

Al-Haq, Law in the Service of Man
Shawan Jabarin
+972 2 295 4646
shawan@alhaq.org

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Fourth Session

Joint written statement submitted by Al-Haq, a non-governmental organisation in special consultative status, Badil Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organisation in special consultative status, and the Palestinian Centre for Human Rights, a non-governmental organisation in special consultative status.

Forty years of increasing facts on the ground: New actions urgently required by the Human Rights Council to prevent the preclusion of the Palestinian right to self-determination¹

The undersigned Palestinian non-governmental organisations are compelled by the impending 5 June 40-year anniversary of Israel's occupation of the West Bank, including East Jerusalem, and the Gaza Strip, to call for a re-orientation of the debate on the right of the Palestinian people to self-determination.

As organisations committed to the protection and promotion of human rights in the Occupied Palestinian Territory (OPT), we wish to make clear that the impasses in political negotiations over the last 40 years do not mean that a *status quo* is being preserved in relation to Palestinian self-determination. With each passes day, Israeli authorities create new facts on the ground which prejudice the fate of the OPT and its people in favour of Israel's long-term demographic and territorial interests, thereby making Palestinian self-determination, an end to the Israeli-Palestinian conflict and ultimately international peace and security more untenable.

The Palestinian right to self-determination

The right to self-determination is a cornerstone of the UN Charter and has been reaffirmed in Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The UN General Assembly, the Security Council and the Commission on Human Rights have each upheld the Palestinian right to self-determination.

The International Court of Justice (ICJ) reiterated in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT, that the right to self-determination is an obligation *erga omnes*. If a state violates such a norm – in this case the right of Palestinians to self-determination – all members of the international community are obliged to redress the violation. In other words, the realisation of Palestinian self-determination must be enforced by the international community. The ICJ asserted that the obligation of states to

¹Al-Mezan Center for Human Rights, the Women's Center for Legal Aid and Counselling, Defence for Children International – Palestine Section, the Ramallah Center for Human Rights Studies, Ensan Center for Democracy and Human Rights, Jerusalem Legal Aid and Human Rights Center and Addameer Prisoners' Support and Human Rights Association also share the views expressed in this statement.

Al-Haq, Law in the Service of Man

Shawan Jabarin

+972 2 295 4646

shawan@alhaq.org

demand redress included the duty of non-recognition of the illegal situation, of non-assistance in maintaining the illegal situation and of actively ensuring that the illegality comes to an end.

In their public statements and in the texts of internationally-brokered agreements, members of the international community who have expressed a commitment to resolving the Israeli-Palestinian conflict, including Israel, have either tacitly or explicitly recognised that a durable peace depends upon the creation of a Palestinian state. Unfortunately, the point of departure for these statements and agreements over the last 40 years has not always been international law. Thus, the right of the Israeli people to security has effectively eclipsed the Palestinian people's fundamental right to self-determination and their ancillary right to define its realisation.

East Jerusalem

As Palestinians wait for the international community to take decisive action on their right to self-determination, Israeli authorities are enacting policies to proactively create facts on the ground with the aim of ensuring that the entire city of Jerusalem will be the majority- Jewish capital of the State of Israel.

In 1967, Israel *de facto* annexed East Jerusalem and placed it under Israeli civil rule. Thirteen years later, Israel sought to legalise its annexation of East Jerusalem by extending its domestic legal jurisdiction over the entire city. Non-recognition of this illegal act by the international community, however, has not been sufficient to prevent Palestinian Jerusalemites from being pushed out of the city. Discriminatory Israeli laws and policies have forced tens of thousands of Palestinian Jerusalemites to leave the city over the last four decades.

Although Palestinian Jerusalemites are classified as permanent residents and constitute 58 percent of the East Jerusalem population, they do not have the same rights as Israeli citizens. For 40 years, they have been discriminated against by Israel's policies regarding planning, building and land expropriation. While they have the right to social benefits and health insurance from Israel's National Insurance Institute (NII), the NII's default position is to treat Palestinians with suspicion. Benefit applications for Palestinians are systematically delayed for prolonged periods, during which time thousands of Palestinians and their children go uninsured.

Although Palestinian Jerusalemites pay taxes to the State of Israel, their neighbourhoods receive only a small fraction of the city's development budget. It is not unusual to find Palestinian neighbourhoods unconnected to a sewage system, or which are without paved roads, sidewalks or rubbish collection.

Israel's High Court of Justice has played a significant role in upholding Israel's institutionalised discrimination. On 31 July 2003, the Knesset enacted the Nationality and Entry into Israel Law (Temporary Order). This law prohibits the granting of any residency or citizenship status to Palestinians from the OPT who are married to Israeli citizens or permanent residents. The law effectively prevents "family unification" for thousands of families, including families where one spouse is a Palestinian Jerusalemite with permanent

Al-Haq, Law in the Service of Man

Shawan Jabarin

+972 2 295 4646

shawan@alhaq.org

residency status. On 14 May 2006, the High Court of Justice dismissed a petition challenging the legality of the law.

It is clear that a fundamental intent behind such policies and practices is the pressuring of Palestinians to leave Jerusalem and Israel.

The Annexation Wall and Settlements

Despite the conclusion of the ICJ's 2004 Advisory Opinion that the construction of the Wall with its associated regime is contrary to international law, Israeli authorities continue to build the Wall. If approved by the Israeli Cabinet, the 2007 revised route of the Wall will span 708 kilometres and will penetrate even deeper into the West Bank. Eighty percent of the Wall will be built on occupied Palestinian territory, rather than on the 315 kilometre-long Green Line (the *de facto* 1967 border).

Despite Israeli claims to the contrary, the Wall is not merely a temporary measure built for reasons of security. Costing up to \$2 million per kilometre, upon completion the Wall will be Israel's unilaterally-created border between it and any future Palestinian state. Israeli protests to the contrary rang hollow in November 2005 when former Israeli Minister of Justice, and now Minister of Foreign Affairs Tzipi Livni stated, "One does not have to be a genius to see that the fence will have implications for the future border."

The Wall threatens to unlawfully annex the land on which an estimated 370,000 Israeli settlers (87 percent of the total number of Israeli settlers) illegally live in the occupied West Bank, including East Jerusalem. Israel has not frozen settlement activity, including activity related to the "natural growth" of the settlements. In 2006 alone, the settler population in the West Bank grew by six percent. Further, Israel has actively launched new settlement projects and expanded the infrastructure of the larger existing settlement blocs, including by inviting investment from abroad.

According to 2006 projections, upon completion of the Wall, the lives of an estimated 225,000 Palestinian Jerusalemites will be adversely affected. By the same projections, an estimated 25,000 (non-Jerusalemite) West Bank Palestinians will find themselves on the western side of the Wall, separated from other Palestinians. They will require permits to live in their homes and will only be permitted to leave their communities to enter the West Bank via policed gates in the Wall. A further 247,800 West Bank Palestinians who will end up on the eastern side of the Wall will be either completely cordoned off into enclaves or will be partially surrounded by the Wall's route. Access to these areas by non-residents is highly restricted. In all of these cases Palestinians' ability to access their land, schools, hospitals, workplaces, places of worship or family will be severely impacted upon.

The settlements and the route of the Wall effectively prevent Palestinian access to East Jerusalem and sever the West Bank in half from north to south. As acknowledged by the UN Special Rapporteur on the OPT, self-determination is closely linked to the notion of territorial sovereignty, as the right can only be exercised within a territory. The ICJ Advisory Opinion supported this contention when it noted:

Al-Haq, Law in the Service of Man
Shawan Jabarin
+972 2 295 4646
shawan@alhaq.org

[C]onstruction, along with measures taken previously, thus severely impede the exercise by the Palestinian people to self-determination, and is therefore a breach of Israel's obligation to respect that right.

Request to the Council

While the Council is a new body, we urge it to recognise that without international engagement of another sort, facts on the ground will soon preclude the possibility of the realisation of the Palestinian right to self-determination.

Recognising the limits of the Council's mandate, we respectfully urge the following:

- Issue a resolution calling on Israel to adhere to binding Security Council resolutions in order to bring about an end to the Israeli occupation of the OPT and a meaningful realisation of the Palestinian right to self-determination.
- Issue a resolution calling upon all member states to respect their obligations under international law to refrain from rendering any form of support to Israel which impedes a meaningful realisation of the Palestinian right to self-determination.
- Recommend to the General Assembly that it request, according to its authority under Article 96 of the UN Charter, that the ICJ render an advisory opinion on the legal consequences of a regime of prolonged occupation with features of colonialism and apartheid as recommended by Special Rapporteur John Dugard in his report (A/HRC/4/17) to the Council during its fourth regular session.