

Israel's Forcible Transfer of Palestinian Bedouin: Forced Displacement as a Pillar of Colonialism and Apartheid

Submission for the Special Rapporteur on the Situation of Human Rights
in the Palestinian Territories Occupied since 1967

بديل
المركز الفلسطيني
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BADIL
Resource Center
for Palestinian Residency & Refugee Rights

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Cover photo: The demolished village of Abu Nuwwar, part of the E1 plan (©Rich Wiles, 2015).



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About BADIL

BADIL Resource Center for Palestinian Residency and Refugee Rights, located in Bethlehem in the occupied West Bank, is an independent, human rights nonprofit organization which works to defend and promote the rights of Palestinian refugees and internally displaced persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

BADIL has special consultative status with UN ECOSOC, a framework partnership agreement with UNHCR, and is a member of Palestinian Human Rights Organizations Council (PHROC), BDS Campaign National Committee, HIC-Habitat International Coalition (Cairo), CRIN-Child Rights Information Network (UK), ICVA-International Council of Voluntary Agencies (Geneva), ECCP-European Coordination Committees and Associations for Palestine, OPGAI-Occupied Palestine and Syrian Golan Heights Advocacy Initiative, and PNGO-Palestinian NGO Network.

Written Submission for the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967.

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1.

Introduction

The role of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 is of great importance. That this mandate exists is recognition of both the unique nature of a military occupation rapidly approaching its 50th year, and of the extreme, resulting vulnerability of the rights of the occupied Palestinian populace. It is a mandate which provides a vital conduit through which awareness of the human rights situation in the occupied Palestinian territory (oPt) can be raised among the international community and other relevant actors. This, subsequently, serves to promote transparency, protection of at-risk communities and accountability for perpetrators of rights abuses. Despite the clear importance of the mandate, however, there exist a number of challenges to its effectiveness.

Foremost among these is Israel's prevention since 2008 of the mandate from accessing the occupied Palestinian territory. This refusal is far from an isolated incident, and represents merely the latest event in what has become a pattern of Israeli non-compliance regarding independent investigations into grave human rights abuses within the occupied Palestinian territory. Prominent examples of this non-compliance include the denial of entry to the West Bank in 2009 of the United Nations Fact Finding Mission on the Gaza Conflict following Operation Cast Lead, the denial of entry to all areas of the occupied Palestinian territory in 2012 of the UN Fact-finding Mission on Israeli Settlements and the denial of entry to all areas of Israel and the occupied Palestinian territory of the United Nations Independent Commission on Inquiry on Gaza 2014.

This is an entirely unacceptable and unsustainable state of affairs, and must be rectified as a matter of great urgency if the mandate – and UN investigatory processes generally – are to retain legitimacy and the ability to deliver tangible change. Such rectification can likely only be realized with the assistance of external, diplomatic channels, but there exists another area in which the overall impact of the mandate can be developed and which is entirely within the control of the present mandate-holder: the use of legally-rooted language that accurately represents the gravity of Israeli conduct and corresponding legal obligations.

In his January 2015 report on the situation of human rights in the Palestinian territory occupied since 1967,¹ the present mandate-holder makes a number of crucial observations. These include Israeli plans to forcibly transfer thousands of Palestinian Bedouin from their places of residence inside the occupied West

¹ Wibisono, 22 January 2015. A/HRC/28/78. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (hereafter 'Wibisono').

Bank, and the multitude of rights abuses which would accompany the execution of such a transfer. Furthermore, the present mandate-holder highlights Israel's intention to construct/expand settlements in that land from which these Palestinian communities are to be transferred.

Such abuses and crimes represent grave breaches of the Fourth Geneva Convention – which in turn create legal obligations for third party states – as well as potentially constituting war crimes and/or crimes against humanity under the Rome Statute.² However, the January 2015 report does not employ this legally-rooted terminology, and thus risks failing to portray the true gravity of the situation on the ground. Moreover, the report highlights such abuses, as well as the presence of “*discriminatory [Israeli] policies in East Jerusalem*”,³ but – unlike previous mandate-holders – does not consider the possibility of such actions forming constituent parts of much broader forms of discrimination.

Noting the present mandate-holder's stated intention to extend his area of review in future reports,⁴ this submission – endorsed by the Civic Coalition for Palestinian Rights in Jerusalem, and the result of extensive desk-based research as well as field work facilitated by international and Palestinian non-governmental organizations – provides an update on Israeli plans to forcibly transfer Palestinian communities in the occupied West Bank, followed by an explanation of the wider significance of the language used in the reporting and documenting of rights abuses in the occupied Palestinian territory generally. The submission then considers Israeli policies against the respective legal frameworks of colonialism and apartheid, before providing a series of practical recommendations through which the overall impact of the mandate can be developed.

Finally, BADIL takes this opportunity to thank the present mandate-holder for the continuation of this essential work, and pledges its full future support to the execution of the mandate.

² This is of particular significance in light of Palestine's recent accession to the International Criminal Court.

³ Wibisono. Para.8

⁴ *ibid.* Para.8

2.

Update: Israeli Plans to Forcibly Transfer Palestinian Bedouin

1. In the context of international armed conflict, under Article 49 of the Fourth Geneva Convention⁵ and Rule 129 of Customary International Law,⁶ an occupying power is strictly prohibited from deporting and/or forcibly transferring⁷ the civilian population of an occupied territory. This provision is robust and unequivocal, prohibiting individual or mass forcible transfer regardless of motive, with contravention constituting a grave breach under Article 147 of the Fourth Geneva Convention (and thus also a war crime under the Rome Statute of the International Criminal Court⁸) as well as being addressed more widely in the latter under Article 8 (2)(b)(viii), which prohibits:

The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.⁹

2. Israeli plans to forcibly transfer Palestinian Bedouin communities residing in Area C continue to gather momentum, with 7,000 Palestinians currently at risk.¹⁰ These plans follow a clear pattern of behavior, and three previous waves of forcible transfer of Palestinian Bedouin were enacted by Israel between 1997 and 2007, resulting in forced evictions of over 150 families and their relocation to al Jabal; a site adjacent to the Abu Dis garbage dump and its many associated health risks.¹¹ The size of this fourth potential wave eclipses those that have gone before it, and would result in incalculable human suffering.

⁵ International Committee of the Red Cross (ICRC), "Fourth Geneva Convention", Article 49.

⁶ International Committee of the Red Cross (ICRC), "Customary IHL - Rule 129. The Act of Displacement," accessed 24 July 2014, http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule129.

⁷ 'Forcible transfer' pertains to the forced displacement of individuals of communities within a *de jure* or *de facto* national border. Article 49 also covers situations of deportation, characterized by the forced displacement of individuals across such borders.

⁸ International Criminal Court, Rome Statute of the International Criminal Court, 1998, Article 8(2) (a)(vii).

⁹ International Criminal Court, Rome Statute of the International Criminal Court, 1998, Article 8(2) (b)(viii).

¹⁰ OCHA. September 2014. Bedouin Communities at risk of forcible transfer. Available at: https://www.ochaopt.org/documents/ocha_opt_communities_jerusalem_factsheet_september_2014_english.pdf

¹¹ Hale, 20 March 2013. Experts probe reach of toxins from West Bank landfill. Ma'an News Agency. Available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=573286>

3. Those Bedouin slated for transfer face a range of direct challenges to their enjoyment of basic human rights. The vast majority of their structures have demolition orders pending against them, and according to UNRWA, in the period of January and September 2013, 446 Palestinian structures were demolished in Area C by Israeli forces.¹² This is an utterly devastating experience, and a study commissioned by the Norwegian Refugee Council¹³ concluded that the average adjusted damage (factoring in – *inter alia* – physical damage to property, psychosocial and legal costs) inflicted upon each Palestinian household impacted by displacement was NIS 680,648 (US\$ 177,312¹⁴). Donor-funded structures find no immunity from this Israeli-implemented permit system, a fact demonstrated in April 2014 with the deconstruction and removal by Israel – by way of Seizure-of-Goods orders under Military Order no. 378 – of 18 emergency residential structures which had been provided to Palestinian Bedouin communities in Jabal al-Baba by the European Union-funded humanitarian division, ECHO.¹⁵ Demolition/removal of donor-funded structures is an increasingly common phenomenon, rising by 54% in 2013 compared to 2012.¹⁶ In 2013, more than 20% of the 565 structures demolished by Israel in Area C were donor-funded.¹⁷
4. Such practices are in direct contravention of international humanitarian law which demands that, in circumstances where a primary duty bearer is unable or unwilling to abide by its obligations towards a protected population, full access by humanitarian organizations must be permitted. Such access cannot be refused on arbitrary or unlawful grounds. Not only has Israel clearly and comprehensively failed to comply with these obligations, but the provision of emergency structures by humanitarian organizations has also been met with official complaints from the Israeli government, issued to those organizations' parent state through diplomatic channels.¹⁸ Moreover, there have been calls from members of the Knesset to entirely prohibit those humanitarian organizations who fail to comply with the terms set out by Israel's discriminatory building permit regime from working within the West Bank generally.¹⁹

¹² UNRWA. Demolitions in 2013. Available at: <http://www.unrwa.org/demolition-watch/demolitions-2013>

¹³ Hever, April 2015. The Economic Impact of Displacement: Analysis of the Economic Damage caused to Palestinian households as a Result of Displacement by Israeli Authorities. Norwegian Refugee Council.

¹⁴ Conversion accurate as of 4 June 2015

¹⁵ Applied Research Institute – Jerusalem. April 2014. Report on the Israeli Colonization Activities in the West Bank & the Gaza Strip. Volume 189, April 2014 Issue. Available at: http://www.arij.org/files/arijadmin/April_2014.pdf

¹⁶ OCHA (oPt), 2014. Fragmented Lives: Humanitarian Overview 2013, pg.73. Available at: <http://unispal.un.org/UNISPAL.NSF/0/43B4D427B63C369B85257CB300585957>

¹⁷ Ibid

¹⁸ Mordechai Yogev (Chairman of Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee). Minutes of the meeting of the Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee, 27 April 2014

¹⁹ MK Orit Struck. Minutes of the meeting of the Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee, 27 April 2014.

5. As well as the prevalence of demolition orders, just half of these communities have been connected to the public water network, whilst none have been connected to the public electricity network. Access to crucial grazing land is made increasingly problematic by the route of the Annexation Wall and the expanding boundaries of settlements/colonies,²⁰ and this expansion also brings with it harassment and threats of violence from settlers/colonizers. The cumulative result is an often desperate living environment, and a clear breach of the right to adequate housing, enshrined within the International Covenant on Economic, Social and Cultural Rights (to which Israel is a signatory).
6. As part of Israel's 'Nuweima Plan', all remaining Palestinian Bedouin communities in the central West Bank will be evicted and transferred to three urban townships: the first at the existing al Jabal site, and the two largest – Nuweimeh North and Armonot Hashmonaim, intended to allow for a future combined capacity of 12,500 individuals – to be built near Jericho in the Jordan Valley. Such attempts – despite being conducted entirely against the will of those being displaced – are framed by the Israeli authorities as being for the benefit of Bedouin communities; relieving them from poverty.²¹ To the contrary, however, this relocation of traditionally nomadic and pastoral Bedouin communities to cramped townships would represent a devastating blow to the cultural practices of these populations, severing links to “fundamental elements in their economic, commercial and social universe”.²²
7. In 2015, these plans have notably accelerated. On 28 April 2015, a representative of the Israeli Civil Administration (ICA; in fact a pseudonym for the Israeli Military Administration in the 1967 occupied Palestinian territory) visited the village of Abu Nuwwar, located in what has become known by the international community as the 'E1' area, to inform residents that they were slated for transfer, with 34 families to be transferred to the al Jabal West relocation site (the groundworks of which are currently at an advanced stage of preparation), and the remaining families to be transferred to other locations at a later date. It was made clear by the ICA representative, Dov Sedaka, that no members of the community would be permitted by the ICA to remain in the area. Such moves are regarded by international and Palestinian non-governmental organizations as the initial steps in the execution of Israel's 'Nuweima Plan'.
8. As such, the residents of Abu Nuwwar – and many other Palestinian Bedouin communities in the central West Bank – have been confronted with an impossible decision: a choice between succumbing to transfer, or awaiting

²⁰ OCHA (oPt), 2014. Area C Vulnerability Profile. Available at: http://www.ochaopt.org/documents/ocha_opt_fact_sheet_5_3_2014_en_.pdf

²¹ Greenwood, May 2012. Bedouin land and culture threatened by Israel's plans for resettlement. Available at: <http://www.theguardian.com/global-development/2012/may/09/bedouin-land-culture-israel-resettlement>.

²² Chatty, 1986. From Camel to Truck: The Bedouin in the Modern World. Vantage Press New York, p.30

forced eviction from their homes in what has become an almost impossible living environment of Israel's making. Though some Israeli sources have claimed that this process is being conducted with the consent of the affected communities, such claims find no basis in fact or in law. With regards to the former, it is the repeatedly-stated desire – and inalienable legal right – of Abu Nuwwar residents and similarly-affected Palestinian Bedouin communities to return to the land of the Naqab desert from which they were displaced during and since the ethnic cleansing of the Israeli-perpetrated Nakba in 1948. Until this is realized, however, these communities wish to remain in the villages in which they currently reside, and to enjoy the human rights to which they are entitled under international law.

9. Concerning the latter, as demanded by the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) – any announcement of an 'intention' to be relocated must be considered in light of the relevant operating circumstances. Context is crucial, and consent may be rendered "valueless" given the nature of the environment in which that consent is given.²³ This logic was developed in the case of Blagojević & Jokić:

Even in cases where those displaced may have wished – and in fact may have even requested – to be removed, this does not necessarily mean that they had or exercised a genuine choice. The trier of fact must consequently consider the prevailing situation and atmosphere, as well as all relevant circumstances, including in particular the victims' vulnerability, when assessing whether the displaced victims had a genuine choice to remain or leave and thus whether the resultant displacement was unlawful.²⁴

10. Given the aforementioned highly coercive physical environment, application of this principle to any issuing of consent by Palestinian Bedouin individuals/communities at risk of forcible transfer in Area C leaves no doubt that such 'consent' was issued from a position absent of genuine choice. This 'consent' is therefore obtained under duress, is entirely without value and should in no way be considered as absolving Israel or any other actor of their respective obligations under international law.
11. This desperate position of the affected communities is also compounded by a conspicuous absence of procedural safeguards. For instance, their access to appropriate and effective legal mechanisms is limited by cost considerations, the cases being heard in courts inside Israel – to which these communities must seek special permission in order to gain physical access – and with

²³ ICTY, Prosecutor v. Krstić, 2001. Case number. IT-98-33-T, Trial Judgement, para.529

²⁴ ICTY, Prosecutor v. Blagojević, 2005. Case number IT-02-60, Trial Judgement, para.596

proceedings being conducted in Hebrew. Despite these difficulties, some Bedouin communities have challenged the legality of the relocation process in the Israeli courts. Yet this has achieved only a temporary reprieve in the form of existing demolition orders being stayed in anticipation of the creation of the resettlement sites. According to the Coordinating Office of Government Activities in the Territories (COGAT) – an organ of the Israeli military – once the resettlement plans are finalized and building plots allocated, all unrecognized construction “will be dealt with in accordance with the [Israeli] law”.²⁵

12. This reveals an inherent bias of the law conceived and applied by Israel within Area C. It is a bias which favors the occupying power and its citizens, and is reflected in the multiple petitions filed with Israeli courts by the settler/colonist movement, demanding that existing demolition orders against Bedouin structures be executed without delay. This creates a scenario whereby individuals whose very presence in the occupied West Bank constitutes a war crime are able to utilize the existing legal system to further their own interests at the expense of the protected occupied population.
13. Another key protective legal concept which has been entirely disregarded by the relocation process is that of rationality; that is, the objective consideration of alternative options by the authority in question. In early 2014, the Israeli NGO, BIMKOM, following an extensive consultation process with all 23 Jahalin communities, submitted principled plans which would allow Palestinian Bedouin communities to enjoy services in their current location without compromising their pastoralist lifestyle or Bedouin culture. These plans have received support from the Palestinian Authority, and would avoid forcible transfer. However, these plans have so far been ignored by Israeli authorities. This *de facto* rejection, absent of any clear and lucid explanation, removes a crucial procedural safeguard and encourages the arbitrary exercise of power.
14. Should Israel continue with its practices of forced displacement of Palestinians from the central West Bank, such actions would be clearly consistent with a finding of forcible transfer; that is, a permanent relocation of a protected population by the occupying power, against their will, from a location where they are legally present to another location not of their choosing, absent the crossing of a national border and without legal justification.

²⁵ Hass, 16/09/14. Israeli government plans to forcibly relocate 12,500 Bedouin. Haaretz. Available at: <http://www.haaretz.com/news/national/.premium-1.615986>

15. This is made abundantly clear in expert, independent legal opinion²⁶ as well as in the language of the UNRWA Commissioner, General Pierre Krahenbuhl,²⁷ and that of UN Secretary General, Ban Ki-Moon.²⁸ The ‘forcible’ aspect of this displacement arises from two separate but intrinsically linked procedures: the creation of a highly coercive ‘push’ factor in the form of a deeply oppressive living environment, and the intended permanent relocation of a protected population to sites not of their own choosing. As such, Bedouin communities are deprived of any appreciable genuine choice, and in conjunction these two procedures will deal a devastating, irreparable blow to the protected communities concerned.

²⁶ Boutruche, Sassoli, Expert Opinion on the Displacements of Bedouin Communities from the Central West Bank under International Humanitarian Law. Available at: http://www.jlac.ps/data_site_files/file/studies/Legal_Opinion_on_Forcible_Transfer_of_Bedouin.pdf

²⁷ Al Jazeera, 22/09/14. UN warns Israel against relocating Bedouins. Available at: <http://www.aljazeera.com/news/middleeast/2014/09/un-warns-israel-against-relocating-bedouins-201492118213997830.html>

²⁸ Secretary-General’s remarks to Security Council briefing on the Situation in the Middle East [as delivered], 21 October 2014. Available at: <http://www.un.org/sg/statements/index.asp?nid=8120>

3.

The Significance of Language

16. Forcible transfer and its accompanying range of rights abuses represent some of the most heinous acts that can be committed within a context of international armed conflict, and should be treated as such, yet beyond specific individual offences they can also indicate and underpin broader, systematic forms of discrimination. To borrow rationale from the field of medicine, to devise a cure we must first identify the illness, and to this end, the language used by bodies committed to the protection of human rights inside the occupied Palestinian territory is of huge importance. This point has been clearly made by previous mandate holders:

The Special Rapporteur believes that the language used to consider Palestinian grievances relating to international humanitarian law and international human rights law in Palestine needs to reflect everyday realities, and not remain beholden to technical wording and euphemisms that mask human suffering resulting from violations.

It seems therefore appropriate to describe such unlawful impositions on the people resident in the West Bank by reference to “annexation” and “colonial ambitions” rather than “occupation”... Such clarifications at the level of language reinforce the contention that it is a matter of urgency to pursue more concerted efforts within United Nations venues to implement the rights of the Palestinian people.²⁹

17. Whilst in 2008, then President of the General Assembly, Miguel d’Escoto Brockmann, addressed the importance of the UN using the language of apartheid to describe Israeli practices in the occupied Palestinian territory:

I believe it is very important that we in the United Nations use this term. We must not be afraid to call something what it is. It is the United Nations, after all, that passed the International Convention against the Crime of Apartheid, making clear to all the world that such practices of official discrimination must be outlawed wherever they occur.³⁰

²⁹ Falk, 13 January 2014. A/HRC/25/67. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (hereafter, ‘Falk’). United Nations Human Rights Council. Para.7

³⁰ Speech of the President of the UN GA, Miguel d’Escoto, UN Headquarters, New York, 24 Nov. 2008, available at: http://www.humanrightsvoces.org/assets/attachments/documents/7245_Brockmann_GA.pdf.

18. Such observations are crucial, highlighting that the appropriate use of legally-rooted language can have a significant impact on the ability of Palestinians to enjoy their inalienable rights. The term ‘occupation’ is woefully insufficient to describe Israel’s domination of the Gaza Strip and the West Bank (including East Jerusalem) which is now in its 49th year. International Humanitarian Law does not include provisions for ending a military occupation or for realizing a population’s right to self-determination, and thus sole reliance on the vocabulary bundled with this body of law compromises our appreciation of the present day reality of Palestinians inside the occupied Palestinian territory, and limits our ability to seek redress.
19. Furthermore, identification of the presence of specific crimes (colonialism, population transfer and apartheid, for example) inside the occupied Palestinian territory creates binding obligations upon third party states to prevent their perpetration. Given the outright failure in 2014 of US-led ‘peace talks’ to reach a just and durable solution to the Palestine question, external pressure and intervention from the international community represents the primary vehicle to achieving a change in the destructive status quo. More widely, the identification of such crimes (when such identification comes from respected, authoritative bodies) resonates globally and can mobilize public opinion and political support.
20. Thus language can greatly boost the ability of human rights organizations to perform their mandate; to raise awareness of the ongoing plight of the occupied Palestinian population, and to deliver effective change on the ground. Accordingly, it is of great importance that all relevant bodies – including the present mandate-holder – explore alternative lexicons in any review of Israeli actions in the occupied Palestinian territory. What follows is a consideration of a selection of these actions against the legal frameworks of colonialism and apartheid.

4.

The Legal Framework of Colonialism and its Practical Application to the occupied Palestinian territory

21. ‘Colonialism’ finds no international treaty-based definition. Instead, our understanding of the term is derived primarily from UN resolutions. In particular, the Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1514 of 1960) asserts that:

[T]he right to self-determination is the right of all peoples to freely to determine, without external interference, their political status and to pursue their economic, social and cultural development.

That such a right is an entitlement of the Palestinian people is not in question, and is reflected in the 2004 advisory opinion of the International Court of Justice, which held that “the existence of the ‘Palestinian people’ is no longer an issue”.³¹

The Declaration on the Granting of Independence to Colonial Countries and Peoples go on to define colonialism as:

[T]he subjection of peoples to alien subjugation, domination and exploitation, [which] constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

22. Though allegations of colonialism in relation to Israeli actions are based upon practices and policies which extend much further than the geographic and content focus of this submission, consideration of Israel’s plans to forcibly transfer Palestinians reveals a clear and steady erosion of the Palestinian capacity for self-governance. The right of self-determination requires a territorial basis, yet Israel’s manipulation of planning and zoning policy in Area C has allowed for a steady fragmentation of Palestinian land. Indeed, the planning and zoning system has been described as “one of the most influential mechanisms affecting the map of the West Bank.”³² Within Area C, Israel has implemented a legal framework which – through designations

³¹ International Court of Justice. 2004. Legal Consequences of a Wall in the Occupied Palestinian Territory (Request for advisory opinion): Note 12, para.118

³² Lein, May 2002. Land Grab: Israel’s Settlement Policy in the West Bank. Jerusalem. B’Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, pg.70. Available at: http://www.btselem.org/download/200205_land_grab_eng.pdf

of 'state' lands; closed military zones; areas under the jurisdiction of Israeli colonies; areas of existing and planned road networks and land reserved for the route of the Annexation Wall – prohibits Palestinian construction on 70% of the land.

23. For the remaining 30% of land in Area C where Palestinian construction is theoretically permitted, the applicable planning law is established by the *Jordanian Towns, Villages, and Building Planning Law No. 79 of 1966*, which requires the existence of a detailed and dedicated planning scheme before construction can take place. Shortly after Israel's occupation of the West Bank in 1967, the *Israeli Military Order Concerning Towns, Villages and Buildings Planning Law (Judea & Samaria) No. 418 of 1971* was introduced, removing all Palestinian representation from the planning process by way of annulment of Local Planning Committees. Instead, this responsibility was transferred to the Israeli Civil Administration's Local Planning and Licensing Sub-Committee.
24. Similarly, the responsibility for the issuing of building permits in Area C lies with the Secondary Planning Committee, which is also part of the Civil Administration. Through a broad interpretation of Jordanian law, the types of structures for which a building permit is required is extensive, including both permanent and non-permanent structures, and also covering repairs of those structures already in place. On account of a 2.3% success rate for such building permit applications,³³ Israel has effectively made Palestinian presence inside Area C illegal. It is this cynical manipulation and alteration of the applicable law which sets the scene for the aforementioned demolition of Palestinian structures and the resulting forced displacement.
25. As such, complete control of the planning and construction process – from the conception of policy to its realization and enforcement on the ground – is retained by the occupying power; a situation in direct contravention of Article 43 of the Hague Regulations³⁴ and Article 64³⁵ of the Fourth Geneva Convention.³⁶ This inherently unlawful scenario was further entrenched in June 2015 by Israel's Supreme Court's rejection of a petition brought by the village council of Dirat Al-Rifa'iya, and supported by a coalition of NGOs, which sought the restoration of planning authority to Palestinian villages in

³³ Civil Administration's response to B'Tselem. Quoted in B'Tselem, 2013, *Acting the Land Lord: Israel's Policy in Area C, the West Bank*. Available at http://www.btselem.org/download/201306_area_c_report_eng.pdf

³⁴ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

³⁵ Though some scholars consider the application of Art 64 limited to penal legislation only, this is an argument compellingly refuted by Sassoli, and does not represent the view of the ICRC under the ICRC Commentary

³⁶ Art. 64, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

Area C.³⁷ Such unfettered administrative control has allowed the occupying power to strengthen its grip on Palestinian territory; criminalizing Palestinian presence and therefore ‘legalizing’ their removal, followed by the mass implantation of an estimated 547,000³⁸ Jewish-Israeli settlers throughout the occupied Palestinian territory.

26. Israel’s intention to replace Palestinian inhabitants of Area C with its own citizens is demonstrated in a 123% increase³⁹ in settlement construction in 2013 compared to the previous year, and formally presented in plans such as 420/4; the master plan for ‘E1’,⁴⁰ which received approval in 1999. This master plan is split into separate detailed plans. Of these, three (a water reservoir,⁴¹ industrial zone⁴² and police station⁴³) have already been deposited for public review and subsequently approved by the planning committee, with the police station already constructed. Three other detailed plans – 420/4/3, 420/4/7 and 420/4/10 – pertain to a total of almost 3,700 housing units, and over 2000 hotel rooms, but have not yet received formal approval, largely on account of vocal international opposition. Following a successful Palestinian bid in 2012 to be admitted as a UN observer state, however, the Israeli government sought to push forward with these outstanding plans,⁴⁴ and the Civil Administration subsequently opened up the plans for filing of objections.⁴⁵
27. In addition, the Israeli Minister for Construction and Housing, Uri Ariel – himself a resident of a settlement/colony inside the Adumim Bloc – has stated on record that building inside E1 is both an Israeli “right and obligation”,⁴⁶ whilst the office of Prime Minister Benjamin Netanyahu responded to international criticism to

³⁷ Rabbis for Human Rights. 10 June 2015. Israeli High Court Dismisses Petition to Restore Planning Rights to Area C Villages (hereafter ‘Rabis for Human Rights’). Available at: <http://rhr.org.il/eng/2015/06/israeli-high-court-dismisses-petition-to-restore-planning-rights-to-palestinian-villages-in-area-c>.

³⁸ B’tselem, May 2015. Statistics on Settlements and Settler Population. Available at: <http://www.btselem.org/settlements/statistics>

³⁹ Israel Central Bureau of Statistics. March 2014. Figures available at: http://cbs.gov.il/hodaot2014n/04_14_052t4.pdf

⁴⁰ ‘E1’ is the Israeli moniker assigned to the Palestinian area of Bab al-Shams – a parcel of land measuring roughly 12km² and situated between Jerusalem and the Israeli settlement/colony of Ma’ale Adumim. BADIL does not endorse the use of ‘E1’, but will use the term in this paper for sake of clarity.

⁴¹ Plan 420/4/1.

⁴² Plan 420/4/2.

⁴³ Plan 420/4/9.

⁴⁴ Following this announcement, the governments of the UK, France, Sweden, Spain and Denmark called in respective Israeli ambassadors to make formal complaints

⁴⁵ B’tselem, 2013. The E1 plan and its implications for human rights in the West Bank. Available at: http://www.btselem.org/settlements/20121202_e1_human_rights_ramifications

⁴⁶ Hoffman, April 2013. Livni’s Party Angered by E1 Building Plans. Available at: <http://www.jpost.com/Diplomacy-and-Politics/Livni-party-angered-by-E1-building-plans-310095>

the E1 plans by declaring that construction here represented an Israeli “vital interest”.⁴⁷ This “vital interest” refers to the merging of Ma’ale Adumim and Jerusalem, resulting in the latter becoming surrounded by a bank of Israeli Jewish settlements/colonies. This would effectively sever the West Bank in two and thus end any remaining hope of a geographically contiguous Palestinian state based on 1967 borders, whilst Israel’s creation of such ‘facts on the ground’ more generally inside Area C must be considered in conjunction with the present and intended path of Israel’s Wall, which would annex a number of settlement blocs, and thus also huge areas of Palestinian land in the process.

28. The underpinning logic behind these practices was made abundantly clear in 1998 by former Israeli Prime Minister – then a cabinet minister – Ariel Sharon, who declared that *“everybody has to move, run and grab as many [Palestinian] hilltops as they can to enlarge the [Jewish] settlements because everything we take now will stay ours [...] Everything we don't grab will go to them.”*⁴⁸ Accordingly, Israel’s declared intention to annex the Etzion bloc in the south; Ma’ale Adumim to the east of Jerusalem; and the Ariel bloc in the north as part of any negotiated solution⁴⁹ represents the successful and logical conclusion of a colonialist process: drastic alteration to the demographic composition of a territory by way of removal of one ethnic group, to be replaced with a privileged other, leading to spatial domination of land and, finally, the permanent annexation of that territory. Such intention is also plainly reflected in Israel’s settlement/colony and annexation enterprise in both occupied East Jerusalem and so-called metropolitan “Greater Jerusalem” in the occupied West Bank.
29. This is entirely consistent with the findings of a 1993 UN report, which held that *“the objective of population transfer can involve the acquisition or control of territory, military conquest or exploitation of an indigenous population or its resources,”*⁵⁰ and those of former mandate-holder, Professor Richard Falk, who observed that *“the combined effect of the measures designed to [...] facilitate and expand settlements, and, it would appear, to annex land, is hafrada, discrimination and systematic oppression of, and domination over, the Palestinian people.”*⁵¹ Support for such a position can also be found in the expert opinion of Professor Michael Bothe, who notes that *“an Israeli policy of fragmentation can be observed within the West Bank [...] which is considered to*

⁴⁷ BBC, December 2012. Israeli Settlements: Netanyahu defies outcry over E1. Available at: <http://www.bbc.com/news/world-middle-east-20585706>

⁴⁸ Gilbert, 25 February 2010. An Outpost Carved in Rock. The Jerusalem Post. Available at: <http://www.jpost.com/Features/In-Thespotlight/An-outpost-carved-in-bedrock>

⁴⁹ Ma’an News Agency. 19 January 2014. Radio: Israel wants to annex fourth settlement bloc. Available at: <http://www.maannnews.com/Content.aspx?id=666428>

⁵⁰ Al-Khasawneh & Hatano., 06 July 1993. E/CN.4/Sub.2/1993/17*. The human rights dimensions of population transfer, including the implantation of settlers. The United Nations Economic and Social Council. Para.17.

⁵¹ Falk, para.77

*be problematic under international law as violating International Humanitarian Law, International Human Rights Law and the right to self-determination of the Palestinian people”.*⁵²

30. What is also clear is that this is an evolving, developing crime, reflected in declarations by Benjamin Netanyahu during the 2015 Israeli election campaign that there would be no sovereign Palestinian state under his stewardship, and that settlement construction would continue.⁵³ In addition, the UN Committee on the Elimination of Racial Discrimination took the exceptional step in 2012 of stating its grave concern at Israeli practices “*that change the demographic composition of the Occupied Palestinian Territory*”,⁵⁴ and specifically, planning policy which seeks “*demographic balance*” as a stated aim.⁵⁵
31. Given the weight of available evidence, assertions that Israel is pursuing a policy of demographic change inside the occupied Palestinian territory – and that this policy is built upon a Zionist ideology which asserts the dominance of Jewish Israelis over Palestinians – appear incontestable. The application of this policy is deliberate and systematic, reflected in legal frameworks, in public statements from the highest echelons of Israeli government and in the relentless creation of ‘facts on the ground’, all of which are intended to deny the right of Palestinians to self-determination, and to achieve their removal from the territory. As highlighted by Professor Richard Falk:

To sustain indefinitely an oppressive occupation containing many punitive elements also seems designed to encourage residents to leave Palestine, which is consistent with the apparent annexationist, colonialist and ethnic-cleansing goals of Israel⁵⁶

Developments arising from within the Israeli judicial system during the drafting of this submission provide firm support for this notion, with the rejection of the Dirat Al-Rifa’iya petition “further validat[ing] the belief that the aim of the Israeli military occupation is to reduce, if not to completely negate, Palestinian living space as much as possible.”⁵⁷

⁵² Bothe, 2015. Expert Opinion: The Legality of Prolonged and *De Facto* Permanent Fragmentation and Separation of Occupied Territories in the Context of the Gaza Blockade. Courtesy of the Norwegian Refugee Council. pg.5

⁵³ Lubell, 16 March 15. Netanyahu says no Palestinian state as long as he’s prime minister. Reuters. Available at: <http://www.reuters.com/article/2015/03/16/us-israel-election-idUSKBN0MC1I820150316>

⁵⁴ Committee on the Elimination of Racial Discrimination, Eightieth session. 13 February – 9 March, 2012. CERD/C/ISR/CO/14-16. Consideration of reports submitted by States parties under article 9 of the Convention (hereafter ‘CERD/C/ISR/CO/14-16’) Para.4

⁵⁵ Ibid, Para.25

⁵⁶ Falk. Para.4

⁵⁷ Rabis for Human Rights

32. We cannot, therefore, regard Israeli practices pertaining to the occupied Palestinian territory and its Palestinian population merely as a ‘military occupation’. In both their temporal duration and their systematic assault on a whole host of Palestinian rights – not least that of self-determination – Israeli actions are of a nature that renders such terminology woefully inadequate. Objective consideration of these actions reveals not a temporary occupation which, as far as is possible, respects the sovereignty and rights of the occupied, but rather twin Israeli policies of territorial fragmentation/annexation and demographic restructuring along racial lines. Accordingly, we are left with no option but to apply the lens and language of colonialism to the situation inside the occupied Palestinian territory.

5.

The Legal Framework of Apartheid and its Practical Application to the occupied Palestinian territory

33. The 1976 International Convention on the Suppression and Punishment of the Crime of Apartheid was the result of a need to more precisely identify the material elements of this terrible crime. Accordingly, Article 2 sets out a broad set of inhuman acts which constitute apartheid if they are “committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.” Such acts include:

- Deliberate imposition of living conditions calculated to cause physical destruction in whole or in part⁵⁸
- Any legislative or other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups (denial of basic human rights and freedoms, including the right to return to their country)⁵⁹
- Any measures, including legislative measures, designed to divide the population along racial lines...[including] the expropriation of landed property belonging to a racial group or groups⁶⁰

34. Apartheid is also listed as a crime against humanity under Article 7(1)(j) of the Rome Statute, and subsequently defined as “inhuman acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”⁶¹ Under Article 7(1)(d), forcible transfer of population is explicitly listed as such an act.

As identified by former mandate-holder, Professor John Dugard:

The essence of the definition of apartheid is thus the systematic, institutionalized, and oppressive character of the discrimination involved, and the purpose of domination that is entailed. It is this

⁵⁸ Art.2(b)

⁵⁹ Art.2(c)

⁶⁰ Art.2(d)

⁶¹ Rome Statute. Art.7(2)(h)

institutionalized element, involving a state-sanctioned regime of law, policy, and institutions, that distinguishes the practice of apartheid from other forms of prohibited discrimination.

35. Considered in light of the above definitions and provisions, a number of Israeli actions directed against Palestinian communities – but, significantly, not against Jewish-Israeli settlers/colonizers – inside Area C would appear to meet the material threshold of inhuman acts upon which a finding of apartheid can be founded. As stipulated in the Rome Statute, forcible transfer is such an act, and as detailed above, there can be little doubt as to the presence of this specific crime inside the occupied Palestinian territory. Furthermore, certain acts inextricably linked to this policy of transfer can, in themselves, be deemed to be in direct contravention of the Apartheid Convention.
36. For instance, the deeply oppressive living environment which Israel has created for Palestinian Bedouin communities – particularly the widespread demolition of dwellings – would, in addition to constituting a war crime under Article 147 of the Fourth Geneva Convention, appear to breach Article 2(b) of the Convention. To this end, in *Akaseyu*, the International Criminal Tribunal for Rwanda held that “*deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction*”.⁶²
37. The Tribunal deemed that ‘conditions of life’ included “*systematic expulsion from homes*”,⁶³ and this exact terminology was later incorporated into the Elements of Crimes of the International Criminal Court under the wider theme of “*deliberate deprivation of resources indispensable for survival*”.⁶⁴ Furthermore, this oppressive environment and its attendant erosion and curtailment of basic human rights (including the right to adequate housing and the right to health) would also indicate a direct contravention of Article 2(c).
38. Meanwhile, a broad range of measures implemented by Israel inside Area C have the clear and direct result of dividing populations along racial lines, thus representing an emphatic breach of Article 2(d). Expropriation of Palestinian land has been made possible through Israel’s cynical manipulation of the operating legal environment to favor the interests of Jewish-Israeli settlers/colonizers over the rights of Palestinians. Far from showing signs of easing,

⁶² Akaseyu Judgment, para.505. See also the Kayishema and Ruzindana Judgment, para.166; Rutaganda Judgment and Sentence, para.52

⁶³ Akaseyu Judgment, para.506. See also the Kayishema and Ruzindana Judgment, para.115; Rutaganda Judgment, para.52; Musema Judgment and Sentence, para.157; Stakic Judgment, para.517

⁶⁴ See footnote 4 to Article 6(c)-4 EoC. The footnote was based on the Akaseyu ruling

this regime of separation and discrimination has instead received the assent of Israel's highest judicial body, thus "*rubber-stamping elements of Israel's apartheid system.*"⁶⁵

39. The effect is to 'legalize' unlawful Israeli declarations of large swathes of the occupied Palestinian territory as 'state land', which are then followed by the forcible transfer of the resident Palestinian populace and, finally, the use of these areas for settlement/colony construction/expansion. Presently, in excess of 40% of West Bank land is allocated for this purpose, with Palestinian access to and enjoyment of this land – including that used by an extensive network of settler/colonizer-only roads – significantly restricted. The result is the reduction of the West Bank to an archipelago of shrinking Palestinian enclaves surrounded by a sea of Israeli-controlled territory. This spatial domination is pursued through:

A visible grid of walls, fences, trenches, roads, tunnels, and checkpoints and an invisible grid of administrative controls on movement and residence in the form of permit systems akin to South Africa's pass laws [which] combine to ensure the stringent segregation of the Palestinian and Jewish populations.⁶⁶

40. In addition, the discriminatory effect is compounded by the application to Jewish-Israeli settlers/colonizers of Israeli civil law, compared to the much harsher provisions of Israeli military law to which Palestinians in the same territory are subject.⁶⁷ Thus, Israel has achieved a clear separation of communities along racial lines, both through physical segregation – "*a central underpinning feature of an apartheid system*"⁶⁸ – and through the creation of parallel legal and administrative realities for the two populations in question. Such acts have drawn the censure of the UN Committee on the Elimination of Racial Discrimination which, in March 2012, stated its extreme concern:

[A]t the consequences of policies and practices which amount to *de facto* segregation, such as the implementation by [Israel] in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand.⁶⁹

⁶⁵ White, 12 June 2015. Israel's High Court rejects petition against apartheid planning regime. Middle East Monitor. Available at: <https://www.middleeastmonitor.com/blogs/politics/19199-israels-high-court-rejects-petition-against-apartheid-planning-regime>

⁶⁶ Dugard., Reynolds., 2013. Apartheid, International Law and the Occupied Palestinian Territory (hereafter 'Dugard & Reynolds'). The European Journal of International Law Vol.24, no.3, pg.911

⁶⁷ It is relevant to the present discussion that the Israeli military court system has been accused of effecting 'judicial domination' over the occupied civilian population. See https://www.icrc.org/eng/assets/files/other/irrc_866_weill.pdf

⁶⁸ Dugard & Reynolds, pg.898

⁶⁹ CERD/C/ISR/CO/14-16 ,para.24

41. The Committee went on to announce that it was “*particularly appalled at the hermetic character of the separation of two groups,*”⁷⁰ and given the scope of the Israeli-perpetrated inhuman acts identified above – both in terms of the sheer number of Palestinian communities affected, and the timescale concerned (often having been conducted over a period of decades) – there can be little doubt as to their operation as part of a widespread systematic attack. This position finds support in the final report submitted to the UN Human Rights Council by former mandate-holder, Professor Richard Falk:

None of the human rights violations discussed in the context of possibly constituting “inhuman acts” for the purpose of the International Convention on the Suppression and Punishment of the Crime of Apartheid or the Rome Statute can be said to be isolated events. Rather, their commission reflects systematic and discriminatory Israeli policies, laws and practices.⁷¹

This view is mirrored in the work of Professor John Dugard:

Can it seriously be denied that the purpose of [selected Israeli practices] is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them? Israel denies that this is its intention or purpose. But such an intention or purpose may be inferred from the actions described in this report.⁷²

⁷⁰ Ibid, para.24

⁷¹ Falk, para.77

⁷² Dugard, 29 January 2007. A/HRC/4/17. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 196. United Nations Human Rights Council. Para.50

6.

Conclusion & Recommendations

Given the requisite breadth of discrimination required to uphold a finding of colonialism and/or apartheid, the content of this submission – focusing primarily on the forcible transfer of Palestinian Bedouin communities as a result of Israeli actions inside Area C – should not, in itself, be regarded as proof of the presence of these crimes, but rather as one supporting evidential strand amongst many. Accordingly, this submission must be read in conjunction with the wealth of existing information from other sources which document a range of grievous Israeli-perpetrated rights abuses directed against Palestinians throughout the occupied Palestinian territory – consisting of the Gaza Strip, the West Bank and East Jerusalem – including willful killing, denial of residency, denial of refugee return, arbitrary detention and torture. Separately, these inhuman acts impart devastating effects on the affected individuals and communities, but considered holistically, they convey a picture of a systematic attack directed at the occupied Palestinian populace; an attack conducted with almost complete impunity.

The mandate-holder's two most-recent predecessors have explored Israeli practices inside the occupied Palestinian territory not just in isolation, but with an awareness of the potential presence of much broader forms of discrimination. In both cases, such presence was confirmed. Professor John Dugard has noted:⁷³

The three 'pillars' of apartheid that we have identified above in relation to the former South African regime are broadly reproduced today in Palestine. The demarcation of distinct racial groups under the 1950 Population Registration Act in South Africa finds its equivalent in the Israeli-Palestinian context in the preferential legal status granted to those defined as Jewish nationals under the 1950 Law of Return. This superior status underpins the creation of a dual legal system as well as systematic discrimination against Palestinians across a wide spectrum of rights.

The second pillar – a 'grand apartheid'-like policy of territorial fragmentation and racial segregation – is evidenced by Israel's land appropriation and settlement policies, and its cantonization of Palestinian territory a 'grand apartheid'-like policy of territorial fragmentation and racial segregation

The third pillar upon which Israel's systematic domination in the occupied Palestinian territory rests is the matrix of security laws and

⁷³ Writing not in his capacity as mandate-holder

practices [...] invoked to validate the suppression of opposition to the occupation and to buttress the extant system of racial domination.⁷⁴

Similarly, Professor Richard Falk observed:

None of the human rights violations discussed in the context of possibly constituting “inhuman acts” for the purpose of the International Convention on the Suppression and Punishment of the Crime of Apartheid or the Rome Statute can be said to be isolated events. Rather, their commission reflects systematic and discriminatory Israeli policies, laws and practices.⁷⁵

Such statements are not – and must never be – made lightly, or without a solid evidential basis. Instead, they are the considered opinions of independent experts, based upon an objective consideration of all available evidence and applied with clear awareness of the relevant legal instruments. Ultimately, they present a powerful argument of the need to “[connect] the dots between discrete and disparate rights violations, illuminating them against a common backdrop.”⁷⁶ This wider angle of review is essential and, in turn:

[A]dvances the legal analysis of the situation in the West Bank and Gaza beyond the ‘habitual focus on specific actions undertaken within the occupation, as distinct from the nature of the occupation as a normative regime’, and facilitates an assessment of the cumulative effect of almost half a century of belligerent occupation where patterns of domination have proliferated.⁷⁷

In the expert opinion of previous mandate-holders, Israel has perpetrated, and continues to perpetrate, some of the worst forms – or, at the very least, central elements of some of the worst forms – of systematic discrimination: colonialism and apartheid. The presence of such discrimination serves to demonstrate that the framework of International Humanitarian Law and its bundled language of ‘military occupation’ are entirely inadequate to describe and to tackle Israel’s domination of the Gaza Strip, the West Bank and East Jerusalem which is now almost fifty years in duration, and which is demonstrably motivated by the desire to deny the Palestinian right to self-determination, and is underpinned and sustained by systematic discrimination.

According to Professor Falk, “the entrenching of colonialist and apartheid features of the Israeli occupation has been a cumulative process. The longer it continues,

⁷⁴ Dugard & Reynolds, pg.911

⁷⁵ Falk, para.77

⁷⁶ Dugard & Reynolds, pg.912

⁷⁷ Ibid. Pg.912

the more difficult it is to overcome and the more serious is the abridgement of fundamental Palestinian rights.”⁷⁸ The need for immediate use of appropriate language is therefore apparent, allowing for the identification of the true nature of the illness, which in turn creates clear and distinct legal obligations for third party states, as well as greatly assisting the advocacy work of civil society organizations who seek to protect the rights of Palestinians, and to bring to account the perpetrators of international crimes.

It is clear that the use of so-called ‘balanced language’ has failed to stem in any appreciable way the scope and magnitude of Israeli rights abuses inside the occupied Palestinian territory, but closer review suggests that its usage is actually harmful. In diluting the language employed to describe and identify Israeli practices, we mislead and misinform key target audiences, from the international community to that of wider public opinion. Such language is not, therefore, ‘neutral’, but instead is actively damaging to the rights of Palestinians in the occupied Palestinian territory. It encourages apathy and acquiescence among those who are best-placed to protect Palestinians, simultaneously fostering and maintaining an environment of Israeli impunity. This must be addressed as a matter of urgency, and BADIL accordingly calls upon the present mandate-holder:

1. To condemn, in the strongest possible terms, Israel’s on-going non-cooperation with the mandate of the Special Rapporteur. State concern that this reflects a broader Israeli policy of non-cooperation with the United Nations, including non-compliance with the resolutions adopted by the Security Council, General Assembly and the Human Rights Council, the CoI, and Israel’s on-going refusal to recognize and apply its human rights treaties to Palestinians in the occupied Palestinian territory, including East Jerusalem, in contravention of international law and the stated positions of the ICJ and all human rights treaty committees.
2. To state strong concern at the lack of effective domestic remedies available to Palestinian communities who face forcible transfer, and to call for the redress of this situation. In particular, the mandate-holder should highlight that this absence of remedy is systemic, and is the result of a combination of Israeli civil and military legislation which actively discriminates against Palestinians, accompanied by a policy of discriminatory law enforcement.
3. To condemn, in the strongest possible terms, Israeli perpetration of – and future plans to perpetrate – forcible transfer, as well as the specific unlawful methods through which Israel pursues this crime. In doing so, the mandate-holder must outline that forcible transfer is a war crime, and is accompanied by serious violations of peremptory norms of customary international law, such as the prohibitions on acquisition of territory by force, racial discrimination and population transfer. Also, highlight the role that Israel’s forcible transfer of

⁷⁸ Falk, 30 August 2010. A/65/331. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. Para.3

Palestinians in the occupied West Bank plays in the wider, permanent acquisition of occupied Palestinian territory, and in the undermining of the right of self-determination of the Palestinian people.

4. To adopt accurate and legally-grounded terminology when describing/classifying Israeli acts, policies and laws. Specifically, to apply the analytical lenses of forcible population transfer, colonialism and apartheid in any review of Israeli actions inside the occupied Palestinian territory. Furthermore, the mandate-holder should take a proactive lead in urging other UN organs and agencies to adopt this same language and analytical approach in their consideration of Israeli actions inside the occupied Palestinian territory.
5. To remind third party states and the United Nations of their legal obligations resulting from serious violations by Israel of peremptory norms. In this vein, the mandate-holder should call on the United Nations and its members to support civil society efforts for accountability and respect of human rights, including civil society's campaign for boycott, divestment and sanctions (BDS) against Israel until it abides by international law and respects the fundamental rights of the Palestinian people.
6. To call on states and the United Nations to act upon their obligation of non-recognition of the unlawful situation created by Israel through its policy of population transfer in the occupied West Bank, and the obligation to ensure that such violations cease, and that full reparation be made to all affected Palestinian individuals and communities.
7. To call on states and the United Nations to provide maximum support and facilitation for all independent investigatory bodies and mechanisms mandated to operate in the occupied Palestinian territory, including the ongoing investigations of the ICC into the situation in Israeli-occupied Palestine.

A photograph of a hillside under a cloudy sky. In the background, a town with many buildings and a prominent tower is visible. The middle ground shows a steep, eroded hillside. In the foreground, there is a construction site with dirt, rocks, and some temporary structures. A large, light-colored rock is in the lower foreground.

“The entrenching of colonialist and apartheid features of the Israeli occupation has been a cumulative process. The longer it continues, the more difficult it is to overcome and the more serious is the abridgement of fundamental Palestinian rights.”

Professor Richard Falk,
3 August 2010