

## **ISRAELI COLONIAL-APARTHEID POLICIES AND PRACTICES THAT DENY THE RIGHT OF SELF-DETERMINATION OF THE PALESTINIAN PEOPLE**

### **Introduction**

In this submission, BADIL addresses concerns arising from ongoing Israeli colonial-apartheid policies and practices. This submission covers four categories of systematic Israeli violations since Israel's last Universal Periodic Review in 2017: (1) the denial of access to natural resources, annexation, land confiscation and denial of use; (2) the segregation, fragmentation and isolation of Palestinian communities; (3) self-determination and denial of reparations – especially return - for Palestinian refugees and internally displaced persons (IDPs); (4) the suppression of Palestinian rights defenders.

These policies and practices aim at forcibly transferring the Palestinian population from their land and constitute part of a larger discriminatory legal system that denies the Palestinian people's right to self-determination. These systematic policies and practices constitute serious violations of international law and are considered the root cause of many human rights violations on both sides of the Green Line.

International law regards the forcible displacement of individuals without grounds permitted under international law as a very serious violation. The forcible transfer of protected persons by physical force, threats or coercion constitutes a grave breach of the Fourth Geneva Convention<sup>1</sup> and a war crime under the Rome Statute of the International Criminal Court.<sup>2</sup>

Moreover, when the affected population belongs to a minority or ethnic group and the policies of forcible displacement are systematic or widespread, these practices could amount to crimes against humanity.

Israel colonial practices violate Palestinians political, economic, social, and cultural rights, by permanently altering the demographic composition of Palestinian communities and ultimately depriving them of their right to self-determination. The denial of Palestinian self-determination and their right to reparations constitute one of the main goals of Israel's colonial-apartheid strategy.

Israel not only denies Palestinian refugees and IDPs their right to reparations (return, restitution, and compensation), but also applies a myriad of discriminatory forcible transfer policies, aimed at perpetuating illegal control over Palestinians and their land, while changing the demographic composition of the territory.

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<sup>1</sup> International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Articles 49 and 147.

<sup>2</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, Article 7(1) (d).

## The Denial of Access to Natural Resources, Land Confiscation and Denial of Use

Israel continues to forcibly transfer Palestinians in order to further its colonial enterprise so to acquire the maximum amount of Palestinian land with the minimum number of Palestinians. As such, land continues to constitute a central element of Israel's colonial-apartheid system.<sup>3</sup>

As a form of colonial practices, the creeping annexation of the occupied Palestinian territory through land grabs and denial of use, implantation of colonizers, and the forced transfer of the protected Palestinian population must be considered in direct contravention with international law and standards.<sup>4</sup>

In the case of the occupied West Bank, 46 percent of the land is under the complete control of Israel's colonial enterprise, with around 700,000 colonizers residing in more than 400 colonies. Sixty percent of the West Bank is classified as colony areas, confiscated areas, state land, reserved areas, and military and firing zones that render them off-limits for Palestinians.<sup>5</sup>

Israel thus deploys a two-fold strategy to seize land through manipulative categorizations on the one hand and denial of access to and use of land on the other, in order to free up more land for future seizure and colonization.

The overall policy is pursued through the registration of land into categories. In addition to the actual confiscation of land (*de jure*), Israel employs different means to restrict or completely deny the use and access of land – effectively appropriating large areas (or *de facto* confiscating them, as the owners are unable to use them freely, if at all).<sup>6</sup>

The colonial system of domination over Palestinians and appropriation of their lands while also denying their rights to their lands not only prevent Palestinians from accessing their natural resources but it also severely impedes their rights to education, health and freedom of movement, in violation of Israel's obligations as a State-party to numerous human rights treaties.<sup>7</sup>

Further, Israeli land grab policies create a coercive environment that ultimately results in the forcible transfer of Palestinians.

In the Palestinian context of multi-layered, evolving, and aggressive *de jure* and *de facto* land grab and annexation, these practices are in and of themselves tools of apartheid that initiate, pursue and

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<sup>3</sup> See BADIL, *Denial of Palestinian Use and Access to Land: Summary of Israeli Law and Policies*, February 2022, available at: [https://www.badil.org/cached\\_uploads/view/2022/03/16/summary-denialof-use-access2land-eng-1647430431.pdf](https://www.badil.org/cached_uploads/view/2022/03/16/summary-denialof-use-access2land-eng-1647430431.pdf)

<sup>4</sup> See BADIL, *Israeli Annexation: The Case of Etzion Colonial Bloc*, July 2019, available at: [https://www.badil.org/cached\\_uploads/view/2021/04/20/etzionbloc-israeliannexation-1618907810.pdf](https://www.badil.org/cached_uploads/view/2021/04/20/etzionbloc-israeliannexation-1618907810.pdf)

<sup>5</sup> See BADIL, *Creeping Annexation: A Pillar of the Zionist-Israeli Colonization Process in Palestine*, December 2020, available at: [https://badil.org/cached\\_uploads/view/2021/04/19/wp25-creepingannexation-1618823962.pdf](https://badil.org/cached_uploads/view/2021/04/19/wp25-creepingannexation-1618823962.pdf)

<sup>6</sup> See BADIL, *Forced Population Transfer: The Case of Palestine - Denial of Access to Natural Resources and Services*, September 2017, available at: <https://www.badil.org/phocadownloadpap/badilnew/publications/research/working-papers/wp20-DANRS.pdf>

<sup>7</sup> Among others: the ICCPR and the IESCR.

reinforce policies of racial segregation and discrimination towards the Palestinian people.<sup>8</sup>

Israeli laws, policies and practices fortify domination over the Palestinian people, specifically through a set of laws, policies and practices that strive to:

- Deliberately impose living conditions calculated to cause the physical destruction of the Palestinian people as a cohesive group;
- Appropriate land and property belonging to the Palestinian people;
- Controlling land use to restrict Palestinian development and systematically exploiting Palestinian natural resources;
- Divide the population present along racial lines through the creation of segregated, fragmented and isolated Palestinian communities with the aim of maintaining domination by the colonizers over the Palestinian people.

### **Segregation, Fragmentation and Isolation of Palestinian Communities**

The colonization of Palestine has been based on the fragmentation of its historical territory into different politico-legal entities to which additional colonial practices are applied. Israel applies laws and policies that subject Palestinians to different legal regimes in order to fragment the Palestinian population. In doing so, these laws and policies serve to weaken the cohesiveness, identity and capacity for self-determination as a people.

Demonstrated by concrete examples on both sides of the Green Line, segregation, fragmentation, and isolation therein operate by splintering the Palestinian people geographically, legally and politically into different categories<sup>9</sup> with several administrative methods used to control Palestinian populations based on where they live:

- Palestinian citizens of Israel: Palestinians permanently residing within Israel with Israeli citizenship. Although they are citizens of Israel, in practice, individuals in this subcategory enjoy fewer rights than Israeli Jewish nationals.
- Palestinian permanent residents of Jerusalem: Palestinians who are registered as being permanent residents of east Jerusalem after the 1967 occupation and annexation by Israel.
- Palestinians with a West Bank identity card: Palestinians who are registered as being permanent residents of the West Bank after the 1967 occupation by Israel.
- Palestinians with Gaza Strip identity card: Palestinians who are registered in the Gaza Strip after the 1967 occupation by Israel.
- Palestinians living in forced exile without any legal affiliation to Palestine: Palestinians (along with their descendants) who have been forcibly displaced from their homeland since the

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<sup>8</sup> See BADIL, *Forced Population Transfer: The Case of Palestine – Land Confiscation and Denial of Use*, October 2017, available at: [https://www.badil.org/cached\\_uploads/view/2021/04/19/wp21-lc-1618823891.pdf](https://www.badil.org/cached_uploads/view/2021/04/19/wp21-lc-1618823891.pdf)

<sup>9</sup> See BADIL, *Forced Population Transfer: The Case of Palestine – Instalment of a Permit Regime*, December 2015, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp18-FPT-Israeli-permit-system.pdf>

creation of Israel.

Israel mobilizes these methods to confine, concentrate, separate, disconnect and isolate Palestinian communities of one particular area from another, all of which relate to apartheid by dividing the population along racial lines on multiple levels, including legal, physical, socio-economic and cultural.

Israel also has a stranglehold on urban planning and transportation decision-making. The policies it enacts in cities' structural maps and the permission or prevention of building play a primary role in either creating successful cities or poor and marginalized ones. These structural maps are designed according to Israeli-Jewish priorities and are at odds with Palestinian needs.<sup>10</sup>

Palestinian cities are not only becoming increasingly disconnected, but are also facing internal disconnection between different urban areas and villages within the governorates themselves – a result that directly stems from the Israeli imposed system of bypass roads and a fractured public transport system on both sides of the Green Line.

The ultimate aim thereof is to erase Palestinian national identity while creating an exclusively Jewish space. The policy is executed on the macro level by denying freedom of movement within the occupied Palestinian territory, Israel and the *Shatat* (exile communities), and on the micro level by sub-dividing communities into neighbourhoods, suburbs and restricted areas.

### **Self-determination and Denial of Reparations, including Return**

Israel continues to systematically deny Palestinian refugees their right to reparations, which principally includes the right of return, as well as property restitution, compensation and guarantees of non-repetition, either directly or indirectly under multiple Israeli laws, policies and practices. This constitutes an ongoing violation of Palestinian individual and collective rights that does not allow for the possibility of redress or justice for the international crime of forcible transfer or displacement.<sup>11</sup>

The Palestinian people have continuously been denied the enjoyment of their legitimate right to self-determination, despite this right having been consistently recognized by multiple United Nations General Assembly resolutions, as well as by the International Court of Justice in its Advisory Opinion on the legal consequences of the construction of a Wall in the occupied Palestinian territory.

The Israeli legal system embodies the denial of the Palestinian people's right to self-determination through laws that undermine and thwart the overall Palestinian self-determination. For example, Israel's Basic Law: Israel – National State of the Jewish People of 2018 (the Nation State Law) is a prime illustration of the role that Israeli law plays in denying Palestinian self-determination, insofar as it blatantly states that the exercise of the right to national self-determination in the State of Israel is unique to the Jewish people.

The Nation State Law further constitutionalizes the superiority of the Jewish population and favours their priorities as a 'people', with the necessary corollary of this being the systematic inferiorization of Palestinians. Within this structure, the Palestinian people are explicitly denied their right to self-determination, excluded by omission and incompatibility with Israeli priorities of colonization, as

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<sup>10</sup> See BADIL, *Forced Population Transfer: The Case of Palestine: Segregation, Fragmentation and Isolation*, February 2020, available at: [https://badil.org/cached\\_uploads/view/2021/04/19/wp23-sfi-1618823935.pdf](https://badil.org/cached_uploads/view/2021/04/19/wp23-sfi-1618823935.pdf)

<sup>11</sup> See BADIL, *Forced Population Transfer: The Case of Palestine - Denial of Reparations*, October 2018, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP22-Reparations-ofReparations.pdf>

well as their language and other cultural identifiers diminished in standing or unacknowledged in entirety.<sup>12</sup>

In the Palestinian context, the right of return and the right of the Palestinian people to self-determination are intrinsically dependent and inseparable, and without one, the other cannot be fulfilled.

The individual and collective right of return for Palestinian refugees and IDPs, who constitute 66.4 per cent of the Palestinian people, must be viewed as a precondition for the realization of the Palestinian people's collective right to self-determination and must inevitably be included in practicing Palestinian self-determination.<sup>13</sup>

Excluding Palestinian refugees, who have been forced to live in exile, outside the borders of Palestine (approximately 8.3 million), from exercising their right to self-determination, is a violation of this right as a whole, as it is a collective right owed to a people in its entirety.

Refugees' inclusion will only be possible by virtue of their physical presence in the land. Thus, by denying Palestinian refugees their right of return, Israel is not only perpetuating the protractedness of the Palestinian refugee issue, but is also undermining the Palestinian people's right to self-determination by taking active measures to prohibit their physical presence on both sides of the Green Line. The denial of return thus amounts, in the Palestine context, to a violation of the right to self-determination, a *jus cogens* norm, and a serious breach of international law.<sup>14</sup>

### **Suppression of Palestinian Rights Defenders**

Palestinian right defenders, be them human rights defenders or organizations, work to oppose Israel's pursuit of absolute control over Palestinian lives by empowering Palestinian rights-holders and building resilience, as well as to expose the colonial-apartheid nature of Israeli policies.

The defamation, smear and delegitimization campaigns that Palestinian and international advocates for Palestinian rights are facing stem from the Israel and Israeli Government-Organized NGOs (GONGOs) that aim to discredit, silence and defund organizations that criticize Israeli colonial-apartheid policies and practices, by means of unfounded accusations of terrorism or antisemitism.<sup>15</sup>

Since its creation in 1948, Israel has continuously renewed its "state of emergency" to arbitrarily derogate from its obligations under international law and justify its silencing of Palestinian organizations and stifling of dissent. After occupying the West Bank in June 1967, the Israeli occupying army enforced a set of British "emergency" regulations from the time of the mandate to declare any Palestinian CSO as an "unlawful association" whenever it opposes Israel's colonial-

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<sup>12</sup> See BADIL, *The Nation State Law: The Culmination of 70 years of Israeli Apartheid and Colonization*, May 2018, available at: [https://www.badil.org/phocadownloadpap/badil-new/publications/research/infocus/NationStateLaw\(PositionPaper-BADIL-Oct2018\).pdf](https://www.badil.org/phocadownloadpap/badil-new/publications/research/infocus/NationStateLaw(PositionPaper-BADIL-Oct2018).pdf)

<sup>13</sup> See BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018*, Volume IX, (June 2020) available at: [https://badil.org/cached\\_uploads/view/2021/06/04/survey2016-2018-eng-1622811412.pdf](https://badil.org/cached_uploads/view/2021/06/04/survey2016-2018-eng-1622811412.pdf)

<sup>14</sup> See BADIL, *Palestinian Self-Determination: Land, People and Practicality*, October 2021, available at: [https://badil.org/cached\\_uploads/view/2021/11/15/wp-28-self-determination-1636973309.pdf](https://badil.org/cached_uploads/view/2021/11/15/wp-28-self-determination-1636973309.pdf)

<sup>15</sup> See BADIL, Written Submission to the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association to Inform Thematic Report on Trends, Developments, and Challenges to the Ability of Civil Society Organizations to Access Resources, Including Foreign Funding, to be Presented to the HRC at its 50th Session, February 2022, available at [written-submission-badil-sr-feb2022-1645613684.pdf](https://www.badil.org/written-submission-badil-sr-feb2022-1645613684.pdf)

apartheid regime. These regulations were also used to justify similar military orders that banned all forms of peaceful assembly and association with any organization declared as “unlawful.”<sup>16</sup>

Hindering and delegitimizing the work of advocates for Palestinian rights, including preventing the promotion of Palestinian refugees’ and IDPs’ right of return, are considered a violation of the Palestinian people’s right to freely determine their political course of action and demand their national and socio-economic rights.

Israel’s unfounded designation of six Palestinian human rights organizations as “terrorist entities” unquestionably falls into this category of misuse and abuse of counter terrorism legislation, in violation of its international law obligations. It serves the strategic purpose of smearing all actions of Palestinian civil society and human rights defenders, silencing their vital role in exposing Israeli violations, and attempting to activate the broader global counter-terrorism framework to engage other states in shrinking the space for legitimate Palestinian civic discourse.<sup>17</sup>

The mere implication of terrorism is in and of itself a mechanism of silencing, and does not withstand scrutiny in the Palestinian context, where civil society plays a vital role in exposing violations and advancing Palestinian self-determination as well as protecting the right to legitimate resistance against colonial domination. Instead, overly restrictive donor frameworks, derived from this abusive application of the law, actually impair the ability of Palestinian civil society to self-determine their associations and their advocacy, in violation of international human rights law.

Israel’s discriminatory policies that delegitimize human rights organizations and defenders are not merely reflective of a disregard or lack of respect for the rights of Palestinians; these policies are constituent of the Israeli colonial-apartheid’s wider and protracted strategy to facilitate the ethnic cleansing and forced population transfer of the Palestinian people.

## Recommendations

BADIL calls on the Human Rights Council and the UN Member States to:

- Pressure third states to abstain from acknowledging and supporting situations of fragmentation, segregation, and isolation created by Israel, which violate the Palestinian people’s internationally recognized right to self-determination;
- Investigate the components of colonization and apartheid of the Israel system of domination over the Palestinian people on both sides of the Green Line and in exile and take practical measures to put the inalienable rights of Palestinian people, namely the Palestinian right to self-determination and Palestinian refugees’ and internally displaced persons’ right to reparation (return, property restitutions and compensation), into practice;
- Take all measures available within international law, including sanctions, to hold Israel accountable for its policies and practices of colonization and apartheid and demand Israel to

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<sup>16</sup> See BADIL, *Forced Population Transfer: The Case of Palestine - Suppression of Resistance*, December 2016, available at: [http://badil.org/phocadownloadpap/badil\\_new/publications/research/working-papers/wp19-Suppression-of-Resistance.pdf](http://badil.org/phocadownloadpap/badil_new/publications/research/working-papers/wp19-Suppression-of-Resistance.pdf)

<sup>17</sup> See BADIL, Al-Majdal Magazine, “*Shrinking Spaces in Palestine: An Israeli Colonial Strategy to De-Politicize Palestinian Civil Society*”, Issue No. 60, August 2022, available at: [https://www.badil.org/cached\\_uploads/view/2022/08/26/al-majdal60-1661506113.pdf](https://www.badil.org/cached_uploads/view/2022/08/26/al-majdal60-1661506113.pdf)

cease all measures and policies that contribute to the fragmentation of the Palestinian people and repeal all legislation enshrining racial discrimination, domination, and oppression.

- Adopt a genuine human rights-based approach in its partnership with Palestine so to empower the Palestinian people to seek and achieve their own solution to the Palestine predicament, instead of its involvement in activities and actions that serve Israel's interests in reinforcing the status quo.
- Take a principled stance against the constant attacks on Palestinian human rights organizations and defenders, and promote a prosperous, sustainable civil society by understanding the nature and environment in which Palestinian civil society works/operates.