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### Human rights situation in Palestine and other occupied Arab territories

## Written statement\* submitted by BADIL Resource Center for Palestinian Residency and Refugee Rights, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2019]

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\* Issued as received, in the language(s) of submission only.



## Palestinian Refugees and IDPs: fortifying UNRWA and closing the protection gap

### Introduction

Since 1948, the Palestinian people have been exposed to systematic and ongoing forcible displacement and transfer. This forced displacement and transfer is coupled with the denial of the right to reparations. As such the mechanisms, policies and practices employed by Israel have created, maintained and augmented the displaced Palestinian population. Currently, Palestinian refugees and internally displaced persons (IDPs) constitute 8.7 million<sup>1</sup> - 67 percent of the Palestinian people. This dilemma is exacerbated by an ever-expanding protection gap resulting from a deterioration in and absence of existing protection mechanisms and the unwillingness of the international community to fulfill its obligations and responsibilities towards the Palestinian people.

### Forced displacement and transfer and the denial of reparations

In 1948 and in 1967, Israel relied predominately on the force derived from armed and violent conflict to ethnically cleanse and expel significant Palestinian populations from their places of origin or habitual residence. For example, in 1948, a series of military plans – spearheaded by Plan Dalet - were implemented by Zionist militias that were later absorbed into the Israeli military forces.

In addition, Israel also deploys a number of policies that create a coercive environment to forcibly transfer Palestinians in the Occupied Palestinian Territory (OPT). These policies include the denial of residency, the installment of a permit regime, land confiscation and denial of use, discriminatory zoning and planning, denial of access to natural resources and services, segregation and isolation, and the suppression of resistance.<sup>2</sup>

Israeli displacement and transfer are coupled with the ongoing denial of the right to reparations<sup>3</sup> (i.e. voluntary repatriation, property restitution, compensation and guarantees of non-repetition) either directly or indirectly. For example, hundreds of Palestinian villages and localities were demolished between 1948 and 1952, in order to prevent and impede Palestinian return. Then in 1954, the Israeli Knesset ratified the Prevention of Infiltration Law,<sup>4</sup> which bore significant consequences for Palestinians that attempted to return after the cessation of armed conflict in 1948. A number of other laws were also enacted to deny reparations,<sup>5</sup> such as the Absentee Property Law,<sup>6</sup> Law of Return,<sup>7</sup> and the more recent Israeli Nation State Law.<sup>8</sup>

<sup>1</sup> BADIL Survey of Palestinian Refugees and IDPs, 9th Edition (to be released), this number includes 5,545,540 M 1948 refugees registered with UNRWA; 1,161,812 M 1948 unregistered refugees; 1,237,462 M 1967 refugees; 415,876 internally displaced inside the Green Line and 344,599 internally displaced in the Occupied Palestinian Territory (OPT).

<sup>2</sup> For more information see BADIL's working paper series, Forcible Transfer: the Case of Palestine, "Denial of Residency", "Installment of the Permit Regime", "Land Confiscation and Denial of Use", "Discriminatory Zoning and Planning", and "Suppression of Resistance", all available at <http://www.badil.org/en/publication/research/working-papers.html>.

<sup>3</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, November 2001, Supplement No. 10 (A/56/10), Art 31, available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf); and more specifically the right of return enshrined under Rule 132 of Customary IHL; Art 6 and 158 of the Fourth Geneva Convention; Art. 13(2) of the Universal Declaration of Human Rights (UDHR); and Art 12(4) of the International Covenant on Civil and Political Rights (ICCPR).

<sup>4</sup> Law for the Prevention of Infiltration (Offences and Judging), 5714-1954, SH No. 16, 160, (as amended)(Isr.).

<sup>5</sup> BADIL, "Forcible Transfer: the Case of Palestine, Denial of Reparations", Working Paper No. 22, October 2018, available at <http://www.badil.org/en/publication/press-releases/87-2018/4901-pr-en-091008-31.html>.

This ongoing denial of reparations generates a particular vulnerability in Palestinian refugees to further displacement and emboldens Israel's policies of forcible transfer.<sup>9</sup> This can be seen with Palestinian refugees displaced from the Syrian Arab Republic, often identified as the most vulnerable group affected by the conflict,<sup>10</sup> and in the Occupied Palestinian Territory (OPT) where forcible transfer continues unabated.

## The protection gap

While the United Nations mandated two agencies to provide assistance and protection to Palestinian refugees and IDPs; both have struggled and/or failed to ensure basic and inalienable rights. The United Nations Conciliation Committee on Palestine (UNCCP), established by UNGA Resolution 194 and tasked to ensure the right to reparations, was quickly relegated to a nominal and dysfunctional agency.

The United Nations Relief and Works Agency (UNRWA), created in 1949 and assigned to administer basic needs and services, suffers from structural deficiencies that include the lack of a sustainable funding mechanism, a needs-based rather than a rights-based definition of 'Palestine' refugee, and limitations in its legal and geographic mandate.

Compounding UNRWA's shortcomings is the recent systematic attacks against the Agency by the administrations of the United States of America and Israel.<sup>11</sup> These attacks aim to cripple the Agency's ability to fulfill its mandate by undermining its funding, further limit the refugee definition, and transfer international responsibility for Palestinian refugees to host and Arab states. UNRWA's current budget deficit stands at \$200 million<sup>12</sup> and, without a mandatory financing mechanism that would ensure financial stability, the agency will continue to suffer from chronic financial crisis. The United States of America/Israel strategy aims to have Arab and host states assume financial and operational responsibility, replacing UNRWA, an agency that reflects international responsibility for Palestinian refugees.

The protection gap is further exacerbated by the absence of effective protection<sup>13</sup> for Palestinian refugees experiencing secondary displacement, such as those in Syria, Iraq, Kuwait and Yemen. These refugees are unable to access the protection mechanisms offered by the United Nations High Commissioner for Refugees (UNHCR) due to narrow interpretations of Article 1D of the 1951 Refugee Convention, nor UNRWA, due to the Agency's legal and geographic limitations.

<sup>6</sup> Absentee Property Law, 5710-1950, SH, No. 37, 86. An English translation of the law is available at: <https://unispa.un.org/DPA/DPR/unispa.nsf/0/E0B719E95E3B494885256F9A005AB90A>.

<sup>7</sup> Law of Return, 5710-1950, 4 LSI 114 (1949-1950) (Isr.)

<sup>8</sup> Basic Law: Israel - the Nation State of the Jewish People, 5778-2018, (Isr.). An English translation of the law is available at <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>; also see BADIL, "The Nation State Law: the Culmination of 70 years of Israeli Apartheid and Colonization", October 2018, available at <http://badil.org/en/publication/research/in-focus.html?download=1289:nationstatelaw-positionpaper-badil-oct2018>.

<sup>9</sup> BADIL, *supra* note 5, p.66-68.

<sup>10</sup> UNHCR and Lebanon Government, *Lebanon Crisis: Response Plan 2017-2020 (2018 update)*, January 2018, p.11,13,37, available at: <https://data2.unhcr.org/en/documents/download/61740> [accessed 1 May 2019].

<sup>11</sup> BADIL, "Understanding the political underpinnings of UNRWA's chronic financial crisis", Bulletin No. 27, July 2018, available at [http://www.badil.org/phocadownloadpap/Badil\\_docs/bulletins-and-briefs/bulletin-no27-unrwa-financial-crisis.pdf](http://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/bulletin-no27-unrwa-financial-crisis.pdf).

<sup>12</sup> <https://www.palestinechronicle.com/unrwas-budget-deficit-reaches-200m/>.

<sup>13</sup> BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States signatories to the 1951 Refugee Convention*, 2<sup>nd</sup> edition, February 2015, Chapter 5, available at <http://www.badil.org/phocadownloadpap/badil-new/publications/Handbook-art1d/Art1D-2015Handbook.pdf>.

### Obligations of Third Party and UN member States

In situations in which states are unable or unwilling to provide protection, it is incumbent on third party and UN Member States to intervene and provide protection.<sup>14</sup> It is clear that, as the ongoing Nakba enters its 72<sup>nd</sup> year, Israel continues to shirk its obligations as the occupying power, and its international responsibilities as a Member State of the UN, which are dictated in numerous international conventions and UN resolutions. Israel is bound, inter alia, by the Universal Declaration of Human Rights, international customary law, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), UNGA Resolution 194 of December 1948 and UNSC Resolution 237 of 1967, just to name a few. These same conventions and resolutions define intentional responsibilities and obligations of other states towards the Palestinian people.

### Recommendations

In recognition of World Refugee Day, which indicates the international community's acknowledgement and recognition of its responsibilities towards displaced populations and groups, and, as Palestinian refugees and IDPs constitute the world's largest and most protracted displaced population,<sup>15</sup> BADIL calls on third party and UN Member States to uphold international law to hold Israel accountable and demand fulfillment of their obligations.

As the only active international, UN-mandated agency servicing Palestinian refugees, measures are required to maintain UNRWA's international character, and provide the needed inputs and adjustments to its mandate to ensure and enhance its continued viability. Such inputs and adjustments could be established within a UN resolution that:

- Reaffirms UNRWA is an international agency with a permanent mandate until such time that UNGA Resolution 194 and UNSC Resolution 237 are implemented and stresses the impermissibility and illegality of transferring UNRWA's responsibilities to host and Arab countries;
- Develops and deploys a mandatory funding mechanism to permanently alleviate UNRWA's chronic funding crisis and allow the Agency to focus its efforts on providing core and essential services;
- Aligns the UNRWA definition with the international refugee definition as per the 1951 Refugee Convention, regional definitions and international standards;
- Expands UNRWA's geographic scope to include all Palestinian refugees and internally displaced persons (IDPs) in the areas where they are present, and not only UNRWA's current five areas of operation;

Expands UNRWA's legal mandate to explicitly include legal and physical protection, including the protection and management of refugee and IDP property.<sup>16</sup>

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<sup>14</sup> ILC Draft Articles on State Responsibility, *supra* note 3.

<sup>15</sup> UNHCR, *The State of the World's Refugees*, April 2006, 106, available.

<sup>16</sup> UN General Assembly, *Palestine refugees' properties and their revenues*, A/RES/72/83, 14 December 2017, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/72/83](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/83) [accessed 28 May 2019].