



**Badil Resource Centre for Palestinian Residency and Refugee Rights**

بديل المركز الفلسطيني لمصادر حقوق المواطنة واللاجئين

**Supplement to Badil's Written Report in Response to Israel's Third Periodic Report to the  
UN Human Rights Committee (CCPR/C/ISR/3)**

**Updated Relevant Information for the compilation of the List of Issues**

Submitted 25 June 2010

**Contacts:**

Nidal Azza  
Coordinator, Resource Unit  
Badil Resource Center  
[resource@badil.org](mailto:resource@badil.org)  
Tel: +972.2.274.7346

Rania Madi  
Legal Advocacy Consultant, Geneva  
Badil Resource Center  
17, rue Ferdinand-Hodler 1207 Geneva  
tel, +41.22.736.9266, Fax 0+41.22.736.9193  
[Geneva@badil.org](mailto:Geneva@badil.org)

Susan M. Akram,, Clinical Professor,  
Boston University School of Law  
and,  
Boston University Law Students:  
Brian DaLuiso  
Amber Camio  
Elisabeth Rossi

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## I. INTRODUCTION

1. *Badil Resource Center* (Badil) is an independent human rights organization based in Palestine. It works to promote a rights-based approach to the issues of Palestinian refugees and internally displaced persons. 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).
2. Badil appreciates the opportunity to submit additional information to the UN Human Rights Committee (HRC) to update its Report of 30 September 2009, with regard to Israel's Israel's Third Periodic Report (CCPR/C/ISR/3) concerning its implementation of the *International Covenant on Civil and Political Rights* (ICCPR).
3. This written report is organized by article, and aims at drawing the attention of the HRC to the nature and scope of the forcible displacement and dispossession of the Palestinian population by the State of Israel both in its national borders and the Occupied Palestinian Territory (OPT). Israel's intentional actions and omissions of forcible displacement and dispossession amount to flagrant violations of Article 1 (self-determination); Article 2 (applicability of the Covenant and non-discrimination); Article 7 (prohibition on torture); Article 12 (freedom of movement, freedom to choose residency, and the right to return) and Article 26 (equality before the law). Information submitted in this report is based on the monitoring and documentation work of highly-respected non-governmental organizations in Israel, the Occupied Palestinian Territories, and United Nations organizations with a mandate to monitor and report on human rights conditions in the region.

## II. ISRAEL'S COMPLIANCE WITH ITS OBLIGATIONS UNDER THE ICCPR

### Brief Summary of the Legal Framework of Palestinian Rights

4. Israel's prolonged occupation of the Palestinian Territory (OPT), armed conflict, population expulsion, land confiscation and implantation of Jewish-only colonies in the OPT has institutionalized a regime of colonization and apartheid. Although belligerent occupation is not *per se* a violation of international law, the conduct of an occupying power is regulated by the rules of armed conflict found in the Hague Regulations of 1907<sup>1</sup> and the Fourth Geneva Convention of 1949<sup>2</sup>. Both of these treaties apply to Israel's prolonged occupation of the Palestinian people, and have been flagrantly violated with regard to its actions in the OPT.<sup>3</sup>
5. Colonization, as defined in the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)<sup>4</sup>, has two aspects that are proscribed by international human rights and humanitarian law: the crime of aggression over another territory or peoples<sup>5</sup>, and the denial of self-determination of the indigenous population subjected to colonialism.<sup>6</sup>
6. Apartheid, one of the most egregious forms of racism, is defined and proscribed under the Convention on the Elimination of Racial Discrimination (CERD)<sup>7</sup>, the Convention on the Suppression and Punishment of the Crime of Apartheid (Anti-Apartheid Convention)<sup>8</sup>, and the Rome Statute.<sup>9</sup> Apartheid is defined as a crime against humanity.<sup>10</sup>
7. The extreme forms of discrimination, racism and dispossession suffered by the Palestinian people for over sixty years reflect massive violations of the international human rights guaranteed under the ICCPR as well as other human rights and humanitarian law. This

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1 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, available at <http://www.unhcr.org/refworld/pdfid/4374cae64.pdf>.

2 Geneva Convention Relative to the Protection of Civilian Persons in a Time of War 287 (12 Aug. 1949) 75 U.N.T.S 973.

3 For the applicability of the Hague Regulations as binding customary law and the application of the Fourth Geneva Convention to Israel, see International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, paras. 89, 94, 95.

4 Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) A/RES/1514 (XV).

5 *Id.* At 67

6 *Id.*

7 International Convention on the Elimination of All Forms of Racial Discrimination (21 Dec. 1965) A/RES/2106 A (XX).

8 International Convention on the Suppression and Punishment of the Crime of Apartheid (30 Nov. 1973) A/RES/3068 (XXVI)

9 Rome Statute of the International Criminal Court (17 Jul. 1998) A/CONF.183/9

10 *Id.* at 7.

Update discusses the most recent developments since Badil's Report of September 2009 relevant to Israel's obligations to the Palestinian people under the ICCPR. It highlights the entrenched nature of Israel's occupation and colonization, and the institutionalized system of racism against Palestinians that fits the international definition of the proscribed crime of apartheid.

## 1. **The Right to Self-Determination (Article 1)**

**Question 1:** Please provide a precise explanation of how Israel's confiscation of Palestinian land to expand and construct Jewish-only colonies in the OPT complies with the ICCPR. Please provide a timetable for halting expansion and construction of Jewish colonies, returning Palestinian land to its owners, and implementing the ICCPR's requirement to provide territorial sovereignty and self-determination to the Palestinian people in all of the territories occupied by, and under the control of, Israel.

**Question 2:** Please provide detailed information with regard to the *Israel Land Administration Law (Amendment No.7) (2009)*, and its effect on Palestinian-owned land.

**Question 3:** Please provide a precise explanation of how Israel's continued construction of the separation Wall complies with the ICCPR, and the ICJ Advisory Opinion (2004). Please provide the Committee with a precise timetable for complying with the ICJ Advisory Opinion, including dismantling all of the Wall constructed in the OPT and East Jerusalem, and compensating Palestinian landowners for illegal expropriation of their lands.

## Introduction

8. The crime of apartheid involves 'inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.'<sup>11</sup> Israel's prolonged occupation of the Palestinian Territory, armed conflict,

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11 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:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person: (i) By murder of members of a racial group or groups; (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups; (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 mem-

population expulsion, land confiscation and implantation of Jewish-only colonies in the OPT has institutionalized a regime of apartheid and colonization that prevents the possibility of Palestinian self-determination for the foreseeable future. The key UN Resolutions affirming the right of the Palestinian people to self-determination have been cited in Badil's initial Report, and are also reiterated in this Committee's General Comment 12.<sup>12</sup> Badil's Report and Update provide overwhelming evidence for the Committee to conclude that Israel has constructed an apartheid regime vis-a-vis the Palestinian people, in violation of the ICCPR's guarantee of self-determination.

### **Land Confiscation and Privatization in the OPT**

9. As discussed in Badil's Report, Israel occupies the entire surface of the OPT (some 6,225 km<sup>2</sup>) and has confiscated or *de facto* annexed more than 4,100 km<sup>2</sup> (70%) of the West Bank for the exclusive benefit of the Jewish population.<sup>13</sup> Israel's expropriation measures continue to date under the guise of a series of laws that claim Palestinian land as "abandoned" land, "state property" for military use or for a "public purpose."<sup>14</sup> Aside from expropriation of West Bank land for Jewish colonies, approximately 555,000 dunams of land have been confiscated for the construction of the separation Wall. It is important to note that total expropriation of Palestinian land relates not only to land taken by Israel in the OPTs since 1967, but expropriation that began before 1948. The Palestine Central Bureau of Statistics (PCBS) records that 85% of historic Palestine is now under Israeli control.<sup>15</sup> Palestinian property confiscated by Israel continues to be for the sole purpose of constructing or

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bers 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 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;...."

12 HRC, *General Comment No.12: The Right to Self-Determination of Peoples*, 13 March 1984, para.6.

13 Badil, *Survey of Palestinian Refugees and Internally Displaced Persons(2008-2009)*, available at [www.badil.org](http://www.badil.org) (hereinafter "Badil 2008-2009 Survey").

14 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.

15 Palestinian Central Bureau of Statistics, *Press Release*, 30 Mar. 2010.

expanding Jewish settlements, or for the exclusive use of Jews, and, under the law, Palestinians are permanently denied use of or access to their expropriated land.<sup>16</sup>

10. In November 2009, the Israeli government claimed it would freeze construction of settlements for ten months. However the freeze applied only to new construction and not to the 2,500 units on which construction had already begun, or to the 455 apartments already marketed. Despite the freeze, construction has continued. “Six months after the freeze began, the state informed the High Court of Justice that it had discovered 423 violation of the construction freeze.”<sup>17</sup>
11. The moratorium appears to be in name only, as the Israeli government has created loopholes and exemptions that allow continued construction and settlement planning during the ten-month ‘moratorium’ period. For example, the Israeli government has authorized settlements to process construction permits even though the permits will not be granted for the time being. When the moratorium ends, this will mean that a significant pool of applications will have been fully processed, and permits can be issued the moment the moratorium is lifted. In addition, a series of exemptions are allowing continued ‘legal’ construction and settlement planning. “These ‘limited’ exceptions reflect a far higher rate of construction in the West Bank than inside the Green Line”<sup>18</sup>
12. That the moratorium is not intended to freeze settlement expansion of construction is clear from the statements of Israeli government officials themselves. Defense minister Ehud Barak has assured settlers that Israel will not relinquish settlement blocs. Other Israeli leaders have, in fact, criticized the moratorium for including settlement blocs. Foreign Minister Lieberman has provided settlers assurances that unrestricted construction will resume once the moratorium expires, and that the moratorium will not be renewed. In light of such assurances, settlers have been pushing to continue construction during the freeze, perhaps believing that following that expiration of the moratorium “such construction will be retroactively approved.”<sup>19</sup>
13. Although Israel committed to evacuating its self-defined ‘unauthorized outposts’ as part of the Road Map framework, it has not evacuated any such settlements established in the West

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16 See *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine*, Badil Resource Center & Center on Housing Rights and Evictions (COHRE), May 2005.

17 B’Tselem, *Human Rights Review, 1 January 2009 to 30 April 2010*, p. 25, available at [http://www.btselem.org/Download/2009\\_Annual\\_Report\\_Eng.pdf](http://www.btselem.org/Download/2009_Annual_Report_Eng.pdf) (hereinafter “B’Tselem 2009 Annual Report”).

18 Lara Friedman, *Settlements Moratorium: A Three Month Accounting*, Americans for Peace Now, Mar. 1, 2010, [http://peacenow.org/entries/settlements\\_moratorium\\_three-month\\_accounting](http://peacenow.org/entries/settlements_moratorium_three-month_accounting).

19 *Ibid.*

Bank since 2001. On April 25, 2010, the state informed the High Court that it was considering approving the Derekh Ha'avot 'outpost', which was built in 2001 on cultivated Palestinian land, next to the Elazar settlement in Etzion Bloc. The High Court has failed to intervene.<sup>20</sup>

14. As noted in Badil's Report, confiscation of Palestinian land in occupied East Jerusalem has accelerated rapidly. Israel has made clear that East Jerusalem is not part of the November 2009 construction freeze.<sup>21</sup> The main purpose of the rapid expropriation of Palestinian land remains to tightly link West Jerusalem to the Jewish settlements in East Jerusalem and those in the West Bank, 'Judaizing' as much contiguous territory as possible.<sup>22</sup>
15. Recently, the Jerusalem Municipality has accelerated approvals of a number of plans to build colonies in the heart of Palestinian neighborhoods in occupied East Jerusalem. Some of these plans, pending for decades, have become concrete, such as the approval of 975 apartments in the Gilo colony, and 1600 in the Ramat Shlomo colony. Approval for another 414 planned apartments for Jewish settlers in Palestinian neighborhoods is pending before the planning committee.<sup>23</sup>
16. As noted in Badil's Report, on 3 August 2009, the Knesset adopted the *Israel Land Administration Law (Amendment No.7)*, which allows privatization of lands "owned" by the State of Israel, the Jewish National Fund (JNF) and the Development Authority, both within Israel and the OPT.<sup>24</sup> This law authorizes the sale of settlements and areas confiscated for settlement construction from Palestinians to private Jewish owners, including Palestinian land in occupied East Jerusalem.<sup>25</sup> This may also include Palestinian land in so-called Area C--land exclusively under Israeli control under the Oslo agreements. This incorporates the 70% of the area of the occupied West Bank that is no longer available to Palestinians, and

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20 See B'Tselem, *A License to Loot: The Derekh Ha'avot Outpost*, 5 May 2010, [http://www.btselem.org/English/Settlements/20100505\\_License\\_for\\_looting\\_in\\_Derekh\\_Haavot\\_outpost.asp](http://www.btselem.org/English/Settlements/20100505_License_for_looting_in_Derekh_Haavot_outpost.asp); International Middle East Media Center, *Settlers - Outpost To Be Authorized As A New Settlement Near Bethlehem*, 26 April 2010, <http://www.imemc.org/article/58533>; Dan Izenberg, *State Must Prepare Zoning Plan to Legalize Derech Ha'avot*, The Jerusalem Post, 27 April 2010, <http://www.jpost.com/israel/article.aspx?id=174026>; Peace Now, *Petition to High Court: State Confirms Outpost to be Authorized as a New Settlement*, 25 April 2010, <http://peacenow.org.il/site/en/peace.asp?pi=66&dodid=4648>; Peace Now, *Outposts List, Derech Ha'Avot*, <http://peacenow.org.il/site/en/peace.asp?pi=58&dodid=347>.

21 B'Tselem 2009 Annual Report at p. 25.

22 UN OCHA ("OCHA"), *Fact Sheet: Sheikh Jarrah*, August 2009, p.4.

23 B'Tselem 2009 Annual Report at p. 26.

24 Suhad (check spelling) Bishara, "Israel is Selling Lands in the Occupied Territories: Adalah Position Paper on Privatization of the Lands of the Settlements on the Golan Heights and East Jerusalem", *Adalah's Newsletter*, Vol. 63, August 2009.

25 *Ibid.*



which has been allocated over the years to Israeli military use or settlements.<sup>26</sup>

17. On 10 February 2010, Israel passed an Amendment to the Land Ordinance (Acquisition for Public Purposes) (1943).<sup>27</sup> The Act gives the Finance Minister complete discretion to expropriate land for “public purposes” and to define those purposes. Under the new law the state may confiscate land without the need to use it for its original purposes for seventeen years, and gives the landowner no right to demand its return if it was confiscated for one purpose but used for another. Under the law, the Finance Minister’s power to confiscate land for public purposes has expanded to include “the establishment and expansion or development of towns.”<sup>28</sup> This law has been used to confiscate yet more Palestinian land.

### **Ongoing Land Confiscation and Dislocation from the Apartheid Wall**

18. Badil’s Report discusses developments in the ongoing construction of the Wall in the OPT in violation of the 2004 ICJ *Advisory Opinion on the Legal Consequences Arising from the Construction of the Wall*.<sup>29</sup> As noted, confiscation of Palestinian lands under Israeli military orders is continuing rapidly, and the major part of the route of the 709-kilometer Wall remains within the occupied West Bank and East Jerusalem,<sup>30</sup> According to B’tselem 85% of the Wall’s planned route runs inside the West Bank. To date 60% of the Wall is complete.<sup>31</sup>
19. The Wall severely restricts the movement of people in villages in the so called “seam zone”, those between the Wall and the Green Line. Because of the severe restrictions in their daily lives, a fifth of the population of ‘Dhaher al-Maleh left the village in the beginning of 2010. Over the past year, the Israeli Civil Administration has pressured residents of other villages to move, despite the state’s claim to the Israeli High Court that it would protect the

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26 OCHA, *The Humanitarian Monitor*, May 2010, p.7,

[http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2010\\_06\\_21\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2010_06_21_english.pdf).

27 Adalah, *Knesset Enacts New Amendment to the Land Ordinance of 1943 to Block Palestinian Claims for Land Previously Confiscated by the State*, 25 Feb. 2010, [http://www.adalah.org/eng/pressreleases/pr.php?file=24\\_02\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=24_02_10).

28 Adalah, *Special Report: 10 Discriminatory Laws*, June 2010, para. 2, <http://www.adalah.org/eng/10.php>.

29 International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004. The ICJ Opinion found that the construction of the Wall within the OPT violated Israel’s international human rights and humanitarian law obligations and ordered it to be dismantled.

30 The Wall’s total length is more than twice the length of the 320-kilometer-long 1949 Armistice Line between the West Bank and Israel. . OCHA, *Five Years after the International Court of Justice Advisory Opinion: A Summary of the Humanitarian Impact of the Barrier*, July 2009, p. 8,

[http://www.ochaopt.org/documents/ocha\\_opt\\_barrier\\_report\\_july\\_2009\\_english\\_low\\_res.pdf](http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf).

31 OCHA, *West Bank Movement and Access Update*, June 2010, p. 1,

[http://www.ochaopt.org/documents/ocha\\_opt\\_movement\\_access\\_2010\\_06\\_16\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_movement_access_2010_06_16_english.pdf).

living conditions of villagers affected by the Wall.<sup>32</sup> Thousands of Palestinian farmers have been cut off from their farmland, and must rely for access to their own land on “agricultural gates.” Obtaining a permit to cross at these gates is difficult, and the number of permanent permits to use the gates dropped by 83% between 2006 and 2009.<sup>33</sup>

20. Although some adjustments have been made to the route of the Wall-- in particular, the rerouting around the Alfe Menashe settlement in Qalqilya that has reconnected the communities of Dab’a, Wadi Ar Rash and Ras at Tira with the rest of the West Bank— agricultural land owned by the affected communities remains closed to them.<sup>34</sup> In Hebron, 110 people must now get permits to continue living in their own homes. Some in this community have been unable to renew their permits, and movement in and out of the community has become exhausting and humiliating. For example, children are often delayed on their way to school for the inability to produce a birth certificate.<sup>35</sup>
21. In February 2010, after a three year freeze, Israel began clearing land for two sections of the Wall in the northwest part of Bethlehem. This has generated concerns about the effects of the Wall’s completion in that area. . The Wall’s official route in the area encloses ten Israeli settlements in the “Gush Etzion” block. This enclosure will isolate some 64,000 dunums from the West Bank, including some of the area’s best agricultural land, as well as 21,000 Palestinian residents. Completion of the Wall in this region will mark the largest expansion of the “seam zone” regime in both land area and the numbers of Palestinians whose lives are disrupted.<sup>36</sup>

### **Implantation of Jewish-only Colonies in the OPT**

22. As pointed out in Badil’s Report, Israel withdrew its 22 settlements from the occupied Gaza strip in 2005, but settler activity has accelerated in the occupied West Bank and East Jerusalem.<sup>37</sup> The most recent reports indicate that the annual growth rate for settlers in the

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32 B’Tselem 2009 Annual Report at p. 33.

33 *Ibid.* at 33-34.

34 OCHA, *The Humanitarian Monitor*, May 2010, p. 5, (“Currently, the total number of Palestinians living in closed areas behind the Barrier is approximately 7,700, down from 10,600 previously”).

35 *Ibid.* at 6.

36 OCHA, *West Bank Movement and Access Update*, June 2010, p. 14.

37 Paragraph 6 of Article 49 of the *Fourth Geneva Convention*. The 1907 *Hague Regulations Respecting the Laws and Customs of War on Land* (Articles 43, 46, 52 and 55), implicitly prohibit the demographic transformation of an occupied territory by designating the Occupying Power as an interim administrator and usufructuary, with no greater power over the territories than to protect and beneficially manage them until their eventual return to the new sovereign government. Susan Akram and Michael Lynk, "The Arab-Israel Conflict," in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, forthcoming).

West Bank is 5%, compared to 1.7% for the rest of Israel. The total settler population amounts to 6.5 % of Israel's population.<sup>38</sup> B'Tselem's most recent report states that Israel recognizes 121 settlements in the West Bank, and "another twelve settlements were built on land that Israel annexed in 1967 and included in the Jerusalem city limits." There are also approximately 100 so-called 'outposts.'<sup>39</sup>

23. All of these measures are institutionalized in Israeli laws and policies that discriminate exclusively against Palestinians on the basis of ethnic/national origin, and create a two-tiered legal system: a preferential system for Jews, and a third-class system for Palestinians. The deeply entrenched nature of the discrimination affecting the broad range of rights of the Palestinian people discussed here reflects the intentional 'systematic oppression and domination by Jews over Palestinians' that is apartheid. Such a regime makes the possibility of the exercise of Palestinians to self-determination guaranteed under Article 1 of the ICCPR impossible.

## **2. Applicability of the ICCPR in the OPT (Article 2)**

**Question 4:** Please provide a detailed explanation of how the state rationalizes the non-applicability of the ICCPR in its obligations towards the Palestinian population in the OPT, and how it distinguishes from the assessment of this Committee that the ICCPR applies fully to all of the state's actions in the West Bank and Gaza.

24. Badil reminds the HRC that it has consistently viewed Israel as responsible for implementing its human rights obligations arising from the ICCPR both within its borders, and in the OPT, as long as it is in effective control of the territory, and that humanitarian law applicable during armed conflict does not preclude the application of the ICCPR.<sup>40</sup> This position is supported by the *ICJ Advisory Opinion on the Legal Consequences Arising from the Construction of the Wall in the OPT*.<sup>41</sup> Nevertheless, Israel still maintains that the ICCPR does not apply beyond its own territory, notably in the occupied West Bank and the Gaza Strip.

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<sup>38</sup> B'Tselem 2009 Annual Report at p. 32 ("The total settler population amounts to 6.5 percent of Israel's population. The annual growth rate of the settler population in the West Bank is 5 percent, almost three times higher than the figure for Israel as a whole, which is 1.7 percent").

<sup>39</sup> Tovah Lazaroff, *Israel won't Honor Outpost Pledge*, The Jerusalem Post, 28 April 2010, <http://www.jpost.com/israel/article.aspx?id=174144>.

<sup>40</sup> HRC, *Concluding Observations, Israel*, CCPR/C/79/Add.93, 18 August 1998; HRC, *Concluding Observations, Israel*, CCPR/CO/78/ISR, 21 August 2003, para.11..

<sup>41</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, paras.102 – 113.

25. Since June, 2007, when Hamas prevailed in the Palestinian elections and took control of the Gaza strip, Israel has imposed a tight blockade on Gaza. Israel has controlled the airspace and territorial waters of Gaza as well as most land crossings. Israel only permits Gaza residents to travel outside of the area in the rare cases that it deems “humanitarian.” The same policy applies to people wishing to cross Israel to get to the West Bank. Israel’s claimed objective in the siege of Gaza is to “bring down the Hamas government” and secure the release of Gilad Shalit, held by Hamas.<sup>42</sup> Israel severely limits imports to only 150 kinds of products, as compared to 4,000 kinds of products that were imported before the siege, and prohibits all exports.<sup>43</sup> Israel also prohibits building materials from entering Gaza, and has reduced the supply of industrial fuel to the area. Ninety-eight percent of Gaza residents experience blackouts of up to 10 hours on a daily basis; the other 2 percent have no electricity at all.<sup>44</sup>
26. On December 27, 2008, the Israeli armed forces launched an offensive, code-named Operation Cast Lead, in the Gaza Strip. By the end of hostilities, approximately 1,390 Palestinians had been killed, including 759 civilians, 318 of whom were minors.<sup>45</sup> According to the United Nations, more than 3,500 homes were destroyed, causing more than 20,000 people to become homeless. Israel’s forces also attacked agricultural and industrial sites, as well as electricity, sanitation, and water facilities.<sup>46</sup> Nine Israeli soldiers were killed, four by friendly fire.<sup>47</sup> Four Israelis died as a result of rockets and mortar attacks by Palestinian armed groups; three of them were civilians.<sup>48</sup>
27. The United Nations convened a fact-finding mission on the Gaza conflict and found flagrant violations of international law. The Report of the UN Fact Finding Mission on the Gaza Conflict (Goldstone Report) found that numerous attacks on civilian facilities, including those on the Palestinian Legislative Council and the Gaza main prison violated international humanitarian law, which restricts attacks to those with military objectives.<sup>49</sup> The mission also found that the Israeli armed forces failed to take steps that would minimize loss of civilian life or damage to civilian objects and violated the Fourth Geneva Convention by

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42 B’Tselem 2009 Annual Report at p. 9.

43 *Ibid.*

44 *Ibid.* at 10.

45 B’Tselem 2009 Annual Report at p. 5.

46 *Ibid.*

47 *Ibid.*

48 Goldstone Report, A/HRC/12/48, p. 11

49 *Ibid.* at 11, para 32

“willfully causing great suffering to protected persons”<sup>50</sup> when attacking civilian houses and a mosque. The report further found that Israel’s destruction of industrial infrastructure, food production, water installations, sewage treatment and housing amounted to a war crime.<sup>51</sup> The arbitrary detention of Palestinian civilians, held in degrading conditions, further constituted a war crime and a collective penalty on civilians.<sup>52</sup>

28. The blockade has exacerbated the already dire humanitarian conditions in the Gaza Strip. Because of Israeli restrictions on imports and exports, the economy in Gaza has been devastated. Ninety-five percent of factories and workshops have closed as a result of the siege policy because no raw materials can enter the area.<sup>53</sup> More than 40% of people in Gaza are unemployed, and international aid sustains over 70% of the population.<sup>54</sup> Shortage of classrooms is another problem that has arisen as a result of the blockade and destruction of schools, and the inability to import building materials. Because of the prohibition on importing building materials, the infrastructure that was destroyed during Operation Cast Lead cannot be rebuilt. Agriculture has also suffered, due to prohibitions on the import of pesticides and spare parts for irrigation systems as well as prohibitions on exports. Some farmers cannot even access their farms, because they are near the Israeli border in areas declared part of a “security strip,” in which Israel has implemented open-fire regulations. Fishermen can only fish within three nautical miles of the coastline, where there is a meager fish supply.<sup>55</sup>
29. On May 31, 2010, a flotilla of civilians carrying 10,000 tons of aid<sup>56</sup> headed to Gaza in an attempt to break the embargo. Israeli naval commandos attacked the flotilla in international waters. Nine people on board, many of them Turks and one American, were killed, and nineteen were injured, many seriously. Israel’s claim that it was enforcing its blockade, and acted in self-defense<sup>57</sup> is untenable, as the boats were attacked in international waters and the blockade itself is illegal.
30. Soon after the attack, the Israeli government claimed that it will begin facilitating the entry

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50 *Ibid.* at 16, para 46

51 *Ibid.* at 17, para 50

52 *Ibid.* at 20, para 60. The Mission also investigated Palestinian actions and found that Palestinian armed guards had launched attacks from areas near civilian or protected buildings, which exposed the civilian population in Gaza to danger. *Id.* at 20, para. 35.

53 B’Tselem 2009 Annual Report at p. 11.

54 *Ibid.*

55 *Ibid.*

56 Isabel Kershner, “Deadly Israeli Raid Draws Condemnation,” 31 May 2010, NYTimes.com, accessed 23 June 2010, <http://www.nytimes.com/2010/06/01/world/middleeast/01flotilla.html>.

57 Michael Slackman, “People in Gaza Await Easing of Israeli Blockade,” 21 June 2010, NYTimes.com, accessed 23 June 2010, <http://www.nytimes.com/2010/06/22/world/middleeast/22gaza.html?fta=y>.

of civilian goods into Gaza.<sup>58</sup> On June 17, Israel announced it would adjust its policy and “liberalize the system by which civilian goods enter Gaza.”<sup>59</sup> Israel continues to claim that the blockade is essential for its security because it prevents Hamas from acquiring weapons.<sup>60</sup> The adjustments in the blockade policy suggested that Israel would permit foodstuffs to enter Gaza, but there would be no easing of restrictions on the movement of people in and out of Gaza, or the import and export of raw materials.<sup>61</sup> Residents of Gaza, however, say they do not need food; they need building supplies, freedom of movement; and raw materials so that manufacturing can resume and jobs can be created.<sup>62</sup> Secretary General Ban Ki-moon has condemned the continued blockade of Gaza.<sup>63</sup>

31. Israel remains the occupying power in effective control of the territory, air space, borders, resources, and movement of goods and people throughout the West Bank and Gaza Strip. Hence, Israel is bound by its obligations under the ICCPR and other human rights and humanitarian law in the entire OPT. The Israeli High Court’s decisions in *Bassiouni Ahmed*<sup>64</sup>, *Anbar v. GOC Southern Command*<sup>65</sup> and other cases completely disregard international human rights law which establishes that Israel remains the occupying power in effective control of all of the Gaza Strip and West Bank. Israel’s position that it does not have any ongoing human rights/humanitarian law obligations towards the Gaza Strip since 2005 allows it to continue to act with impunity, in particular towards the 1.5 million Gazans who have remained locked down by Israel’s brutal siege and sanctions regime.

### **3. Equality and Non-Discrimination (Articles 2(1) and 26)**

**Question 5:** The principles of equality and non-discrimination are not guaranteed either in Israel's *Basic Law: Human Dignity and Liberty*, which serves as Israel's Bill of Rights, or in an ordinary statutes. Israel's law distinguishes between nationality and citizenship and reserves the full rights of nationals and citizens for its Jewish population. Further, Israel defines itself in its Basic Laws as a Jewish and democratic state. How does the State of Israel comply with international human rights

58 Isabel Kershner, “Israel Signals New Flexibility on Gaza Shipments,” 3 June 2010, NYTimes.com, accessed 23 June 2010, <http://www.nytimes.com/2010/06/04/world/middleeast/04flotilla.html?fta=y>.

59 Isabel Kershner, “Israel to Ease Gaza Land Blockade,” 17 June 2010, NYTimes.com, accessed 23 June 2010, <http://www.nytimes.com/2010/06/18/world/middleeast/18mideast.html>.

60 Isabel Kershner, “Israel Signals New Flexibility on Gaza Shipments,” 3 June, 2010, NYTimes.com, accessed June 23, 2010, <http://www.nytimes.com/2010/06/04/world/middleeast/04flotilla.html?fta=y>.

61 Kershner, “Israel to Ease Gaza Land Blockade.”

62 Neil MacFarquhar, “U.N. Leader Criticizes Israeli Plan for Inquiry,” 18 June 2010, NYTimes.com, accessed 23 June 2010, <http://www.nytimes.com/2010/06/19/world/middleeast/19nations.html?scp=1&sq=flotilla&st=cse>.

63 *Ibid.*

64 *Jaber al Bassiouni Ahmed v. The Prime Minister*, HCJ 9132/07, 30 January 2008, available at [http://www.adalah.org/eng/features/gaza/gaza%20\\_eng.rtf](http://www.adalah.org/eng/features/gaza/gaza%20_eng.rtf).

65 *Anbar et al. v. GOC Southern Command*, HCJ 5268/08 and 5399/08, 9 December 2009, available at [http://www.hamoked.org.il/items/110492\\_eng.pdf](http://www.hamoked.org.il/items/110492_eng.pdf).

law requirements to ensure equal rights to all its citizens, Jews and Palestinians, and protect the latter from racial discrimination?

**Question 6:** In the OPT, the State party applies a different set of laws, rules, policies and practices to Palestinians (military law) than it applies to Israelis and Jewish settlers (Israeli civil law), in relation to freedom of movement, access to land and housing, food, water and medical services. How does the State of Israel reconcile with the principle of non-discrimination in the OPT?

32. As Badil's Report has noted, house demolitions, forced evictions, building rights, movement restrictions, and policies of re-entry are all carried out in a fashion that discriminates against Palestinians on the ground of their national origins on both sides of the Green Line, namely in Israel and the OPT. Israel is failing to comply with its legal obligations under international human rights law, including Articles 2(1) and 26 of the ICCPR.
33. The institutionalized racial discrimination in the Israeli legal system, based on the distinction between "nationality" and "citizenship," gives first-class rights and benefits to Jews while second-class status is afforded all others, even non-Jewish citizens of the state.<sup>66</sup>
34. In the West Bank, one set of laws and policies applies to Palestinians, primarily through military orders, while settlers have exclusive preferential rights extended to them by Israeli domestic law. Two new military orders have the potential of placing thousands of Palestinians at risk of arrest, prosecution, and deportation based on "unclear criteria and without adequate judicial review."<sup>67</sup> The Order regarding Prevention of Infiltration (1650) changes the definition of "infiltrator" from an enemy of the state to anyone in the West Bank without a permit. Human rights organizations are challenging what appears to be a new military permit system with no clear guidelines.<sup>68</sup> The Order regarding Security Provisions (1649) provides for a military committee to review deportations appeals. The Order does not specifically grant the right to appeal or to legal counsel, and, unlike Order 1650, allows deportation within 72 hours.<sup>69</sup>
35. According to Adalah, Order 1650 primarily targets Palestinians with ID cards registered in the Gaza Strip, individuals who lack official status such as spouses of Palestinians to whom Israel has refused to grant ID cards, and foreigners in the West Bank visiting or working

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66 Roselle Tekiner, "Race and the Issue of National Identity in Israel", *In. J. Middle East Stud*, 23 (1991), 39 - 55. See also CESCR, *Concluding Observations, Israel*, E/C.12/1/Add.27, 4 December 1998, para.18; CERD, *Concluding Observations, Israel*, CERD/C/ISR/CO/13, 14 June 2007, para.17.

67 OCHA, *The Humanitarian Monitor*, April 2010, p. 2,

[http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2010\\_04\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2010_04_english.pdf).

68 *Ibid.* at 13.

69 *Ibid.* at 13.

there whose visas Israel will not renew. Some of the thousands threatened by the order severely constrain their own movements, fearing arrest and deportation. “At a time when Israel is promising to ‘ease’ restrictions in the West Bank, Order 1650 is choking the civilian population.”<sup>70</sup> None of these restrictions apply to Israeli Jews or Israeli settlers.

36. The discriminatory regime applies to the movement of people, as well: the hundreds of checkpoints and barriers to movement across the West Bank and East Jerusalem apply only to restrict the movement of Palestinians. OCHA has reported a 50% increase in the use of “flying checkpoints” between Dec. 2009 and March 2010, although some permanent checkpoints have been removed during this period.<sup>71</sup> OCHA states two possible reasons for this increase: 1) To control movement of Palestinians in areas where fixed checkpoints had been removed, and 2) to attempt to disrupt regular protests in the Jerusalem and Ramallah areas.<sup>72</sup>
37. Though Israel has removed a number of checkpoints, the main existing checkpoints have almost eliminated Palestinian traffic on certain “key routes” that Israeli settlers use for easy access between Israel and the West Bank.<sup>73</sup> To compensate for reduced access on main roads by Palestinians, new secondary roads have developed. However, according to OCHA this has served to further “entrench the exclusion of Palestinians from main roads and contribute to the fragmentation of the West Bank.”<sup>74</sup> OCHA reports that the “general closures” imposed by the Israeli authorities on the West Bank increased from 47 the prior year to 50 days in 2010.<sup>75</sup>
38. Palestinian citizens of Israel are afforded no constitutional protection against racial discrimination and are accorded second-class status.<sup>76</sup> This regime of institutionalized discrimination extends to the OPT, where the apartheid nature of the two separate legal systems means a completely separate set of laws and policies apply to the Jewish settlers and another to the Palestinian population. The entire system contravenes the equality guarantees of ICCPR Articles 2 and 26.

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<sup>70</sup> Adalah, *News Release, Palestinian and Israeli Human Rights Groups Call for End to Israeli Military West Bank Deportation Policy*, 13 May 2010, [http://www.adalah.org/eng/pressreleases/pr.php?file=13\\_05\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=13_05_10).

<sup>71</sup> OCHA, “West Bank Movement and Access Update,” June 2010 at p. 8.

<sup>72</sup> *Ibid.* at 8.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.* at 28.

<sup>75</sup> *Ibid.* at 14.

<sup>76</sup> See in this regard, CESCR, *Concluding Observations, Israel*, E/C.12/1/Add.27, 4 December 1998, para.10.



#### 4. **The Right to A Remedy (Article 2)**

39. Despite the ongoing and systematic violations of Palestinian rights under the ICCPR, no effective remedy has been provided by the State of Israel to date. There is almost no accountability by Israel for serious and ongoing violations of the rights of Palestinians guaranteed by the ICCPR. Human rights defenders report that complaints of abuse filed to the relevant Israeli authorities are met by inadequate investigations and treated as isolated incidents. Over the decades of occupation, few killings and acts of violence against Palestinians, including those perpetrated by Israeli settlers, have been investigated, indicted, and prosecuted by the Israel authorities.<sup>77</sup>
40. In the aftermath of the “Cast Lead” offensive, while the Israeli authorities have issued a number of reports focused on the operation, they have failed to undertake credible investigations into reported IHL and IHR violations.<sup>78</sup> The Israeli government has dismissed the conclusions of the September 2009 UN Fact Finding Mission on the Gaza Conflict (Goldstone Report), and refused to comply with its recommendations.
41. As pointed out by the Goldstone Mission, “the current constitutional structure and legislation in Israel leaves little room, if any, for Palestinians to seek compensation for damage or loss incurred...during Israeli military operations.”<sup>79</sup> The *Civil Wrongs Act* of Israel (amended in 2001, 2002 and 2005) allows only a two-month period within which victims may make claims against the state, and provides immunity to Israeli officials for any claims made by ‘subjects of enemy states,’ or members of ‘terrorist organizations.’<sup>80</sup>
42. The same lack of accountability marks Israel’s response to the outcry against its attack on the Gaza aid flotilla. Prime Minister Netanyahu announced that Israel would set up its own investigation into the events surrounding its raid on the Gaza convoy. Israel has rejected a United Nations proposal for an international panel to investigate the deadly May 31 interception of the flotilla.<sup>81</sup> The ICRC declared in a June 14, 2010 news release that the

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77 OCHA, *2010 Consolidated Appeal*, at p. 28

[http://ochadms.unog.ch/quickplace/cap/main.nsf/h\\_Index/CAP\\_2010\\_oPt/\\$FILE/CAP\\_2010\\_oPt\\_SCREEN.pdf?OpenElement](http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/CAP_2010_oPt/$FILE/CAP_2010_oPt_SCREEN.pdf?OpenElement).

78 *Ibid.* at 28.

79 Goldstone Report, A/HRC/12/48, p.520, para. 1670.

80 *Civil Wrongs (Liability of the State) Law, 5712-1952 (as amended, 2001, 2002, 2005)*, English translation available at <http://www.adalah.org/features/compensation/law-e.pdf>.

81 Haaretz.com, *PMO officially announces internal Gaza flotilla raid investigation panel*, 14 June 2010, <http://www.haaretz.com/news/diplomacy-defense/pmo-officially-announces-internal-gaza-flotilla-raid-investigation-panel-1.295957>.

blockade of the Gaza Strip, which is now in its fourth year, is a collective punishment imposed against the 1.5 million people living in Gaza in contravention of Israel's international obligations.<sup>82</sup>

43. B'Tselem has filed 220 complaints since September 2000, when the second intifada began, regarding cases of Israeli violence against Palestinians or destruction of their property. B'Tselem reports that, to the best of its knowledge, investigations have begun in 124 cases. Only nine of those investigations resulted in indictments. The Israeli Police closed another 33 cases without taking any action against anyone involved, and there had been no decision in any of the other cases. The Israeli Police have not even responded to fifty-six of B'tselem's complaints.<sup>83</sup>
44. B'tselem has filed forty complaints regarding incidents in which it suspected that Israeli security forces either failed to intervene during settler violence or took part in the violence since the second intifada began. Five of those cases are being investigated.<sup>84</sup> B'tselem documented instances of settler violence when security forces failed to make advance preparations, although such events were predictable, or did not investigate the individuals who were involved.<sup>85</sup>
45. In decisions on the Occupied Territories, the Israeli High Court has found almost universally in favor of the state, giving enormous deference to state agencies even where binding international norms cut to the contrary. For example, on the issue of the applicability of the Fourth Geneva Convention., the Court has claimed that the humanitarian provisions of the Convention will apply to the Occupied Territories, but has declined to rule that the Fourth Geneva Convention applies as a matter of law to the Territories. It has also declined repeatedly to rule on the legal status of the Israeli settlements.<sup>86</sup> The High Court has also applied a dual system of 'justice' in civil claims, one for Palestinians, and another for Jews. In the thousands of claims made by Palestinians from 1948 to the present to challenge home demolitions, land expropriation, closures, and other measures, the High Court has rarely ruled in their favor, and even the few favorable rulings have not been implemented by the

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82 OCHA, *Protection of Civilians*, 9 – 15 June 2010, p. 4

[http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_2010\\_06\\_18\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_2010_06_18_english.pdf).

83 B'Tselem 2009 Annual Report at p. 28.

84 *Ibid.* at 28.

85 *Ibid.* at 28-29.

86 *See generally*, David Kretzmer, *The Occupation of Justice, The Supreme Court and the Occupied Territories* (2002).

state.<sup>87</sup>

46. In the absence of accountability, the state has developed a “culture of impunity” which defies international law, escalates violence and further degrades the rights of Palestinians. According to the September 2009 UN Fact Finding Mission on the Gaza Conflict (Goldstone Report), there is an “urgent need for accountability in the OPT to support protection of civilians, justice for victims and a durable peace agreement.”<sup>88</sup> Israel has failed to implement any effective legal process that would guarantee Palestinians the right to remedy required by Article 2 of the ICCPR.

## **5. Prohibition on Torture (Article 7): Violence and Harassment by Jewish Settlers in the OPT**

**Question 7:** Please provide a list of all complaints submitted to the state concerning violence committed by Jewish settlers against Palestinian individuals and property; all steps taken by the state to investigate and prosecute such crimes; the reasons for dismissing any and all such complaints that the state has failed to prosecute. What are the measures taken by the State party to protect Palestinian civilians and prevent such violence and to hold those responsible accountable?

47. Palestinian civilians in the OPT continue to be subject to widespread and systematic Jewish settler harassment and violence, including physical assault, criminal trespassing, property destruction, threats of violence, abuse and intimidation, killing of animals, desecration of cemeteries and mosques, dumping of waste, sexual harassment, as well as killings.
48. Threats of violence against Palestinians rose in the aftermath of the government’s freeze on construction in November 2009 in the settlements. Some of this rise in violence appears to be a consequence of the “price tag” tactic employed by settlers to discourage the government from evacuating ‘outposts.’<sup>89</sup>
49. OCHA stated that settler violence is on the rise and has recorded more than twice the number of settler attacks on Palestinians so far in 2010 than the average of the past four years for the same period – “120 compared to 54 incidents”.<sup>90</sup> In addition to attacks on Palestinian individuals, OCHA also reported eighteen incidents in May involving attacks on Palestinian property by settlers.<sup>91</sup> In 2010, one Palestinian child has been killed and 56

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87 See Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Access to Land in Israel* (2003). See also, Eyal Benvenisti and Dahlia Shaham, *Facially Neutral Discrimination and the Israeli Supreme Court*, 36 N.Y.U. J. INT’L L. & POL. 677 (2004).

88 *Ibid.*

89 OCHA, *The Humanitarian Monitor*, May 2010 at p. 4.

90 OCHA, *The Humanitarian Monitor*, May 2010 at p. 3.

91 *Ibid.*

Palestinians and 29 settlers injured in the context of settler-related incidents.”<sup>92</sup>

50. Settler violence against Palestinians and their property has risen dramatically over the last year, apparently condoned by the Israeli military and state officials. Moreover, the lack of a legal process to provide any remedy for Palestinians against settler perpetrators results in Palestinians living in constant fear of harm to themselves and their property. Settler violence causes Palestinians great physical and mental suffering amounting to torture and/or cruel, inhuman and degrading treatment or punishment by private persons who are within Israel’s control.<sup>93</sup>

## **6. Freedom of Movement and Freedom to Choose a Residence (Article 12(1))**

### **Forced Displacement in the OPT and in Israel**

**Question 8:** Please comment on the information that the State party is carrying out arbitrary and discriminatory dispossession and displacement of Palestinian civilians (refugees and non-refugees) in the OPT, including East Jerusalem.

**Question 9:** Please provide an explanation for the systematic pattern of denial of building permits to Palestinians in occupied East Jerusalem and Area C of the West Bank. And please clarify who is responsible for decisions regarding home demolitions.

**Question 10:** Please provide information on measures taken to ensure that town plans accommodate the Palestinian housing needs and developments in both occupied East Jerusalem and Area C.

### *Home Demolitions and Forced Evictions*

51. As Badil’s Report describes in detail, Israel has implemented a wide range of measures to restrict and deny Palestinians freedom of movement and residence in the OPT. As with its other policies, such measures apply almost exclusively to Palestinians, and not to Jewish settlers or Jewish citizens of Israel. The severe barriers to freedom of movement are also continuing to cause forcible displacement among the Palestinian population. These policies and practices constitute violations of Articles 12 and 2 since they are carried out on a discriminatory basis. Such measures, carried out exclusively on the basis of nationality and ethnicity, also fit within the definition of apartheid.

<sup>92</sup> OCHA, *Protection of Civilians*, 9 – 15 June 2010 at p. 2.

<sup>93</sup> See also *Dzemajl v. Yugoslavia*, Communication No.161/2000, U.N. Doc. CAT/C/29/D/161/2000(2002).

52. The demolition of Palestinian-owned homes and displacement were the subject of extensive discussion in Special Rapporteur John Dugard's Report of January 2008.<sup>94</sup> As Badil's Report noted, between 1967 and the beginning of 2009, Israel demolished over 24,100 Palestinian homes and structures, displacing over 128,700 Palestinians in occupied West Bank, East Jerusalem, and the Gaza Strip.<sup>95</sup>
53. As of June 15, 2010, 70 Palestinian-owned structures in Area C have been destroyed by Israeli authorities. The destruction has displaced 129 people. Five other structures have been destroyed in east Jerusalem. In the first six months of 2009, Israeli authorities destroyed 133 structures in Area C and 36 structures in East Jerusalem, displacing 450 people.<sup>96</sup>
54. In January 2010, Israeli forces demolished the village school, 12 animal pens, and the homes of 100 Palestinians in Khirbet Tana.<sup>97</sup> According to UN estimates, there are 4,800 demolition orders currently pending against Palestinians living in the OPT.<sup>98</sup>

**Question 11:** Please provide detailed information about the widespread and systematic forced evictions of Palestinians, refugees and non-refugees, in the OPT, and whether the State party provides legal advice, assistance and compensation to the evictees.

**Question 12:** Please explain how the State party provides protection to Palestinian residents of a property with a contested ownership who are at risk of forced eviction while the case is pending before national courts.

**Question 13:** Please comment on the information that the State party has recognized claims of ownership by Jewish individuals or associations prior to 1948, while failing to recognize the rights of Palestinian refugees to reclaim lost land and property.

55. Israel has stepped up the enforcement of closed military zones and firing zones, leading to many more forcible evictions in various Jordan Valley locales. More than 80 percent of the demolitions in Area C during 2009 occurred in designated "firing zones". The constant threat of eviction causes families in these areas to live in a persistent state of fear and insecurity. Many of the communities base their livelihood on herding, and have few available options that would allow them to legalize their status and also earn a living. Many

<sup>94</sup> J. Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, para. 41, UN Doc. A/HRC/7/17 (21 January 2008).

<sup>95</sup> Israeli Committee Against House Demolitions (ICAHD), *Statistics on House Demolitions (1967 – 2009)* as of 19 January 2009, and the Inter-Agency Rapid Shelter/NFI Assessment undertaken between 22 January and 2 February 2009.

<sup>96</sup> OCHA, *Protection of Civilians*, 9 – 15 June 2010 at p. 2.

<sup>97</sup> *Ibid.* at 5.

<sup>98</sup> Amnesty International, *As Safe as Houses: Israel's Demolition of Palestinian Homes*, June 2010, p. 3, <http://www.amnesty.org/en/library/asset/MDE15/006/2010/en/a76d04ee-6672-4498-a8b9-0a86e6942bb9/mde150062010en.pdf>.

evicted people in this area end up rebuilding their structures in the same area following demolition.<sup>99</sup>

56. Two new military orders entered into force on April 13, 2010 which “broaden the existing definition of ‘infiltration’ in the occupied West Bank.” The new orders would criminalize every person present in the West Bank and subject them to deportation.<sup>100</sup>
57. Dispossession and displacement are aimed at creating Jewish majorities in every area within Israel.<sup>101</sup> Adjacent to the Judea and Samaria Police Headquarters are a group of wooden and tin structures belonging to members of the Sawahreh Bedouin tribe. Under Outline Plan 420/4 for building in the area known as E-1, to the north of Ma’ale Adumim, this area is intended for construction of housing for settlers. The plan has not yet been approved.”<sup>102</sup>
58. The most recent forced evictions and home demolition of Palestinian-owned property fit in the pattern of planned expansion of Jewish-only colonies throughout the West Bank and East Jerusalem. Once again, these measures are deliberate, institutionalized discrimination reinforcing the apartheid nature of ‘separate and unequal’ treatment of Jews and Palestinians. As Badil noted in its Report, these measures have a single goal: to take over the maximum amount of land with a minimum number of Palestinians, and replacing them with Jewish-only colonies.

#### *Israel’s “Quiet Transfer” Policy: Revocation of Residency Status*

**Question 14:** Please provide detailed information about the policy of revocation of the residency status of Palestinian Jerusalemites, and explain why the State party does not reinstate the residency status of those Palestinians.

59. Israel has instituted a new policy that will almost completely eliminate the possibility of

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99 OCHA, The Humanitarian Monitor, January 2010, p. 7,

[http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2010\\_01\\_31\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2010_01_31_english.pdf).

100 Al-Haq, *Al-Haq’s Legal Analysis of Israeli Military Orders 1649 & 1650: Deportation and Forcible Transfer as International Crimes*, <http://www.alhaq.org/pdfs/legal-analysis-of-new-israeli-military%20Orders.pdf>. Regarding Orders 1649 and 1650, see also: Al Mezan Center For Human Rights, *Public Statement: The EMHRN condemns Israeli Military Orders Threatening the Mass Transfer of West Bank Palestinians*, 13 April 2010, [http://www.mezan.org/en/details.php?id=10070&ddname=expel&id\\_dept=12&p=center](http://www.mezan.org/en/details.php?id=10070&ddname=expel&id_dept=12&p=center);

Al Mezan Center For Human Rights, *Israel Implements New Military Order 1650; Authorities Expel Palestinian Man from the West Bank to the Gaza Strip*, 22 April 2010, [http://www.mezan.org/en/details.php?id=10008&ddname=expel&id\\_dept=9&p=center](http://www.mezan.org/en/details.php?id=10008&ddname=expel&id_dept=9&p=center)

Al Mezan Center For Human Rights, *Palestinian and Israeli Human Rights Groups Call for End to Israeli Military West Bank Deportation Policy*, 13 May 2010, [http://www.mezan.org/en/details.php?id=10105&ddname=expel&id\\_dept=31&p=center](http://www.mezan.org/en/details.php?id=10105&ddname=expel&id_dept=31&p=center).

101 J. Cook, *On the Margins* (2006), p. 7.

102 B’Tselem 2009 Annual Report at p.27.

relocation from Gaza to the West Bank. The policy is that unification of parents and children or spouses does not constitute ‘humanitarian’ grounds justifying the grant of family unification permits in the West Bank. Israel’s definition of “humanitarian” under the new procedures would prohibit an orphaned child in the Gaza Strip from uniting with his parent in the West Bank if there were any relative in Gaza who could care for him. This policy represents another Israeli effort to deepen the gulf between the West Bank and the Gaza Strip.<sup>103</sup>

60. In 2008, Israel passed an Amendment No. 9 (Authority for Revoking Citizenship) to article 11 of the Citizenship Law (1952) that revokes citizenship due to “breach of trust or disloyalty to the state”. “Breach of trust” is defined broadly to include “the act of naturalization or obtaining permanent residency status in one of nine Arab and Muslim states which are listed by the law, and the Gaza Strip.” Citizenship can be revoked even without a criminal conviction.<sup>104</sup>
61. A 2003 temporary order prohibits family unification where one spouse is a resident of the OPT and the other is an Israeli citizen. Amendments to the order, passed in 2007 and 2008, expanded the prohibition. It now includes citizens and residents of Iran, Lebanon, Syria, Iraq and residents of the Gaza Strip. The Knesset has consistently extended the temporary order, so that it is, in effect, a permanent law. . “Thousands of Palestinian families have been affected by the law, forced to split apart, move abroad or live in Israel in fear of constant deportation.”<sup>105</sup>
62. In 2007, Israel instituted a policy of defining as “illegal aliens” all Palestinians from the Gaza Strip who were present in the West Bank without a permit. \_Israel refuses to transfer the registered address of a Palestinian from Gaza to the West Bank, even if s/he has lived in the West Bank for years.”<sup>106</sup> “In 2008, the Knesset approved the Citizenship Law (Amendment No. 9) (Authority for Revoking Citizenship) which allows citizenship to be revoked on the grounds of breach of trust vis-à-vis the state.x Proceedings have been launched to revoke the citizenship of several Palestinian citizens of the state based upon

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103 HaMoked, *News Release, 13 Human Rights Organizations Petition the Supreme Court: Israel should not Determine which Parent a Palestinian Child Lives with*, 15 March 2010, [http://www.hamoked.org.il/news\\_main\\_en.asp?id=899](http://www.hamoked.org.il/news_main_en.asp?id=899).

104 Adalah, *Special Report: 10 Discriminatory Laws*, June 2010, <http://www.adalah.org/eng/10.php>.

105 *Ibid*.

106 Badil, *Revocation of Residency Rights*, <http://www.badil.org/en/component/k2/item/1367-revocation-of-residency-rights>.

security pretexts, including some elected parliamentarians.”<sup>107</sup>

### *The Closure Regime and Movement Restrictions*

**Question 15:** Please comment on the information that restrictions imposed by the State party on the freedom of movement of the Palestinian civilians in the OPT is systematic and discriminatory.

**Question 16:** Which permissible purpose does the closure obstacles imposed within the OPT and away from the borders of the State party serve?

**Question 17:** Please explain why the State party does not immediately cease the blockade imposed on the Gaza Strip, in order to allow free access of civilians, goods and services from and into the Gaza Strip.

63. According to OCHA, at the end of March 2010, there remained 505 obstacles to internal Palestinian movement in the West Bank. Among the obstacles are 65 permanently staffed checkpoints, 22 partial or ad-hoc checkpoints, and 418 physical but unstaffed barriers. Though the checkpoint figure includes 11 checkpoints in the Hebron City area, approximately eighty other obstacles have been left out because they have not been counted in the past and adding them would alter the “continuity of the data.” Also absent from the figure are 63 “Barrier gates” allowing access to agricultural land. By the end of OCHA’s reporting period in March 2010, 246 old obstacles had been removed and 125 new obstacles had been created for a total of 505, a 19% reduction from the number of obstacles reported in March 2009.<sup>108</sup>
64. Israel announced new measures on May 24, 2010 that would open a key route east of Jerusalem for Palestinian traffic, though “no significant improvement took place in the access of Palestinians to areas behind the Barrier, including East Jerusalem, and to land and rural communities in the Jordan Valley.”<sup>109</sup>

**Question 18:** Why does the State party not allow those who were internally displaced during the 1948 war and its immediate aftermath to return and repossess their property?

**Question 19:** Why did the State of Israel decide to relocate inhabitants of the “unrecognized” Bedouin villages rather than to recognize these villages? Why does not the State party allow the Bedouin to live in their traditional ancestral lands, and recognize their right to develop, control and use their communal land?

<sup>107</sup> *Ibid.*

<sup>108</sup> OCHA, *West Bank Movement and Access Update*, June 2010 at p. 4,

<sup>109</sup> OCHA, *West Bank Movement and Access Update*, June 2010 at p. 1.



**Question 20:** Please provide information on plans to depopulate the Bedouin “unrecognized” villages, and whether the State party enhanced its efforts to consult with the inhabitants of these villages and obtain the free and informed consent of the affected population prior to their relocation.

**Question 21:** Please provide segregated information on the number of Jewish and Palestinian-owned structures in all of Israel, which have been demolished since 2003 and provide the reason. How many Palestinian citizens of Israel have been evicted from their homes since 2003 and for what reason?

**Question 22:** Please comment on the information that the eviction and demolition orders against Palestinian citizens of Israel are issued and implemented in a discriminatory manner.

## **7. The Rights to Return and Property Restitution (Articles 12(4) and 2(3))**

**Question 23:** Why does the State party not revise its re-entry policies and respect the right of the 1948 and 1967 Palestinian refugees to return to their homes of origin as envisaged in the ICCPR?

**Question 24:** What measure did the State party take to promote the right of Palestinian refugees to property restitution and compensation for the loss and damage?

**Question 25:** How does the amendment of the *Israel Land Administration Law (Amendment No.7) (2009)* protect the property rights of the Palestinian refugees?

## **III. RECOMMENDATIONS FOR CONCLUDING OBSERVATIONS**

1. Badil calls on the HRC to insist that Israel respect the right of the Palestinian people to self-determination; repeal the discriminatory land laws; cease all Jewish colonial expansion and construction in the OPT and East Jerusalem; cease all further confiscation of Palestinian land; dismantle the Wall as required by the ICJ and halt all further construction; and make reparations for all damages caused as a result of the State party’s actions. Badil requests the HRC to conclude that Israel has instituted an apartheid regime vis-à-vis the Palestinian people, and that it is incumbent on all state parties to the ICCPR to institute sanctions against Israel until the apartheid system is dismantled.
2. Badil urges the HRC to call on Israel to implement its human rights obligations under the ICCPR in relation to the Palestinian population in the OPT, including the occupied Gaza Strip. Badil requests the HRC to declare the siege and sanctions on the Gaza Strip to be illegal collective punishment; to require Israel to comply with the human rights obligations

outlined in the Goldstone Report and the ICJ Opinion on the Wall; and for all state parties to the ICCPR to institute sanctions against Israel until it complies with its obligations under the ICCPR, lifts the sanctions on Gaza, and applies the full measure of rights guaranteed to the entire Palestinian population throughout the OPT.

3. Badil calls on the HRC to urge the State of Israel to ensure that the principles of equality and non-discrimination will be enacted as general norms of high status in domestic law; to review its re-entry policies; ensure equality of treatment for all its citizens (Jews and Palestinians); and halt its discriminatory policies and practices against the Palestinians in the OPT.
4. Badil urges the HRC to call on Israel to fulfill its legal obligations vis-à-vis the Palestinian population in the OPT; to take positive measures to protect these civilians against settler violence or any other act which impairs the enjoyment of the rights under ICCPR; and to take appropriate measures and exercise due diligence to prevent, promptly and impartially investigate, and punish the perpetrators, and redress the harm caused by the acts of these settlers.<sup>110</sup>
5. Badil recommends the HRC urge Israel to immediately halt the forced displacement and dispossession of Palestinian civilians, including refugees, in the OPT, and facilitate the return of those who have been displaced as a result of forced evictions and/or house demolitions; and to protect Palestinians' property rights and ensure property restitution and compensation for any damage in compliance with Article 2(3) of the ICCPR, and to ensure that Palestinians at risk of displacement have access to adequate planning and legal advice and assistance.
6. Badil urges the HRC to call on Israel to immediately cease the revocation of residency of the Palestinians in occupied East Jerusalem and to reinstate the residency of all Palestinians whose residency has been revoked.
7. Badil recommends the HRC urge Israel to immediately end the illegal blockade on the Gaza Strip and allow freedom of movement for Palestinians within the OPT, namely within the West Bank including East Jerusalem, between the West Bank and the Gaza Strip, and

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<sup>110</sup>HRC, *General Comment No.31: Nature of the General Legal Obligation Imposed on States parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para.8. See also Committee against Torture, *Concluding Observations, Israel*, CAT/C/ISR/CO/4, 14 May 2009, para.32.

between the OPT and the outside world in accordance with the ICCPR.

8. Badil calls upon the HRC to urge Israel to immediately halt its discriminatory policies and practices that directly or indirectly result in the dispossession and forcible displacement of its Palestinian citizens. As to the Bedouin we recommend the HRC call on Israel to recognize their right to live, develop and control their traditional ancestral lands, and recognize the “unrecognized villages”, and to consult with the inhabitants of these villages and obtain free and informed consent regarding any relocation.
9. Badil calls upon the HRC to urge Israel to revise its re-entry policies and respect the right of the 1948 and 1967 Palestinian refugees to return to their homes of origin under conditions of safety, and to promote the right of Palestinian refugees to property restitution and compensation for the loss and damage caused by the conflict; and to revoke the new Israel Land Administration Law, and immediately end the transfer of ownership rights over Palestinian refugee property to private-owners.