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UN Human Rights Council – 53rd Session

Written Submission on Item 7

Israel's Denial of Return: Strategy of Deprivation of Liberty and the Denial of the Right to Reparations and Palestinian Self-Determination

The negation of the right of return is often denied proper consideration when analyzing Israeli policies that culminate in the deprivation of Palestinian liberty. In the context of the ongoing forced population transfer of the Palestinian people, denial of return is essential to the overall policy of ethnic cleansing carried out by the Israeli colonial-apartheid regime. On the one hand, it perpetuates the displacement of Palestinians and facilitates further displacement away from their homes and lands, as a result of the ongoing instability preserved by the denial of reparations including return. On the other, the lack of accountability of Israel for its ongoing denial of reparations promotes future displacement and encourages Israel to continue to displace Palestinians from their homes.

Israel's denial of the right of return strategically deprives Palestinians of their right to self-determination, as both rights are intrinsically dependent and inseparable, and without one, the other cannot be fulfilled. The Israeli policies and practices that deny the Palestinian people's rights to return and self-determination go beyond mere human rights violations. Rather, they constitute the Israeli regime's three main pillars: Palestinian displacement and transfer, colonization, and apartheid. These pillars, which are translated into Israeli laws, policies, and practices, aim to control the maximum amount of land with the minimum number of Palestinians.

For more than 75 years, the Israeli-perpetrated ongoing Nakba has resulted in the protracted forced displacement of 66 percent of the Palestinian people. As a result, 9.17 million Palestinians have experienced forced displacement and/or transfer, constituting the largest and most protracted displaced population in the world.[1] Correspondingly, the perpetuation of the ongoing Nakba – made feasible by the lack of practical measures to hold Israel accountable for its international crimes – reflects the extent of international complicity with the Israeli colonial-apartheid regime in Palestine. This submission will outline the obligations of both the Israeli colonial-apartheid regime as well as the international community, and will then discuss the tools and strategies used by both actors to perpetuate the ongoing deprivation of liberty faced by Palestinians, via the denial of their right to return.

Israel's obligations vis-à-vis forcibly displaced Palestinians

Israel is under an obligation to protect Palestinians from arbitrary or forcible displacement, and this includes obligations towards both Palestinians with Israeli citizenship, as well as Palestinians in the

occupied Palestinian territory (oPt). Within Palestine's 1948 borders, Israel has also continually and intentionally displaced Palestinians with Israeli citizenship within and outside that territory from key strategic areas through the implementations of policies including land confiscation, discriminatory planning and zoning, denial of services, and institutional discrimination. Similarly, as the occupying power in the oPt, Israel has established a system of oppression and forcible transfer aimed at transferring Palestinians from their homes in order to empty the land for further colonization.

Additionally, Israel is under an obligation to provide reparations for the injuries caused, which include the right of return. Facilitating return, however, is inimical to the mission of the Zionist colonial project upon which Israel is built – that is, the mission of acquiring the largest amount of land with the minimum number of Palestinians and subsequently manufacturing a 'Jewish majority'. Israel's widespread and systematic policies and practices of forcible displacement and transfer of the Palestinian people[2] depart from the active denial of Palestinian refugees' right of return and other durable solutions, set forth in UN General Assembly Resolution 194(III) of 1948. These policies and practices include barring refugees from returning to their original homes (1950 Law of Return and 1954 Prevention of Infiltration Law), mass denationalization against Palestinian refugees (1952 Israeli Citizenship Law), confiscation of private property (1950 Absentees' Property Law), and contemporary smear campaigns against UNRWA to encourage its defunding.[3]

Obligations and Complicity of the International Community

Considering that Israel refuses to meet its obligations under international law and to facilitate the right of return of Palestinian refugees, third party states have a responsibility to intervene. Pursuant to the Draft Articles on State Responsibility for Internationally Wrongful Acts, serious breaches of peremptory norms, which include both colonization and apartheid, prompt the liability of states in two ways: a positive duty to "cooperate to bring to an end through lawful means any breach," and a negative duty not to "recognize as lawful a situation created by a serious breach [...] nor render aid or assistance in maintaining that situation".[4]

The international community has been voting in favor of resolutions recognizing the right to reparations for Palestinian refugees and internally displaced persons (IDPs), but has not shown sufficient political will to properly and effectively pressure Israel into compliance. More specifically, there are numerous UN resolutions calling for the implementation of prior UN resolutions 194 and 237, but no international organization has been assigned to provide protection for Palestinian refugees and to actively engage in the search for a comprehensive solution to the Palestinian refugee and IDP issue since the early 1950s. Rather, international politics has confined the UN to a guardian of Palestinian refugee rights and limited its role to providing humanitarian aid, personified by UNRWA. Moreover, solutions have been left to political negotiations between the parties, which are undertaken specifically outside the ambit of international law. These negotiations have been subject to a balance of power that is in Israel's favor, and Israel, in turn, has sought at all times to avoid recognition and implementation of the right of reparations.

In fact, through the continuous financial, military, and political support offered to Israel by multiple states, along with the harrowing impacts of conditional funding restrictions placed on UNRWA and Palestinian civil society organizations, the international community is directly complicit in promoting further Palestinian displacement and deepening Israeli impunity.[5] The unwillingness of the international community to effectively pressure Israel and to facilitate reparations results in the ongoing and ever-increasing exile and dispossession of the Palestinian people. As long as the international

community continues to provide support to Israel, and does not intervene and apply pressure on Israel to provide reparations, the Israeli colonial-apartheid regime will continue to have the tacit consent to proceed with its breaches of international law, and the number of forcibly displaced Palestinians will continue to increase.

Conclusion and Recommendations:

The Palestinian people have systematically been deprived of their liberties and denied their enjoyment of their legitimate right to return. It is imperative to recognize and address the root causes of 75 years of ongoing forcible displacement and continued denial of reparations of the Palestinian people by Israel. The international community bears the duty to decolonize Israel's colonial-apartheid system, and end its impunity, thus facilitating the Palestinian people's right of return. BADIL, therefore calls on:

- The Council to recognize the urgent need to dismantle the Israeli colonial-apartheid regime through addressing the root causes of the ongoing forcible displacement and continued denial of the rights to self-determination and reparations of the Palestinian people by Israel;
- The Council to reaffirm and implement the inalienable rights of refugees and IDPs to repatriation to their homes, land and property restitution, compensation for all losses and damages sustained, and guarantees of non-repetition;
- The Council and other UN institutions to develop mechanisms and take effective measures to bring Israel into compliance with international law, including pursuing responsibility and accountability for injuries, loss of life and property through independent investigatory processes, in turn ensuring reparations to victims and prosecution of perpetrators of serious international human rights and humanitarian law violations;
- The Council and other UN bodies to utilize all available legal mechanisms that obligate third states to refrain from supporting and/or investing in infrastructure and services that reinforce Israel's colonial-apartheid strategy and to cut all investment ties with Israel and its companies as well as international companies involved in the Israeli colonial-apartheid regime.
- The Council and its member states to take all measures available within international law, including severance of diplomatic relations, as well as economic, military, and cultural and athletic sanctions to hold Israel accountable for its policies and practices of colonization and apartheid.

ENDNOTES:

[1] See BADIL, 'Survey of Palestinian Refugees and Internally Displaced Persons 2019-2021' (2022) X Survey of Palestinian Refugees & IDPs https://www.badil.org/cached_uploads/view/2022/10/31/survey2021-eng-1667209836.pdf.

[2] See BADIL, Series on Forced Population Transfer: The Case of Palestine, working papers no. 15 - 23, available at: <https://www.badil.org/en/publication/research/working-papers.html>.

[3] BADIL, 'UNRWA, Ongoing Target of Israel's Normalization Strategy, Must be Upheld by the International Community' (BADIL, 2021) <https://badil.org/press-releases/565.html>.

[4] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (November 2001) Supplement No. 10 (A/56/10), chp.IV.E.1, art 41(2) http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

[5] See BADIL, 'Shrinking Spaces in Palestine: An Israeli Colonial Strategy to De-Politicize Palestinian Civil Society' (2022) 60 Al Majdal https://www.badil.org/cached_uploads/view/2022/08/26/al-majdal60-1661506113.pdf; BADIL, *USA-UNRWA Framework Agreement: Assistance or Securitization?* (Working Paper No. 29, BADIL 2022) https://badil.org/cached_uploads/view/2022/02/21/wp-29-unrwa-eng-1645448404.pdf; BADIL 'European Union Conditional Funding: Its Illegality and Political Implications' (2020) https://www.badil.org/cached_uploads/view/2021/04/20/europeanunionconditionalfunding-positionpaper-april2020-1618905422.pdf.