



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

بديل المركز الفلسطيني لمصادر حقوق المواطنة واللاجئين

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

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

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## I. INTRODUCTION

*Badil Resource Center* 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).

Badil appreciates the opportunity to submit information to the UN Human Rights Committee (HRC) with regard to Israel's implementation of the *International Covenant on Civil and Political Rights* (ICCPR), in advance to the adoption of List of Issues pertaining to the Israel's Third Periodic Report (CCPR/C/ISR/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). The vast majority of the information submitted in this report is based on Badil's monitoring and documentation work.

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

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

**Question 1:** Please comment on the information that Israel continues to confiscate Palestinian-owned land and build/expand Jewish-only settlements in the OPT. How do these policies and practices comply with the ICCPR and particularly with the obligation to respect the right of Palestinian people to self-determination?

**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 comment on the information that the construction of the separation Wall has continued inside the OPT.

#### 1.1 Introduction

1.1.1 Israel's prolonged occupation of the Palestinian Territory, armed conflict, population expulsion, land confiscation and implantation of Jewish-only settlements in the OPT, prevents the Palestinians from exercising their right to self-determination. The UN has repeatedly reiterated the right of the Palestinian people to self-determination, including their right to an independent State of Palestine.<sup>1</sup> Recalling the HRC's reiteration to Israel of the applicability of the ICCPR in the OPT,<sup>2</sup> and in line with the Committee's General Comment 12, Israel, as a state party to the ICCPR, has an obligation to respect and promote the realization of the right of the Palestinian people to self-determination.<sup>3</sup>

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

1.2.1 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>4</sup> Israel has continued to expropriate Palestinian land as "abandoned"

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<sup>1</sup> See, for instance, UNGA Resolution, *The right of the Palestinian people to self-determination*, A/61/442, 29 November 2006 UNGA Resolution, *The right of the Palestinian people to self-determination*, A/C.3/62/L.63, 20 November 2007. UNGA Resolution, *The right of the Palestinian people to self-determination*, A/RES/63/165, 19 February 2009.

<sup>2</sup> HRC, *Consideration of Reports submitted by States parties under Article 40 of the ICCPR, Concluding Observations, Israel* CCPR/C/79/Add.93, 18 August 1998; HRC, *Consideration of Reports submitted by States parties under Article 40 of the ICCPR, Concluding Observations, Israel*, 21 August 2003, para.11, CCPR/CO/78/ISR.

<sup>3</sup> HRC, *General Comment No.12: The Right to self-determination of peoples*, 13 March 1984, para.6.

<sup>4</sup> Badil Resource Center, *Survey of Palestinian Refugees and Internally Displaced Persons 2008* (forthcoming).

land, “state property” for military use or a “public purpose.”<sup>5</sup> Confiscated property in the OPT held by the State of Israel under military orders for the purpose of constructing or expanding Jewish settlements suggests *de facto* permanent confiscation and possibly annexation.

1.2.2 Land confiscation in and around occupied East Jerusalem has accelerated in recent years. Approximately a third of the land Israel illegally annexed in occupied East Jerusalem was confiscated to build Jewish-only settlements.<sup>6</sup> The present pattern of land confiscation, combined with plans to build and expand already existing Jewish settlements aims at creating facts on the ground by forging a contiguous link between West Jerusalem, and the Jewish settlements in occupied East Jerusalem and in the occupied West Bank, in particular Ma’ale Adumim.<sup>7</sup> Such efforts isolate and fragment occupied East Jerusalem, severing it from the remainder of the West Bank, while further weakening the social and economic link between the northern and southern West Bank.<sup>8</sup>

1.2.3 While the Israeli executive branch plans what it calls the “Judaization” of the OPT, including occupied East Jerusalem, the legislature solidifies the dispossession of the Palestinians. On 3 August 2009, the Knesset adopted the *Israel Land Administration Law (Amendment No.7)*, which is in fact a reform in the management of lands “owned” by the State of Israel, the Jewish National Fund (JNF) and the Development Authority. **As part of the reform, the State of Israel and the other actors will begin a process of privatization of built-up areas and areas planned for development, not only within Israel but also within the OPT.<sup>9</sup> In other words, the State of Israel will be selling Palestinian-owned land to private owners. The privatization process will encompass the settlements and areas planned for settlement construction in occupied East Jerusalem in violation of**

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<sup>5</sup> 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.

<sup>6</sup> UN Security Council Resolution 252 of 1968 reaffirms that the “acquisition of territory by military conquest is inadmissible” and noted that “all legislative and administrative measures of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”.

<sup>7</sup> UN OCHA, *Fact Sheet: Sheikh Jarrah*, August 2009, p.4.

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

<sup>9</sup> Suhad 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.

## **Israel's legal obligations under international human rights and humanitarian law.<sup>10</sup>**

1.2.4 Despite the ICJ Advisory Opinion on the legal consequences arising from the construction of the Wall in the OPT, the Israeli Ministry of Defense continues to confiscate land from Palestinian landowners through military orders for the construction of the 709-kilometer long Wall,<sup>11</sup> while the majority of its route runs illegally *inside* the occupied West Bank, including East Jerusalem.<sup>12</sup> Although the land severed on the "Israeli" side of the Wall remains the legal property of Palestinian owners, those living in, or using this land require permits to access or remain on it, and these permits do not necessarily guarantee regular access to the land due to movement restrictions imposed by the State of Israel (see Section 6). As a result, approximately 9.5% of the West Bank territory is isolated from the OPT. In addition, 80 Jewish-only settlements will be located between the Wall and the 1949 Armistice Line ("Green Line").<sup>13</sup> It is self-evident that the Wall route is a *de facto* annexation of occupied Palestinian territory that has implications for future borders of a Palestinian state, and undermines the right of the Palestinian people to self-determination.

### **1.3 Implantation of Jewish-only Settlements in the OPT**

1.3.1 Although Israel withdrew its 22 settlements from the occupied Gaza strip in 2005, the occupied West Bank and East Jerusalem remain the major centers of accelerated Israeli settlement activity in violation of the prohibition on transfer by an Occupying Power of its civilian population into the occupied territory.<sup>14</sup> According to Israeli government figures, by the end of 2008 there were 133 settlements in the occupied West Bank, including 12 large settlements in occupied East Jerusalem, and other smaller settlements throughout the city.<sup>15</sup> Additionally there are 105 settlement "outposts" throughout the West Bank - that is, informal

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<sup>10</sup> *Ibid.*

<sup>11</sup> 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.

<sup>12</sup> 58% of the Wall is complete; 10% is under construction and 31.5% is planned. When completed, almost 85% of the Wall will run inside the OPT. UN OCHA, *Five Years After the International Court of Justice Advisory Opinion*, July 2009, pp.4 and 8. The map of the current route was published on the website of the Ministry of Defense in April 2006.

<sup>13</sup> UN OCHA, *Five Years After the International Court of Justice Advisory Opinion*, July 2009, p.8.

<sup>14</sup> 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).

<sup>15</sup> B'Tselem, *2008 Annual Report: Human Rights in the Occupied Territories*, February 2009.

structures which serve as a prelude to a new settlement, and are nominally "unauthorized" but still funded by the Israeli government.<sup>16</sup> The jurisdictional area of Israeli settlement "local and regional councils" exceeds more than 40 percent of the West Bank.<sup>17</sup> The *Israeli Central Bureau of Statistics* estimates the 2008 Jewish population of the West Bank settlements at almost 500,000. The annual rate of growth of the settler population for 2008, (excluding East Jerusalem) is 4.7%, far higher than the 1.6% growth rate inside the Green Line.<sup>18</sup>

1.3.2 **The above Israeli policies and practices render the two-state solution unfeasible and deny the realization of the right of the Palestinian people to self-determination and to “freely determine their political status and freely pursue their economic, social and cultural development”.**<sup>19</sup> **Without the realization of their right to self-determination, the Palestinians will be unable to effectively enjoy, promote and strengthen other individual human rights envisaged in the ICCPR.**<sup>20</sup>

1.3.3 *In light of the above Badil calls on the HRC to urge Israel to respect the right of the Palestinian people to self-determination, and immediately halt the land confiscation, the establishment and/or expansion of settlements, and the construction of the Wall, and make reparations for all damages caused as a result of the State party's actions.*

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

**Question 4:** Please explain why the State party's report lacks a reference to the human rights situation in the OPT and why the State party does not implement its human rights obligations under the ICCPR in relation to the OPT, including the occupied Gaza Strip.

2.1 The HRC has repeatedly reiterated its view that Israel continues to bear responsibility 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

<sup>16</sup> J. Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008.

<sup>17</sup> B'Tselem, *Access Denied: Israeli Measures to Deny Palestinians Access to Land around Settlements*, September 2008. p.77

<sup>18</sup> B'Tselem, *2008 Annual Report*, op. cit.

<sup>19</sup> Article 1 of the ICCPR.

<sup>20</sup> HRC, *General Comment No.12*, op. cit, para.1.

applicable during armed conflict does not preclude the application of the ICCPR.<sup>21</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>22</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.

2.2 The implementation of the *Unilateral Disengagement Plan* from the Gaza Strip in 2005, raised questions regarding the continued status of the Gaza Strip as an occupied territory. International humanitarian law adopts a pragmatic definition of occupation, that is, the effective (actual) control over a territory by a foreign military force. “Effective control” is understood as an effective military control coupled with an effective administrative control.<sup>23</sup> The ending of occupation is equally pragmatic. Occupation ends when the Occupying Power no longer exercises effective military control over the occupied territory and does not apply government authorities there.<sup>24</sup> In this regard, it has been noted that:

“The presence of land troops has traditionally been a requirement to identify a territory as occupied. **However, the test of ‘effective control’ should, in light of modern technology and new means of maintaining control, take into account all kinds of control exercised over a territory, both military control and control over civilian life.** Despite the withdrawal of military troops in 2005, there are ongoing as well as new measures of Israeli military and administrative control in the Gaza Strip, which amount to ‘effective control.’”<sup>25</sup>

2.3 Thus, withdrawal of the Israeli troops alone does not render the occupied Gaza Strip unoccupied. The facts on the ground which show that Israel continues to maintain its effective control over the Gaza Strip by different means, such as control over air space, sea space and the international borders, should define the legal status of this territory. Nevertheless, the Israeli High Court of Justice in *Jaber Al-Basyouni v. the Prime Minister* ruled that Israel is not in

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

<sup>22</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.

<sup>23</sup> Article 42 of the *Hague Regulations* and Article 6 of the *Fourth Geneva Convention*.

<sup>24</sup> *Ibid.*

<sup>25</sup> (Emphasis added), Diakonia, *Does international humanitarian law apply to the Gaza Strip after the withdrawal?*, 14 January 2009, [www.diakonia.se/sa/node.asp?node=842](http://www.diakonia.se/sa/node.asp?node=842).

effective control of the Gaza Strip. The Court accepted the State's position that its duties are limited to the prevention of a humanitarian crisis. This position denies the Palestinians in the Gaza Strip the enjoyment of the rights enshrined in the ICCPR.<sup>26</sup>

2.4 Accordingly *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 and to provide extensive information on the enjoyment of the rights enshrined in the Covenant by those living in the OPT.

### **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. 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 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 than it applies to Israelis and Jewish settlers, 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?

3.1 House demolition, 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.

3.2 The principle of equality and prohibition of discrimination are not guaranteed in Israel's *Basic Law: Human Dignity and Liberty* (1992), which serves as Israel's Bill of Rights. As a result, and in conjunction with Israel's self-identification as a "Jewish and democratic state", **the Palestinian citizens of Israel are afforded no constitutional protection against racial discrimination and are accorded a second-class status.**<sup>27</sup> Accordingly, Israel is failing to comply with its legal obligations under international human rights law, including Articles 2(1) and 26 of the ICCPR.

3.3 *Jewish Nationality and Israeli Citizenship* - Institutionalized racial discrimination is reflected in

<sup>26</sup> H.C. 9132/07, *Jaber Al-Basyouni v. the Prime Minister*, High Court of Justice, 30 January 2008.

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

the Israeli legal system, which makes a distinction between “nationality” and “citizenship”. “Jewish nationality” is a ground for exclusive preferential treatment for persons of the Jewish nationality. Under Israeli law, the status of “Jewish nationality” is accompanied with first-class rights and benefits, which are not granted to non-Jews.<sup>28</sup> *The Law of Return (1950)*, is *de facto* the law of nationality. It entitles all Jews and only Jews to the rights of nationals, namely the right to enter “Eretz Israel” (Israel and the OPT), and to immediately enjoy full legal and political rights, thus resulting in discriminatory treatment against non-Jews, in particular Palestinian refugees.<sup>29</sup> *The Citizenship Law (1952)*, on the other hand, regulates the acquisition of Israeli citizenship by Jews and non-Jews.<sup>30</sup> Both laws are the main pillars of the Israeli legal framework that creates a discriminatory and dualistic arrangement whereby Jews hold nationality and citizenship, and non-Jews (Palestinians) hold only citizenship.

3.4 The State of Israel has extended its regime of racial discrimination to the OPT. The State party applies two different sets of laws, policies and practices to Palestinians on the one hand, and to Israelis and Jewish settlers on the other. Palestinians throughout the OPT are denied freedom of movement; the system of “road apartheid”;<sup>31</sup> in the West Bank, and particularly in Hebron, settlers are given preferential treatment over Palestinians in respect of movement (major roads are reserved exclusively for settlers); Jewish settlers are entitled to enter the closed zone between the Wall and the Green Line without permits while Palestinians require permits to enter the same area; home demolition in the occupied West Bank, including East Jerusalem are carried out in a manner that discriminates against Palestinians based on their nationality; building rights and army protection also discriminate against Palestinians. In this regard, it has been noted by the former Special Rapporteur J. Dugard, that **Israel’s military occupation displays features of colonialism and apartheid that aim at establishing and maintaining domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them.**<sup>32</sup>

3.5 *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*

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<sup>28</sup> 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.

<sup>29</sup> *Ibid.*

<sup>30</sup> In the official Knesset translation, this Law is wrongly entitled “Law of Nationality.”

<sup>31</sup> Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008, para.30.

<sup>32</sup> *Ibid.*

*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. The Right to Remedy (Article 2)**

4.1 Israel's policies and practices vis-à-vis its Palestinian citizens and the Palestinian population in the OPT have been characterized by systematic violations of international law. Palestinians' rights which are guaranteed under the ICCPR have been consistently violated and ignored, while no effective remedy has been provided by the State of Israel as will be discussed below.

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

**Question 7:** Please comment on the information that violence, intimidation and destruction of property of Palestinians by Jewish settlers in the OPT are widespread and rarely investigated or prosecuted. What are the measures taken by the State party to protect Palestinian civilians and prevent such violence and to hold those responsible accountable?

5.1 The Palestinian civilians in the OPT are 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.

5.2 Incidents of settler violence in 2008 were most concentrated in the Hebron region (42%) and the outskirts of Nablus (21%), a trend also witnessed in previous years.<sup>33</sup> The first 10 months of 2008 witnessed 290 settler-related incidents targeting Palestinians and their property – a figure that illustrates the continued rise of this phenomenon over the course of the previous two years: 182 and 243 in 2006 and 2007, respectively.

5.3 Since the beginning of 2009, a weekly average of seven settler-related incidents of violence affecting Palestinians take place in the OPT.<sup>34</sup> Thus, for instance between 26 August – 1 September 2009, 6 incidents of property damage, intimidation and trespassing took place. In the northern West Bank, settlers from Avnei Hefetz settlement (Tulkarem) hurled stones toward

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33 OCHA, *Special Focus: Unprotected - Israeli Settler Violence Against Palestinian Civilians and their Property*, December 2008.

34 OCHA, *Protection of Civilians 26 August – 1 September 2009*, 2 September 2009.

farmers working their land in the vicinity of the settlement, forcing them to leave the area.<sup>35</sup> Similarly, herders from Yanun village (Nablus) were forced out of a grazing area nearby Itamar settlement, when settlers chased them away while shooting in the air.<sup>36</sup> In the South, settlers from Neve Daniel settlement uprooted a number of olive trees belonging to Palestinian farmers from the town of Al Khader (Bethlehem).<sup>37</sup>

5.4 The Israeli authorities have failed to provide adequate protection to the Palestinian civilians and failed to enforce the rule of law in the OPT. Thus, for instance, 90% of the Israeli authorities' investigations into settler offenses against Palestinians, are closed without indictment. Investigation files are closed on the grounds of "lack of evidence" and/or "perpetrator unknown," and in other cases, complaints filed are lost and never investigated.<sup>38</sup>

**5.5 The systematic settler violence and aggressive action against the Palestinians and their property, coupled with the absence of an effective response by the Israeli military and law enforcement officials results in additional displacement of Palestinian residents mainly in the areas adjacent to Jewish settlements in the occupied West Bank. All of the above inflicts on the 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>39</sup>

5.6 *Badil urge 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 settlers 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>40</sup>

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> "A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank" quoted in "Law Enforcement upon Israeli Civilians in the OPT" Yesh Din's Monitoring, July 2008.

<sup>39</sup> See also *Dzemailj v. Yugoslavia*, Communication No.161/2000, U.N. Doc. CAT/C/29/D/161/2000(2002).

<sup>40</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.

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

### **6.1. Forced Displacement in the OPT**

#### *6.1.1 Introduction*

Israel's policies and practices create a wide array of obstacles affecting the full enjoyment of the rights of Palestinians to move freely and to take up residence in the OPT. Despite the fact that the right to reside in a place of one's choice includes protection against all forms of forced internal displacement, Israel continues to forcibly displace the Palestinian civilians, refugees and non-refugees, within the OPT on a prohibited basis, namely, their national origin.<sup>41</sup> Moreover, the closure and segregation regime imposed on the Palestinians within the OPT blatantly violates their right to freedom of movement. As a result of or in order to avoid the effects of such or other human rights violations, Palestinians are regularly forced or obliged to leave their homes or places of habitual residence creating a new wave of internally displaced persons. All these policies and practices constitute violations of Articles 12 and 2 since they are carried out on a discriminatory basis.

#### *6.1.2 Home Demolition in the OPT*

**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.

6.1.2.1 The demolition of Palestinian-owned homes and displacement have been a regular feature of Israel's occupation of the OPT.<sup>42</sup> Between 1967 and the beginning of 2009, Israel has demolished over 24,100 Palestinian-owned homes and other structures in occupied West

<sup>41</sup> HRC, *General Comment No.27: Freedom of Movement*, CCPR/C/21/Rev.1/Add.9, 2 November.27, para.7.

<sup>42</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).

Bank, East Jerusalem, and the Gaza Strip,<sup>43</sup> resulting in the internal displacement of more than 128,700 Palestinians within the OPT since 1967. More than 3,000 Palestinian-owned structures in the West Bank have pending demolition orders, which can be immediately executed without forewarning resulting in new waves of displacement.<sup>44</sup>

6.1.2.2 Israel advances different reasons or justifications for the demolition of Palestinian-owned structures, such as administrative demolition, punitive demolition or military demolitions:

a. Administrative Demolition

6.1.2.3 Administrative demolitions are carried out on the grounds that no building permits have been obtained as designated by the Israeli occupation authorities. Demolition for administrative reasons constitute 27% of overall home demolition in the OPT,<sup>45</sup> and are viewed by the State of Israel as a normal feature of town planning. However, both law and fact show that homes “are not demolished in the course of ‘normal’ town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.”<sup>46</sup> These demolitions are most common in occupied East Jerusalem and Area C (comprising villages and rural districts), where the Palestinian construction is severely limited and building permits are rarely granted; as a result, Palestinians are frequently compelled to build homes without permits. The serious impacts of this Israeli policy are ongoing forced displacement of Palestinians in the OPT and reduced space for development of their communities.

6.1.2.4 *Occupied East Jerusalem* – Since 1967, the main tool for blocking legal Palestinian construction in the Old City has been town planning, invariably driven by the Israeli goal of maintaining a large Jewish majority in East Jerusalem.<sup>47</sup> Most of East Jerusalem land that remains in Palestinian hands (approximately 45 km<sup>2</sup>) cannot be built on, either because Israeli authorities have not approved town plans (preventing the issuance of permits), or because large parts of these lands have been designated “open” or “green” spaces (where

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<sup>43</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>44</sup> OCHA, “*Lack of Permit*”: *Demolitions and Resultant Displacement in Area C, Special Focus*, May 2008.

<sup>45</sup> ICAHD, *Statistics on House Demolitions (1967 – 2009)* as of 19 January 2009.

<sup>46</sup> J. Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008.

<sup>47</sup> Ir Amim, *A Layman’s Guide*, March 2009.

construction is prohibited). **While Palestinians constitute over 50% of the population of East Jerusalem, only 13% of the land therein is available for Palestinian construction, most of which is already built-upon; the permitted construction density is limited and the application process is complicated and expensive.**<sup>48</sup> A building permit is still a remote possibility also for Palestinians who own land in an area that does have an approved town plan and zoned for construction because of extraordinary legal, financial and bureaucratic obstacles for a Palestinian applicant.<sup>49</sup>

6.1.2.5 The size of the Palestinian population in occupied East Jerusalem has risen from 69,000 in 1967 to approximately 270,000 today. However, the existing town plans and building permits approved by the Israeli authorities do not accommodate the housing needs of this population.<sup>50</sup> The natural growth among Palestinians in East Jerusalem requires the construction of 1,500 housing units per year. However, between 1992 and 2001, the Jerusalem Municipality issued only 1,400 building permits for construction in East Jerusalem.<sup>51</sup> In 2008, only 125 building permits were issued allowing for the construction of approximately 400 housing units. Thus, the current gap between housing needs and legally permitted construction is at least 1,100 housing units per year. The gap may be even higher considering that some of the permits are issued for additions to existing structures, as opposed to new housing units.<sup>52</sup>

6.1.2.6 As a result of the above policies and practices, there is a serious housing shortage caused by Israel's failure to provide planning for Palestinian neighborhoods. This shortage has been exacerbated by the influx of Palestinian Jerusalemites into the city due to the separation Wall and the threat of losing their residency status in the city if they move outside the Israeli-defined municipal borders of Jerusalem. Because of the difficulties in obtaining building permits from the Israeli Occupying Power, and due to the lack of feasible alternatives, many Palestinians risk building on their land without a permit in order to meet their housing needs. At least 28% of all Palestinian homes in occupied East Jerusalem have been built in violation of Israeli zoning requirements, putting 60,000 Palestinians in

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<sup>48</sup> *Ibid*, and OCHA, *The Planning Crisis in East Jerusalem*, op. cit., p.2.

<sup>49</sup> Ir Amim, *A Layman's Guide*, op. cit., and OCHA, *The Planning Crisis in East Jerusalem*, op. cit.

<sup>50</sup> OCHA, *The Planning Crisis in East Jerusalem*, op. cit., p.12. Ir Amim, *A Layman's Guide*, op. cit.

<sup>51</sup> Bimkom and Ir Shalem, *The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem (English Abstract)*, 2005, p.2.

<sup>52</sup> OCHA, *The Planning Crisis in East Jerusalem*, op. cit.

occupied East Jerusalem at risk of having their homes demolished.<sup>53</sup>

6.1.2.7 In 2008, the number of home demolitions in occupied East Jerusalem rose by about 32% in comparison to 2007, and by about 217% in comparison to the multi-year average between 1992 and 2006.<sup>54</sup> Between 2000 and 2008, the Israeli authorities demolished 670 Palestinian-owned structures in East Jerusalem, due to lack of permits, displacing some 400 Palestinians.<sup>55</sup> At the beginning of 2009, the residents of 19 Palestinian-owned structures in East Jerusalem were displaced, including 11 inhabited residential structures, due to lack of permits. As a result, approximately 109 Palestinians including 60 children were displaced.<sup>56</sup> Of particular concern are areas in occupied East Jerusalem that are threatened with mass demolitions. For instance, the execution of pending demolition orders in Tel al Foul area in Beit Hanina, Kalet el'Ein in At Tur, Al Abbasiya in At Turi, and Wadi Yasul between Jabal al Mukabbir and At Turi, will affect more than 3,600 Palestinians.<sup>57</sup> Moreover, in the Bustan area of Silwan neighborhood, which was designated as an "open" or "green" area by the Jerusalem municipality, almost 90 houses are at risk of demolition displacing an additional 1,000 residents.<sup>58</sup>

6.1.2.8 The administrative demolition orders in occupied East Jerusalem are issued without the institution of any legal proceedings, by a politician (the *Mayor* in his capacity as *Chairman of the Jerusalem Local Planning Committee*), or a senior official (*Head of the Jerusalem District of the Interior Ministry* in his capacity as *Chairman of the Regional Planning Committee*). **Thus, these demolition orders are by definition, political, and issued by individuals who are themselves responsible for the policies that have created a situation in which the Palestinians cannot build legally.**<sup>59</sup>

6.1.2.9 Home demolitions are implemented in a discriminatory fashion in occupied East Jerusalem as already outlined by the former Special Rapporteur, J. Dugard.<sup>60</sup> Nevertheless, in its report to the HRC, the State of Israel explains the gap between demolition of Palestinian houses

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<sup>53</sup> *Ibid*, p.2.

<sup>54</sup> *Ibid*.

<sup>55</sup> OCHA, *The Planning Crisis in East Jerusalem*, op. cit.

<sup>56</sup> *Ibid*.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid*, p.7.

<sup>59</sup> Ir Amim, *A Layman's Guide*, op. cit.

<sup>60</sup> J. Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008.

and Jewish houses as follows:

“In the western parts of Jerusalem, building violations almost invariably consist of additions to a legal building, such as the addition of a room in courtyard or an attic within a roof space. In the eastern part of Jerusalem, violations typically take the form of entire buildings constructed without a permit. Thus, demolitions in the eastern neighborhoods of Jerusalem are far more dramatic than in the western part of the city” (para. 381).

This statement ignores the fact that while the town plans in Jewish neighborhoods of the city aim at accommodating and accelerating development, the town plans in occupied East Jerusalem – provided they exist – aim at containing or even preventing any reasonable development of the Palestinian population. **Therefore, the Palestinians in the OPT are being punished for building illegally while not being permitted to build legally by the same occupation authorities.**<sup>61</sup>

6.1.2.10 *Area C in the West Bank* – The planning legislation and authorities responsible for planning issues and thus for authorizing and executing demolitions of Palestinian-owned structures differ both in occupied East Jerusalem and Area C. While in the former, it is the *Jerusalem Municipality* and *Ministry of Interior* that is responsible for these matters, in Area C it is the *Israeli Civil Administration* (a military body). Nevertheless, the reality in both areas is similar in terms of the prohibition of Palestinian construction and automatic criminalization by the Israeli authorities.<sup>62</sup>

6.1.2.11 Hundreds of Palestinian-owned structures, including schools, clinics and mosques, are demolished each year for lack of building permits.<sup>63</sup> Israel retains control over the planning sphere in Area C, which constitutes 60% of the West Bank, and contains most of the land available for natural expansion of densely populated Palestinian towns and cities. **Between 2000 and 2007, some 94% of Palestinian applications for building permits in Area C were rejected by the Israeli occupation authorities.**<sup>64</sup> The serious impacts of this

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<sup>61</sup> Ir Amim, *A Layman's Guide*, op. cit.

<sup>62</sup> OCHA, *The Planning Crisis in East Jerusalem; Understanding the Phenomenon of “Illegal” Construction*, *Special Focus*, April 2009, p.11.

<sup>63</sup> OCHA, *The Planning Crisis in East Jerusalem*, op. cit.

<sup>64</sup> *Ibid*, p.11.

policy are ongoing displacement of Palestinian civilians and reduced space for development of their communities in the OPT. Some entire Palestinian communities, such as *Al Aqaba* in the Tubas governorate and *Kirbet Tana* in Nablus governorate, are at imminent risk of displacement due to pending demolition orders. In the first quarter of 2009, 25 Palestinian-owned structures, including nine residential structures, in Area C were demolished due to lack of building permits. As a result, 46 Palestinians, including 30 children were displaced. All of these structures are in or next to the E1 area in the east of occupied East Jerusalem, which is earmarked for settlement expansion to link the Ma'ale Adumim settlement with Jerusalem.<sup>65</sup>

#### b. Punitive Demolitions

6.1.2.12 Punitive demolitions involve demolishing homes of Palestinians alleged to be involved in resistance activity against the Israeli occupation, including cases where the alleged militant has already been imprisoned or killed (around 8% of the overall demolition in the OPT).<sup>66</sup> Although Israel claims to have discontinued punitive home demolitions, instances of such demolitions still occur. Thus, for instance, on 29 August 2007, the Israeli military demolished seven housing units in the Naqar neighborhood of Qalqiliya, displacing some 48 persons, including 17 children, on the ground that they housed members of the military wing of Hamas.<sup>67</sup>

#### c. Military Demolitions

6.1.2.13 Military demolitions constitute almost 65% of all demolitions in the OPT.<sup>68</sup> Military demolitions also include demolitions of Palestinian-owned homes and structures for the purpose of clearing the area for an unspecified military role. The recent Israeli military assault on Gaza, “Operation Cast Lead”, represented the epitome of this trend. Between 27 December 2008 and 24 January 2009, over 4,240 residences were destroyed and approximately 44,300 were damaged, most rendered uninhabitable without considerable

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<sup>65</sup> *Ibid.*

<sup>66</sup> ICAHD, *Statistics on House Demolitions (1967 – 2009)* as of 19 January 2009.

<sup>67</sup> J. Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008.

<sup>68</sup> ICAHD, *Statistics on House Demolitions (1967 – 2009)* as of 19 January 2009.

rehabilitation.<sup>69</sup> The Israeli military did not provide evidence to substantiate its allegations that the houses were used as combat positions or for any other military purpose. 80-90,000 people were forcibly evicted, many of whom were rendered homeless and forced to live in open spaces.<sup>70</sup>

### 6.1.3 *Forced Evictions in the OPT*

**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.

6.1.3.1 Forced eviction is another measure used by the Israeli occupation authorities to displace Palestinian refugees and non-refugees in the OPT.<sup>71</sup> In some cases, Israel confiscates property inhabited by Palestinians through a complex system of legal, administrative and institutional mechanisms, subsequently evicting the Palestinian residents and leasing or transferring these properties to Jewish settlers.<sup>72</sup> In other cases, settlers make use of Israeli courts to lay claim to Palestinian-owned property, claiming ownership by Jewish individuals or associations prior to 1948. The Israeli Supreme Court has ruled in favor of such claims while failing to recognize the rights of Palestinian refugees to reclaim lost land and property.

6.1.3.2 In recent years, settler groups have intensified their efforts aiming at forcibly evicting

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<sup>69</sup> Rapid Shelter/NFI Assessment undertaken between January 22 and February 2, 2009, February 11, 2009, cited in Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health et. al, *Human rights situation in Palestine and other occupied Arab territories*, A/HRC/10/22, 20 March 2009.

<sup>70</sup> OCHA, *Protection of Civilians Weekly Report: 9 -15 January 2009*, 16 January 2009.

<sup>71</sup> During the 1948 Arab-Israeli War, Palestinians fled or were expelled from parts of Mandate Palestine, many finding refuge in the Occupied Palestinian Territory (OPT), including East Jerusalem ("Palestinian Refugees"). At the beginning of 2009, there were over 1,813,000 Palestinian refugees in the OPT representing 45% of its population of approximately 4 million Palestinians. More than 754,000 reside in the occupied West Bank, and over 1,059,000 in the occupied Gaza Strip. Badil Resource Center, *Survey 2008*, op. cit..

<sup>72</sup> OCHA, *Sheikh Jarrah*, op. cit.

Palestinian families and communities from their homes to make way for new settlement.<sup>73</sup> On 2 August 2009, for instance, some Palestinian refugees who moved to Sheikh Jarrah in East Jerusalem in 1956 following an agreement between UNRWA and the Government of Jordan were forcibly evicted from their homes by Israeli authorities following a court ruling.<sup>74</sup> As a result, 53 Palestinian refugees, including 20 children, have once again been displaced. With no alternative residence, the families are forced to camp out on the street in front of their homes. Their appeal to overturn the eviction was rejected on 9 August 2009. Their properties were handed over to a settler organization that intends to build a new settlement in the area, placing 300 Palestinian refugees living in the area at imminent risk of forced eviction, dispossession and displacement.<sup>75</sup>

6.1.3.3 Settlers have also laid claim to several other plots in Sheik Jarrah, including 33 buildings that are home to almost 175 people, most of whom are Palestinian refugees. Although the case is still pending in the Israeli courts, a group of settlers, accompanied by Israeli police, entered the area on 26 July 2009 and occupied one of the buildings.<sup>76</sup> Almost 500 Palestinian residents of the Sheikh Jarrah neighborhood are at risk of eviction as their homes are located on land whose ownership is contested by Jewish settlers.<sup>77</sup>

**6.1.3.4 The present pattern of forced evictions and home demolition of Palestinian-owned property, in conjunction with plans to build Jewish-only settlements in the heart of Palestinian neighborhoods, is indicative of Israel's efforts to illegally assert control over the maximum amount of land with a minimum number of Palestinians and implanting Jewish-only settlements.**

6.1.3.5 *In light of the above, 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*

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

<sup>74</sup> Civil Court case 4744/02, TPS 12705.

<sup>75</sup> OCHA, *Sheikh Jarrah*, op. cit.

<sup>76</sup> *Ibid.*

<sup>77</sup> OCHA, *The Planning Crisis in East Jerusalem*, op. cit., p.7.

and legal advice and assistance.

#### 6.1.4 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.

6.1.4.1 Residency revocation is an additional method used by the Israeli Occupying Power to attain its demographic objectives particularly in occupied East Jerusalem, which was illegally annexed by Israel in 1967. This policy has been applied retroactively both to Palestinians who live abroad and those who live in the West Bank or nearby Jerusalem suburbs, but not to Israeli Jews or foreign Jews who are permanent residents of occupied East Jerusalem.<sup>78</sup>

6.1.4.2 Only those Palestinians (and their descendents) who were in occupied East Jerusalem and were registered in the 1967 Israeli census were accorded permanent residency status in the Old City. Accordingly, Palestinian Jerusalemites were granted blue Israeli identity cards (ID cards) that gave them the right to live in the city. In other words, Palestinian Jerusalemites are defined as "foreigners" under Israeli law, even though they live in their own homeland.

6.1.4.3 In 1974 the *Law of Entry into Israel* (1952) was amended by the *Entry into Israel Regulations* which specified the conditions under which permanent residency in Israel would expire. Between 1967 and 1995, some 5,000 Palestinian Jerusalemites staying abroad for work or studies lost their residency rights in Jerusalem based on these regulations.<sup>79</sup> Revocation of Palestinian residency rights in occupied East Jerusalem was stepped up in 1996 based on a reinterpretation of the 1974 *Entry into Israel Regulations* and the investigation of Palestinian Jerusalemites to determine their status. This new policy conditions Palestinian residency rights in occupied East Jerusalem with physical presence (permanent domicile, "center of life") which must be proven and documented during any interaction with the Ministry of Interior. The required documents (property ownership certificates, rent contracts, tax receipts, etc.) are difficult to obtain for a population living in conditions of displacement, dispossession and economic and social marginalization. Three years after the adoption of this new policy, more than 2,080 Palestinian Jerusalemites have

<sup>78</sup> See in this regard also CESCR, *Concluding Observations, Israel*, E/C.12/1/Add.27, 4 December 1998, para.20.

<sup>79</sup> Badil Resource Center, *Eviction, Restitution and Protection of Palestinian Rights in Jerusalem*, April 2009.

had their blue ID cards confiscated.<sup>80</sup>

6.1.4.4 In March 2000, the then-Minister of Interior submitted an affidavit to the High Court of Justice and stated that the “quiet transfer policy” would cease. Nevertheless, in recent years, the Ministry has once again begun to revoke residency status of Palestinians from occupied East Jerusalem. In 2005 the Ministry revoked the residency of more than 200 Palestinians. In 2006, this number rose to 1,363.<sup>81</sup>

6.1.4.5 *We urge 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.*

#### 6.1.5 *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.

6.1.5.1 The closure regime applied in the OPT seriously and systematically obstructs the freedom of movement of the Palestinian civilians on discriminatory bases and with disastrous consequences for other human rights, such as family life, work, education and health. As the World Bank observes, “freedom of movement and access for Palestinians within the West Bank is the exception rather than the norm.”<sup>82</sup> As of June 2009, there were 613 closure obstacles in the OPT, of which 68 are permanently staffed. Most of the permanently staffed checkpoints are used to prevent Palestinians without permits access into occupied East Jerusalem and Israel. However, most of these checkpoints are located inside the West Bank, blocking Palestinian access to communities and land *within* the OPT.<sup>83</sup> Furthermore, there

<sup>80</sup> *Ibid.*

<sup>81</sup> B’Tselem, *Revocation of Residency in East Jerusalem*.

<sup>82</sup> World Bank Technical Team, *Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy*, 9 May 2007, p. 1.

<sup>83</sup> OCHA, *West Bank Movement and Access Update*, June 2009.

are 522 unstaffed obstacles that include earth walls, earth-mounds, roadblocks, road barriers, road gates, trenches, and 23 points of control staffed on an ad-hoc basis.<sup>84</sup>

6.1.3.1 In addition to the 613 closure obstacles, there are 84 obstacles blocking Palestinian access and movement within the Israeli controlled area of Hebron City (H2), 63 crossing points along the Separation Wall, which control Palestinian movement into West Bank areas on the west side of the Wall. Furthermore, there is an average of 70 mobile checkpoints deployed every week since the beginning of 2009.<sup>85</sup>

6.1.3.2 Moreover, major roads in the OPT are reserved exclusively for Jewish settlers, who are also entitled to enter the closed zones between the Wall and the Green Line without permits, whereas Palestinians living or accessing land in this area, require permits to enter and reside in their homes. In certain areas not designated closed, an ID card/prior coordination system operates. Access through the Wall is channeled through a series of designated gates and checkpoints, which open on a daily, weekly or seasonal basis.

6.1.3.3 Israel's restrictive measures are not in conformity with the requirements of Article 12 (paragraph 3), neither in terms of necessity nor the requirements of proportionality. Recalling that the majority of the closure obstacles are *within* the OPT, and many of them are distant from the border of Israel, while imposing severe effects on the Palestinians' daily-lives, Israel's restrictive measures are disproportionate and inappropriate to serve any security interest. Moreover, these measures are not only intrusive but also implemented in a discriminatory manner to serve the convenience of the Jewish settlers and to "impress upon the Palestinian people the power and presence of the occupier".<sup>86</sup>

6.1.3.4 Many Palestinians within the occupied West Bank, including East Jerusalem, have been forced or obliged to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of violations of their human rights, including the right to freedom of movement.<sup>87</sup>

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<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> J. Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008.

<sup>87</sup> *The UN Guiding Principles on Internal Displacement (2001)*.

6.1.3.5 As to the Gaza Strip, the ever-tightening blockade and the closure of border crossings for people, goods and services, including electricity and fuel generation, has a severe impact on the Palestinians' economy, employment opportunities and family livelihood. The three-year blockade does not only deprive the Palestinian population in the Gaza Strip (66% of whom are refugees) from sustenance, employment, health care, housing and water, but also denies them freedom of movement and the right to leave and enter their own country, but limits access to a court of law and effective remedy.<sup>88</sup> The UN Fact-Finding Mission on the Gaza Conflict has noted recently that the above "could amount to persecution, a crime against humanity."<sup>89</sup>

6.1.3.6 The closure and segregation regime applicable to the Palestinians within the OPT constitutes only one of several layers of a complex system that prevents the Palestinian civilians from full enjoyment of their human rights as envisaged in the ICCPR, particularly Article 12.

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

## 6.2 Forced Displacement in Israel

**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?

**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?

<sup>88</sup> *Report of the United Nations Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, 15 September 2009.*

<sup>89</sup> *Report of the United Nations Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, 15 September 2009, para.75.*

**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.

### 6.2.1 *First Waves of Internal Displacement*

6.2.1.1 Dispossession and displacement are aimed at creating Jewish majorities in every area within Israel.<sup>90</sup> About half of Israel's Jewish population is concentrated in central Israel, while less than 10% of Israeli Jews live in the North. On the other hand, some 60% of the Arab population live in the North, and 11% in the South.<sup>91</sup> The existence of areas within Israel with high Palestinian concentrations has made them a target of policies to restrict their growth and development geographically, while dividing these areas internally from one another. Both the Galilee and the Naqab have been targets of Judaization policies since 1948 that have escalated in recent years, particularly with the onset of the second *Intifada*.<sup>92</sup>

6.2.1.2 The Palestinian citizens of Israel have been subject to policies aimed at dispossession and displacement since the establishment of the Israeli state in 1948. The first waves of forced internal displacement that were carried out by Israel in the 1948 war and its immediate aftermath, have resulted in approximately 335,000 internally displaced Palestinian citizens of Israel and their descendants.<sup>93</sup> To date, the State of Israel continues to block these Palestinian communities from returning and repossessing their property, irrespective of the fact that the Israeli High Court of Justice has recognized the right of several internally displaced Palestinian communities (e.g. Iqrit, Kafar Bir'im and Al-Gha'bsiyeh in the Galilee) to return to their villages of origin.<sup>94</sup> The State of Israel has confiscated the land of these displaced communities and transferred it to nearby Jewish settlements for use as grazing fields or other purposes. **In 2003, the High Court of Justice reversed its previous decision pertaining to the village of Iqrit and ruled that the internally displaced**

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<sup>90</sup> J. Cook, *On the Margins* (2006), p. 7.

<sup>91</sup> The Jerusalem Post, "CBS: Israel's population numbers 7,465,500", 17 September 2009.

<sup>92</sup> The "Judaization" plans included the ideas that Nazareth Ilit and Carmiel were to expand their populations from 40,000 to 100,000, and to develop existing locations, as well as build new towns in the Negev, the Gilboa region (on the southern end of Galilee) and near Haifa. Among the places to be expanded, include Harish, south of Um al-Fahem which is to become an ultra-orthodox center with 20,000 dwelling units. There are also plans to build a new city in the "Tefen area" (in Upper Galilee, north of Majd al-Krum). See Assaf Adiv, "Israel's Response to the October Uprising: 'Judaizing' Galilee", *Challenge* n.67, March-April 2001.

<sup>93</sup> This number does not include the recent waves of the forcible internal displacement in the Galilee, Naqab and the mixed-population cities. Badil Resource Center, *Survey 2008*, op. cit.

<sup>94</sup> See, for example, H.C. 220/51, *Aslaan et. al. v. The Military Governor in the Galilee* (30 November 1951); H.C. 195/51, *Ibrahim et. al. v. The Minister of Defense et. al.* ( 18/01/1952); H.C. 64/51, *Mbada v. The Minister of Defense*, (31 July 1951).

**Palestinian community cannot return and repossess their properties since this would set a legal precedent for millions of Palestinian refugees whose claims are to be resolved in future political negotiations.**<sup>95</sup>

6.2.1.3 While all Palestinian communities within Israel are vulnerable to forced displacement on the ground of their nationality, the Palestinian Bedouin (the herding communities) and Palestinians in the “mixed population-cities” are particularly at risk of forced displacement. Between 2000 and 2007, at least 3,084 Palestinian-owned structures were demolished, while the majority is owned by Bedouin living in the unrecognized villages in the Naqab (Negev).<sup>96</sup>

## 6.2.2 *The Bedouin Communities*

6.2.2.1 Bedouin in Israel are part of the indigenous Palestinian people. Almost 140,000 Bedouin live in the Naqab,<sup>97</sup> approximately 60,000 of whom live in 40 so-called “unrecognized villages”, which are deprived of most basic services, including water, electricity, telephone lines, health clinics and state funded education, and face difficulties in obtaining building permits. Despite the fact that the Bedouin live on their ancestral lands (prior to the establishment of the State of Israel in 1948), the government perceives them as “trespassers on state land”,<sup>98</sup> and therefore **the Bedouin communities face imminent threat of forcible displacement.**<sup>99</sup> The State of Israel has aimed to collect these Bedouin communities into seven densely and improvised “concentration areas” – seven government-planned townships – and confiscate what remains of their traditional ancestral land.<sup>100</sup>

6.2.2.2 In November 2005, Israel unveiled its strategic plan for "the development of the Negev" and declared its preparedness to directly and indirectly invest in the implementation of the plan.

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<sup>95</sup> H.C. 840/97, *Alawi Sbit et. al. v. Ministry of Defence*, High Court of Justice, June 2003.

<sup>96</sup> Statistics provided by the Israeli ICAHD cite in Adalah, *Suggested Questions for the UN HRC Considering Israel's Compliance with the ICCPR*, 10 August 2009.

<sup>97</sup> M. Mustafa and M. Subhi, *Unlicensed: The Policy of Demolishing Arab Homes in Israel*, Center for Contemporary Studies, 2005 (Arabic).

<sup>98</sup> Attorney General's response to Adalah's petition H.C. 2887/04, *Salem Abu Medeghem et. al. v. Israel Lands Administration* (April 2007) cited in Adalah, *Suggested Questions for the UN HRC Considering Israel's Compliance with the ICCPR*, 10 August 2009.

<sup>99</sup> For more see Hazem Jamjoum, “Al-Naqab: the Ongoing Displacement of Palestine's Southern Bedouin”, *Al Majdal*, No.34/40, Autumn 2008/ Winter 2009.

<sup>100</sup> Badil Resource Center, *Survey 2008*, op. cit.; Human Rights Watch (HRW), *Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages*, March 2008; I. Humphries “Bringing Life to the Desert”: Israel's Master Plan for Dispossession in the Negev, *Washington Report on Middle East Affairs*, 15 March 2008.

It aims, among other things, to almost double the Naqab's Jewish population from approximately 535,000 people to 900,000 by 2015. This is to be achieved through the construction of 100 "individual settlements," and 65,000 regular housing units, which are almost exclusively designated for Jewish towns and communities,<sup>101</sup> despite the fact that many of the 100 existing Jewish communities in the Naqab are half-empty.<sup>102</sup> The plan also suggests evacuating and demolishing unrecognized villages and moving their inhabitants to the government-planned townships. The plan's only section on development in Arab towns (described as constructing "special properties" housing units) fails to allocate any money for that purpose, thus perpetuating the ongoing trend of concentrating this community on less and less land, while encouraging and subsidizing Jewish citizens to relocate there.<sup>103</sup>

**6.2.2.3 In violation of the ICCPR, the State of Israel uses in a discriminatory manner demolition of Bedouin homes - on the pretext of violations of land and planning laws – as one of the tools used to depopulate the unrecognized villages.<sup>104</sup> Moreover, the State of Israel is deliberately using the denial of basic services as a measure of forcing the residents of the unrecognized Bedouin villages to flee their lands and relocate to the government-planned Bedouin townships. This constitutes a violation of Israel's obligations under the ICCPR.**

### 6.2.3 *The Mixed-Population Cities*

6.2.3.1 Roughly, 20 percent of the Palestinian community in Israel resides in mixed Palestinian-Jewish cities. These Palestinian communities are under ongoing threat of dispossession and displacement. Four measures are underway to achieve this goal:

- (1) Making life more difficult for Palestinian citizens by instituting discriminatory service provision practices that marginalize Palestinian areas;
- (2) Erasing the Arab identity of these towns through the destruction of historic buildings and inscriptions, and renaming Arabic streets and historic sites;
- (3) Rehabilitating and gentrifying neighborhoods by transforming them into artist quarters, galleries, and tourist projects without the inclusion of Palestinian citizens, which over time

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<sup>101</sup> Adalah's Report to CERD, 2007.

<sup>102</sup> HRW, *Off the Map*, 2008

<sup>103</sup> See Adalah's Report to CERD, 2007, p.17

<sup>104</sup> HRW, *Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages*, March 2008.

makes it more difficult economically for them to reside there;

- (4) Acquiring Palestinian buildings and property through government-owned companies in accordance with laws targeted at the "Judaization" of these cities, while also preventing families from inheriting property. This relates in particular to Amidar, the national Israeli company jointly owned by the Israeli government, the Jewish Agency and the JNF, which manages all public housing, and assists people deemed entitled to rent properties from the government. While it claims "to build a model for public and sheltered housing and social management that is stemming the tide of homelessness and providing citizens of Israel with the basic human need of shelter", Amidar has a record of dispossessing, displacing and demolishing the homes of Palestinian citizens of Israel. Thus for instance, on 19 March 2007, Amidar published a document entitled "A Review of the Stock of Squatted Properties in Jaffa – Interior Committee, Israel Knesset", which reviews properties managed by the company in the Jaffa–Tel Aviv municipality. The document outlined 497 eviction orders of Palestinian families living in the Ajami and Jabliya neighborhoods in Jaffa on pretexts such as "squatting" in the property, and "building additions" to properties undertaken by Palestinian tenants of these buildings "without the approval from Amidar and without obtaining permit from the planning and building authorities". These evictions, which are held in a discriminatory manner on the pretext of legal violations by the government-owned company, Amidar, seek the homogenization and Judaization of the mixed-population cities.

*6.2.3.2 In light of the above, we call 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.*

## **7. Right 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)*

7.1 Palestinian refugees are the largest and longest-standing displaced population in the world today. Out of 10.6 million Palestinians worldwide, 6.6 million are refugees (60%) displaced in 1948 and 1967.<sup>105</sup> **In violation of Article 12 (paragraph 4) of the ICCPR, the State of Israel is blocking Palestinian refugees from returning to their homes of origin based on the discriminatory basis of nationality.**

7.2 The *Citizenship Law* (1952), has denationalized the 1948 Palestinian refugees and their descendants (5.7 million) in a discriminatory fashion based on their national origin, and *de facto* denied them their right to return to their homes of origin within the territory that became Israel in 1948.<sup>106</sup> The Palestinian refugees are also excluded from the *Law of Return* (1950) which entitles only Jews to enter “*Eretz* Israel”.

7.3 **The State of Israel denies not only the right of the 1948 Palestinian refugees to return but also the right of the 1967 Palestinian refugees (940,000) to return to their country of origin, namely the OPT.**<sup>107</sup> Immediately after the occupation of the remaining Palestinian Territory in 1967, the State of Israel carried out a census in the West Bank and Gaza. Only those who are registered in Israel’s census are considered legal residents of the OPT. Anyone who was outside the OPT at that time was automatically denied the right to return to or enter the OPT. The State of Israel also retains the authority to make the final determination on permanent residency, including those related to issues of family reunification of Palestinians not registered in the 1967 census, and controlling the return/entry of Palestinians to the OPT.

7.4 In an attempt to prevent Palestinian refugees from returning to their homes and repossessing their property, Israel expropriated their property in an illegal, discriminatory and arbitrary manner before and/or during exile, subsequently allocating most of the refugees’ property to Jewish users and settlements.<sup>108</sup> The property of the Palestinian refugees was classified as “absentees’ property” under the *Absentees’ Property Law (1950)*.<sup>109</sup> Under this law all

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<sup>105</sup> Badil Resource Center, *Survey 2008*, op. cit.

<sup>106</sup> *Ibid.*

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

<sup>108</sup> See also L. El-Malak, “Reparation for Palestinian Refugees”, *Forced Migration Review* 26, August 2006, p.46.

<sup>109</sup> Article 1 of the *Absentee Property Law* defines “absentee” as a person who, at any time after 29 November 1947 (the date of the UNGA resolution 181 to partition Palestine), had been: (a) A national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or (b) in any of these countries or in any part of Palestine outside the area of Israel, or (c) a Palestinian citizen who left his ordinary place of residence in Palestine or who abandoned his

absentees' property was taken and possessed by the *Custodian for Absentees' Property* ostensibly, for guardianship of the properties until a political solution for the absentees was reached. However, the new law that was adopted on 3 August 2009, namely the *Israel Land Administration Law (Amendment No.7)*, also legalizes, *inter alia*, the sale of absentees' (refugees') property, and retroactively legitimizes illegal sales of absentee property that took place in previous years, such as in 2007 and 2008.<sup>110</sup> **The new law has repercussions on property restitution and thus violates the refugees' right to remedy in contravention of Article 2(3) of ICCPR.**<sup>111</sup>

*7.5 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.*

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or her normal place of residence, either for a place outside Palestine before 1 September 1948; or for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment. Technically, this included all Palestinians who vacated their homes during the war, regardless of whether the returned who are known the "present absentees" are legal citizens of Israel. Jeremy Forman and Alexander (Sandy) Kedar, "From Arab to 'Israel Lands': the Legal dispassion of the Palestinians displaced by the Israel in the wake of 1948", *Environment and Planning D: Society and Space*, Vol.22 (2004), pp.809-830, 815.

<sup>110</sup> *Adalah to Attorney General and Custodian of Absentee Property: Israel's Sale of Palestinian Refugee Property Violated Israeli and International Law*, Press Release, 22 June 2009. See also Section 1 of this report.

<sup>111</sup> The *1907 Hague Regulations* stipulate the need of combatants to respect the right to private property and explicitly prohibit permanent confiscation of private property following the termination of warfare. The U.S. Military Tribunal at Nuremberg was the first to address the confiscation of property following the end of fighting in the Second World War. In *U.S. v. Alfred Krupp et al.*, the tribunal ruled that such confiscation of property and its subsequent acquisition by the Krupp firm constituted a violation of Article 46 of the *1907 Hague Regulations*. *U.S. v. Alfred Krupp et al.* cited in *How Does Law Protect in War? Cases, document and teaching materials on contemporary practice in international humanitarian law, 2<sup>nd</sup> ed., Vol.2* (ICRC, 2006), p.1030, and Adalah's letter addressed to the Attorney General on Tenders for selling absentees' property administered by Amidar, 19 May 2009.