

Submitted to

**The United Nations Special Committee to Investigate Israeli Practices Affecting
the Human Rights of the Palestinian People and Other Arabs in the Occupied
Territories**

For

The session of the Committee from 26 June to 7 July 2005

Regarding

**The Ongoing Violations of the Fundamental Rights of Palestinian Refugees and
Internally Displaced Persons in the 1967 Occupied Palestinian Territories**



Submitted by

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1. Violations of the implementation of durable solutions

Refugees residing in the 1967 Occupied Palestinian Territories (OPT) are not only protected persons according to international humanitarian law; they are also entitled to specific rights, protection and durable solutions granted to them under human rights law and UN resolutions. Over the past year, however, the inalienable rights of refugees have not only continued to be denied, but further violations of their rights to housing, property, security and family life have occurred.

a) Continued violation of the right of return of 1967 refugees

Palestinian refugees (around 780 000) who fled or were expelled during the 1967 war remain in forced exile. Notwithstanding the occupied non-self governing status of the Occupied Palestinian Territories, 1967 refugees have the right to return to the OPT according to international human rights¹ and humanitarian law.²

Any durable solution to the 1967 Palestinian refugees should offer the voluntary choice to opt either for return to the original homes in the 1967 OPT, the integration in the host country or resettlement in a third state. The international community has recognized Israel's direct power over the realization of durable solutions,³ and particularly the fundamental right of return of the Palestinian people.⁴ Political negotiations over and solutions for Palestinian refugees⁵ were conducted in the

¹ In this respect, Resolution 194 and especially Resolution 237 are relevant. Resolution 237 stipulates that Israel should "facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities." UNSC, Resolution 237, S/RES/237, 14 June 1967. See also the Universal Declaration of Human Rights: article 9 and article 13 and the International Covenant on Civil and Political Rights (ICCPR): article 12.

² The Fourth Geneva Convention relative to the Protection of Civilians specifically states in article 45 that this provision: "shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities" [Emphasis added]. UN, Fourth Geneva Convention (IV) Relative to the Protection of Civilians, 12 August 1949, article 45. The Additional Protocol (I) affirms: "...the following shall be regarded as grave breaches of this Protocol if committed willfully and in violation of the Conventions or Protocol: b) unjustifiable delay in the repatriation of prisoners of war or civilians" [Emphasis added]. UN, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 85 (4)(a). Similarly, the 1990 Turku Declaration declares in Article 7: "Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement *imperative* have ceased" [Emphasis Added]. Turku Declaration, Declaration of Minimum Humanitarian Standards, UN Doc. E/CN.4/Sub.2/1991/55, December 2, 1990 in Sassoli, Marco and A.Bouvier, Antoine. *How Does Law Protect in War?*, International committee of the Red Cross, Geneva, 1999, p. 519.

³ See for instance UNGA Resolution 3236 (XXIX), 22 November 1974 which stipulates the right to self-determination, national independence, return to their homes and property of the Palestinian people. See also UNGA Resolution 51/129 which recalls "resolution 394 (V) of 14 December 1950, in which it directed the Conciliation Commission, in consultation with the parties concerned, to prescribe measures for the protection of the rights, property and interests of the Palestine Arab refugees" and "call once more upon Israel to render all facilities and assistance to the Secretary-General in the implementation of the present resolution."

⁴ Please refer to footnote 1

⁵ Multilateral Working Group on Refugees; quadri-partite (Israel, PLO, Jordan, Egypt) Continuing Committee on the Modalities of Admission of 1967 Displaced Palestinians.

framework of the Madrid-Oslo peace process. No tangible results were achieved and all negotiations have remained frozen since, at least, 2000. The right of return, and thereby the vital choice of a durable solution to which refugees are entitled, has therefore remained denied for the past 38 years to 1967 refugees.

b) Recent legislation affecting the right of return

A recently approved law in Israel prohibits the right of return of Palestinians. On January 1, 2001, the Knesset passed the *Ensuring Rejection of the Right of Return Law*⁶ which prevents refugees, defined as “a person who left the borders of the State of Israel at the time of war and is not a national of the State of Israel, including the persons displaced in 1967 and refugees of 1948 or a member of his family” to return “to the territory of the State of Israel except with the approval of a majority of members of Knesset” [Emphasize added]. This law is undoubtedly discriminatory as it specifically targets a national, religious and political group. The rejection of the right of return furthermore breaches Israel's obligations under international law, as the law stipulates that “the government of Israel will not make any commitment and will not enter into any agreement that is inconsistent with the provisions of this law.” Lastly, by changing the laws in the OPT, Israel is also violating the principle of international humanitarian law requiring that the occupying power respects the *status quo ante*.

c) Continued violation of the right to restitution and compensation

Return can never be complete without restitution and compensation. Israel ought to provide Palestinians victims of international human rights and humanitarian law: "restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition." More precisely, restitution is defined as the “restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence' and restoration of employment and return of property.”⁷ If restitution of the original property is judged impossible, then, extra compensation should be paid.

d) Recent legislation affecting the right to compensation

There is a new proposal by the Constitution, Law and Justice Committee of the Knesset to amend the Civil Wrongs (Liability of the State) Law. This amendment stipulates that "residents of a conflict area" and "subjects of enemy states", which includes Palestinians, are not allowed to sue or claim compensation to the Israeli

⁶ Sefer Hahukim (Laws of Israel), Booklet 1172 (10 January 2001), p.116 in Sultany, Nimer, *Citizens Without Citizenship*, Mada's First Annual Political Monitoring Report: Israel and The Palestinian Minority, 2000-2002, Israel, 2003, p. 19

⁷ “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law,” adopted by the Commission on Human Rights of the United Nations Economic and Social Council on January 18, 2000. UN Doc. E/CN.4/2000/62.

government for damages caused by 'combatant activity'. Combatant activity is defined as "...any action of combating terror, hostile actions, or insurrection, and action intended to prevent terror and hostile acts and insurrection committed in circumstances of danger of life or limb" [Emphasize added].

Concretely, it means that most, if not all, Palestinians in the OPT would be barred from any legal redress for the wrongdoings of Israeli soldiers, such as death or injury of civilians as a result of the actions of the Israeli army, abuse and degrading treatment or physical violence as well as damages and looting of properties. It also means that incidents of physical and psychological violence amounting to torture could not be prosecuted. Moreover, this law is discriminatory as it is exclusively based on the identity of the claimant and not on the merits of the claim.

This amendment clearly violates Israel's legal obligations to bear responsibility for any human rights violations committed by its nationals or agents, including damages incurred by its army, including responsibility for damages incurred to Palestinian life and property during the second intifada. The amendment also preempts restitution and compensation owed to the Palestinian victims of Israel's Wall in the OPT as stipulated by the 9 July, 2004 ICJ advisory opinion and subsequent UN General Assembly resolutions. Indeed, under all human rights and humanitarian law treaties, and more precisely, the Universal Declaration for Human Rights,⁸ the International Covenant for Civil and Political Rights,⁹ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁰ Geneva Convention Relative to the Protection of Civilians in Time of War,¹¹ states are responsible for the treatment accorded by its agents to persons under its jurisdiction.

2. Impact of the Wall on forced displacement and refugee communities

The most recent route of the Wall annexes 10.1 percent of the West Bank into Israel and enables Israel to control 46 percent of the occupied West Bank.¹² Upon

⁸ Article 8 of the Universal Declaration for Human Rights (UDHR) stipulates: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." UN, UDHR, 10 December 1948.

⁹ Article 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR) states: "Each party to the present Covenant undertakes: (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." UN, ICCPR, 16 December 1966.

¹⁰ Article 4 of the Convention Against Torture (CAT) mentions: "1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature." UN, CAT, 10 December 1984.

¹¹ Article 29 of the Geneva Conventions affirms: "The Party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred." UN, Geneva Convention Relative to the Protection of Civilians, 12 August 1949.

¹² OCHA, West Bank Barrier Route Projections: Preliminary Overview, Jerusalem, 20 February 2005 and PLO Negotiations Affairs Department, *Barrier to Peace: Assessment of Israel's 'New' Wall Route*, March 2005.

completion and depending on whether the Wall will be built along the Jordan Valley, it is estimated that up to 38 percent of the land of the West Bank could be located outside the Wall; in other terms, *de facto* annexed to Israel.¹³

a) New forced displacement as a consequence of the Wall

There is no comprehensive data on the overall impact of the Wall on refugee communities and new internally displaced. UNRWA estimates that as result of the construction of the first phase¹⁴ of the Wall, 220,000 people will be affected to some degree, including 15,291 refugee families, or 76,455 individuals.¹⁵ Overall, UNRWA estimates that of the total number of Palestinians affected by the first phase of the Wall, one-third are refugees. In addition, as a result of the first phase of the Wall, 138,593 Palestinians, including 67,250 refugees will reside in enclaves, cut off from the rest of the West Bank.¹⁶

According to a survey made by the Palestinian Central Bureau of Statistics (PCBS) in July 2004, 11,461 persons had already been displaced as a direct result of the construction of the Wall, of which approximately 4,000 are refugees and 8,000 are persons displaced for the first time.¹⁷ Initial statistics from PCBS also indicate that 85 houses and 574 commerces have been destroyed or partially demolished as a direct result of the construction of the Wall while 925 businesses have been closed for an indeterminate period.¹⁸

According to statistical data, we can estimate that in villages which are affected by phase IV (from Bethlehem southwards to Hebron) most have substantial refugee populations¹⁹ while others have a population of more than 2,000 refugees.²⁰ For the families expelled and forced to leave their homes, the construction of the Wall recalls events not unlike the 1948 and 1967 expulsions of Palestinians.

Most families affected by the Wall have already lost land due to the delimitation of the 1949 Armistice Line and the Israeli colonization since 1967.²¹ More alarming, a

¹³ PLO Negotiations Affairs Department, *Map of The Wall and Israeli Colonies*, May 2005.

¹⁴ The first phase course's starts at Salem checkpoint in Jenin and runs through Tulkarem and Qalqilya to the Masha village in Salfit.

¹⁵ UNRWA, *The Impact of the First Phase of Barrier on UNRWA-Registered Refugees*, Summer 2004.

¹⁶ UNRWA, *The Impact of the First Phase of Barrier on UNRWA-Registered Refugees*, Summer 2004.

¹⁷ This number has been deducted from the Palestinian Central Bureau of Statistics, who estimates that 12,000 persons have been displaced as a result of the construction of the wall, of which one-third are 1948 refugees according to UNRWA. This data is a general estimate as comprehensive data on new forced displacement as a result of the construction of the wall is still unavailable.

Palestinian Central Bureau of Statistics (PCBS), *Survey on the Impact of the Expansion and Annexation Wall on the Palestinian Localities that the Wall Passed Through*, March 2004, p.6

¹⁸ Palestinian Central Bureau of Statistics (PCBS), *Survey on the Impact of the Expansion and Annexation Wall on the Palestinian Localities that the Wall Passed Through*, March 2004, p.6

¹⁹ This includes Battir, Wadi Fukin, Husan, Nahalin, 'Arab al-Fureijatt, ar-Ramadin, Deir al-Asal, al-Tahta.

²⁰ Such as Beit 'Awwa, Surif, and al-'Azariya according to the Palestinian Central Bureau of Statistics (PCBS) 1997 Population Census.

²¹ Rempel, Terry, "Are They New Refugees? The Hidden Reality Behind the Wall," *Al Majdal*, Issue

recent report corroborates Israel's intention to annex confiscated Palestinian land.²² Indeed, in exchange for title to their land, Palestinians whose land has been seized for the construction of the Wall are offered alternative land in the West Bank; 'alternative land' that had previously been confiscated from Palestinian owners. This new policy confirms Israel's intention to *de facto* annex the territory confiscated during the construction of the Wall, in breach of international law and Palestinians' right to self-determination.

b) *Population transfer through revocation of residency rights in eastern Jerusalem*

Out of an estimated Palestinian population of 250,000²³ in eastern Jerusalem, around 70,000 ID holder may lose their residency rights and as a result, lose access to health care, education, and housing in Jerusalem.²⁴ Of this number, at least 10,000 persons are refugees from Shu'fat camp, who, despite the camp's location within the municipal boundaries of Jerusalem, will be completely cut off and separated from Jerusalem. In this case, and as in many other instances, the gate in the Wall will only open on the West Bank side, and not on the Jerusalem side; thereby isolating thousands of Palestinians from their city. The Wall is thus not only a way to annex land, it is also a way to clear Jerusalem from its Palestinian population, i.e. a clear form of ethnic cleansing.

Moreover, Israel recently approved the destruction of 88 houses, affecting around 1,000 persons out of an estimated population of 10,000²⁵ in the Silwan neighborhood of eastern Jerusalem. This is the largest single demolition of Palestinian homes since 1967 and will lead to further displacement.²⁶ The Committee should thus bring the issues of revocation of residency rights, property demolition and ethnic cleansing in eastern Jerusalem to the urgent attention of the General Assembly. Israel's policies of forced displacement and transfer of population through coercive acts without grounds permitted in international law and intentional and severe deprivation of fundamental rights contrary to international law amount to crimes against humanity and war crimes.

No.23, Bethlehem, September 2004, p. 29.

²² See Al Haq, "Al-Haq Open Letter", Ref. 13.2005E, 17 May 2005.

²³ According to PASSIA, there are different numbers on the number of Palestinian in eastern Jerusalem. These numbers vary between 225,400 (33.58%) from the Israeli CBS data to 240,721 (34.3%) from the Population Registry Bureau of the Interior Ministry to 252,948 by the Palestinian Central Bureau of Statistics. See PASSIA, *Jerusalem Facts and Figures*, The Palestinian Academic Society for the Studies of International Affairs, Jerusalem.

²⁴ Villages particularly affected are Al Ram, Dahiet Al Barid, Bir Nabala, Kufr Aqab, Sameer Amis, Kaf Al Hawa. See Sub Laban, Ahmad, "Jerusalem residents scramble to fight wall", *Palestine report*, 22 May 2005.

²⁵ See PASSIA, *Jerusalem Facts and Figures*, The Palestinian Academic Society for the Studies of International Affairs, Jerusalem.

²⁶ For more information on the case, see ICAHD, "The Process of Transfer Continues", *Israeli Committee against House Demolition*, Friday, 3 June 2005.

3. Recommendations to the Special Committee

- **The Committee is encouraged to propose a resolution by the General Assembly condemning Israel for its failure to allow the return of 1967 refugees to the West Bank and Gaza Strip as required by Resolution 237 and define the ongoing policy of forced displacement and transfer of population through coercive acts without grounds permitted in international law as crimes against humanity and war crimes.**
- **The Committee should inquire to the General Assembly about the progress made in the implementation of the registry, as proposed under Resolution ES/10/15,²⁷ to comprehensively register damages caused by the construction of the Wall. The Committee should also support broadening the mandate of the registry to entail an evaluation or an assessment of the loss or damage and a claims commission, particularly since the new Israeli amendment to the Civil Wrongs (Liability of the State) Law is rendering redress for violation of the rights of Palestinians impossible.**
- **In addition to a registry of damage for properties, the Committee needs to request the General Assembly to call on the appropriate UN agency to comprehensively monitor and report on the impacts of the Wall and its associated regime on internally forcibly displaced persons and population transfer.**
- **The Committee should support a resolution by the General Assembly taking concrete steps to sanction Israel until it dismantles the Wall, ends the occupation, allows refugees to return to their homes and properties in areas under Israeli jurisdiction and repeal legislation contradicting the fundamental precepts of international law.**
- **The Committee should encourage all United Nations agencies to adopt homogenous and consistent language which defines the Wall as a wall in accordance with the Advisory Opinion of the International Court of Justice and General Assembly Resolutions,²⁸ and not as a Barrier'.**

²⁷ "Requests the Secretary-General to establish a register of damage cause to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion." UNGA, Advisory opinion of the International court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, A/Res/ES-10/15, 2 August 2004, para. 4

²⁸ ES/10-13 (21 October 2003), ES/10-14 (8 Demcember 2003) A/Res/ES-10/15 (2 August 2004).