

BADIL Resource Center for Palestinian Residency and Refugee Rights
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Written statement

Israel's racially discriminatory policies and legal system amount to the crime of apartheid

The Durban Declaration and Programme of Action (DDPA) lays out those principles intended to guide a global campaign against racism, racial discrimination, xenophobia, and related intolerance based on international law including human rights treaties and the Convention to End All Forms of Racial Discrimination (ICERD) in particular. While this conceptual framework also identifies Palestinian people as victims of racism and racial discrimination, it does not recognize how racism and racial discrimination function as the root causes of the plight of the Palestinian people. Instead, the DDPA reiterates long-standing principles of UN resolutions on Palestinian rights and the peace process.

Herein, BADIL provides a brief description of how racism and racial discrimination are root causes of the plight of the Palestinian people, how it perpetuates their condition of dispossession and forced displacement, and how addressing these root causes can enable finding a just, comprehensive, and lasting solution of the protracted colonial conflict over, and occupation of, Palestine.

BADIL begins by briefly addressing the questions posed to civil society by the Office of the High Commissioner for Human Rights.

Israel's efforts to combat racism since the adoption of the DDPA

Since 2001, Israel has not only done nothing to combat racism as recommended by the Programme of Action, but it has worked to systematically undermine the document by casting it as anti-Semitic. Notwithstanding the DDPA's reference to several classes of victims of racism most notably, people of African descent, staunch Israeli supporters have maligned the UN for mentioning Palestinians as victims of racism and accused it of singling out Israel.¹ Following suit, the U.S. Congress began initiating several Congressional resolutions in order to discredit the Durban process all together.² Together Israel and the U.S. have worked to marginalize and dilute the Durban process. After successfully removing language related to any class of victims at the Durban review in 2009, neither State party participated in the proceedings. Naomi Klein writing for Harper's Magazine explains

In reality, the U.N. goes to great lengths to ensure the neutrality of the proceedings, but the objections reduce Durban II to an event that nobody (except anti-Israel crusader Mahmoud Ahmadinejad) wants to touch, and the bare-knuckles fight seems convincingly won. Meanwhile, U.S. public-policy activists report the word that the White House is interested only in hearing about projects that are "race neutral"—and not in anything that targets disadvantaged constituencies. Which all leads to the question of whether the relatively thin charge of anti-Semitism was, for many developed nations, an excuse to avoid Durban II's questions about what the rich countries of the world might reasonably owe on their debts to the peoples they once exploited.³

¹ Bayefsky, Anne, *Obama should denounce Durban II*, Forbes.com (March 2009) available at <http://www.forbes.com/2009/03/17/united-nations-durban-opinions-bayefsky.html>.

² http://www.foreignaffairs.house.gov/press_display.asp?id=1642

³ This is a description of Klein's article by Harper's editors, <http://www.naomiklein.org/articles?page=4>

Rather than develop programs of action to combat racism within its society as well as legal system, Israel's policies since 2001 have exacerbated racial tensions and discrimination against its Palestinian citizens and civilians under occupation.

Israel's dual legal system amounts to a regime of Apartheid

Palestinians living inside Israel and in the Occupied Palestinian Territory (OPT) are subjected to a regime of institutionalized discrimination. Palestinians are subject to different laws than Jewish Israelis both inside Israel and in the OPT.⁴ Further, Palestinians are discriminated against in virtually all aspects of public life inside Israel, including access to education, healthcare, and work. Further, the systematic discrimination and Jewish preference inside Israel and in the OPT meet the definition of a regime of apartheid.⁵

Equality is not mentioned as a constitutional right in Israel's *Basic Law: Human Dignity and Liberty (1992)*, which serves as Israel's Bill of Rights.⁶ In the absence of a constitutional right to equality, it is relegated to a secondary level-right, and is only considered if it can be derived from other rights granted by the Basic Law. Paragraph 10 of the Law, moreover, provides that, "This Basic Law shall not affect the validity of any law in force prior to the commencement of the Basic Law." A series of discriminatory laws adopted in the 1950s and 1960s thus continue to violate the fundamental right to equality of Palestinians.⁷

Palestinian refugees living in the OPT and throughout the world have been denied the right to return to Israel since 1948, in violation of international human rights law, international humanitarian law, and customary refugee law.⁸ While Palestinians world-wide are denied the right to return to Israel, The 1950 Law of Return grants Jews living *worldwide* the preferential "Jewish nationality," granting them the full rights, privileges and protections of the Israeli political and legal system.⁹ Palestinian Israelis have Israeli citizenship, but have no "Palestinian nationality" and are excluded from the "Jewish nationality."¹⁰ The Jewish nationality creates a two-tiered legal system in Israel that grants full benefits to Jewish Israelis, and a second-class status to Palestinian Israelis.¹¹ Inside the OPT Palestinians are subjected to Israeli military law while Israeli Settlers enjoy the full protection of Israel's domestic law.¹²

This dual legal system is applied in a discriminatory manner based on ethnicity, religion and nationality. Accordingly, it constitutes the crime of apartheid, because Israel has instituted a dual system of laws to institutionalize Jewish dominance over the Palestinian population in the OPT.¹³

Israel's racially discriminatory practices persist

Israel's apartheid policies are systemic and ongoing. Ten years since the adoption of the DDPA, those

⁴ BADIL, *Dignity & Justice for the Palestinian People*, (March 2009).

⁵ *Id.*

⁶ Passed on 12th Adar Bet, 5752 (17 March 1992); Published in Sefer Ha-Chikkun No. 1391 of the 20th Adar Bet, 5752 (25 March 1992).

⁷ These include the The Law of Return [Passed by Knesset on 20th Tammuz, 5170 (5th July 1950) and Published in Sefer Ha-Chukkim No. 51 of the 21st of Tammuz] and the Nationality Law (5172-1952), available at http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf

⁸ Badil, Survey of Palestinian Refugees and Internally Displaced Persons (2008-2009) 95, available at www.badil.org [hereinafter Badil Survey 2008-2009].

⁹ *Id.* at 18.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 27.

¹³ See Supra note 1.

practices have worsened against Palestinian citizens of Israel, Palestinians living under occupation in the OPT, and continue to deny Palestinian refugees the right of return. These racially discriminatory policies undermine finding a comprehensive, just, and durable resolution to the Palestinian-Israel conflict.

Since the elections of 2009, Israel has been governed by one of most right-wing government coalitions in its history.¹⁴ It has introduced a series of discriminatory legislation directly targeting Palestinian citizens of Israel. Several of these laws specifically undermine Palestinian land rights and work to entrench the historic dispossession of Palestinian refugees and/or to forcibly displace Palestinians today.

In late March 2011, the Israeli Knesset passed a law that criminalized the commemoration of the historic and ongoing dispossession of Palestinians known in Arabic as the *Nakba*. The law that has come to be known as the *Nakba Bill*, stipulates that the government shall de-fund any organization, institution, or municipality that marks the day of Israel's establishment as a day of mourning or loss.¹⁵ The original version of the bill, subsequently changed in response to broad condemnation, stipulated that violators of the law shall be incarcerated for up to three years.¹⁶ The bill is a fundamental challenge to equality, liberties of speech, and national rights. In particular it impedes the ability of Israel's indigenous population to commemorate their enduring presence and historical rootedness to the land. According to Israeli activist Eitan Bronstein, who is the founder and spokesperson of *Zochrot*, an organization dedicated to raising awareness about the Nakba within Israeli society:

*This law is part of a whole campaign to intimidate anyone who wishes to study, to remember, to mention, to have anything to do with the Nakba. In Israel, it mostly effects and it already effects, from what we see, Palestinian citizens from Israel.*¹⁷

The Land Acquisition for Public Purposes Ordinance (1943) is a British-mandate era law that authorizes the Finance Minister to confiscate Palestinian lands for "public purposes" in perpetuity.¹⁸ In February 2010, the Knesset amended the law to prevent Palestinian landowners to restore land confiscated pursuant to the ordinance even if it was never used for the alleged public purpose for which it was originally confiscated. The Amendment allows the state not to use the land for the original intended purpose for 17 years and it prevents landowners from demanding restoration if the land has been transferred to a third party or if more than 25 years has lapsed since the confiscation.¹⁹ This impacts Palestinians collectively as Israel confiscated significant portions of their lands over 25 years ago and has since transferred them to third parties.

The Admissions Committee Law, passed in February 2011, is a mechanism that excludes Palestinians from owning and using lands in Israel. The legislation institutionalizes hitherto informal practices that filter out Palestinian applicants from living in particular neighborhoods thereby institutionalizing racially segregated villages and towns. Admissions Committees are bodies that select applicants for housing units in agricultural and community towns that sit on state land based on "social suitability."²⁰ The policy, which impacts 68.5% of all towns and 85% of all villages in Israel intends to bypass the landmark Supreme Court decision, *Qa'dan*, which held that the exclusion of Arabs from state land constituted discrimination based on nationality and rendered the practice illegal.²¹

¹⁴ Adalah, [New Discriminatory Laws and Bills in Israel](#) (29 November 2010).

¹⁵ Stoil, Rebecca Ann, "Nakba bill passes Knesset in third reading," [Jerusalem Post](#) (March 23, 2011) available at <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=213396>.

¹⁶ D'Amours, "Israel criminalizes commemoration of the Nakba," [The Electronic Intifada](#) (March 29, 2011).

¹⁷ *Id.*

¹⁸ Adalah, [The Inequality Report: The Palestinian Arab Minority in Israel](#) (March 2011), page 32.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

The **income gap** between Palestinian and Jewish citizens of Israel is vast and helps explain how 53.5% of all Palestinian families in Israel are categorized as poor compared to a national average of 20.5%.²² Adalah notes the income gap disparity in the chart below:

*Gross monthly income per employee by population group and sex in 2009
(in New Israeli Shekels)*²³

	Total	Males	Females
Palestinians	5,419	5,764	4,350
Jews	7,949	9,966	6,046

Inequality between Palestinians and Jews is perhaps most obvious in the unrecognized Arab Bedouin villages in the Negev. The disparity between the Bedouin townships and the Jewish settlements, now cities, is striking and visibly demonstrate Israel's apartheid policies, which seek to segregate the population based on religious and ethnic categories and to exhibit dominance by one over the other.

The Bedouin villages became illegal with the enactment of *The National Planning and Building Law (1965)*, which excluded them from official recognition despite their existence prior to the establishment of Israel in 1948.²⁴ In effect, Bedouin townships, home to 75-90,000 Palestinian Bedouin citizens of Israel, often lack transportation systems, public service banks, public libraries, cultural centers, and not one of the townships has a functional sewage system. In contrast, Jewish towns are considered "development towns" and therefore enjoy funding allocated in the building plans. The development towns also enjoy expansion by draconian means, confiscating land of nearby Bedouin townships. In the case of Omer, the Local Planning Commission permitted the annexation of 7,000 dunums of neighboring unrecognized village of Tarabin al-Sana'. The 5,000 affected Bedouins petitioned for permission to reside in Tarabin al-Sana' and in response the Omer authorities forced them into special created townships and issued 75 home demolition orders for their remaining homes.²⁵

Within the OPT, Israel's racially discriminatory practices have undermined the peace process and exacerbated the conflict. Israel's discriminatory residency practices have systematically reduced the Palestinian population in the West Bank. A new document obtained by Ha'aretz from Israel's Ministry of Justice reveals that Israel stripped 140,000 Palestinians of their residency rights in a covert policy between 1967 and 1994.²⁶ The Central Bureau of Statistics comments that but for the discriminatory policy, the Palestinian population would be greater by 14 percent.²⁷

This policy mirrors an ongoing policy in East Jerusalem where Palestinians must demonstrate their continued residency for seven years or face revocation of their residency status.²⁸ Palestinians must demonstrate that Jerusalem is their "center of life" regardless of whether they live in adjacent areas in the West Bank or abroad, and even if they do not hold foreign passports or permanent residency elsewhere.²⁹ In 2008 alone, Israel revoked the residency permits of 4,577 Palestinian Jerusalemites.³⁰ This policy, which amounts to "quiet deportation," has significantly altered the demographic composition of Jerusalem and is indicative of an ongoing forced population transfer policy.

²² Supra note 15 at 19.

²³ *Id.*

²⁴ *Id.* at 21.

²⁵ Tarazi, Monica, "Planning Apartheid in the Naqab," *MERIP*, (Winter 2009).

²⁶ Eldar, Akiva, "Israel admits it covertly canceled residency status of 140,000 Palestinians," Ha'aretz (11 May 2011) available at <http://www.haaretz.com/print-edition/news/israel-admits-it-covertly-canceled-residency-status-of-140-000-palestinians-1.360935>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Human Rights Watch, "Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories," (December 2010: 48).

³⁰ *Id.*

In Gaza, Israel continues to impose a debilitating blockade that amounts to the collective punishment of 1.5 million Palestinians in contravention of Article 33 of the Fourth Geneva Convention. Moreover, Israel has yet to be held to account for its war crimes and crimes against humanity committed against the Palestinians in Gaza during its Winter 2008/09 offensive. The lack of accountability and ongoing siege contravene Article 82 of the DDPA, which notes that “impunity for violations of human rights and international humanitarian law is a serious obstacle to a fair and equitable justice system and, ultimately, reconciliation and stability.”

BADIL urges the High Commissioner to:

1. Recognize how racism and racial discrimination function as the root causes of the plight of the Palestinian people;
2. To commission a study to examine whether Israel’s policies within Israel Proper as well as the OPT that institutionally distinguish between its Jewish and non-Jewish citizens and residents as a matter of policy, law, practice, and decree amount to Apartheid pursuant to GA Resolution 3068; and
3. To condemn Israel’s forced displacement practices within East Jerusalem and elsewhere that amount to ethnic cleansing; and
4. To call for the immediate lifting of the Gaza blockade and to support ongoing efforts to hold Israel to account for alleged war crimes and crimes against humanity committed during its Winter 2008/2009 aerial and ground offensive against Gaza.