

Report to the
Committee on Economic, Social and Cultural Rights

25th Session, 23 April 2001

General Item: Follow-Up Procedure (Israel)



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Supplementary BADIL Submissions to the Committee:

- A. Resubmission of BADIL's 13 November 2000 Report to the CESCR
- B. **BADIL's Legal Analysis on the Palestinian Refugees' Right of Return under International Law:**
1. (*Shorter version*) Brief #8: Palestinian Refugees and the Right of Return: An International Law Analysis(January 2001)
 2. (*Longer version, with full legal citations*): The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis (February 2001)
- C. **BADIL's Submission to the recent UN Commission of Inquiry (Falk/Dugard/Hossein) titled: Palestinian Refugees and the al-Aqsa Intifada: The Impact of the Lack of International Protection (February 2001)**
- [Note: This paper gives a very good summary overview of the special legal regime set up by the United Nations system to protect the legal rights of Palestinian refugees, why this regime is currently not functioning properly, and includes some suggestions for correcting the problems.]*
- D. **Series of BADIL Briefs on Topics Related to this Submission:**
1. Brief #1: Reinterpreting Palestinian Refugee Rights under International Law, and a Framework for Durable Solutions (Susan M. Akram, February 2000)
 2. Brief #2: Fora Available for Palestinian Refugee Restitution, Compensation and Related Claims (Susan M. Akram, February 2000)
 3. Brief #4: Temporary Protection and Its Applicability to the Palestinian Refugee Case (Susan M. Akram, June 2000)
 4. Brief #5: The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees (Terry Rempel, June 2000)
 5. Brief #6: The UN Relief and Works Agency (UNRWA) and a Durable Solution for Palestinian Refugees (Terry Rempel, July 2000)

PART I. EXECUTIVE SUMMARY AND DETAILED RECOMMENDATIONS, IDENTIFIED BY PALESTINIAN REFUGEE POPULATION GROUP

This section begins with a summary of three of Israel's main "core, foundational" Covenant violations which effect the three main groups of displaced Palestinians which are of our primary concern: (1) the 1948 Palestinian refugees; (2) the "internally displaced" Palestinians inside what is commonly referred to as "Israel proper" (i.e., that territory over which Israel has asserted sovereignty since the drawing of the 1949 armistice lines); and (3) the 1967 Palestinian refugees. We have focused on violations of what we previously identified in our November 2000 submission to the Committee as three main "core, foundational rights" contained in the Covenant, because their implementation by a State party is so essential to the exercise and enjoyment of all the other rights enumerated in the Covenant. (Much additional background material fleshing out the massive scope and impact of these violations is contained in our November 2000 submission to the Committee.). We then provide a list of specific recommendations for follow-up action by the Committee.

I. Identifying Israel's Breaches of Three "Core, Foundational" Covenant Rights

First, BADIL requests that the Committee strengthen its 1998 Concluding Observations regarding Israel.

Strengthening the Conclusions of the Committee: First, BADIL requests that the Committee strengthen its 1998 Concluding Observations regarding Israel by identifying the following **breaches**:

- A. Obstruction of the Right of Return: Clearly identify the Covenant violation noted in **Observation 13** as a "**breach**," rather than using the milder "notes with concern" language.
- B. Obstruction of the Right of Restitution: Reaffirm that the Covenant "**breach**" identified in **Observation 11** has not been corrected and recommend that specific follow-up action be taken (see below, for specific suggestions for follow-up action).
- C. The "Internally Displaced" - Obstruction of their Rights of Return and Restitution: Clearly identify the treaty violation noted in **Observation 25** as a "**breach**," rather than using the milder "expresses... concern" language.
- D. Obstruction of the Right of Self-Determination: Clearly identify the Covenant violation noted in **Observation 39** as a "**breach**."

Note: By violating the above three "core, foundational" rights of the internally and externally displaced Palestinians (i.e., the 1948 refugees, the "internally displaced" Palestinians and 1967 refugees), Israel thereby completely violates (or in the case of the "internally displaced" significantly infringes upon) the remaining set of Covenant-enumerated rights of each of these groups in their entirety.

II. Identifying Appropriate Remedies

Having clearly identified above Israel's breaches of three "core, foundational" Covenant rights, we urge the Committee to make the following specific recommendations to Israel regarding appropriate **remedies** necessary to be implemented to correct the identified breaches:

A. The Right of Return:

The right of return is really a remedy. It is the appropriate legal remedy for violation of the right to hold citizenship in the "country of one's origin." The right to hold citizenship in the "country of one's birth" is grounded in **Article 2(2)** of the Covenant. Because the Palestinian refugees' right of return is grounded in customary international law (including human rights law), **Articles 4** and **5(2)** of the present Covenant therefore require that Israel implements the refugees' right of return. The **International Law Commission** has quite clearly articulated the binding, customary nature of the right of displaced persons to return to their homes of origin in its report titled "**Nationality in Relation to the Succession of States**" (UN Doc. #A/54/10 and Corr. 1 & 2). The Palestinian refugees' right of return to their "homes of origin" inside Israel was unambiguously reaffirmed in **General Assembly Resolution 194(III)** of 11 December 1948.

Note: During verbal dialogue with one NGO representative during the Committee's 24th Session in November 2000, the Committee noted that it would gladly receive additional information regarding the binding, customary nature under international law of the Palestinian refugees' right to return. Accordingly, we would like to submit to you our legal analyses (in both a "condensed" and a "longer" version with full legal citations) titled The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis. Since the Palestinian refugees' right of return is grounded in customary international law (including human rights law), **Articles 4** and **5(2)** of the present Covenant therefore require that Israel implements the refugees' right of return.

The 1948 Palestinian Refugees:

- a. The Committee should recommend that the 1948 Palestinian refugees - by virtue of their "presumption" of status as nationals of Israel, which obtains under the law of nationality as applied upon state succession - should be extended actual nationality status, or citizenship, by Israel (since it is their "country of origin") on terms equal with Jews' ability to obtain automatic citizenship in Israel (currently found in Israel's Law of Return, which applies to Jews only).
- b. According to the foregoing principle, the Committee should recommend that Israel's Nationality Law of 1952 must be annulled or amended (to remove the bar prohibiting the 1948 refugees from returning to their "country of origin," i.e., Israel).

The "Internally Displaced" Palestinians:

- a. The Committee must recommend that all "internally displaced" Palestinian citizens of Israel must be immediately allowed to return to their families' lands and "homes of origin" inside Israel.

The 1967 Palestinian Refugees:

- a. Because Israel's military occupation can never attain de jure sovereignty and because it violates both the "collective" and "individual" aspects of the Palestinian people's right of self-determination as enshrined in **Article 1** of the Covenant, the Committee should recommend that Israel's military occupation should cease immediately and that Israel's military orders and policies (including those which currently bar the 1967 refugees from returning to their families' "homes of origin" in the Occupied Palestinian Territories) should be annulled.

*(See further discussion of the Palestinians' "individual" and "collective" right of self-determination under **Article 1** of the Covenant, in Section C, below.)*

B. The Right of Restitution:

The right of restitution is really a remedy. It is the appropriate legal remedy for violation of the right to own property free from illegal governmental interference. The right to own property free from illegal governmental interference is grounded in **Articles 1(2), 2(2), 11(1)** and **25** of the Covenant.

The 1948 Palestinian Refugees:

a. The Committee should recommend that Israel's land confiscation laws as implemented inside "Israel proper," including, of course, the so-called Absentees' Property laws, are illegal under international law because: (1) they are **selectively applied** against only Palestinian landowners to deprive them of their land without being equally applied to deprive similarly situated Jewish landowners of their land; and (2) they completely lack international due process or evidentiary guarantees for the Palestinian landowners (most obviously because the individual landowners are not even allowed into court to protest the governmental takings of their land and property because Israel refuses to re-admit them). Furthermore, all land and property confiscated by the Israeli government under these illegal domestic laws are converted for exclusive use by Jews. Therefore, because these Israeli land confiscation laws are framed and implemented in a way that discriminates on the basis of racial, ethnic, religious or political criteria (to work exclusively in favor of Jews and exclusively against the interests of Palestinian Arabs), they *prima facie* violate the Covenant in their entirety.

b. According to the foregoing principle, the Committee should recommend that all of Israel's discriminatory and illegal land confiscation laws must be repealed or amended (to allow full restitution, as required by international law, of all private property of the 1948 refugees which was illegally confiscated from them under Israel's illegal land confiscation laws).

c. Regarding the preceding recommendation, the Committee should specifically recommend that the official land records and archives of both the government of Israel and the United Nations Conciliation Commission for Palestine (UNCCP) (which was empowered in G.A. Resolution 194 to record, tabulate, monitor and preserve the private property rights of the 1948 refugees) should be opened up to the public - and in particular to potential Palestinian claimants seeking to reclaim their property - for inspection and duplication.

The "Internally Displaced" Palestinians:

a. The Committee should recommend that all "internally displaced" Palestinian citizens of Israel must immediately have restituted to them all of their families' property and lands which have been illegally confiscated from them under domestic Israeli laws which violated international law.

The 1967 Palestinian Refugees:

a. Because Israel's military occupation can never attain *de jure* sovereignty and because it violates both the "collective" and "individual" aspects of the Palestinian people's right of self-determination as enshrined in **Article 1** of the Covenant, the Committee should recommend that Israel's military occupation should cease immediately and that Israel's military orders and policies (including those under which land and property was illegally confiscated) should be annulled, thereby allowing all illegally confiscated land and property to be restituted to the rightful, original owners, including any 1967 refugees so affected by such confiscations as well as any other Palestinian residents of the Occupied Palestinian Territories so affected.

*(See further discussion of the Palestinians' "individual" and "collective" right of self-determination under **Article 1** of the Covenant, in Section C, below.)*

C. The Right to Self-determination:

The right of self-determination is considered a fundamental cornerstone of the entire human rights system that has evolved since the founding of the United Nations, and it is firmly embedded in the "International Bill of Human Rights." The right to self-determination is enshrined in the Covenant in Articles 1(1), 1(2) and 1(3). The right to self-determination is considered a fundamental human right with which all persons are endowed simply by virtue of having been born.

The right to self-determination has two complementary and interrelated components - an "individual" aspect and a "collective" aspect. For further expert UN analysis of these two complementary components, see the Final Report of Special Rapporteur H. Gros Espiell regarding his study on the right of self-determination (UN Doc. #E/CN.4/Sub.2/405/Rev.1 (1980)).

The "individual" right of self-determination requires State parties to human rights treaties - including, of course, the present Covenant - to respect each and every human right enumerated in the entire "International Bill of Human Rights." In other words, it is a concrete affirmation that all persons are entitled to exercise all of their human rights in their entirety. Exercise of the "individual" aspect of the right to self-determination is, of course, a necessary precondition for the exercise of the "collective" aspect of this right. A people may choose for itself whatever form it wishes to utilize to exercise the "collective" aspect of their right to self-determination.

The 1948 Palestinian Refugees:

a. The 1948 Palestinian refugees should be recognized as being entitled to exercise their right of self-determination, which requires State parties to the Covenant to respect each and every human right enumerated in the "International Bill of Human Rights." This the 1948 Palestinian refugees cannot do for so long as they are exiled from their families' homes of origin and their property remains illegally confiscated from them in its entirety.

The "Internally Displaced" Palestinians:

a. The "internally displaced" Palestinians should be recognized as being entitled to exercise their right of self-determination, which requires State parties to the Covenant to respect each and every human right enumerated in the "International Bill of Human Rights." This the "internally displaced" Palestinians cannot do for so long as they are barred from returning to their families' homes of origin and their property remains illegally confiscated from them, virtually in its entirety.

b. Additionally, it must be noted that all Palestinian citizens of Israel suffer from "second-class" citizenship and rights-distribution status as "non-Jews" living in a "Jewish state." Therefore, the Committee must unequivocally state that **Israel's entire Jewish-preferencing legal regime** - which systematically privileges Jews and systematically disadvantages non-Jews - *prima facie* violates the Covenant in its entirety and constitutes a clear and flagrant breach of Israel's obligations thereunder.

"Internally displaced" Palestinians are simply even more disadvantaged than other Palestinian citizens of Israel because their lands have been illegally confiscated from them virtually in their entirety under domestic Israeli laws violating international standards protecting private property. This deliberate Israeli confiscation of an entire land base makes the "internally displaced" Palestinians especially economically disadvantaged in exactly the same way that the "external refugees" are particularly economically disadvantaged.

The 1967 Palestinian Refugees:

a. The 1967 Palestinian refugees should be recognized as being entitled to exercise their right of self-determination, which requires State parties to the Covenant to respect each and every human right enumerated in the "International Bill of Rights." This the 1967 Palestinian refugees cannot do for so long as they are exiled from their families' homes of origin and their property remains illegally confiscated from them.

All Residents of the Occupied Palestinian Territories (Including Those Barred Re-Admission):

a. Similarly to the above, with regard to the 1967 occupied territories, the Committee must clearly and unequivocally state that as Israel can never obtain *de jure* sovereignty in the 1967 occupied territories under international law, it must accordingly relinquish *de facto* sovereignty (i.e., its military occupation) there to the group of persons with the priority legal right to that area under international law, i.e., the Palestinian people, who hold that prior legal right by virtue of the clear legal grant to them of the right to exercise full national sovereignty (i.e., the right to exercise their **right of self-determination**) in the geographical territory covenanted to them in **Article 22, paragraph 4** of the **1919 League of Nations Covenant**.

For further analysis of the long-standing historical legal basis (since 1919) for the Palestinians' right of self-determination in all of historic Palestine, please see our descriptive report, in Part II of this submission, below.

Accordingly, the Committee should conclude that Israel's military presence in the occupied territories violates the binding customary rule of international law prohibiting the acquisition of territory by force as well as the Palestinian peoples' right of self-determination, as codified in **Articles 1(1), 1(2) and 1(3)** of the Covenant.

D. "Al-Aqsa Intifada" Covenant Violations - Especially Impacting Refugees:

Other NGO's will be presenting this Committee with the data documenting Israel's massive violations of Covenant-enumerated rights perpetrated against the Palestinian residents of the Occupied Palestinian Territories.

Because BADIL's mandate is focused primarily on the situation of the Palestinian refugees, we have collected data that demonstrates the particularly devastating impact of the *intifada* upon this particularly vulnerable sector of the population. It is important to note that **Palestinian refugees comprise fully 50% of the population of the Occupied Palestinian Territories**.

Annex A to this report details in great length specific "*intifada*"-related Covenant violations which Israel has perpetrated against the Palestinian refugees in the Occupied Palestinian Territories.

We have broken the data down into four main categories, which are as follows:

1. **Article 6: The Right to Work**
2. **Article 11: The Right to an Adequate Standard of Living**
3. **Article 12: The Right to the Highest Attainable Standard of Physical and Mental Health**
4. **Article 14: The Right to Education**

Kindly refer to **Annex A** for further detailed information on these specific Covenant-enumerated rights violations.

III. Identifying Specific Covenant Mechanisms for Implementing the Above-Mentioned Remedies

Having clearly identified the appropriate remedies which Israel must undertake to correct its mass-scale and egregious Covenant breaches, the Committee is mandated under **Part IV** the Covenant (**Articles 16** through **25**) to pursue concrete follow-up strategies specifically enumerated to assist a State party in coming into compliance with its treaty obligations. Given the mass scale and egregious consequences of Israel's Covenant breaches, we believe that all of the Covenant-mandated follow-up strategies must be pursued cumulatively:

1. **Article 18:** The Committee should inform the **Economic and Social Council** of the legal grounds requiring notification of all **UN specialized agencies** of Israel's mass-scale Covenant breaches.

This particularly relates to all specialized agencies dealing with human rights (see Article 19). The most important of these would be an explicit and express mandate to the **High Commissioner for Human Rights** to assume responsibility for assisting Israel to come into compliance with its Covenant obligations, including, most importantly, implementation of the rights of the Palestinian refugees to **return** and **restitution**. Palestinian refugees must be expressly invited to enter into this discussion. Sufficient financial resources must be earmarked for this effort.

2. **Article 19:** The Committee should inform the **Economic and Social Council** of the legal grounds requiring the referral of the issue of Israel's violation of the rights of the Palestinian refugees to the **Commission on Human Rights** and, if appropriate, to the **Subcommission on the Promotion and Protection of Human Rights** for "study" and "general recommendations." The Commission must further mandate and finance a "**Special Rapporteur**" dedicated to the process of clarifying the bases in international law of the Palestinian refugees' rights of **return** and **restitution**.

3. **Article 21:** The Committee should inform the **Economic and Social Council** of the legal grounds requiring the submission of the issue of Israel's violation of the rights of the Palestinian refugees to the General Assembly for consideration of **General Assembly** mechanisms which can be activated to bring Israel into compliance with the Covenant by implementing the rights of the Palestinian refugees to return and restitution.

4. **Article 22:** The Committee must inform the Economic and Social Council of the legal grounds requiring bringing the issue of Israel's violation of the rights of the Palestinian refugees to the attention of **other United Nations organs** to decide upon the advisability of international measures likely to bring Israel into compliance with the Covenant by implementing the rights of the refugees to **return** and **restitution**. Most importantly would be to call for official UN exploration of an inter-agency task force - to include UN agencies such as the United Nations Relief and Works Agency (UNRWA), the United Nations Conciliation Commission for Palestine (UNCCP) and the Office of the UN High Commissioner for Refugees (UNHCR), as well as other relevant UN agencies and other potential non-UN agencies - to assist Israel in coming into compliance with the Covenant by fully implementing the rights of the Palestinian refugees. Palestinian refugees must be expressly invited to enter into the process of crafting an implementable durable solution to their plight. Such a durable solution must place primary emphasis upon implementable mechanisms for the refugees' voluntary return to their families' "homes of origin," as voluntary repatriation is the preferred of the international community's three durable solutions to refugee flows and also accords with binding norms of customary international law requiring repatriation of the refugees, as reaffirmed in the Palestinian case in G.A. Resolution 194(III) (of 11 December 1948). Sufficient financial resources must be earmarked for this effort.

5. **Article 23:** The Committee should **inform all States parties** to the Covenant of the legal grounds requiring **international action for the achievement of the rights** recognized in the present Covenant, including implementation of the rights of the Palestinian refugees to **return** and **restitution**. The Covenant expressly enumerates the following recommended actions: (1) adoption of recommendations; (2) furnishing of technical assistance; (3) holding of regional meetings and technical meetings.

Part II: DESCRIPTIVE REPORT TO THE 25TH SESSION OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 23 APRIL 2001

Madame Chairwoman, and Ladies and Gentlemen of the Committee on Economic, Social and Cultural Rights, please allow us to introduce ourselves.

We are BADIL Resource Center for Palestinian Residency and Refugee Rights, located in Bethlehem, Palestine. We are a Palestinian NGO dedicated to advocacy for and protection of the legal rights of the Palestinian refugees. Because BADIL's mandate concerns Palestinian refugees, our report to the 25th Session of this Committee will address the compliance record of the government of Israel under the International Covenant on Economic, Social and Cultural Rights (the "Covenant") as those actions affect Palestinian refugees.

We feel a sense of urgency in reporting to the Committee at this 25th session. This is so not only because of the centrality of the rights enshrined in the Covenant to the situation of the Palestinian refugees but also because of the important array of remedies which the Covenant expressly provides in **Part IV** of the Covenant, and specifically **Articles 18** through **23**, to assist those States parties which are in breach of their Covenant obligations to come into compliance with the Covenant. The urgency, is, of course, compounded by the current human rights and humanitarian law crisis occurring in the Occupied Palestinian Territories in the context of the "*al-Aqsa Intifada*," including clear and mass-scale violations of Israel's obligations under the Covenant. Other NGOs addressing you at this 25th session will focus at greater length upon intifada-related Covenant violations as they impact the population in the Occupied Palestinian Territories generally. We will, in contrast, target our report more specifically to the situation of the refugees resident in the Occupied Palestinian Territories.

But let us be clear about one of the universally-acknowledged causes of the current *intifada*, which unquestionably was triggered by the failure of a seven-year-long "peace process" to address adequately in terms of international law *the* most central and important aspect of the dispute between the Israelis and the Palestinians, which is, of course, the issue of the Palestinian refugees.

Therefore, fully understanding the rights of the Palestinian refugees under international law is absolutely critical to beginning to pave the way for the implementation of those rights, which itself is the very *key* to realizing peace between the Israelis and the Palestinians.

First, we would like to call your attention to the fact that the Palestinian refugee population worldwide now numbers an estimated 5.5 million to 6 million persons. That is to say that of the total population of Palestinians worldwide, estimated to number roughly 8 million persons, fully three-quarters of them are refugees. (It can be noted that of this overall number, only 3.7 million Palestinian refugees are currently

registered with UNRWA, due to UNRWA's internal registration procedures.) The Palestinian refugee population, then, currently comprises *the* single largest refugee population in the world. It is also one of the longest-standing unresolved cases of refugee status the world has ever witnessed, dating as it has since 1948 (which is a 52-year period).

The Palestinian refugees constitute two subgroups: (1) those persons (and their descendants) initially displaced in the conflict surrounding Israel's unilateral declaration of independence in 1948 (commonly referred to as the "1948 Palestinian refugees"); and (2) those persons (and their descendants) displaced in during the 1967 conflict (commonly referred to at the "1967 Palestinian refugees"). The 1948 refugees comprise the vast majority of Palestinian refugees. (Some 1948 refugees became "second-time" refugees when they were displaced again during 1967).

As this Committee has already correctly noted, because Israel has unilaterally assumed *de facto* sovereignty over the Occupied Palestinian Territories since 1967 and has thus far refused to relinquish that territorial control, Israel therefore is also fully obligated to implement the Covenant in the Occupied Palestinian Territories.

Israel's treatment of the 1948 Palestinian refugees and the 1967 Palestinian refugees is strikingly similar. Israel denies to both groups the right to return to their families' "homes of origin." In addition, Israel has enacted a vast array of laws designed to confiscate the land and other private property of Palestinian refugees. In all cases, the confiscated land is converted for exclusive use by Jews. These laws fail in the most fundamental way to conform to international law standards protecting private property rights. Nor do they comply with international evidentiary or due process standards. Hence, all property and land confiscations carried out by Israel using these laws are illegal under international law. **We provided substantial documentation regarding the Israel's illegal land confiscation laws, including initial quantifications of the amount of land and property illegally confiscated under these laws, in our November 2000 submission to the 24th session of this Committee.** (We are resubmitting that report for your consideration at this 25th session.)

Regarding the 1948 Palestinian refugees' right to return to their families' homes of origin, which now lie inside that area commonly referred to as "Israel proper" - i.e., that territory over which Israel has asserted sovereignty since the signing of the 1949 armistice accords - that right was reaffirmed in **General Assembly Resolution 194(III)** of 11 December 1948. The **International Law Commission** has quite clearly articulated the binding, customary nature of the right of displaced persons to return to their homes of origin in its report titled "**Nationality in Relation to the Succession of States,**" (UN Doc. #A/54/10 and Corr. 1 & 2). Furthermore, the entire group of 1948 Palestinian refugees has the related right to receive back as restitution all their property and land which has been confiscated from them by domestic Israeli laws which violate international law. The Committee itself has quite clearly articulated these property rights of displaced persons in its **General Comment #7**. The Committee now needs to clarify that Israel's continued failure to implement the rights of **return** and **restitution** in the case of the Palestinian refugees constitutes clear, flagrant and unacceptable violations of Israel's Covenant obligations.

As we explained in our November 2000 submission to this Committee, Israel's violation of the right of return of the Palestinian refugees (both groups) constitutes a clear violation of Covenant **Article 2(2)**. During verbal dialogue with one NGO representative during the Committee's 24th Session, the Committee noted that it would gladly receive additional information regarding the binding, customary nature under international law of the Palestinian refugees' right to return. **Accordingly, we would like to submit to you our legal analyses (in both a "condensed" and a "longer" version with full legal citations) titled The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis.** Since the Palestinian refugees' right of return is grounded in customary international law (including

human rights law), **Articles 4 and 5(2)** of the present Covenant therefore *require* that Israel implements the refugees' right of return.

Regarding the right of the Palestinian refugees (both groups) to have all of their illegally confiscated property returned to them, this right is grounded in a variety of articles of the Covenant, including **Articles 1(2), 2(2), 11(1) and 25**. The Committee's important **General Comment #7** is quite explicit regarding the property rights of displaced persons.

It should be added here that both of the above-mentioned rights - the right of return and the right of restitution of illegally confiscated property - also apply to another group of Palestinians, of whom this Committee has already taken note. This group comprises the **estimated 250,000 "internally displaced" Palestinians** who reside inside Israel proper and hence are citizens of Israel but whom Israel has nevertheless prevented since 1948 from returning to their families' lands and homes of origin *inside* Israel. Israel has used many of the same laws to confiscate the lands and properties of the internally displaced and their descendants as it has used to confiscate the lands and properties of the 1948 externally displaced Palestinian refugees and their descendants. These laws - which are selectively applied against Palestinians only, which do not meet international evidentiary or due process standards, and which do not offer fair market value compensation - violate private property protections under international law and hence are patently illegal under international law. Israel is, therefore, in massive violation of important Covenant-enumerated rights of the "internally displaced" Palestinians inside Israel.

Finally, Israel is in clear violation of the Covenant's **Article 1** right to self-determination - and this is true with respect to both jurisdictions, i.e., inside Israel proper and in the Occupied Palestinian Territories. **As H. Gros Espiell - who was appointed as a Special Rapporteur by the UN Subcommission on Prevention of Discrimination and Protection of Minorities to conduct a study specifically on the right of self-determination - pointed out in his final report in 1980 (UN Doc. E/CN.4/Sub.2/405/Rev.1 (1980))**, the right to self-determination, which is a fundamental human right with which all persons are endowed simply by virtue of having been born, has two complementary and interrelated components: an "individual" aspect and a "collective" aspect. The "individual" right to self-determination requires States parties to the Covenant to respect each and every human right enumerated in the "International Bill of Human Rights." In other words, it is a concrete affirmation that all persons are entitled to exercise all of their human rights in their entirety. Exercise of the "individual" aspect of the right to self-determination is, of course, a necessary precondition for the exercise of the "collective" aspect of this right. A people may choose for itself whatever form it wishes to utilize to exercise the "collective" aspect of their right to self-determination.

With regard to Israel's compliance record *inside* Israel proper, the Committee must clearly call upon Israel to abrogate every discriminatory law and policy which authorizes differential treatment between Jewish and non-Jewish citizens of Israel and thereby infringes upon each Palestinian citizen of Israel's **Article 1** right to self-determination (requiring respect for each individual's full range of human rights), and especially in the case of the "internally displaced" Palestinians in Israel (who are particularly economically disadvantaged). The fundamental, two-tier citizenship and rights-distribution status currently imposed upon Palestinian citizens of Israel is patently illegal under human rights law generally and in particular under the right of self-determination of **Articles 1(1) and 1(3)** of the Covenant. The Committee must clearly articulate this fundamental incompatibility between Israel's discriminatory laws and true principles of democracy, which require equality of treatment for all a State party's citizens. The Committee must identify every Israeli law and official governmental policy which systematically differentiates between Jewish and non-Jewish citizens of Israel. The Committee must then clearly articulate to Israel that each such law or practice constitutes an individual Covenant violation and that taken collectively, Israel's entire discriminatory legal regime constitutes a *prima facie* violation of the Covenant in its entirety.

Furthermore, Israel is most flagrantly violating the 1948 Palestinian refugees' **Article 1** right of self-determination by refusing to allow them to return to their "country of origin" and to assume full citizenship rights there, a right which they clearly have under international law. Logically speaking, it is hard to enjoy one's full range of human rights guaranteed to all persons under the **Article 1** right of self-determination if one is confined to exile abroad and is, accordingly, stateless and deprived of "diplomatic protection," as is currently the case with the Palestinian refugees. Furthermore, the illegal property and land confiscations clearly violate **Article 1(2)** of the Covenant.

In addition, Israel is quite clearly violating the right of self-determination of those Palestinians whose "homes of origin" lie within the OPTs, including the 1967 refugees who Israel continues to bar from returning there. The Committee must clearly label Israel's refusal to re-admit as a clear breach of the Covenant's **Article 1** right of self-determination.

Furthermore, the Committee must call for an immediate end of Israel's military occupation in the entire OPTs, including East Jerusalem, which occupation in its entirety is a blatant violation of the Palestinians' **Article 1** right of self-determination. This is so because **the Palestinian people have an indisputable legal basis for implementation of their right of self-determination under Article 1 of the Covenant in all of historic Palestine. The foundational legal basis for this right stems from Article 22, paragraph 4 of the 1919 Covenant of the League of Nations, which made a specific geographical grant to the Palestinian people of the territory of historic Palestine, which was clearly designated as the site of their future independent Palestinian state where they were to exercise full national sovereignty.**⁽¹⁾ **The British Mandate for Palestine which was later approved by the League of Nations expressly stated that the rights of all minority population groups in the British Mandate were to be *equally respected*, and no Jewish-preferencing legal regime was ever approved or sanctioned by the League of Nations grant of the British Mandate for Palestine to Britain. Nor did the *proposed* (but not implemented) General Assembly Resolution 181 which *recommended* partition for Palestine ever contemplate or approve a Jewish-preferencing legal regime. To the contrary, the proposed "partition plan" also expressly stipulated that the legal rights of all minority groups in the contemplated future states were to be *equally respected*.**

⁽¹⁾ Covenant of the League of Nations, 28 June 1919, reprinted in Henry Cattan, PALESTINE AND INTERNATIONAL LAW: THE LEGAL ASPECTS OF THE ARAB-ISRAELI CONFLICT 259 (1973). Article 22 reads, in part:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independence nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory. As is clear, para. 4 of Article 22 specifically refers to the geographic area, which formerly had been occupied by the Turkish Empire. This area, which included Palestine, was ultimately divided into five separate mandate areas - Palestine, Trans-Jordan, Lebanon, Syria, and Iraq - which were all denominated "Class A" mandates because they were deemed to be the closest to achieving their full sovereign independence, and were expected to receive their independence sooner than the "Class B" or "Class C" mandates.

Thus, the League of Nations itself, as early as 1919, "provisionally" recognized Palestine's "existence" as an "independence nation" in Article 22 of its Covenant. The Covenant of the League of Nations both predated the appointment of Britain as the Mandatory Power in Palestine by the League of Nations and served as the juridical basis for Britain's authority to serve as the Mandatory Power. This being so, Britain assumed the Mandate for Palestine subject to the terms of Article 22 of the Covenant of the League of Nations. In particular, Britain assumed the role of Mandatory power with the clear understanding that its responsibility, and in fact its very *raison d'être* as a Mandatory Power in the first instance, was to bring the League of Nations' "provisional" recognition of Palestine's "independence" as an independent sovereign nation into full realization, i.e., assist the Palestinian people in their achievement of full, independent sovereign statehood.

Any subsequent actions by Britain in its position as Mandatory Power which may have tended to derogate from the terms of Article 22 would therefore have been *ultra vires* and hence void under the terms of the Covenant of the League of Nations.

Of the five "Class A" mandates created by the League of Nations out of the former Turkish Empire, only Palestine failed to achieve full independent sovereign statehood. The other four - Trans-Jordan, Lebanon, Syria and Iraq - all achieved the sovereign independent statehood as pledged to them in Article 22 of the League of Nations. The people of Palestine received the same pledge in 1919 as the other "Class A" mandates, and have remained entitled to full sovereign independent statehood ever since.

We mention the foregoing analysis because it illustrates so clearly the unassailable legal basis for the Palestinian right to exercise their right of self-determination in *all* of historic Palestine.

Additionally, the rule of the "inadmissibility of the acquisition of territory by force" it is a universally acknowledged and binding customary norm of international law. Because Israel can never obtain *de jure* sovereignty in the 1967 Occupied Palestinian Territories (including East Jerusalem), it must accordingly relinquish *de facto* sovereignty (i.e., its military occupation) there to the group of people with the priority legal right to sovereignty in that territory under international law, which is, of course, the Palestinian people.

Accordingly, the Committee, as a legal interpretive body, must clearly call for an immediate termination of Israel's military occupation of the Occupied Palestinian Territories, as that military occupation flagrantly violates the entirety of Article 1 of the Covenant.

In addition for the foregoing (which are non-*intifada*-related Covenant violations), Israel is committing egregious Covenant violations in its effort to suppress the "*al-Aqsa Intifada*." In response to urgent NGO requests for consideration of Israel's egregious Covenant violations being perpetrated in the course of trying to suppress the *intifada*, this Committee has appropriately scheduled a special session for 4 May to assess Israel's compliance record under the Covenant in the OPTs.

One critically important point that we would like to ensure that the Committee appreciates is that **fully half of the current Palestinian population of the Occupied Palestinian Territories are themselves refugees**, which is an inordinately high percentage of the population and which **also represents among the poorest sector of the population**. More than 50% of those Palestinians killed by Israeli forces between 29 September 2000 and 18 April 2001 are refugees. By definition having no access to their own land from which to earn a subsistence basis of living, their situation is exacerbated by the chronic deficit problem faced by UNRWA since the beginning of the Oslo process. UNRWA emergency food rations distribution has shot up to an incredibly high 85% of the registered refugee population since September 2000 (from a pre-September level of less than 10%), demonstrating the severe *intifada*-induced poverty in this population sector.

Due to their vicinity to Israeli military installations, settlement and by-pass roads, many refugee camps have become regular targets of Israeli attacks by heavy weapons. Damage to refugee camps from military assaults by Israeli helicopter gunships, tanks and heavy calibre ammunition runs in the millions of dollars. On 10 April 2001 alone, Israel had demolished 30 homes and their contents as well as a five-story apartment block in Khan Yunis refugee camp (Gaza), leaving some 500 Palestinian refugees homeless. Damage to family homes caused by indiscriminate Israeli shelling is especially large in the densely built-up refugee camps, where makeshift constructions are less resistant to attacks by heavy Israeli ammunition and missiles. The population density in West Bank and Gaza Strip refugee camps is as high as 30,450 refugees per square kilometre in some areas.

The demand on first aid supplies and drugs for chronic cases, cardiac, mental and hypertensive patients who are refugees has increased by some 30-40 percent as compared with the same period last year. The number of still births has increased by over 30 percent as compared to the same period last year, due to psychological trauma and compromised nutrition.

The vulnerability of Palestinian refugees is, of course, further exacerbated by the absence of an international protection regime.

We provide extensive documentation of the *intifada*-related Covenant violations Israel has perpetrated against the Palestinian refugees in the Occupied Palestinian Territories in **Annex A**, attached.

RECOMMENDATIONS

Our detailed recommendations - which are closely tailored to specific remedies provided for in the Covenant itself - are listed at the end of our Executive Summary, which appeared in Section I of this report, above.

ANNEXES

We include in this report two annexes, which contain information additional to the data provided in our November 2000 submission to the 24th session of the Committee.

Annex A provides specific data on the "*al-Aqsa Intifada*"-related Covenant violations perpetrated against Palestinian refugees in the Occupied Palestinian Territories, who comprise 50% of the population there.

Annex B provides specific data on the situation of the "internally displaced" Palestinians inside Israel, including specific Covenant violations that Israel is practicing against them.

Part III - Annexes

- A.** Data on "*al-Aqsa Intifada*" Covenant Violations by Israel against Palestinian Refugees inside the Occupied Palestinian Territories

- B.** Data on the "Internally Displaced" Palestinians *inside* Israel

Annex A

Data on Main Covenant Violations by Israel against Palestinian Refugees inside the Occupied Palestinian Territories in the Context of the Current " *al-Aqsa Intifada* "

From **Section II.C of the Executive Summary**, which appears in Part I of this report, it should be apparent that Israel's serious "*al-Aqsa Intifada*" Covenant violations are actually an *additional overlay* to the already-existing, egregious Covenant violations which Israel practices in the Occupied Palestinian Territories by virtue of refusing to readmit the 1967 Palestinian refugees, by confiscating land in the Occupied Palestinian Territories according to procedures which violate international law, and - as the most obvious and fundamental violation of all - by maintaining its military occupation of the Occupied Palestinian Territories.

Having noted that, following is a description of the violations of Covenant-enumerated rights flowing from Israel's attempt to suppress the "*al-Aqsa Intifada*" as they have particularly affected Palestinian refugees, divided into four broad categories.

I. Article 6: Right to Work

Restrictions on freedom of movement due to military closure of the OPT and closure of Israel's labor market to Palestinians have had an especially devastating impact upon refugee families, who by definition own no land from which to earn a subsistence basis of living. Palestinian refugees - camp refugees in particular - are a landless, economically marginalized population completely dependent upon income from employment and labor. Limited savings are rapidly consumed in times of unemployment.

According to the Office of the UN Special Coordinator for the Occupied Territories (UNSCO), at least 40 percent of the labor force in the 1967 occupied territories is currently unemployed, causing economic distress to 45.5 percent of the population. In its second *Progress Report* for the first two weeks of January 2001, UNRWA noted that an estimated 80 per cent of Erez Industrial Zone's employees (most of whom are refugees), for example, could not report to work on a regular basis due to the internal closures in Gaza. On 15 January 2001, 769 UNRWA staff members were turned back at Israeli roadblocks in Gaza and could not report to work. During the first two weeks of January 2001, a total of 176 UNRWA staff members were turned back at Israeli checkpoints in the West Bank.

The World Bank notes that the poverty rate (less than US \$2.1 consumption per person per day) in the West Bank and Gaza Strip has risen by 50 percent since the end of September 2000. Although exact figures are not yet available, it must be assumed that the poverty rate among the refugee population is even higher. Several indicators highlight the severe impact of the violation of the right to work for Palestinian refugees. By the end of January 2001, the UN Relief and Works Agency (UNRWA) Emergency Employment Creation scheme had hired an additional 486 sanitation, packing and distribution laborers, 336 teachers, 44 social workers, 36 sanitation and supervisory staff, 36 clerks, 9 engineers, 5 technical assistants, 2 registration supervisors, and 14 guards to provide temporary employment for Palestine refugees. Additional staff was hired by the Agency in February and March 2001; however, some emergency employment projects have yet to start due to the lack of construction materials as a result of border closures and restrictions on freedom of movement.

Another indicator is the level of emergency food assistance provided by UNRWA. As of the end of March 2001, UNRWA was providing emergency food assistance to between 80 - 85 percent of the registered

refugee population in the West Bank and the Gaza Strip; prior to the *intifada* (i.e., pre-September 2000), approximately 8 percent of the registered refugee population was receiving food assistance for the Agency. Additionally, during February and March 2001, some 6,500 Palestinian families were provided with selective cash assistance to help families who had lost their breadwinner; persons who had sustained serious injuries and are unable to work; families who were forced to vacate their homes as a result of Israeli shelling of the areas of their residence; and families with pressing emergency cash requirements, which they could not otherwise afford.

II. Article 11: The Right to an Adequate Standard of Living

Israel's military repression of the Palestinian *intifada* has also had a severe impact on the standard of living of Palestinian refugees, thus violating their right to an adequate standard of living. Two areas of specific violations include the right to adequate food, and the right to adequate housing.

In February and March 2001, some 23,500 and 33,100 Palestinian refugee families respectively received basic food commodities and food cash subsidies in the West Bank bringing the total number of beneficiaries to 90,000 families. In Gaza, 256,008 food parcels were delivered in February and March 2001 bringing the total number of food parcels delivered under the emergency program to 365,849. The 123,845 benefiting families are divided into three groups as follows: 114,430 refugees, 8,842 refugee women married to non-refugees and 573 non-refugees, residents of areas placed under siege by the Israeli army, including al-Mawasi area of Khan Yunis and Beit Hanoun town. (Food rations were discontinued by UNRWA in the early 1980s, with the exception of a small number of special hardship cases.)

The right to adequate food has been further violated Israeli restrictions on the delivery of humanitarian items by UNRWA in violation of UN Privileges and Immunities, as well as restrictions on humanitarian operations undertaken by international NGOs. In its first *Progress Report* for the period of October 1 - December 31, UNRWA noted that 124 containers of flour, 25 containers of rice, and 7 containers of whole milk had been delayed in Israeli ports. By the end of March 2001, approximately 40 ten-ton truckloads of supplies had yet to be delivered due to border closures and restrictions on movement. A number of international NGOs working in Gaza have scaled back or cancelled some operations because of their inability to get in essential supplies.

The right to adequate housing for Palestinian refugees has also been violated due to Israeli military attacks on refugee population areas using helicopter gunships, tanks, and high-caliber automatic weapons. Palestinian refugees are particularly vulnerable due to the presence of Israeli military installations and Israeli settlements near Palestinian refugee camps as well as the location of refugee camps near border areas with Israel and the location of several camps (al-'Aroub, Kalandia, and Jalazoun camps) in so-called 'Area C' (i.e., full Israeli control) of the West Bank.

Damages to family homes caused by indiscriminate Israeli shelling are especially large in the densely built-up refugee camps, where makeshift constructions are less resistant to attacks by heavy Israeli ammunition and missiles, and shock and anxiety attacks, especially among the children and elderly, spread among the whole crowded camp population. (Approximately 609,000 refugees live on an area of around 20 sq. km. (total land allotted to the UNRWA-administered West Bank and Gaza Strip refugee camps), translating into a population density as high as 30,450 refugees per sq.km.)

Using the damage assessment for two refugee camps in the Bethlehem District - 'Aida and Beit Jibrin/'Azza - collected by BADIL community workers between 29 September 2000 and 31 December 2001, the table below illustrates as an average of the total damages incurred by each camp during this period. The total damage to 'Aida and Beit Jibrin/'Azza refugee camps is estimated at US\$120,000, with damage to the property of non-registered refugees in the Beit Jala area estimated at an additional US\$2.5 million.

The Palestinian Central Bureau of Statistics (PCBS) states the total damage to West Bank refugee camps as of 8 January 2001 as follows:

1.	Residential Buildings	\$605,402.00
2.	Non-Residential & Infrastructure	\$ 19,004.00

It is worth noting that the above PCBS figures do not reflect damage assessment figures to refugee-owned properties and businesses outside camp boundaries.

Exact figures for refugee property damage in the Gaza Strip are difficult to tally, since more than three-quarters of Gaza's population are refugees and the area is densely built-up with few clear distinctions between refugee and non-refugee areas. It is a fact, however, that Israel's aggression continues to be at its most harsh against refugee persons and property in the Gaza Strip. PCBS estimates the total value of losses to residential property in Gaza as of 8 January 2001 at US\$3,281,512, with another US\$4,952,630 in damage to non-residential property. It can be assumed that a large portion of this damage is to refugee property.

Refugee Property Damage Assessment in US\$			
Location	Type of Damage Residential & Personal Property	Business & Commercial	Institutional
Bethlehem District (as of 31 December 2000)*			
Aida	\$73,038.05	-	\$2,018.00
Beit Jibrin / Azzeh	\$43,376.00	\$10,394.00	-
Beit Jala	\$2,537,501.00	\$16,114.00	-
Gaza Strip (as of 8 January 2001)**			
	\$3,281,512.00		\$4,952,630.00
* Source: BADIL Field Work			
** Source: Palestine Central Bureau of Statistics			

A particularly brutal violation of the right of Palestinian refugees to adequate housing occurred on 10 April 2001 and the early hours of the morning of 11 April 2001 when Israeli military forces fired artillery shells, heavy caliber bullets and medium caliber bullets at Palestinian refugee shelters in Khan Younis refugee camp in the southern Gaza Strip based on the claim that Palestinian gunmen had fired on nearby Jewish settlements and military installations from the refugee camp. According to a report by the Palestinian Center for Human Rights (PCHR) in Gaza, thirty houses and their contents were demolished and a five-story apartment building was partially destroyed. This left more than 50 families (approximately 500 people) homeless. One Palestinian civilian and one officer of the Palestinian Military Liaison forces were killed while 27 Palestinians were wounded in the attack, four of whom were medical personnel.

According to the PCHR report, the following houses and their contents were destroyed:

- 1) a 190-square-meter house, in which four families consisting of 15 people used to live, owned by Salem 'Ali Salem Abu 'Obeida;
- 2) a 320-square-meter house, in which two families consisting of 14 people used to live, owned by Khalil Mohammed Salameh Abu Zarqa;

- 3) a 250-square-meter house, in which 7 people used to live, and a rented commercial store, owned by Hassan Suleiman Abu 'Obeida;
- 4) a 200-square-meter house, in which 8 people used to live, owned by Amin Suleiman Mohammed Abu 'Obeida;
- 5) a 300-square-meter house, in which 10 people used to live, owned by Safeya Mosallam Zayed Abu 'Obeida;
- 6) a 240-square-meter house, in which 14 people used to live, owned by Suleiman Mousa Suleiman Abu Mousa;
- 7) a 250-square-meter house, in which four families consisting of 31 people used to live, owned by Hammoud Hamdan Radwan Abu Radwan;
- 8) a 300-square-meter house, in which five families consisting of 30 people used to live, owned by Jaber Mohammed Mahmoud Abu Radwan;
- 9) a 200-square-meter house, in which two families consisting of 25 people used to live, owned by Ahmed Hassan Mahmoud Abu Radwan;
- 10) a 100-square-meter house, in which one person used to live, owned by Mousa Hassan Abu Louz;
- 11) a 200-square-meter house, in which two families consisting of 20 people used to live, owned by Hussein Ahmed Abu Khoreis;
- 12) a 350-square-meter house, in which 19 people used to live, owned by Jihad and Ziad Hussein Abu Khoreis;
- 13) a 160-square-meter house, in which 20 people used to live, owned by Kefaya 'Atteya Abu Namous and Hassan Mohammed Abu Namous;
- 14) a 100-square-meter house, in which 12 people used to live, owned by Shokolata Mohammed Abu Namous;
- 15) a 220-square-meter house, and a 230-square-meter house, in which 10 people used to live, owned by Jalal Khalil Abu Louz;
- 16) a 220-square-meter house, in which one person used to live, owned by Hajer Mohammed Salameh Abu Louz;
- 17) a 250-square-meter house, in which 11 people used to live, owned by Jihad Khalil Mohammed Abu Louz;
- 18) a 180-square-meter house, owned by Jihad Khalil Mohammed Abu Louz (partially demolished);
- 19) a 125-square-meter house, in which 4 people used to live, owned by Ibrahim Khader Shehadeh 'Amer;
- 20) a 135-square-meter house, in which 6 people used to live, owned by Khader Shehadeh 'Abdel-Qader 'Amer;
- 21) a 150-square-meter house, in which 11 people used to live, owned by Hussein 'Ali Mohammed Abu Louz;
- 22) a 100-square-meter house, in which 8 people used to live, owned by Amin Mohammed Sha'ban El-Tabesh;
- 23) a 100-square-meter house, in which 7 people used to live, owned by Akram and Anwar Mohammed Sha'ban El-Tabesh;
- 24) a 90-square-meter house, in which 10 people used to live, owned by 'Abdel-Hafez Mahmoud Mohammed Abu Shoqeir;
- 25) a 90-square-meter house, in which two families consisting of 9 people used to live, owned by 'Ali Mahmoud Mohammed Abu Shoqeir;
- 26) a 200-square-meter house, in which 10 people used to live, owned by Mohammed Ahmed 'Ayesh Mohammed;
- 27) a 250-square-meter house, uninhabited, owned by Subhi Khalil Abu Louz;
- 28) a 140-square-meter house, in which 8 people used to live, owned by Mohammed Ibrahim Abu 'Awadh;
- 29) a 400-square-meter house, in which 12 people used to live, owned by Kamel Mohammed Abu 'Aker; and
- 30) a 250-square-meter, five-story house, in which 18 people used to live (partially demolished), owned by 'Abdullah Shoreiqi Abu 'Obeida.

In Gaza, nearly 250 refugee shelters, damaged as a result of Israeli shelling, have been identified by UNRWA for repair and reconstruction. Due to persisting security threats to residents in these areas, as well as international and local UNRWA staff, the actual work has not been possible. In the West Bank, some 424 refugee families have received assistance from UNRWA by the end of March 2001 to repair shelters damaged by Israeli shelling. UNRWA has also identified a large number of refugee shelters that require modification in order to accommodate refugees who have suffered permanent disabilities during the intifada.

III. Article 12: The Right to the Highest Attainable Standard of Physical and Mental Health:

Palestinian refugees have also suffered severe violations of their right to the highest attainable standard of physical and mental health as a result of Israel's brutal military policies to suppress the Palestinian *intifada*. Over fifty per cent of Palestinians killed by Israeli forces since the beginning of the uprising in late September 2000 are Palestinian refugees. Using the results of research conducted by a team of BADIL community workers across the West Bank, including occupied East Jerusalem, and the Gaza Strip, the table below breaks down the total number of refugee martyrs by age, gender and place of residence between 29 September 2000 and 31 January 2001.

According to the Palestine Red Crescent Society (PRCS), there were some 351 martyrs, and a staggering 11,194 injured as of 6 February 2001. The Palestinian Central Bureau of Statistics (PCBS) breaks down the above figure for martyrs (with a slight discrepancy) to 204 martyrs in the West Bank (including occupied East Jerusalem), and 145 in the Gaza Strip, for a total of 349 deaths as of 11 February 2001. Of the total of 204 martyrs from the West Bank (including Occupied East Jerusalem), 69, or nearly 35% are refugees. In the Gaza Strip, of a total of 145 martyrs, 77, or about 60% are refugees. As of 18 April 2001, the PCBS reported 423 Palestinians killed by Israeli forces in the West Bank and Gaza Strip (441 including Palestinians inside Israel and abroad). Based on the ratio of refugees derived from previous fieldwork, it is estimated that at least 211 refugees have been killed between September 29, 2000 and April 18, 2001. This figure, however, is probably low, given the fact that the data represents refugees registered with UNRWA and because the data is not comprehensive.

West Bank and Gaza Strip Refugee Martyrs of the <i>al-Aqsa Intifada</i>						
29 September 2000 - 31 January 2001						
Location	Age & Gender		Gender		Sub-Total	Grand Total
	Under 18	18 & Over	Male	Female		
			Under 18	18 & Over		
<i>WestBank*</i>						
Northern Districts**	8	27	0	1	36	
Central Districts***	5	15	0	0	20	
Southern Districts****	3	10	0	0	13	
Total	16	52	0	1	69	69
<i>Gaza Strip^</i>						
Gaza North^^	2	12	0	0		
Gaza City^^^	5	21	0	0		
Gaza Central^^^^	2	10	0	0		
Gaza South^^^^^	7	18	0	0		
Total	16	61	0	0	77	77
					Grand Total	146

* Figures for 29 September 2000 to 31 December 2000 ^ Figures for 29 September 2000 to 31 January 2001
 ** Including Nablus, Jenin, Tulkarem and Ramallah ^^ Including Jabalyia Camp, And Hay Al-Rimal
 *** Including Jerusalem and Jericho ^^^ Including Sheikh Radwan, Beach Camp, and Hay Al-Tufah
 **** Including Bethlehem and Hebron ^^^^^ Including Al-Breij, Deir Al-Balah and Nuseirat camps
 ^^^^^^ Including Rafah, Khan Yunis, and Brazil camps

Source: BADIL Field Work & Palestine Central Bureau of Statistics

The high number of injuries has also necessitated a dramatic increase in rehabilitation programs for Palestinian refugees. In the West Bank, UNRWA estimated that at the end of 2000, it would have to assist some 1,500 permanently injured refugees with rehabilitation. In its report for the following period, however, UNRWA noted that an assessment of the existing physiotherapy program confirmed that disabled refugees seeking post-injury treatment could not reach existing facilities, necessitating additional physiotherapy workers to provide outreach services.

A total of 30 disabled refugees in February and 39 in March were provided with prosthetic devices. Injuries and disabilities to refugees necessitated further procurement by UNRWA of some 335 wheel chairs and 276 walkers for use on a loan basis by temporarily disabled persons. Some 500 disabled refugees in February and 250 in March were referred for specialist assistance and treatment and vocational assessment in the West Bank. Five temporary assistance physiotherapists were hired in February and an additional three in March to provide services to traumatized and post-injury handicapped patients. The number of patients who visited the physiotherapy program in February and March are 262 and 282, while in March alone, 545 patients were visited at home. The total number of physiotherapy sessions provided in February and March is 757 and 852 respectively.

The violation of the right of refugees to the highest attainable standard of physical and mental health is further exacerbated by restrictions on the movement of refugees as well as medical personnel due to internal military closures and roadblocks imposed by Israel throughout the West Bank and Gaza Strip. According to UNSCO, internal movement restrictions and internal closures - partial or severe - have been in place for 100 per cent of the time in the West Bank and for 89 per cent of the time in Gaza.

Due to these restrictions UNRWA has been forced to establish mobile medical clinics in the OPT in an effort to reach Palestinian refugees who are unable to reach UNRWA health care facilities. During the first two weeks in January 2001, for example, some 5,000 refugees received medical assistance provided by the four mobile clinics that UNRWA is running jointly with NGOs in the West Bank. The increased restrictions on movement of UNRWA vehicles may also result in additional health hazards creating conditions that favor disease transmission due to accumulation of garbage in and around camps.

The demand on first aid supplies and drugs for chronic cases, cardiac, mental and hypertensive patients who are refugees has increased by some 30-40% compared with the same period last year. In its fourth *Progress Report* UNRWA provided a chart of indicators illustrating the severe impact of Israel's violation of the right of Palestinian refugees to the highest standards of health. The chart is reproduced below.

Indicator	Drop in rate	
	Gaza Strip	West Bank
Pregnant women registered for ante-natal care	-27.2%	-16.2%
Attendance of pregnant women to ante-natal clinics	-5.6%	-11.7%
Women covered by post-natal care	--	-12.9%
New acceptors of family planning	-20.9%	-6.8%
Hospital deliveries	--	-10.2%
Infants registered for preventative care	--	-13.9%
Attendance of children for MCH clinics	--	-10.5%
Immunization of infants		
BCG	--	-24.4%
DPT	--	-13.4%
Poliomyelitis	--	-12.3%
Measles	--	-10.1%
Hepatitis B	--	-11.9%

Note:

(1) Where no figures are provided, there has been no drop in rates

(2) As is apparent, preventive services were more affected in the West Bank than in Gaza because of problems associated with mobility and access

UNRWA further noted that there has been a significant increase in other indicators that are normally associated with inadequate access to health care and/or undesirable health outcomes. These include:

Indicator	Rate	
	<i>Gaza Strip</i>	<i>West Bank</i>
Home deliveries	+21.1%	+37.1%
Stillbirths	+22.0%	+41.2%

While statistics are not available on the possible increase in the rates of abortions and early miscarriages, UNRWA states that there are good reasons to believe that they are on the increase due to psychological trauma and compromised nutrition. During February and March, for example, some 500 and 638 refugees in the West Bank, respectively, suffering from injuries, premature deliveries, neurosurgical and orthopedic cases were referred and admitted to either contracted or non-contracted hospitals.

The ability of UNRWA to deliver the highest standard of health care is further violated by restrictions imposed by Israel on the delivery of humanitarian supplies. Among those medical supplies that the Agency has been unable to delivery to its medical facilities in Gaza are an x-ray machine for its health care center in Rafah in the southern Gaza Strip, 13 steam sterilizers, 182 sphygmomanometers, physiotherapy equipment, spare parts and instruments, 4 fetal-heart detectors, and 6 wheel stretchers.

Israel's harsh military repression has also caused severe mental trauma to thousands of Palestinian children, not to mention adults. Some 57 newly recruited counselors are working closely with sub-contracted NGOs to provide counseling and material distributed on the impact of war situations on children, while UNRWA has undertaken to organize recreational programs, workshops and lectures for children and youth on how the handle the current crisis.

IV. Article 13: The Right to Education

Israel's brutal repression of the Palestinian *intifada* has also severely harmed the right of Palestinian refugees to education. While no test scores are currently available, it is believed that scores for Palestinian students, including refugees, will be significantly lower due to missed school days and the impact of psychological trauma on school children.

Restrictions on freedom of movement due to Israelis military closure of the OPT has meant that on many days a significant number of Palestinian students and teachers are unable to reach schools throughout the West Bank and Gaza Strip. On 14 January 2001, for example, 410 UNRWA teachers as well as 45 UNRWA instructors could not reach the Agency's schools, due to the strict internal closure imposed by Israel. In the West Bank, 20 UNRWA teachers were prevented from reaching the Agencies school in Nablus for three days (7-9 January 2001). As a result 680 students could not sit for their mid-term exam.

Due to restrictions on movement, UNRWA has been forced to consider establishing mobile education units to assist refugee students who either are unable to reach Agency schools or require additional assistance to make up lost class time. UNRWA schools, moreover, have also come under heavy Israeli military attack and have sustained damage.

Sources:

UNRWA Emergency Appeal Progress Reports 1-4 for the period covering 1 October 2000 through 31 March 2001. Reports are available on the UNRWA website (www.unrwa.org)

Palestinian Central Bureau of Statistics. Statistical data is archived on the PCBS website (www.pcbs.org)

Palestinian Center for Human Rights. Material is archived on the PCHR website (www.pchrgaza.org)

BADIL Resource Center for Palestinian Residency and Refugee Rights. Material is archived on the BADIL website (www.badil.org)

Annex B

Data on the "Internally Displaced" Palestinians inside Israel: Refugees within their Own Homeland

Introductory Note: Israel's self-proclaimed status as a "Jewish State" automatically imposes de facto discriminatory policies upon all non-Jews. When studying Israel's policies towards its non-Jewish population sectors therefore, the differences which emerge from subgroup segmentation and analysis are differences in the extent of the discrimination. While some of the following relates to Palestinian citizens of Israel in general, the clear inference which emerges is that the internally displaced Palestinians feel the impact of Israel's systematic, governmentally-sanctioned discrimination even more acutely because of their landless status and their deliberate omission from governmentally distributed rights, privileges and services.

The *Guiding Principles on Internal Displacement* provide a legal framework listing the specific rights entitled to internally displaced persons. Principle 1, para. 1 states that

Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the grounds that they are internally displaced.

The principles of equality and non-discrimination embodied in the above paragraph are firmly rooted in international law. While Article 7 of the Universal Declaration of Human Rights recognizes that "all are equal before the law and are entitled without discrimination to equal protection of the law," Article 26 of the Convention on Civil and Political Rights, Article 24 of the American Convention on Human Rights and Article 3(2) of the African Charter on Human and People's Rights "set forth the principle of equality and prohibit discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 7 of UDHR, **Article 2 of CDESCR** and Articles 2 and 26 of CCPR stress the prohibition of "discrimination based on 'other status,' which was intended to be interpreted broadly. These broad, fundamental human rights guarantees which are inherent to all human beings would seem almost inarguably to include the "internally displaced" as well. [Walter Kalin, 2000]

In Israel, discrimination is endemic and institutionalized, covert as well as overt, and is usually effected in one of three ways: (1) non-implementation of laws (e.g., certain welfare laws); (2) selective enforcement of laws (e.g., land expropriation laws); and (3) differential implementation of laws (e.g., water allocation and quotas). [David Kretzmer, 1990]

The 20th Century was witness to several displacement tragedies, among them an estimated 1 million Palestinians who between 1947 and 1949 were forced to flee their families' "homes of origin" during the conflict surrounding Israeli's unilateral declaration of independence.

While the great majority of 1948 Palestinian refugees were eventually displaced outside what is commonly referred to as "Israel proper" - i.e., that territory over which Israel has asserted control since the drawing of the 1949 armistice lines - many Palestinians who managed to remain within Israel proper became "internally displaced" when Israel refused to allow them to return to their "homes of origin" in their ancestral villages.

Of the estimated 150,000 Palestinians who remained within Israel proper when the last armistice agreement was signed in 1949, **some 46,000 were internally displaced, as per UNRWA's 1950 registry records.**

Most of the 46,000 who became internally displaced were herded into what Israeli expulsion schemes euphemistically termed "shelter villages."

The geographic distribution of the internally displaced draws a map of mostly forced resettlement that followed three criteria: (1) territory allotted was not within area heavily populated by Jewish settlers; (2) it was never too close to existing Jewish settlements; and (3) it was deemed valueless to Jewish settlement and development. [Hillel Cohen, September 2000].

Today, the internally displaced and their descendents number about 250,000 persons. [The National Society for the Rights of the Internally Displaced in Israel, February 2000]

While about 180,000 internally displaced Palestinians currently live in and around 80 villages and towns, the remaining 70,000 (mostly bedouins from the northern Galilee region) live in unrecognized villages. "Non-recognition means the villagers are not entitled to municipal services like water, electricity, roads, transport, sanitation, education or healthcare. The postal and telephone systems do not serve them. Refuse is not collected... Construction and residence in these areas are illegal under Israeli law. Israeli law prohibits building and residence on what it classifies as agricultural land - a prohibition applied only to Arab building and construction. Residents are instructed to demolish their own homes. Failure to do so can result in arrest and fine. If houses are demolished by the Israeli police, the owners have to pay the costs." [European Institute for Research on Mediterranean and Euro-Arab Cooperation, February 1999]

The aim of these forced resettlement schemes was, and continues to be **the herding of Israel's Palestinian communities into isolated pockets fashioned on South Africa's now-defeated apartheid-based Bantustan system.** Along with yesterday's "shelter village," there are today some 7 **"planned townships"** into which the Israeli government is attempting to transfer the Bedouin community. Indeed, successive Israeli governments have "moved to encircle Palestinian citizen concentrations in Israel, especially in the Galilee **to prevent them from having a contiguous land area and developing an economic base that could support political demands and actions.**" [Elaine Hagopian, May/June 2000]

In 1996, Israel reaffirmed this policy with the drafting of its Master Plan for the Northern Areas of Israel that "lists as priorities increasing the Galilee's Jewish population, and **blocking the territorial contiguity of Arab villages and towns.**" [United States Committee for Refugees - 1999 Country Report: Israel]

Their rights ignored, the internally displaced Palestinians are the forgotten group of refugees who over 52 years after their dispossession, continue to fight for the implementation of their right to return and to restitution and/or compensation. Their primary legal reference is the **United Nations General Assembly Resolution 194 (III)** of 11 December 1948 that clearly states that

... the refugees [i.e., including the "internally displaced"] wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the governments or authorities responsible.

Principle 28, para. 1 of the Guiding Principles on Internal Displacement calls upon

*Competent authorities...to establish conditions, as well as provide the means, which allow internally displaced persons **to return voluntarily**, in safety and with dignity, **to their homes or places of habitual residence**, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.*

Leading legal experts agree that existing humanitarian and human rights law, taken together as a cohesive, holistic package, provide ample juridical basis for the general proposition that international law clearly grants internally displaced persons, including the internally displaced Palestinians, the right to return "to their homes or places of habitual residence." Annex 7 of the 1995 Dayton Peace Agreements for Bosnia and Herzegovina, for example, provides an explicit reaffirmation of this rule - **which was reaffirmed more than 52 years ago in the case of the Palestinian refugees in General Assembly Resolution 194(III) of 11 December 1948** - by stating explicitly that in that situation, 2 million refugees and internally displaced persons

...[have] the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities...and to be compensated for any property that cannot be restored to them.

These Dayton Agreement rights mirror **exactly** the rights which were reaffirmed as early as 1948 in **G.A. Resolution 194** regarding the rights of the internally displaced Palestinians.

Sources:

Walter Kalin, *Guiding Principles on Internal Displacement: Annotations*(2000)

David Kretzmer, *The Legal Status of the Arabs in Israel*(1990)

Hillel Cohen, *The Present Absentees: Palestinian Refugees in Israel since 1948*(2000)

The National Society for the Rights of the Internally Displaced in Israel (February 2000) (www.badil.org)

European Institute for Research on Mediterranean and Euro-Arab Cooperation (February 1999)
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Elaine Hagopian, "Middle East Prognosis: Repression and Violence - Short Term Imperial Gains, Long Term Misery and Instability," *Peacework Magazine*(May/June 2000)

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