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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by Europe-Third World Centre, a non-governmental
organisations in general consultative status

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

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*This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

The right of return for the Palestinians refugees: Right, Justice and Reconciliation

1. There are millions of refugees and displaced people all over the world. Forced to exile or to live somewhere else than their usual places of residence, - having lost all their real estate and personal property- most of these individuals live under very precarious conditions. This is the reason why the question of refugees and displaced persons is the subject of a particular attention as much at the regional and national level as at the universal level. In this statement, the Europe-Third World Centre (CETIM) would like to draw the Sub-Commission's attention to the case of the Palestinian refugees.

An imprescriptible and inalienable right of the Palestinian people

2. The right of return of the Palestinian refugees is the thorniest subject concerning the Israeli-Palestinian conflict. 85% of the inhabitants in the historic Palestine have been expelled from 531 of their cities and villages, which means more than two thirds of the Palestinian population. Thus, nearly four million refugees are currently registered at the UNRWA (United Nations Relief and Works Agency). This Palestinian population is split up between the camps of the West Bank of Jordan, Gaza, Jordan, Lebanon as well as Syria and is composed of the displaced, who lived in Palestine from the 1st of June 1946 to the 15th of May 1948 as well as their descendants, who lost their place of residence and their livelihood because of the 1948 conflict. There is nearly 1 more million refugees who have not been listed, such as the residents of the Palestine under mandate between 1948 and 1967, residents from outside the zone of intervention of the UNRWA (Egypt, Iraq), the refugees of 1967 or wealthy Palestinians, exiled in 1948 and not registered by the UNRWA.

3. For Palestinians, this is about an inalienable right with a deep symbolic impact. There will be no lasting peace without a fair and equitable settlement of the question concerning Palestinian refugees. This settlement would mean the acceptance by Israel of the expulsion and dispossession of the Palestinian people in 1948 and 1967, but these are subjects that remain in the unconscious of the community and also of the Israeli official historiography as taboos - the expulsion is still denied. This fair and equitable settlement needs the recognition of Israel's direct responsibility in the immense harm and the infinite damage suffered by the Palestinians.

4. The right of return breaks down two of the myths that founded the State of Israel: the slogan of a Palestine as "a land without people for the people without a land», as well as the parallel myth (and contradictory in a sense) of the voluntary departure of, only, 500 000 Palestinians, under the bordering Arab governments' orders, which promised them a quick return after the victory.

5. Indeed, the description of a Palestine in ruins, under populated of nomads short of civilisation has for a long time fed the Zionist propaganda since the end of the 19th century. The concept of “a land without people for the people without a land” has led to the birth of the perpetual and perpetuated matter of the “transfer” of population living there, resulting in a perception of Palestinians as a non-existing nation and non-attached to the land of Palestine. So, their belonging to the Arab nation and its vast territories makes their “transfer” more feasible. As a consequence, the massacres and atrocities committed against Palestinian civilians by Jewish extremist groups such as the Irgoun (of Menahem Begin), the Lethi (Itzhak Shamir), the Stern, the Haganah and the Palmach are going to be presented as acts of uncontrolled groups. There is another myth that refers to “exchange of population” between the Arab Palestinian population and the Arab Jews from Morocco, Yemen, and Iraq, who settled in Israel after 1948.

The official historiography from Israel into question: the myths of the Palestinians’ voluntary exodus and the mortal threat for Israel.

6. An analysis of the historic archives carried out by Palestinian researchers and historians (Walid Khalidi, Nur Masalha, Elias Sanbar), as well as “new historians” (Ben Morris, Tom Segev) and “post-Zionist” Israeli historians (Ilan Pappé) demonstrates a completely different reality. They gave proof of the planned expulsion of 750 000 Palestinians in 1948. On the one hand, BBC’s radio archives do not reveal any trace of an Arab or Palestinian call exhorting to exodus (Vidal, 2000:125). On the other hand, the analysis of the Dalet Plan or D Plan clearly reveals the intention of the Zionist high commander to conquer the Arab Palestine, to destroy its community and expel its members in order to create the State of Israel (Khalidi, 2002:66). The meticulous analysis of the report by the intelligence services of the Haganah on 30 June 1948 shows that 73% of the departures, with 400 000 Palestinians constrained to exile before the arrival of the Arab armies in June 1948, were caused by the Israelis. (B. Morris and T. Segev quoted by Vidal, 2002: 126). Nearly 35 massacres were committed in order to submit the remaining population to a military and psychological pressure so as to accelerate the exodus (Abou Sitta, 2000: 16-20).

7. Furthermore, the systematic policy of plundering and property robberies has been recently brought to light by the opening of the Israeli archives (B.Morris quoted by Marsalha, 2002:45-46). In December 1948, Israelis passed a law on the abandoned properties, in order to legitimate the expropriation of nearly 92% of the territory. Palestinians that had been expelled were declared absent, so as to make it possible to get hold of their lands and homes. According to an Israeli historian, Simpha Flapan, 300 000 hectares of land, 73 000 dwellings in the abandoned homes, 7800 shops, workshops and warehouses and 5 million of Palestinians pounds, which were on bank accounts, were stolen (Vidal, 2002: 129). This policy continued until the second expulsion of 150 000 Palestinians (which will be followed by 300 000 more), during the 1967 War.

8. For Israeli officials, the right of return is an extremist claim, which would destroy the national character of Israel (Shimon Perez *dixit*). Some Israeli “pacifists” do not hesitate to take this argument in line with the idea of ethnic purity, according to which “the recognition of the Palestinian right of return will provoke the abolition of the Jews’ right of self-determination. Thus the Jews would become an ethnic minority, to the mercy of the Arabs (Amoz Oz, *Le Monde*, 9th of January 2001). But what about the Palestinians right to self-determination? What about their right of return and the exercise of their most basic rights?

The right of return: an internationally recognised right

9. The right of return, included in the right of peoples to self-determination, implies the freedom of everyone to come back to his/her country, the right to enjoy the liberty to go and come. This right falls within the scope of rights proclaimed by the International Charter of Human Rights (article 13 of the Universal Declaration of Human Rights of 10 December 1948) as well as the Covenant on Civil and Political Rights of 16 December 1967 (article 12). Israel did not adhere to it until 1991 but the established norm constitutes customary law and applies to countries for any situation prior to their conventional engagement (Chemillier-Gendreau, 2002:299). Moreover, the Geneva Conventions of 12 August 1949 proclaim the right for “a national community to be protected in its integrity in case of conflicts and aggression or armed occupation by others”; article 49 of the Fourth Convention “protects the people in its collective subsistence” (Chemillier-Gendreau, 2002:301).

10. The United Nations has also contributed to the strengthening of the right of return. On the 11th of December 1948, Resolution 194 (III) of the United Nations General Assembly “resolves that refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date” (paragraph 11). The five permanent members of the Security Council, including the United States, have confirmed this decision, year after year. Indemnities will have to be paid as a compensation for the goods of those who did not want to go back home. The same resolution creates the United Nations Conciliation Commission for Palestine (UNCCP), which is the principal organ of the United Nations in charge of the question of the indemnities. Until 1964, this Commission took responsibility for estimating the importance and value of the refugees’ goods; these important historical documents, which were archived in 1964, attest the historical validity of the goods and values and establish an essential milestone for future evaluations. In all, the General Assembly adopted 49 resolutions on the question of the right of return thus establishing “modes of expression which collectively acquired a “compulsory force” by the “*opinio juris*” that they express” (Chemillier-Gendreau, 2002:305). In addition, Security Council waited till the expulsions of 1967 to adopt Resolution 237 of June 1967, which urges Israel to facilitate the return of the inhabitants who left and took refuge after the outbreak of hostilities.

The right of the strongest and the peace negotiation

11. After the start of the peace negotiations between Israel and Palestinians in 1991, it has been decided that the negotiation about the right of return would be inserted in the “questions on the final statute”, in order to postpone these difficult transactions to a subsequent stage. This approach maybe arose hope to some people that the demanding of the right of return would die out by itself. But the recognition by the Palestinians of the existence of Israel cannot give in to the injunctions from all pragmatics, who put forward the necessity of a “realistic” approach. An inquiry carried out by a British parliamentary commission about the first victims at the 1948 war makes it clear their will to go back to their land of origin- a step that would represent an important condition for the reconciliation (JPMEC, 2001:quoted by Fargues, 2002:356-357).

12. As the famous Palestinian historian, Elias Sanbar, emphasizes, we must distinguish between the recognition of the right of return and its implementation (Sanbar, 2002:388). The “realistic” modalities and possible scenarios of the return can then be negotiated, as well as the possibility for the refugees (and only for them) to waive this right in exchange for a bearable indemnity. Such an indemnity must concern the lost goods as well as any moral damages suffered because of the expulsion and the interdiction of return.

13. In order to gain a real recognition, which would mean its legitimacy at a regional level, Israel should recognise its direct responsibility in the massive expulsion of the Palestinian people. The symbolic impact would be significant. The duty of memory, which is fairly asked for by Israeli representatives to the European countries, is a universal duty for all. The demographic, economic and security argument is part of the myth about a continuous threat to the survival of Israel. But the key for a real security is a deep reconciliation, with the recognition by Israel of the serious injustices infringed on Palestinians since 1948. A real peace cannot emerge from the armed force, demanding refugees and their descendants who are rooting for more than fifty years in refugees’ camps to accept that their right of return will be buried in the meanders of an international negotiation. Ultimately, as Ilan Pappé (Israeli political post-Zionist scientist) says: “The Right Of Return is the Road Map to peace” (The Palestine Right to Return Coalition, Al Awda, London, 15th of May 2003)

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