians Near Gaza Border (September 12, 2010), <http://www.haaretz.com/news/diplomacy-defense/reports-idf-shelling-kills-3-palestinians-near-gaza-border-1.313414>.

¹²³ *Id.*

¹²⁴ U.N. Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Richard Falk, U.N. Doc. A/HRC/13/53/Rev.1, (June 7, 2010), *available at*: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/140/87/PDF/G1014087.pdf?OpenElement>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See generally Human Rights Council, *Report of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting From the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance*, U.N. Doc A/HRC/15/21 *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf.

and deliver badly needed humanitarian aid.¹³⁰ Nine people on board were killed and nineteen others were injured, many seriously.¹³¹ The Human Rights Council's fact-finding mission on the incident (The Mission) reported that the Israeli forces began descending onto the deck of the ship at 4:30 am from helicopters hovering above.¹³² Once soldiers landed on the deck of the ship, they used live ammunition in the struggle with the passengers, despite the fact that no firearms were found on board the ship.¹³³ The Mission found that the soldiers fired on wounded passengers, and beat, kicked and verbally abused the wounded.¹³⁴ Evidence suggests that two of the passengers who died were shot at close range, while already on the ground: "Furkan Doğan received a bullet in the face and İbrahim Bilgen received a fatal wound from a soft baton round (beanbag) fired at such close proximity to his head that parts such as wadding penetrated his skull and entered his brain."¹³⁵ On the bridge deck of the ship, soldiers killed four passengers who posed absolutely no threat, one of whom was a photographer taking photos of the attack.¹³⁶ Several passengers were "injured or killed whilst trying to take refuge inside the door or assisting other to do so."¹³⁷

58. The Mission found that grave violations of international human rights law and humanitarian law took place in the course of this brutal attack. The Mission found that "there is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention: willful killing; torture or inhuman treatment; willfully causing great suffering or serious injury to body or health."¹³⁸ [*sic*].
59. Not only did the Israeli attack on the flotilla breach international law, the naval blockade of Gaza itself is illegal. Israel contends that the blockade is necessary for security and that the attack on the flotilla was permissible under international law.¹³⁹ However, the HRC found that the blockade, and hence its enforcement, is illegal because it causes "disproportionate damage" to the civilian population.¹⁴⁰ Israel further contends that there is no humanitarian crisis in Gaza, and that sufficient humanitarian aid reaches Gaza.¹⁴¹ However, the Security Council has called the humanitarian situation in Gaza "not sustainable,"¹⁴² And the Human Rights Committee reported that "'abject poverty" among refugees has tripled since the imposition of the blockade, from 100,000 to 300,000 and 61 per cent of households are food insecure."¹⁴³

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at ¶ 114.

¹³³ *Id.* at ¶ 116.

¹³⁴ *Id.* at ¶ 118.

¹³⁵ *Id.*

¹³⁶ *Id.* at ¶ 120.

¹³⁷ *Id.*

¹³⁸ *Id.* at ¶ 265.

¹³⁹ Ethan Bronner, "New Israeli Tack Needed On Gaza, U.S. Officials Say," 2 June 2010, NYTimes.com accessed 14 October 2010, http://www.nytimes.com/2010/06/03/world/middleeast/03policy.html?_r=1&fta=y. [Hereinafter Bronner]

¹⁴⁰ Human Rights Council, *Report of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting From the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance*, ¶ 51-53, U.N. Doc A/HRC/15/21 available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf.

¹⁴¹ Bronner *supra* note 139.

¹⁴² Human Rights Council, *Report of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting From the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance*, ¶ 37, U.N. Doc A/HRC/15/21 available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf.

¹⁴³ *Id.*

60. After the attack on the aid flotilla, Israel announced its intent to allow more supplies into Gaza, however Israel has stated that it will maintain the naval blockade, in clear violation of international law.¹⁴⁴
61. Israel's policies of segregation and closure prevent Palestinians from accessing hospitals, clinics and health care centers. By 2006, around 42% of households affected by the Wall in the occupied West Bank were physically separated from any health services. Impeded access to medical care was particularly acute in the closed zones between the Wall and the Green Line, where 79% of families are separated from health centers and hospitals.¹⁴⁵ Infant mortality rates are reported to be “stagnant” in the OPT. The “stagnation of infant mortality rate [in the OPT] is due mainly to slow progress or worsening of neonatal mortality rates.”¹⁴⁶ Higher mortality rates are directly attributable to the lack of access to health services. The lack of access to health care is particularly troubling considering the fact that a majority (66%) of chronically ill persons in the occupied Gaza Strip needed medical care during Israel’s Operation Cast Lead. Of those, 53% received adequate health care, 27% received inadequate care, and 20% did not receive any health care. Thirty percent of those who did not receive care did not do so because it was too dangerous to try to reach health facilities and hospitals.¹⁴⁷ Providing health care centers in each locality is useless if the people who most need care cannot access the facilities, either because the Wall physically blocks the entrance or a military operation makes the journey too hazardous. Since the beginning of the second Intifada in 2000, 48 people have died after they were denied passage through an Israeli checkpoint.¹⁴⁸ After international condemnation, the number of deaths then dropped dramatically to an average of 2 or 3 per year, but from January 1 to August 31 of 2007, five people have died because they were unable to access medical attention.¹⁴⁹ In 2006, there was a monthly average of 10 delays or denials of ambulance access, while the monthly average for 2007 was 53.¹⁵⁰
62. The Wall and the Blockade of Gaza are policies and practices designed to deny the right to life and liberty and to destroy the Palestinian economic and social infrastructure and means of subsistence. They induce more forced displacement of the Palestinian people and facilitate the annexation of Palestinian land for the exclusive use of Jewish Israelis. These policies and practices not only represent a serious violation of the Palestinian right to self-determination, but also constitute the crimes of apartheid and colonization.¹⁵¹

Inside Israel:

63. Inside Israel, institutionalized discrimination has resulted in separate and unequal access to all ICESCR-enumerated rights as demonstrated in the examples below.

¹⁴⁴ Isabel Kershner, “Israel to East Gaza Land Blockade,” 17 June 2010, NYTimes.com, accessed 14 October 2010, <http://www.nytimes.com/2010/06/18/world/middleeast/18mideast.html>.

¹⁴⁵ *Impact of the Expansion and Annexation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Wall Passes Through in the West Bank* (August 2005) and Press Conference on the Survey Results, Palestinian Central Bureau of Statistics, Ramallah, February 2006, p. 7.

¹⁴⁶ UNICEF Humanitarian Action, *Donor Update*, 8 December, 2005, p. 2

¹⁴⁷ FAFO and UNFPA, “*Life in the Gaza Strip Six Weeks after the Armed Conflict of 27 December 2008 – 17 January 2009; Evidence from a Household Sample Survey.*”

¹⁴⁸ *U.N. News Centre*, More Palestinians Die after being Denied Access through Israeli Checkpoints, UN Reports, available at: <http://www.un.org/apps/news/story.asp?NewsID=24054&Cr=gaza&Cr1=>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *See Concluding Observations 2003.*

64. Palestinian and Jewish Israelis live in separate “sectors.”¹⁵² While Palestinian citizens comprise 20% of the Israeli population, the “Arab sector” received only 7.6% of state development funding in 2008.¹⁵³ 76 local authorities comprised of Palestinian citizens in Israel are classified as “Arab”, and all of them are ranked in the lower half of the national socio-economic scale, with 85% of the localities placed in the lowest three deciles.¹⁵⁴ Further, 89% of towns in Israel are classified as Jewish, and Palestinians are explicitly prevented from leasing rights in 78% of these towns.¹⁵⁵ In 2004, Adalah petitioned the Israeli Supreme Court to address the discriminatory laws that allow the ILA to distribute JNF land exclusively to Jews.¹⁵⁶ The case is pending, but if the discriminatory law remains in place, it will “result in the continued exclusion of Arab citizens from land in Israel and contribute to the further institutionalization of racially-segregated towns and villages throughout the state.”¹⁵⁷
65. Inside Israel, authorities have sprayed crops of Palestinian Bedouin citizens in the Naqab (Negev) with toxic chemicals in the context of a systematic policy of forced eviction and relocation of their communities to “concentration areas.”¹⁵⁸ Palestinian citizens also continue to be denied an effective right to work in public and civil service. Independent reports point out “ongoing employment discrimination in public positions . . . despite the governmental decision made by Prime Minister Olmert mandating that by 2006, at least six percent of employees in all governmental, civil service or ministerial offices must be Arab, with the percentage rising to eight percent by 2008.”¹⁵⁹ Fewer than six percent of civil servants are Palestinians.¹⁶⁰
66. Studies on education in the “Arab sector” report that schools for Palestinians lack 7,000 classrooms that are needed “in addition to a scarcity of supplementary spaces such as playgrounds, theater halls, and science laboratories.”¹⁶¹ Further, the “Palestinian community in Israel lacks a state-funded Arab university despite appeals to the state that date back to 1981.”¹⁶² Without a state-funded Arab university, “[d]iscrimination against Arab students in the Jewish-Israeli higher education system has compelled more than 7,000 Palestinian students to leave the country and pursue higher education abroad.”¹⁶³
67. Unlike Jewish citizens and immigrants, Palestinian citizens must obtain permits for family unification for foreign spouses and children in order to reside legally in Israel with their families. Since 2003, the Knesset has regularly extended a “temporary” amendment of the Entry into Israel Law, effectively making the “temporary” law into a permanent one.¹⁶⁴ The

¹⁵² See CERD Report Seventeenth Session 19 February- 9 March 2007, CERD/C/ISR/CO/13 March 2007.

¹⁵³ Mossawa, *The Economic Status Of Arab Citizens Of Israel: An Overview* (December 2008).

¹⁵⁴ Mossawa, *The Human Rights Status of the Palestinian Arab Minority, Citizens of Israel* at 20 (October 2008).

¹⁵⁵ Adalah, *International Human Rights Day* (December 10, 2007).

¹⁵⁶ Adalah, “*Land Controlled by Jewish National Fund for Jews Only*,” (Jul. 29, 2007), citing H.C. 9205/04, Adalah v. The Israel Land Administration, et.al. (case pending).

¹⁵⁷ *Id.*

¹⁵⁸ Press Release, Arab Association for Human Rights (HRA), “Israel’s Poisonous Aerial Spraying of Negev Crops Illegal, Endangers Health of Bedouin Villagers” (July 6 2004).

¹⁵⁹ Mossawa, *The Human Rights Status of the Palestinian Arab Minority, Citizens of Israel* at 11-23 (October 2008). [Hereinafter Human Rights Status]

¹⁶⁰ *Id.*

¹⁶¹ Human Rights Status *surpa* note 159.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ The Law has been extended until 2011. See Attila Somfalvi, “Citizenship Law Extended by 6 Months,” ISRAEL NEWS, available at: <http://www.ynetnews.com/articles/0,7340,L-3923082,00.html>.

law restricts family unification for Palestinian citizens in Israel and their Palestinian spouses and children from the OPT. The law forces families to remain separated or to relocate.¹⁶⁵

¹⁶⁵ Adalah, *Ban on Family Unification*, available at: <http://www.adalah.org/eng/famunif.php>.

IV. Badil's Conclusions and Recommendations to the Committee

68. In sum, Israel's policies of colonialism, institutionalized discrimination, and apartheid have denied the Palestinian people the opportunity to exercise the rights guaranteed to them by the ICESCR. Specifically, Israel's discriminatory policies have prevented Palestinians from realizing their rights to self-determination and equality, from which flows the enjoyment of all other economic, social and cultural rights, including the rights to work, education, protection of the family, an adequate standard of living and health.
69. The situation for Palestinians has deteriorated drastically since its previous report to the Committee as a result of additional Israeli violations of Palestinian ICESCR rights.
70. Important concluding observations and recommendations have been issued in the past by this Committee and other human rights treaty committees, in particular CERD, regarding Israel's institutionalized discrimination against the Palestinian people and its denial of the right to self-determination.¹⁶⁶
71. Badil would like to emphasize that the realization of self-determination is conditioned upon being free of all forms of discrimination, especially apartheid as practiced by the State of Israel.”
72. Moreover, Badil is deeply concerned that the Committee's letter dated 11 May 2001 declaring the situation a “crisis situation” and recommending that the Economic and Social Council take action under articles 21 and 22 of the Covenant has gone unheeded.¹⁶⁷
73. Accordingly, Badil strongly urges the Committee to examine thoroughly Israel's system of institutionalized racial discrimination and denial of self-determination and issue the strongest possible Concluding Observations, including:

A finding that Israel's laws and policies that create two separate categories among its citizens, namely “Jewish nationals and citizens” vs. “citizens” only, constitute a systematic violation of ICSECR Article 2 which prevents the full enjoyment of equality and non-discrimination.

A finding that Israel's discriminatory laws and policies pertaining to the confiscation and destruction of Palestinian land and other property, land administration and resource distribution, including the para-state status and role of Zionist organizations, violate Article 2 and obstruct the realization of self-determination (Article 1) and all other ICSECR rights among the Palestinian people, including the right of the Palestinian refugees to return and regain their properties.

¹⁶⁶ See for example: **CESCR, 1998 Concluding Observations on Israel** (E/C.12/1/Add.27 of 4 December 1998), paragraphs 11, 13; **CESCR, 2003 Concluding Observations on Israel** (E/C.12/1/Add.90), paragraph 18; **CERD, 2007 Concluding Observations on Israel** (CERD/C/ISR/CO/13 of 14 June 2007) regarding violations of **Article 3** (Prohibition of segregation and apartheid), paragraphs 22, 23, 33, 34, 35; and **Recommendations** 16, 18, 19.

¹⁶⁷ Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC, E/1995/L.21 (11 May 2001).

A finding that Israel's closure and segregation policies as illustrated by the Wall in the occupied West Bank, the blockade of the occupied Gaza Strip and the maintenance of separate "Arab" and "Jewish sectors" in Israel, fundamentally violate Israel's obligation to respect, protect and promote the rights to self-determination and equality of the Palestinian people.

A finding that Israel's particular combination of protracted military occupation, colonization and apartheid renders unlawful Israel's entire regime of occupation in the OPT, as opposed to a belligerent occupation tolerated under international law.

74. Badil urges to the Committee to recommend

to Israel:

Incorporate the right to equality as a constitutional right in its domestic law.

Annul/reform current laws, in particular laws pertaining to nationality, citizenship and land ownership, to meet ICESCR standards.

Lift the unlawful blockade of the occupied Gaza Strip and guarantee unrestricted freedom of movement of Palestinian people, services and goods.

Dismantle the illegal Wall in the occupied West Bank, end military occupation, colonization and apartheid in the OPT and restore land and resources to Palestinian owners as part of reparations.

to the United Nations:

Reiterate the need for ECOSOC to take action under articles 21 and 22 of the Covenant in order to address the crisis situation.

Recommend to ECOSOC, OHCHR, and/or the Human Rights Council to launch a study by independent experts of Israel's systematic and widespread violations of ICSECR, in particular Articles 1 and 2, and other human rights treaties, such as ICERD, with the aim of developing practical recommendations.