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THE CLOCKWORK OF ONGOING NAKBA: UNRAVELING FORCED POPULATION TRANSFER



Ramle 1948



Naqab 2010



Jerusalem 2012



Imwas 1967

BADIL takes a rights-based approach to the Palestinian refugee issue through research, advocacy and support of community participation in the search for durable solutions.

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Editorial

6.8 million Palestinian refugees and counting...
Towards a popular strategy for resisting forcible displacement
by Thayer Hastings2

Commentary

Zionist apartheid: a crime against humanity
by Amjad Alqasis.....5

Photo Story

Lifta and Battir: Parallel Cases of Ongoing Nakba in the Jerusalem District
by BADIL's ONEC Staff8

Feature

Implementing States' Obligations to Combat Population Transfer
by Joseph Schechla.....13

Forced Population Transfer: the Role and Strategy of the Palestinian Authority
by Mohammad Elias Nazzal.....18

Palestinian Claims for Reparation in International Context
by Mick Dumper.....21

Interview summary from Beit Safafa: a dissection of a village, the destruction of life
by Halimah Al Ubeidiya and Wassim Ghantous.....24

Interview summary from Susya: relentless displacement
by Halimah Al Ubeidiya and Wassim Ghantous.....27

Practicing Truth to Power: A report about BADIL's latest work to combat Forced Population Transfer
by BADIL Staff30

Documents

Written submission to the 23rd Human Rights Council Session
by BADIL37

Written submission to the 22nd Human Rights Council Session
by BADIL39

6.8 million Palestinian refugees and counting... Towards a popular strategy for resisting forcible displacement*

by Thayer Hastings

BADIL's Conference on Forced Population Transfer, 4 June 2013
(© RW/BADIL)



The central issue to the Palestinian-Israeli conflict continues to be the mass displacement of Palestinians. The creation of refugees, currently 6.8 million, as well as creation of internally displaced persons, more than 600,000 on both sides of the Green Line, and refusing their right of reparation including their Right of Return is the main component of the [ongoing Nakba](#). The violent uprooting of Palestinians from their homeland was waged in an evolving way from 1947 to the present. Al-Majdal's 53rd issue seeks to highlight this continuous crime. Our feature section profiles material presented in BADIL's 4 June 2013 Conference on Forced Population Transfer, a preliminary response at coordinating a comprehensive defense against forcible displacement. The Clockwork of Ongoing Nakba: Unraveling Forced Population Transfer is intended to provide primary sources, extracts from BADIL's conference and legal analysis – a roundup of the major components of our emerging work.

Forced population transfer is one of the gravest breaches of human rights, punishable as both a war crime and a crime against humanity. It is a term of international law that describes the ongoing Nakba. The [Rome Statute](#) of the International Criminal Court states: “[d]eportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts” (see Joe Schechla's paper, “*Implementing States' Obligations to Combat Population Transfer of Palestinians*”, page 13).

United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities conducted a [study](#) in 1992 finding that a “[t]ransfer can be carried out en masse, or as ‘low-intensity transfers’ affecting a population gradually or incrementally.” Today, [66 percent of 11.2 million Palestinians](#)

[worldwide](#) are, or are descendants of, people who have been forcibly displaced (refugees or internally displaced persons). The proportion is increasing.

Forced population transfer is an ideological and a structural problem targeting Palestinian communities on [both 'sides' of the Green Line](#) (see the photo story on page 8). Many Israeli laws and policies combining the worst features of colonization, institutionalized discrimination and belligerent occupation were developed and applied over the years in order to facilitate control of maximum land with minimum Palestinians. BADIL's new [Handbook](#) and five accompanying brochures seek to stymie forced population transfer and preliminarily focus on residents of West Bank Area C, East Jerusalem and the Gaza Strip Buffer Zone. The resources advocate for using both the law and extralegal strategies of defense.

The Handbook and brochures overview Israeli state practices used to implement displacement drawing from court decisions, legislation, military orders and original interviews with affected individuals. Although the resources are not a substitute for qualified legal advice, they seek to support at-risk Palestinians in their struggle by compiling and distributing information. The information may help Palestinians delay or counteract Israeli strategies of displacement.

The ability of targeted Palestinians to prevent their displacement is rare and limited. Thus, engaging with the unjust Israeli legal and judicial systems is purposed with the narrow aim of buying time or reducing the extent of damages. The legal challenges of Palestinians to forcible displacement are strengthened when coordinated with a popular struggle, a consistent on the ground presence, residency, cultivation and investment in property, and utilization of the media.

One of the legal tools for displacement, [Military Order 1651](#), provides the logic, twisted as it is, for restricting Palestinian use of 18 percent of West Bank land through the declaration of 'closed military zones' or 'firing zones'. Israel appropriates the land for its military, using multiple methods of coercion to evict residents. The case of [Firing Zone 918](#) is an example of this strategy applied to 12 Palestinian communities in the South Hebron Hills (see BADIL's interview with a resident of Susya on page 27). The communities are organizing in parallel to the [judicial process](#) as are other Palestinian communities in the spotlight of forcible displacement today (see BADIL's report about its latest work on the issue of forced population transfer on page 30).

The Palestinian Bedouin of the Naqab have mobilized mass actions against the Israeli government [approved](#) Praver Plan threatening up to 70,000 with displacement. A new UNRWA [report](#) studies Israel's forcible transfer of Palestinian Bedouin communities to the al-Jabal garbage dump in the Jerusalem area, a too common case of multiple displacement. The communities of [al-Walaja](#), [Battir](#) and [Cremsan Valley](#) all have developments relating to Israel's construction of the Annexation Wall through their lands. Media attention and authentic solidarity are ways individuals and organizations can support the communities' struggles.

At BADIL's conference, attorney Suhad Bishara of Haifa-based Adalah: The Legal Center for Arab Minority Rights in Israel echoed many of the presenters when she said, "International Law might be a good or legitimate tool as long as it is part of a strategy." Bishara went on to emphasize the need for a strategy coordinating resistance within Israeli military and civil law while leveraging international law. In conclusion, she said "we need a process of de-fragmentation."

The 53rd issue of al-Majdal features contributions to the forced population conference. Two BADIL-conducted interviews highlight the necessity of drawing our analysis and relevancy from the Palestinian

people and their concerns. The first interview profiles Alaa Salman of East Jerusalem. The second interview profiles Nasser Nawaja'a of the South Hebron Hills. Both witnesses face state-organized forcible transfer and presented public testimonies at BADIL's conference. We include a paper by Professor Joseph Schechla, the coordinator of the Housing and Land Rights Network of the Habitat International Coalition, in which he embarks from his presentation at the conference to detail states' obligations in the context of forced population transfer in Palestine and incorporates recent European Union developments into



the framework. We publish an expanded version of the presentation delivered at BADIL's conference by Palestinian Authority's Mohammad Elias Nazzal who heads the Wall and Colonization Portfolio. Mick Dumper, Professor in Middle East Politics at the University of Exeter, offers a paper on precedents for implementing restitution and compensation for Palestinian refugees, which was the basis for his presentation at the conference. A BADIL report on the field visits following our conference documents the work BADIL is embarking on in connection with common Palestinian struggles. In addition to features covering important components of the conference, this issue also includes a commentary explaining forced population transfer's central role to the practice of Zionism in Palestine by BADIL's Amjad Alqasir and a photo story of two Jerusalem villages on either side of the Green Line compiled from documentary work produced by [BADIL's Ongoing Nakba Education Center](#). This installment of al-Majdal is intended to provide primary sources, extracts from BADIL's conference and analysis – a roundup of the major components of our emerging work on forced population transfer.

Palestinians within the homeland are facing a concerted effort coercing their migration. A defense of Palestinian rights must take into account the context of advancing Israeli colonization and meek [responses](#) from the PLO/PA. In the meantime, more than half of the 530,000 Palestinian refugees in Syria have been [displaced again](#) by fighting; over 1,000 Palestinians were killed. Palestinian refugees residing in Lebanon, Jordan, Egypt and other states are subject to discriminatory policies. Ongoing displacement and refusing the Right of Return compound previous wrongs. A Palestinian strategy that attempts to stem the flow of ongoing forcible transfer, reducing the potential damage done, can be implemented while we pursue avenues for implementing the right of reparation, including the rights of return, restitution and compensation.

**This editorial is adapted from a BADIL op-ed originally published on Mondoweiss 1 August 2013.*

*** Thayer Hastings is a legal researcher at BADIL.*

Zionist apartheid: a crime against humanity

by Amjad Alqasis



Israeli Annexation Wall near 'Aida Refugee Camp - Bethlehem, October 2012
(© Richard Wainwright)

In 1973, the United Nations rightly condemned “the [unholy alliance](#) between Portuguese colonialism, South African racism, Zionism and Israeli imperialism.” Only two years later, it determined “that [Zionism is a form of racism](#) and racial discrimination.” At the behest of the U.S. administration, this resolution was revoked in 1991 in order to pave the way for the Madrid Peace Conference that same year; however, equating of Zionism with racism is still valid.

Apartheid is based on the establishment and maintenance of a regime of institutionalized discrimination in which one group dominates others. In the case of Israel, Zionist ideology is the driving force behind the ongoing Palestinian reality of apartheid. Not limited to the occupied Palestinian territory, the Israeli regime also targets Palestinians residing on the Israeli side of the 1949 Armistice Line (known as the Green Line) and millions of Palestinian refugees living in forced exile while promoting Jewish-Israeli colonization to the expropriated land. As such, the Palestinians, wherever they reside, are collectively exposed to one coherent structure of Zionist apartheid. That structure discriminates against Palestinians in areas such as nationality, citizenship, denial of reparation (return, restitution and compensation), residency rights, and land ownership. This system originated in 1948 in order to dominate and dispossess all forcibly displaced Palestinians, including the 150,000 who were able to remain within the “Green Line” and who became Palestinian citizens of Israel. The occupation of the remaining part of Palestine by Israeli forces in 1967 subjected the Palestinians living within that territory to the same Zionist apartheid regime.

The [findings](#) of the South African session of the Russell Tribunal on Palestine concluded that Israel's practices against the Palestinian people constitute the crime of apartheid within all of Palestine (also referred to as Mandate or historic Palestine). However, the Zionist Movement—and later Israel—had no interest in creating a system of apartheid in order to simply construct and maintain the domination of one “racial” group over another. Israel neither aimed to exploit the indigenous Palestinians for labor nor limit their political and social participation. Rather, its intention has always been to establish a homogeneous Zionist state exclusively for Jewish people. This has been apparent since the early years of the Zionist Movement and is further illustrated by the fact that Israel has hitherto no defined borders. Israel's former Prime Minister Golda Meir explained that “the [borders are determined](#) by where Jews live, not where there is a line on a map.” This statement, in combination with David Ben-Gurion's writings in 1937, in which he stated that “the compulsory transfer of the Arabs from the valleys of the projected Jewish state could give us something which we never had,”¹ offers broad guidelines for transferring Palestinians out and implanting Jewish settlers into the territory.

The creation of a Jewish nation state in a land with a small Jewish minority could only be achieved by forcibly displacing the indigenous population and implanting Jewish colonizers from abroad. Accordingly, Zionist apartheid's main manifestation is forced population transfer.

Forced population transfer has been defined as a practice or policy that has the purpose or effect of moving persons into or out of an area—either within or across an international border:

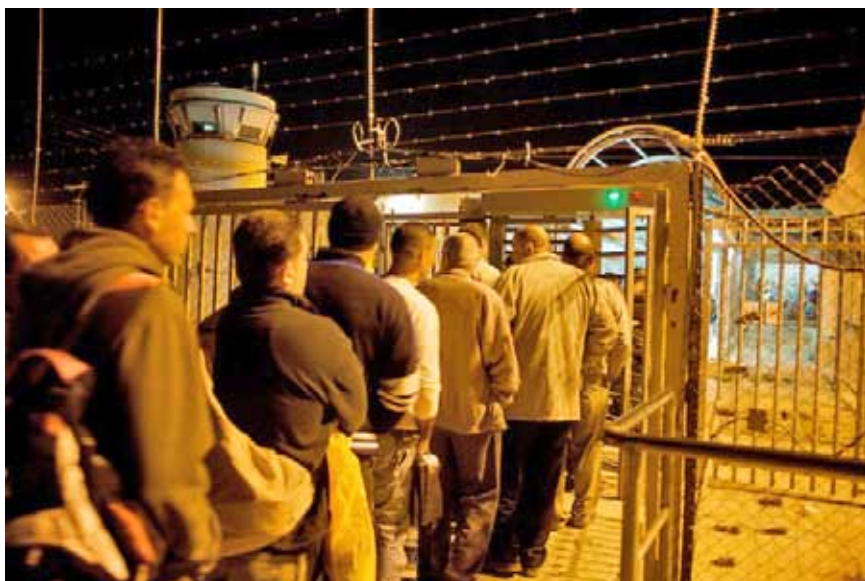
[Transfer](#) can be carried out en masse, or as “low-intensity transfers” affecting a population gradually or incrementally.

Forced population transfer is illegal and has constituted an international crime since the Allied Resolution on German War Crimes, adopted in 1942. The strongest and most recent codification of

the crime is in the [Rome Statute](#) of the International Criminal Court, which clearly defines the forcible transfer of population and implantation of settlers as war crimes.

The intention on “transfer” in Zionist thought was encapsulated in 1905 by the words of Israel Zangwill, one of the early Zionist thinkers, who stated that “if we wish to give a country to a people without a country, it is utter foolishness to allow it to be the country of two peoples.”²

Israeli military checkpoint at Qalqelyia, October 2012 (© Richard Wainwright)



Already [66%](#) of Palestinians worldwide have been displaced by Israel's [ongoing forcible displacement](#) of the Palestinian people. Today, this population transfer is carried out by Israel in the form of its overall policy of “silent” transfer—not by mass deportations like in 1948 or 1967. This displacement is silent in the sense that Israel carries it out while trying to avoid international attention by displacing small numbers of people on a weekly basis. It is thus distinguishable from the more overt transfers achieved under the pretense of warfare in 1948 or 1967.

Population transfer is achieved by creating an [overall untenable living situation](#) that leaves no choice for the inhabitants other than to leave their homes. Moshe Sharett—one of the signatories of Israel's Declaration of Independence—indicated the desire to foster onerous living conditions when he stated “a policy based on minimal fairness should be adopted toward Arabs who were not inclined to leave.”³ Therefore, Israel's apartheid system is a means to an end and not an end-goal in itself because it does not simply seek to dominate the indigenous Palestinians, but to forcibly displace them.

South Africa, on the other hand, not only invented the apartheid system, but was also proud of its creation and publicly advocated for it. The word “apartheid” itself is Afrikaans for “separateness” and became the official government policy of racial segregation in 1948. The South African apartheid structure was based on a clear-cut separation and segregation policy.⁴ It was clear from the outset that the purpose of South Africa's apartheid system was to create a permanent apartheid structure in order to preserve the established status quo. For instance, South Africa designed the 1970 *Bantu Homelands Citizens Act* to react and adapt to increasing criticism from the international community. This law established separate legal entities (Bantustans) and denaturalized the black population so the South African government could argue that the black population was no longer excluded from state affairs because by law they no longer belonged to the South African state. This attempt aimed at continuing the exploitation of the indigenous workforce and resources, thus fortifying the existing system while at the same time discarding its racist, anti-democratic image.

The international crime of apartheid and the subsequent [Apartheid Convention](#) was modeled on, but not limited to, the South African apartheid system. John Dugard wrote that “[The Apartheid Convention](#) was the ultimate step in the condemnation of apartheid as it not only declared that apartheid was unlawful because it violated the Charter of the United Nations, but in addition it declared apartheid to be criminal.” Today, Israel is guilty of committing various crimes in order to forcibly displace the Palestinian people from Palestine. Israel's crimes such as apartheid and persecution, as well as its permanent occupation and annexation-colonization, are intended to create an unbearable situation in order to expel the indigenous Palestinian population. This continuous and calculated targeting of the Palestinian people must be challenged by the international community as it was regarding South Africa where that state's actions and policies were codified into elements of an international crime against humanity. Israel's regime must be judged accordingly and its impunity must be brought to an end because silence—if not complicity—in the face of fundamental rights violations further entrenches politics to the detriment of law. The first significant step in that direction would be reinstating United Nations General Assembly Resolution 3379 of 10 November 1975, declaring Zionism as a form of racism, and paving the way for the end of Israeli impunity and Zionist apartheid.

* *Anjad Alqasis is a legal researcher and the legal advocacy program coordinator of BADIL Resource Center*

Lifta and Battir: Parallel Cases of Ongoing Nakba in the Jerusalem District

Produced by the staff of BADIL's Ongoing Nakba Education Center

Many of Lifta's houses remain structurally intact today although in desperate need of rehabilitation. May 2013 (© RW/BADIL)



–BADIL's Ongoing Nakba Education Center Visualizes Palestine's Struggle through Film and Photography

"Everyday we live through there is a new massacre, there is steadfastness and there are people displaced from their lands. The Nakba and everything that Israel puts on us is an ongoing process..."

Amal Obeidi - Lifta

These words, echoed so eloquently by Amal Obeidi, a young Palestinian refugee with a clear political mindset, were spoken on March 30th - 'Land Day' 2013, and are the opening lines in the film 'Sons of Lifta' - produced by BADIL's Ongoing Nakba Education Center (www.ongoingnakba.org). Amal's grandfather, lived happily in Lifta until the entire population of about 3,000 people were forcibly displaced in 1948 during the early years of Nakba. In common with many other self-sufficient agricultural villages in the Jerusalem district, Lifta was bisected by the 'Green Line'. All houses in the western side of the village now stand empty, their stunning traditional archways still intact in many cases, but the smells of *taboun* bread no longer emanate from houses and the spring no longer waters the community's vegetables or splashes under the weight of frolicking 'Liftawi' children.

"by watching these two short films together, two very different stories of neighboring villages emerge, yet both paint very clear pictures of the colonial Zionist enterprise and some of the different tools it uses to perpetuate the ongoing Nakba."

A few kilometres from Lifta, another of Jerusalem's villages, Battir, was also bisected by the 'Green Line'. Today, Battir's villagers still live from the produce of its rich soil although cannot access all of their lands. Within coming months and more than 65 years after the Nakba and the colonization of their village began, the villagers expect about 3,000 dunums of their agricultural land to be appropriated. Battir is the setting for 'Villagers on the Line' - another very popular film produced by BADIL's Ongoing Nakba Education Center, and by watching these two short films together, two very different stories of neighboring villages emerge, yet both paint very clear pictures of the colonial Zionist enterprise and some of the different tools it uses to perpetuate the ongoing Nakba.

Battir was similarly attacked by Zionist militia in 1948, as Fatima Muammar recalls in 'Villagers on the Line':

"My husband was not here in the village [at that time]. I was ploughing with the donkey, me and my children who were still very small. The Jewish [militias] started to shoot from that side... People started to run away from the village. I had five... children with me so how could I run away? Where could we go?"

Unable to escape, Fatima remained in Battir as did a small number of other villagers. The militias faced some resistance from across the valley in Beit Jala's hills and never proceeded into the main parts of the village. When the 'Green Line' was drawn up it bisected the village, but the presence of the Hijaz railway line, seen as an essential tool by the Zionist project, assisted residents in negotiations with the Zionist leadership. Nakba survivor, Mohammad Abu Hassan, explains that the agreement conditioning residents' remainder on their land included:

"...permission for Battir's villagers to use their lands three kilometers beyond the train line and we, the residents of Battir, must ensure the train's safe journey through Battir"

This agreement, drawn up between the Jordanian and Zionist leadership, was unique in Palestine. More than just 'allowing' Battir's residents to access three kilometers of their lands past the Green Line, the 'Rhodes Agreement' guaranteed that the villagers actually retained ownership of those lands although they were now within the imposed boundaries of the Zionist state.

The story of Lifta's villagers was quite different. Following repeated and heavy attacks on their village, they were entirely forcibly displaced. Some fled to Jordan along with hundreds of thousands of other Palestinians where many remain today, whilst others ended up in Europe and the US. A few Liftawi remained west of the 'Green Line' in what became the West Bank, and today a very active group of refugees still live in Jerusalem, particularly around the areas of the French Hill and Sheikh Jarrah. It is these refugees who feature within the 'Sons of Lifta' film. As holders of Jerusalem ID cards they are able to 'visit' their homes, although have been denied their right of return as have all displaced Palestinians.

Amongst these refugees, some live as close as 500 meters from their original houses. Under Israeli laws which were created to 'legalize' the apartheid system, in particular *Absentee Law*, they have been labeled 'absentees'. This amounts to a complete denial of the knowledge of their presence in order to authorize the confiscation of their lands. For the Liftawi, in common with millions of other displaced Palestinians, they have lived in enforced exile for more than six long decades, yet also in common with all Palestinians they have never given up their struggle for rights. The ongoing Nakba and Israel's Apartheid system controls the lives of this steadfast exiled community through its continued denial of their return to their houses as residents, rather than as 'visitors'.

In Battir, the Hijaz railway line still passes through the village as it has done since its creation at the end of the 19th century, yet it no longer stops in the village, transports villagers and their vegetables to Jerusalem's markets, or even allows villagers to use the train. The train's passengers are today settlers and tourists rather than indigenous traders and farmers. As West Bank ID holders, without applying for the inevitably

Photo Story

Lifta Village

“We are doing all we can to stay connected to our land. We come here to visit our village and look after it...” - Wa’ad Abu Leil was born a refugee only a kilometer or two from her home village of Lifta.



Many of Lifta’s houses remain structurally intact today although in desperate need of rehabilitation.



Inside Lifta’s depopulated houses, vegetation grows where Palestinian children once played under the watchful eyes of their parents.

Two generations of Lifta’s refugees pray together during a visit to their lands on ‘Land Day’, 2013.



Battir Village



"The land is our mother, the mother of the whole world..." - Fatima Muammar stayed in Battir whilst the village was under attack from Zionist militias in 1948, and has lived and worked for her family's land throughout her life.

"Israeli politics are politics of expansionism and confiscation" - Most of Ahmad Adwan's agricultural land lies west of the 'Green Line' and will be cut off from Battir when the Apartheid Wall is built.



3,000 dunums of Battir's land will be confiscated by the Apartheid Wall, beginning east of the railway line and including all of the agricultural lands past the line.



"The life after the Wall will be finished, dead... A man lives and dies on his land..." - Mohammad Abu N'emah can see no future without his land which all lies west of the planned route of the Apartheid Wall.

impossible to obtain permits, they cannot even enter the city of Jerusalem which had been the market for their fresh produce. Standing in Battir today, watching farmers tending the famous *Beitnjan* Battiri (Battir aubergine), it is not hard to imagine how Lifta would have looked had the Zionist enterprise not taken shape, yet the latest plans of this project will push even these contemporary realities into memory. The Apartheid Wall is already snaking through the neighboring lands of Beit Jala, Cremisan and al-Walaja, and over the coming months its oppressive tentacles will reach out through Battir to confiscate another 3,000 dunums of agricultural lands. Its path will hide the historic train line from the village, but more significantly it will devastate the way of life on which Battir has sustained itself proudly for thousands of years. Some farmers will lose all of their lands behind the Apartheid Wall and thus, their only means of survival.

The story of the ongoing Nakba in these two Jerusalem villages has been enforced quite differently yet it highlights several constant threads. Standing at the bottom of the valley in Battir today, essentially *on* the 'Green Line', olive trees to the west are, according to colonial impositions, in 'Israel' whilst to the east they are in 'Palestine' despite belonging to the same families. Such demarcations visually highlight the immorality and sheer ridiculousness of the historic division of Palestine. Similarly, for the Liftawi elders who live within eyesight of their original houses and who regularly take their children, grandchildren and now great-grandchildren to 'visit' and clean the village graves of their ancestors, there is no moral, legal or ethical justification for this division. This division dictates that their lands are in 'Israel' yet they are refugees and 'Jerusalem ID holders' whilst many of their brethren are either refugees with 'West Bank IDs', refugees with Jordanian ID's or refugees holding other foreign passports. Such people are not only members of the same community; they are family members, brothers, sisters, uncles and cousins. Zionism shapes this continued immoral dispossession. The ongoing Nakba being played out in neighboring Battir dictates that farmers who travel a few meters to pick their olives are entering 'a different countr', but after construction of the Apartheid Wall, will lose access to their land altogether.

The stories of these two neighboring villages, or of Palestine in its entirety, cannot be understood through the prism of 'occupation' alone, as a broader toolbox used to promote the enterprise of Zionism shapes Palestinians' reality. This supremacist ideology was at one time recognized by the United Nations as a form of racism before Zionism achieved leverage within US foreign policy with the support of Europe (see *Zionist apartheid* on page 5). Colonialism was brought to its knees in much of the world, and only when a thorough de-colonization project is implemented across all areas of Palestine will these patterns of dispossession, exile and apartheid finally become another blot on the history of mankind.

BADIL's Ongoing Nakba Education Center produces multi-media advocacy tools to support the struggle against Palestine's ongoing Nakba. Materials are available for international exposure through film screenings and photography exhibitions. Please see - www.ongoingnakba.org - and for more information please contact: onec@badil.org

Multimedia

▼ **To** watch 'Sons of Lifta' - produced by BADIL's Ongoing Nakba Education Center, please visit:

<http://www.ongoingnakba.org/en/1948-palestine/jerusalem-district/lifta/lifta-v1.html>

▼ **To** view the accompanying photo-gallery on Lifta, please visit:

<http://www.ongoingnakba.org/en/1948-palestine/jerusalem-district/lifta/lifta-photos.html>

▼ **To** watch 'Villagers on the Line' - produced by BADIL's Ongoing Nakba Education Center, please visit:

<http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/battir/battir-v1.html>

▼ **To** view the accompanying photo-gallery on Battir, please visit:

<http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/battir/photo-gallery.html>

Implementing States' Obligations to Combat Population Transfer*

by Joseph Schechla**

The practices of population transfer, including the implantation of settlers and settlements with the effect or purpose of demographic manipulation, qualify as war crimes and crimes against humanity in modern international law.¹ Two centuries of legal prohibitions and eventual criminalization of population transfer have developed along two converging tracks. The first derives from the rights and sovereign claims of states vis-à-vis other states, establishing the unacceptability of the acquisition of territory by military force or other means. The belated second doctrine derives from states' obligations to respect, protection and fulfillment of human rights, including during times of conflict, occupation and war. Population transfer violates the full range of individual rights, as well as collective rights, among which is the inalienable right to self-determination. Human Rights and International Humanitarian Law (IHL) theoretically protect these values, particularly for the most-likely subjects of population transfer: civilians in wartime, people under occupation and indigenous peoples.²



Ni'lin Village, near Ramallah. 2012
(© Richard Wainwright)

In the early- and mid-1800s, American states recognized their collective duty to oppose the acquisition of territory by force.³ In 1933, American states reaffirmed the “inadmissibility of the acquisition or occupancy of territory by military force or other means of force, even of a temporary nature.”⁴

Successive international public law norms and standards repeatedly have prohibited the acquisition of territory by military and other means—including population transfer—since the Stimson Doctrine of 1932.⁵ The crime of population transfer was codified in the London Conference of 1942 and prosecuted at Nuremberg and Tokyo following WW II. The Organization of African Unity formally

Demolition in Beit Hanina in East Jerusalem, 2011.
(© Virginia Paradinis)



adopted this international law tradition in 1964,⁶ and United Nations General Assembly resolutions 1514,⁷ 2526,⁸ and 3314⁹ also consistently echoed this prohibition. Subsequently, the UN Sub-Commission on Minorities addressed the “human rights dimensions of population transfer,” in 1993–97, further clarifying the international law prohibitions against this grave breach.¹⁰

The Fourth Geneva Convention of 1949 (Article 49) prohibits the transfer of settlers and settler colonies into occupied territory. States’ extraterritorial obligations to uphold this prohibition flow generally from the Convention’s common Article 1, as well as other provisions. The Rome Statute on the International Criminal Court (1998) has codified population transfer and related settlement activity as crimes against humanity¹¹ and war crimes.¹²

Applying the Law to Palestine

The norms explicitly applied to population transfer in Palestine provide a source of legal specificity for remedial measures. The UN General Assembly has been explicit about needed accountability for Israel’s population transfer activities, including the implantation of settlers and settlements in occupied Palestinian territory (oPt).¹³ Notably, too, in its resolution 465 (1980),¹⁴ the UN Security Council has called upon “all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories” (para. 3). The International Court of Justice has concurred.¹⁵

This year, the Human Rights Council reviewed the most-recent UN report on illegal settlements in occupied Palestine.¹⁶ The independent international fact-finding mission report acknowledged that the International Criminal Court’s jurisdiction may enable individual liability for conduct that amounts to international crimes, including Israel’s “transfer of all or parts of the population of the occupied territory within or outside that territory” and the “transfer [of] its population into the Occupied Palestinian Territory” (oPt). It also noted the relevance of “State responsibility for internationally wrongful acts, including third-State responsibility” (para. 17).

That report also freshly reminded the UN Human Rights Council member states of the role of Israel’s parastatal institutions, including the World Zionist Organization/Jewish Agency and Jewish National Fund, in the conduct of these prohibited and criminalized acts. Meanwhile, at least 50 other states—including 18 complicit members of the current Human Rights Council¹⁷—actually host those institutions, conferring on the Israeli parastatals tax-exempt privileges as “charities.” Meanwhile, their operations notoriously involve the recruitment of financial and human capital within the sovereign hosts’ territories to build and maintain settler colonies in territories occupied by military and other universally prohibited means (i.e., population transfer).

Over 30 years have lapsed since Security Council Resolution 465 and other explicit resolutions. With today’s greater clarity about these same breaches, advanced legal norms, accountability mechanisms

and remedial options, the Human Rights Council acknowledged the continuing violations in another resolution, however remained silent about specific actions required of states to correct the illegal situation.

What Are States to Do?

The doctrine of nonrecognition and nonacceptance of, and noncooperation with the illegal situations of occupation and the crime of population transfer imposes self-executing individual, collective, domestic and extraterritorial state obligations to act, in order to correct the illegal situation. Treaties, binding Security Council resolutions and declarative law also specify the practical means by which states are to operationalize these obligations to prevent, oppose and punish crimes related to population transfer.

The universally ratified Fourth Geneva Convention's corrective provisions already require High Contracting Parties (HCPs) to apply existing treaty mechanisms to correct an illegal situation. Notably, the Convention calls on HCPs jointly and/or severally to:

1. Engage the enquiry procedure (Article 149);
2. Dispatch Special Commissions (Articles 8–9); and
3. Enact corresponding domestic legislation and adjudicate grave breaches (Article 146).

Universal jurisdiction is established under Article 146(2), requiring each HCP “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches” and to bring such persons, regardless of their nationality, before its own courts.”

The Convention also provides for the Appointment of “Protecting Powers” (Articles 9–12) in occupied territory. This is especially called for in light of Israel's long-standing refusal to acknowledge its *de jure* obligations under the Convention in the occupied Palestinian territory (oPt).

In response to the illegal actions of the State of Israel, the UN General Assembly and Security Council explicitly have outlined measures required of all states, both members of the United Nations and nonmember states.¹⁸ The Security Council unanimously adopted its resolution 497 (1981), citing «appropriate measures» to be taken by states. The General Assembly subsequently specified those measures in resolution A/37/123. These measures, required as long as the illegal situation prevails, include that states:

- Refrain from political, economic, financial, military and technological support to Israel that encourages Israel to commit acts of aggression and to consolidate and perpetuate its occupation and annexation of occupied Arab territories;¹⁹
- Refrain from supplying Israel with any weapons and related equipment, and to suspend any military assistance that Israel receives from them;²⁰
- Refrain from acquiring any weapons or military equipment from Israel;²¹
- Suspend economic, financial and technological assistance to, and cooperation with Israel;²²
- Sever diplomatic, trade and cultural relations with Israel;²³
- Cease, individually and collectively, all dealings with Israel, in order totally to isolate it in all fields;²⁴
- Ensure that the UN specialized organizations and agencies conform to these remedial terms.²⁵

In response to a state conducting or condoning the crime of population transfer, established state practice can be applied peacefully to implement self-executing obligations, including:

- Divestment and trade sanctions on that state and other states abetting settler colonies;
- Downgrading diplomatic relations with that state and other states committing and abetting crimes and grave breaches;
- Freezing the assets of legal and natural persons responsible for the violations;

In the specific case of Israel's conduct of population transfer in Palestine, these would involve, in particular:

- Formal classification of Israel's parastatal institutions (World Zionist Organization/Jewish Agency, Jewish National Fund, United Israel Appeal, Mekorot and affiliates) as discriminatory organs of the State of Israel, operating in the territory of other states, often claiming private, charitable and/or tax-exempt status, and engaging in population transfer;²⁶
- International and, as appropriate, domestic law sanctions on these parastatal institutions and other organizations found to support, or benefit from settler colonies and natural resource extraction in oPt;
- Preventing the supply of Israel with any building materials and/or related technologies, equipment and services that maintain unlawful construction and maintenance of its settler colonies and associated regime;
- Prohibition of any trade with, or entry of products or services originating from sources that support, benefit from, or are located in Israeli settler colonies;
- Reviewing economic, financial and technological assistance to, and cooperation with Israel for their potential aid to the settler-colony regime, including bilateral and multilateral trade and investment agreements;
- Downgrading diplomatic, trade and cultural relations with Israel;²⁷
- Recognition of Palestine's declaration of accession to the Rome Statute, regardless of the state's status in the General Assembly.

Conclusion

Nonrecognition and nonacceptance of, and noncooperation with the illegal situation of population transfer in Palestine is a matter of *ergo omnes*.²⁸ However, international cooperation in the adjudication of crimes and grave breaches is long overdue.

The Fourth Geneva Convention HCPs and its depositary State so far have undermined faith in the corrective measures envisioned under the Convention by their failure to apply the corrective provisions of that central International Humanitarian Law instrument. The selective nature of prosecutions at the International Criminal Court has avoided adjudicating the codified crimes of this, one of the world's most-protracted crises. The Middle East Quartet, as a mechanism to which states defer for managing the conflict, notoriously has failed to uphold international law.

In light of the individual, collective, domestic and extraterritorial obligations of states to correct the illegal situation of population transfer in Palestine, the "territorial applicability clause" in the new EU guidelines issued on 16 July 2013 forms a small, but important step toward required action.²⁹ The guidelines distinguish between EU support for and within the State of Israel, and to Israeli

entities established or operating in the occupied territories, and “set out the territorial limitations under which the [EU] Commission will not award EU grants, funding, prizes or scholarships to Israeli parties.”³⁰

With implementation as of 2014, these regulations are not sufficient to meet the requirement of correcting the illegal situation.³¹ Israeli institutions and bodies situated anywhere across the pre-1967 Green Line will be automatically ineligible.³² Any applicant Israeli entity will be required to submit a declaration, “on honour,” that it complies with the conditions. Meanwhile, the regulations “do not apply to Israeli public authorities at national level (ministries and government agencies or authorities)” and “do not apply to natural persons.”³³

The available corrective measures already adopted by states, in theory, do not require additional standards in international law. Remedy, however, calls for a measure of legal integrity in international relations.



Activists block a road in the city of Jaffa during a demonstration against the Praver Plan, 15 July 2013. (© Oren Ziv - ActiveStills)

* This paper embarks from Professor Schechla's presentation at BADIL's Forced Population Transfer Conference on 4 June 2013. A video of his presentation is available at BADIL's YouTube Channel.

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*** Endnotes: See online version at: <http://www.BADIL.org/al-majdal>

Forced Population Transfer: the Role and Strategy of the Palestinian Authority

by *Mohammad Elias Nazzal**



Bedouin communities, originally 1948 refugees from Ein Jeddi, face aggressive attacks by the Israeli government. (© Haytham Othman / MaanImages)

My presentation focuses on the forcible displacement of Palestinian pastoral communities from Area C of the West Bank. Making up 50,000 inhabitants who live in approximately 150 communities, they are under constant threat of displacement by the Israeli occupation. The presentation also addresses the Palestinian Authority’s vision, its role in practice and its expectations from the international community.

The policy of forced population transfer that Israel has been implementing in the West Bank since the 1967 occupation is but a continuation of the ethnic cleansing of Palestinians that began in 1948. The policy is a means to take over land, and a mechanism with which Israel controls the conditions of Palestinian demographic development. The means of achieving this objective vary, but forced displacement paired with land expropriation is the essence of the problem facing Palestinians in their homeland. The work of the Wall and Colonization Portfolio aims to resist these procedures, or at least to minimize the damage of Israeli activities.

To elaborate on the Israeli intention to displace the Palestinians, I would like to utilize the position of the spiritual leader of Shas, the ultra-Orthodox religious-political party. Rabbi Ovadia Yosef once said that it is a Jewish duty to remove all forms of Muslim and Christian infidelity from this land, “But can we [Israelis] implement such a vision? To be able to absorb the international anger towards us [Israelis] in case we have done so? If not, we have to suspend this issue.” Yet, since putting Palestinian in trucks and tossing them outside their homeland is not something Israel can implement at the moment, it is creating conditions which serve the Zionist project of taking over lands while preventing the creation of a Palestinian political power. This is achieved via land confiscation and prevention of development –

subsequently leading to insecure life for Palestinians, and lack of social and political cohesion between the different parts of Palestine, thus preventing the formation of Palestinian political awareness and action. Israeli plans for forcible displacement primarily target Palestinians living in Area C, the inhabitants of Jerusalem and its suburbs, the Bedouin communities surrounding Jerusalem, and the pastoral and farming communities stretching from South and East of Hebron Hills all the way to the Jordan valley in the north. Area C, consisting of more than 60 percent of the area of the West Bank, is crucial territory for establishing a Palestinian state.

“The policy of forced population transfer that Israel has been implementing in the West Bank since the 1967 occupation is but a continuation of the ethnic cleansing of Palestinians which began in 1948.”

Bedouins are integral to the Palestinian social, political and economic fabric. It is our duty, as it is their right, to protect their unique lifestyle. Our insistence to keep the Bedouin communities in their original places does not merely stem from our aim to prevent them from a second forcible displacement (because the vast majority are already refugees), but also because, through their way of life, they function as protectors of the land in the face of the Judaizing colonial project. In other words, the idea of gathering them in one location through planning schemes means imposing a particular, devastating, lifestyle on them, affecting them on the personal and the national levels. The recent United Nations study on the community of [Jahalin Al-Jabal](#) is a good example of this.

Nevertheless, the Wall and Colonization Portfolio does not oppose the natural and gradual sedentism of Bedouins who choose to combine Bedouin and rural lifestyles. Such an understanding was gained from the experience of designing planning schemes for communities such as Arab Al-Ramadhin in Qalqilia and Hebron, Um Al-Khayr in Yatta, and Fasayil in Jericho.

The second type of communities in Area C is the pastoral and farming communities that extend from Masafer Yatta in the South to Al-Malih, Al-Farsiyya and Al-Aqaba in the North. In spite of the official stance of the Palestinian Authority, which aims to gather the communities in Area B within joint municipal councils, the Palestinian Authority decided to create planning schemes for the communities where they currently exist in Area C. This has been the case notwithstanding the fact that the number of inhabitants in many of these communities does not exceed 200. In this regard, the Ministry of Local Government created more than 30 planning schemes, 10 of which have been approved in principle. More planning schemes are being prepared by the Wall and Colonization Portfolio for other areas as well, in coordination with the Ministry of Local Government and representatives of a number of communities. It is important to indicate that the Israeli Civil Administration has taken opposing measures to our activities by designing its own planning schemes to some of the communities that the Palestinian Authority provided plans.

Opposition to the forcible displacement of Palestinian communities is also achieved by enhancing their resistance and strengthening their existence on their lands. The Wall and Colonization Portfolio helps to achieve this objective by providing the following services:

- 1. Humanitarian Assistance** is provided in cases of house demolition, land confiscation, or natural disaster. The humanitarian aid that the Palestinian Authority provides in the aftermath of any of the above occurrences is coherent with the activities of other organizations. For example the International Committee of the Red Cross, UNRWA, and other organizations like ACTED (Agency for Technical Cooperation and Development) – all come within this context. Our duty is to make sure that any affected citizen receives such humanitarian assistance. In case such services have not been provided, the Palestinian Authority will immediately interfere to achieve it.

2. **Legal Aid** is provided through following up and assisting with the procedures of house eviction. The Palestinian Authority is obligated to provide legal aid to any citizen who is affected by the Israeli practices aimed at possessing Palestinian land and property. The means for fulfilling this objective are numerous, and they range from confiscation, takeover, forgery of (ownership, eviction, or demolition) documents, to threat of violence, arson, and vandalism. Our position is that we should not let citizens to face his destiny by their own. Whether the legal aid has been carried out through lawyers who are contracted by the Palestinian Authority – like the Jerusalem Legal Aid and Human Rights Center (JLAC) or the Society of St. Yves – or Israeli non-governmental legal institutions, it is all coordinated with the Wall and Colonization Portfolio.

Over the years we have defined ‘red lines’ in these areas of work. For example, [1] in no way do we agree to negotiate the location of the Wall. For example, if the Wall was supposed to confiscate 1,000 dunams, and an alternative route now offers to confiscate only 5 dunams, instead giving back 995 dunams, we cannot agree to that; [2] We cannot offer alternatives routes to the Wall; [3] Land swap is not acceptable; [4] We also do not accept compensations for confiscated land or property.

3. **Development Aid** includes supplying displaced people with water, electricity, schools, clinics, and veterinary clinics. This is undertaken in cooperation with the Ministry of Local Government, being the qualified body, and in coordination with the relevant parties. From the Israeli point of view, these communities live on lands that either have been expropriated for colonization purposes, or declared military training areas. Moreover, implementing any Palestinian project requires obtaining a permit, which is seldom granted. From an Israeli perspective, when we provide Palestinians with tents, shelters and water-tanks it is a threat to Israeli security. This position was officially declared in a number of court appeals: for example in the response of the Israeli Army to an appeal of people from Masafer Yatta who are threatened with eviction. A similar position was stated in a similar appeal of Palestinians from the Jordan Valley. Holding such a position, the occupation forces confiscate tents and tractors, and there were cases where they have destroyed roads in several areas. However, these practices will not stop us from providing such services to these communities. On the contrary, the Palestinian Authority is planning a development program for the West Bank areas in order to identify and designate future development projects.

4. **Documentation:** In the past two or three years we added a fourth dimension to our work, one which focuses on documenting the various cases of forced population transfer.

To conclude this presentation, I would like to stress that the responsibility of the Palestinian Authority towards the population in areas targeted by forced population transfer is unquestionable. However, the temporary Oslo agreement that excluded Area C from the bureaucratic jurisdiction of the Palestinian Authority, even if not its sovereignty, is a direct responsibility of the international community. Finally, the Palestinian Authority in general and the Wall and Colonization Portfolio in particular, encourage all forms of popular initiatives that support the most targeted areas of the West Bank.

* *Dr. Mohammad Nazzal is General Director of the PA Wall and Colonization Portfolio.*

Palestinian Claims for Reparation in International Context*

by Mick Dumper**



First generation refugees visiting their home in the depopulated village of Lifta, West Jerusalem. 2002 (© BADIL).

Does the passing of time affect the rights of displaced people wishing to return to their property? Is there a difference between those returning the day, or a week, after a forcible eviction and those who still seek to return after many years? If so, how does this impact the rights of Palestinian refugees? These were the questions running through my mind as I reviewed the material collected from case studies across the world and over the history of forced displacement during the past sixty years.¹ The answer to all three questions, it seems, is both yes and no. This study examines nine cases of reparations to refugees and displaced people and concludes that while many rights endure, over time new rights also emerge which complicate a resolution of forcible eviction.²

Reparations for forcible eviction are comprised of three main elements: “satisfaction”, restitution and compensation. This article will focus on restitution and to some extent on compensation.³ In the main, there are three forms of restitution. The first can be termed as restitution in kind. This is regarded as the ideal form of reparation in that the displaced person receives back the title of the land or property from which they were evicted as part of a peace agreement that settles the conflict which led to the eviction in the first place. If the property was demolished the displaced person retains the title to the plot and receives compensation for the cost of reconstruction. In reality this form of restitution is often limited by secondary occupation. Secondary occupation is when the land or property of the displaced person is occupied by either other displaced people or new settlers which have been given title of that property by the state. In most of the nine cases studied, the rights of these secondary occupants to remain in situ receive a degree of protection depending on the nature of the peace agreement. What these case studies suggest is that it is often the case that peace agreements can only be reached when they take into account factors such as the legally onerous task of removing secondary occupants and finding them replacement residences, the expense and time involved, and the possibility that their removal may destabilise a fragile political

agreement. Of the nine cases studied those of Bosnia and Herzegovina, Kosovo and post-Baath Iraq prioritised this form of restitution, but were only able to do so with the support of external intervention. Those that sought to restrict restitution were the cases of Rwanda, Cyprus and South Africa on the grounds that full restitution would be too de-stabilising. One innovative way of addressing these difficulties also took place in South Africa known as inverse rental where in some cases title was restored to the claimants on the condition that they continued to lease the property to the secondary occupants.

“One needs to recognise that a per capita framework of compensation for property loss may replicate the income and material inequalities that previously existed; e.g. a former wealthy landlord will receive much more than a former landless labourer.”

A second form of restitution is that of offering alternative assets to those who have lost land or property. In this model property can be exchanged or alternative sites provided as a form of compensation. In addition, displaced people may receive assistance with repatriation and integration, re-training, funds for business start-ups and bonds or vouchers for purchasing other property. In the Annan Plan for Cyprus, displaced people residing in the property of displaced people from the other side

were to be incentivised to conduct exchanges or provided with bonds to purchase property to replace that which they had lost. In Guatemala, refugees were provided with cheap credit to purchase land while in many cases in post-Communist Europe claimants were offered alternative parcels of land. Again, in reality, the expropriation of land and property to provide alternative housing and livelihoods has been difficult to implement.

The third form of restitution is more diffuse and comes as development assistance. In this form, the peace agreement provides funds for state programmes for housing, agricultural development, infrastructural development and other services designed to integrate returning refugees and other displaced persons. This form of restitution recognises that these groups require assistance in developing sustainable livelihoods and more specifically assistance packages tailored to their skills and culture. The main example of this form of restitution is drawn from the South African case in which land reform became a central feature. However, drawbacks in implementing this approach, such as the slowness in delivery, the unreliability of the databases used and the lack of integration into other state programmes, suggest the need for strong enforcement measures and comprehensive planning.



Shatila refugee camp, Lebanon 2012 (© BADIL).

Turning to the third element of reparation, compensation, we again see many different forms which are targeted to deal with specific cases. Compensation for loss of property as well as for refugeehood can take the form of cash payments, the provision of vouchers or the allocation of bonds. But these forms are themselves subject to different types of valuations. Some (very few) offer full market cost, others a percentage, some value the property at the date of dispossession and add inflation, while others offer valuations at specific later dates. In addition, the methods of payment differ widely. Some cases pay a lump sum to the state for allocation to individuals or groups or to programmes. Other cases set up a fund to which categories of people or individuals apply. One needs to recognise that a per capita framework of compensation for property loss may replicate the income and material inequalities that

previously existed; e.g. a former wealthy landlord will receive much more than a former landless labourer. This can exacerbate internal tensions within the displaced community and damage the state re-building process.

“the rights of refugees and other displaced people do not necessarily diminish, but the rights of secondary occupants appear to increase as time elapses and the property is passed onto successive generations.”

Finally, we can also see that from the cases studied there are very few examples where the refugee or forced displaced community is given a free choice of options. In most cases, it is assumed that restitution is the preferred option and that compensation (normally below market price) is offered where restitution is not possible. In the case of Cyprus, secondary occupants who are themselves displaced claimants to property are given a limited choice of returning to their original property or opting for title on their current property. In post-Communist Europe, some claimants were given the choice between restitution and compensation for lost property. In South Africa, choice was restricted by virtue of the fact that negotiations over restitution required the participation of all parties which caused difficulties in reaching an agreement, with the result that compensation was usually opted for in order to avoid an impasse. It is also clear from the cases studied that even when restitution is available, many claimants prefer to sell the property rather than to return to it, presumably because of demographic changes that have taken place in the neighbourhood. Nevertheless, there is a growing body of international “soft” law which is placing the issue of refugee choice at the forefront of peace negotiations involving the property of displaced people.

To sum up this brief overview and relate it to the Palestinian case, I would say that the comparative study of reparations brings both bad news and good news. The bad news is that restitution in kind does take place, but only in limited circumstances. It usually takes place soon after the forcible displacement occurs and usually with strong external intervention to enforce it. Bosnia-Herzegovina and Kosovo are the prime examples of this. From the cases studied, the rights of refugees and other displaced people do not necessarily diminish, but the rights of secondary occupants appear to increase as time elapses and the property is passed onto successive generations. Thus the rights of refugees may remain the same but they do not remain the only rights that have to be taken into account. The good news is threefold. First, while many aspects of the Palestinian refugee case are unique, in this respect it is not; The right for reparation and the restitution of property is a common theme running through numerous cases of forcible displacement. The Palestinians are not anti-Semitic or extremists just because they are seeking reparations. It is a normal and understandable demand to make from people who have been dispossessed. Second, if the rights of secondary occupants emerges as a key obstacle in the restitution of property, particularly in protracted refugee situations like the Palestinians, these should not apply to properties which remain empty and deserted, In this context, Salman Abu Sitta’s claim that 70% of Palestinian property in Israel remain unoccupied requires to be convincingly substantiated.⁴ Third, the experience of the international community in recognising claims for reparation have led to a range of innovative forms of restitutions and compensation which in many respects have proved to be acceptable to displaced people. Rarely has the ideal solution been achieved but a measure of satisfaction is often arrived at. Nevertheless, it should be noted that peace agreements rarely incorporate the rights of people affected by a conflict but reflect more the balance of power between the main parties at the time of signing.

* This paper is the basis of Professor Dumper’s presentation at BADIL’s Forced Population Transfer Conference on 4 June 2013. A video of his presentation is available on BADIL’s YouTube Channel.

** Mick’s Dumper. Formerly Middle East coordinator for Quaker Peace and Service, consultant to Welfare Association (Geneva), and Senior Researcher with the Institute for Palestine Studies (Washington, DC).

Witnesses to Displacement

Beit Safafa: a dissection of a village, the destruction of life

Summary of interview with Alaa Salman, a resident of Beit Safafa - by Halimah Al Ubeidiya and Wassim Ghantous, February 2013.

Construction of Road Number 50 (Begin Highway) in Beit Safafa, February 2013. (© BADIL).



In the past year, BADIL has conducted more than 60 interviews with Palestinian victims of Israeli forcible displacement. These interviews were an essential part of the [handbook](#) published earlier this year, and for which we dedicate this issue of al-Majdal. In this section of the magazine, we bring you summaries of two compelling stories of displacement and resistance. We hope these interviews shed light on the human dimensions of forced population transfer, an issue more often described in dry and distanced legal language.

In March 1990, the people of Beit Safafa were surprised to see trucks and bulldozers of the Jerusalem municipality plowing their lands of its trees, plants, wells and anything else which stood on them without any warning. At that time the municipality claimed that the lands were confiscated for constructing a road, accessible to the people of Beit Safafa as well as the colonizers. But what was later revealed was Road Number 50 (also known as Begin Highway), a three-lane highway in each direction. The whole structure: roads, bridge and walls, would consume 234 dunams of the villagers' lands. By this, the municipality would effectively transform the village into a by-pass road for the colonizers of Gush Etzion providing them with easy motor access to the center of Jerusalem (and Tel Aviv as well). The planned road will divide the village into four separate parts.

Building this road would have terrible consequences for the residents of Beit Safafa, tearing apart the social fabric in the community by physically detach the people from each other, their schools and businesses. Children will no longer be able to reach their schools, currently minutes away from their homes. Instead, they will be forced to make a long detour, inaccessible by car or public transportation – crossing a busy three-lane highway. Moreover, movement between the sides of the village will be seriously harmed. Neighbors, relatives and friends who now live a walking distance from each other will require a long drive around the highway. Furthermore, this dismemberment of social life in the village, by building the road according to the current plans, would also hamper the continuity, or potential continuity, of life in Beit Safafa. This is so because the massive confiscation of land from the villagers would also mean less land for the village to grow. Young couples would have to seek life elsewhere.

Prior to their court case, negotiations between the community council of Beit Safafa and the municipality of Jerusalem were held. Muhammad 'Alyan, the *Mukhtar* of the village, delivered an objection to the municipality based on the fact the people of Beit Safafa had not been appropriately informed about the plan. On 27 December 2010, the municipality replied that there was still time to inform the villagers before the construction work would reach the village. On 28 September 2012, the residents of the village met with the mayor of Jerusalem, the municipality engineers, and other officials. They offered the idea of building a tunnel under the highway in order to allow access to the village. However, since all negotiations with municipality officials bore no fruit, the residents of the village decided to hire an architect who made three detailed alternative plans. These plans were submitted to the municipality, but when all three plans were rejected, the people of Beit Safafa chose to appeal to court to try to abort the plan.

The Beit Safafa residents decided to seek recourse with an administrative appeal to the District Court. The lawyer demanded to abort the building permissions for the highway and that the municipality produce a detailed plan. The case is still active and a decision should soon be made as whether to accept the appeal and freeze the construction work until receiving a detailed plan, or to reject the appeal. If the appeal is rejected the residents plan to appeal to the Supreme Court.

(Update: The District Court rejected the residents' appeal on 10 February 2013, and the residents appealed against the decision to the Supreme Court. On 26 June 2013, Israel's Supreme Court ruled that the state must address the residents' concerns posed by the construction of the highway.

It is important to highlight that the conduct of the municipality in the case of Beit Safafa is illegal according to its own regulations. Firstly, the law grants residents the right to object to municipality plans. For this reason, detailed plans and a local outline plan should be prepared and made public. The absence of these in the case of Beit Safafa made it impossible for the residents to file objections to the road. Secondly, the residents of Beit Safafa will not enjoy the benefits of this project as they would not have access to the road that will be built on their own lands and which runs through the midst of their village. Thirdly, the planned road will be a highway, contrary to prior statements of the municipality. Finally, even though the residents would not be able to use the road, the municipality failed to offer alternative solutions for the residents.



Alaa Saliman in his house, during his interview with BADIL, February 2013. © BADIL.

The residents of Beit Safafa are carrying out different forms of resistance to this project parallel to the legal route. They have established a popular committee to support the legal action as well as to organize demonstrations against Road 50. These are held in the village, in front of the municipality and in other places. For example, the demonstration which was held on 22 January 2013 gathered 1,000 supporters in Beit Safafa, and had a great impact on the residents. The popular committee was also involved in erecting a protest tent where people from the village, journalists, solidarity groups and representatives of organizations can publicly meet to discuss the issue of the highway. Moreover, residents closed the schools in the village as a rejection of an inappropriately supported municipal institution. Pressure was also put on

Construction work of Road Number 50 (Begin Highway) in Beit Safafa. February 2013 ©BADIL.



the construction company “Moriah” achieved by blocking and obstructing the trucks, using social media, and tactical activities like sending hundreds of faxes and emails to the municipality. However, the most important effort has been made to raise awareness among the people of Beit Safafa, most of whom did not have any idea about the real consequences of the highway.

Finally, the villagers also received help and support from different associations and organizations such as Bimkom and Ir Amim. The popular committee of the village formally sent a letter to the Palestinian National Authority asking for their support with legal expenses and other activities. They have not received any reply so far.

* Alaa Salman, 39, is a resident of Beit Safafa and key organizer of the protests in the village. He is one of 16 residents who've filed a court petition to change the construction plan.

Witnesses to Displacement

Susya: relentless displacement

Summary of interview with Nasser Nawaja'a, a resident of Susya - by Halimah Al Ubeidiya and Wassim Ghantous, February 2013.



Tent of the Susya Village Council, February 2013. © BADIL.

In the past year, BADIL has conducted more than 60 interviews with Palestinian victims of Israeli forcible displacement. These interviews were an essential part of the [handbook](#) published earlier this year, and for which we dedicate this issue of al-Majdal. In this section of the magazine, we bring you summaries of two compelling stories of displacement and resistance. We hope these interviews shed light on the human dimensions of forced population transfer, an issue more often described in dry and distanced legal language.

Today, the village of Susya, located in the South Hebron Hills, is composed 45 families or 339 residents, 60 percent of whom are children. Normally, the number of residents increases over the years, but unfortunately, in the case of Susya the numbers are decreasing. The decreasing population comes as a result of losing lands. This land robbery is undertaken by Israeli claims that the land is a 'state land', an 'archeological site', or needed for 'security' reasons. Consequently, the daily problems of this once pastoral village include the lack of basic infrastructure, violence from colonizers (culminating in the murder of three residents of the village), prevention of access to lands (read: prevention to means of livelihood), and demolition of houses.

The saga of displacement in Susya has been going on for three decades. In 1983 the Jewish-Israeli colony of Susya was established on their village lands, after they were declared Israeli 'state lands'. In 1986 the Palestinian inhabitants of Susya were expelled by force by the Israeli military. The Israeli

Civil Administration declared the site a ‘national park’, claiming the existence of an ancient synagogue in the village. The declaration of this archaeological site did not prevent Israelis from colonizing it, putting into question the authenticity of their claim. The Palestinians who were expelled settled on their agricultural lands where they live until this day. However, they face the threat of an imminent expulsion.

Since the 1990s, the residents of Susya have been subject to repeated risk of displacement and house demolition. Due to the Israeli refusal to grant them building permits, they are forced to live in plastic and cloth tents. Not even their makeshift residence is immune to Israeli demolition. Since the early 1990s they have been facing demolition orders for the tents. In 2001, following the assassination of an Israeli-colonizer in the area, the residents of Susya were expelled from their lands for the second time and their properties destroyed by the Israeli military. They appealed to the Israeli High Court, which issued an interim order permitting them to return to their lands. However, the court prohibited the establishment of any new buildings in the village. In order to prevent the demolition orders in 2004 the residents of Susya applied for building permits for the existing buildings in the village. All the applications were denied by the Israeli Civil Administration (ICA) – a misleading name to what actually is the Israeli *Military* Administration in the Palestinian Territory occupied in 1967.

In 2011, the Israeli authorities demolished 14 structures in the village, including 10 residential tents, and handed demolition orders to additional structures including the school and water wells. This led to the displacement of a number of residents who moved to live in the nearby town of Yatta. One year later, an Israeli right-wing organization called Regavim, petitioned the High Court demanding that the ICA carry out the demolition orders issued for the buildings in the village, claiming that the Palestinian village of Susya is illegal. A few months later, the Israeli authorities issued demolition orders for 58 facilities, including Susya’s elementary school and health clinic. The notifications stated that they were renewals of demolition orders originally issued in the 1990s. The residents of Susya were given three days to appeal the orders through the Supreme Planning Council of the ICA. Through those means they

Nasser Nawaja'a, Susya Village. February 2013. © BADIL.



objected to the demolition orders and submitted a detailed master plan for the village with the assistance of the Palestinian Authority and Bimkom organization – hoping to obtain official recognition of Susya as a residential village. Recently, the High Court gave the ICA 90 days to discuss Susya’s master plan, submitted on September 2012, but it has not yet been approved or rejected. Additionally, the judge granted a 90-day extension to allow the state to prepare a master plan for the southern section (Wadi Jhash) of the village.

The residents of Susya originally owned around 10,000 dunums. In the 1980s they lost the first 1,000 dunums to the construction of the colony of “Susya”, which originated from an Israeli military camp that developed to an outpost, and eventually became a full-fledged, ever-expanding, colony. By 2000 the Palestinians of Susya had lost around 80 percent of their lands, and after the Second Intifada and the displacement that followed they discovered that they were allowed to use only 30 percent of their lands. Often, the ICA-issued military orders state that it is forbidden for both, Palestinians and Israeli colonizers, to enter these lands for security reasons. However, the fact of the matter is that it is forbidden for the Palestinians to access their lands while the colonizers can enter, work the land, and establish an outpost. The colonizers, moreover, utilize Israeli-manipulated laws that grant ownership to lands to those who work them, thus taking over lands that are inaccessible to Palestinians. Israel applies Ottoman laws according to which if a person does not use his lands for a certain number of years, it becomes state land.

For obtaining a house building permit a Palestinian needs to show documents that prove his ownership of the land. However, since all the lands of Susya are located in area C, the villagers have to ask the ICA for the documents. This means that a Palestinian has to pay around 150 NIS (\$40) for each document - an expensive fee for most of the farmers in this area.

The cruel irony of Israeli policy with the Palestinians of Susya is best put by Nasser Nawaja’a:

“The building permit applications are based on the British Mandate law RJ/5 according to which it allows building of 150 square meters, plus 30 square meters for a structure to shelter the sheep. We fulfilled and presented all requests, but our applications were declined for arbitrary reasons. For instance, they stated that the sheep shed is too close to the residence and this is not healthy at all, therefore they refused many of our applications. They are concerned for our health, but the fact that we live without any water is not a big matter for them. They use arbitrary excuses to prevent us from getting the building permits. We applied more than once, but they always rejected our applications, so we stopped trying.”

On the current forms of resistance, Nasser Nawaja’a explains:

“The first period of displacement and the struggle against it was really hard. We were alone and it was expensive to pay for the master plans. Also we weren’t aware about the ways the occupation and settlers would steal our land and demolish our homes. Today we have a court case in the High Court and we are struggling in various ways with the assistance of expert organizations and popular struggle. We organize demonstrations on the ground, send Israeli officials petitions demanding a halt to our displacement, using social media campaigns, and so forth - hoping that the court won’t approve our displacement, although we know that, for us Palestinians, the Israeli High Court of Justice is a court of injustice.”

* *Nasser Nawaja’a, 31, activist and resident of Susya.*

Practicing Truth to Power: A report about BADIL's latest work to combat Forced Population Transfer

by *BADIL Staff*

Affecting more Palestinians than any single military operation could, displacement is the biggest threat to Palestinian life today. In the past year alone, Israel displaced thousands of Palestinians in Jerusalem, West Bank Area C and the Gaza Strip Buffer Zone. In May, Israel approved the Praver Plan that threatens to forcibly displace up to 70,000 Palestinian Bedouins in the Naqab.

Forced population transfer is illegal and has constituted an international crime since 1942. The strongest and most recent codification of this crime is in the Rome Statute of the International Criminal Court. The Rome Statute clearly defines the forcible transfer of population and implantation of settlers as war crimes. In order to forcibly transfer the indigenous Palestinian population many Israeli laws and state practices were developed. Today, Israel carries out forcible displacement in the form of a 'silent' transfer policy. The policy is relatively silent because Israel applies it while attempting to avoid international attention by regularly displacing small numbers of people, which it presumes would go unnoticed. Israel's legal and political structures discriminate against Palestinians in many areas including citizenship, residency rights, land ownership and access, and regional and municipal planning.

BADIL Resource Center recently published "Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities." The Handbook and five accompanying brochures aim to help stymie the displacement of Palestinians. These materials primarily focus on West Bank Area C and East Jerusalem regarding three triggers of displacement: land confiscation, restrictions on use and access of land, and the system of planning, building permits and home demolitions. The Handbook outlines Israeli state practices used to implement displacement by drawing on court decisions, legislation, military orders, and original interviews with affected individuals. Although the Handbook is not a replacement for qualified legal advice, the resource seeks to improve awareness of legal procedures imposed on Palestinians. In particular, the Handbook intends to support Palestinian institutions such as municipalities and popular committees in attempting to delay or counteract Israeli displacement strategies. Apart from the legal analysis, the Handbook includes 70 case studies on forced population transfer.

On 4 June 2013, BADIL launched the Handbook at a conference titled "Forced Population Transfer: Elements and Responsibilities." Held in Ramallah, the conference included over 150 participants, US and UK academics and representatives from the Palestine Liberation Organization (PLO), Palestinian National Authority (PNA), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Office for the Coordination of Humanitarian Affairs (OCHA), Office of the High Commissioner for Human Rights (OHCHR), Adalah - The Legal Center for Arab Minority Rights in Israel, Addameer - Prisoner Support and Human Rights Association, Diakonia, Palestinian Human Rights Organizations Council (PHROC), Occupied Palestine and Golan Heights Advocacy Initiative (OPGAI) and Norwegian Refugee Council (NRC).

Contributors discussed the means to tackle forcible transfer of Palestinians using local, national and

international interventions to prevent displacement. The conference was followed by a two-day field visit to affected areas.

Complementary field visit on 5 – 6 June 2013

A two-day visit to a selection of Palestinian communities living with the immediate threat of forcible displacement followed the conference. Three of the experiences are highlighted below.

al-Walaja and a “farmer without a land”

Before 1948, al-Walaja had the largest land holding in all of Palestine with its farmland stretching from southern Jerusalem to northern Bethlehem. 70 percent of al-Walaja landholdings were confiscated during and after the war. ‘New’ al-Walaja was established across the valley after the villagers’ expulsion although most refugees settled in camps in East Jerusalem, Bethlehem, Jordan and Lebanon.

Causally related to land confiscation is the refugee issue. The massive land grab of 1948 resulted in the displacement of 1,600 residents. While about 100 of the villagers and their descendants live across the hill from their original village, today 25,000 Palestinian refugees from al-Walaja are living in Jordan.

Mohammad Barghouth is one of the 100 al-Walaja villagers living directly across the Green Line from his original home. He refers to himself as a “farmer without a land.” “First of all, I am a 1948 refugee,” Barghouth tells us while we sit in his sunlit salon towards the bottom of al-Walaja’s valley during a morning visit. In the 1967 war, Barghouth’s family lost landholding to what is now the Gilo colony that has grown to a population of around 40,000 Jewish-Israeli colonists.

The Jerusalem municipality unilaterally incorporated al-Walaja to its jurisdiction in 1982, after annexing East Jerusalem in 1967. Describing al-Walaja residents’ current reality, Barghouth said: “The only service we receive from the Jerusalem municipality is the bulldozer.”



BADIL study visit to al-Walajah, June 2013 (©BADIL)

In 2010 the military began constructing the Annexation Wall in al-Walaja. “The land where the newly-built road is now used to be good land full of fruit trees,” said Barghouth. The community utilized a broad toolbox in an attempt to halt the illegal and inhumane construction of the Wall. Lawyers have been working with the community for years, local and international media pays close attention to the villages’ struggle and protest has been waged with regularity.

Barghouth planned for a full garden – trees, a beehive and goats; what he calls “living in dignity.” However, Israel raised the Wall and with it the dust, which sent the bees away in addition to confiscating more land. In the process, the military uprooted more than 300 olive trees across the hill. Although his dream was undermined, he currently has 30 trees across the hillside and 10 in his garden. “The oldest and best producing trees were uprooted such as a 25 meter Cyprus tree, which was the most beautiful,” he said.

“You killed them, so you burry them,” is what Barghouth said to the Israeli military when they offered to replant the trees they had uprooted in order to erect the Wall. He rationalized: “I won’t accept them to use replanting as a way to say they are treating Palestinians well after they displaced us.”

Lit by the light of the valley, we sat in the salon listening to the abusive conditions, poignant history and principled rejection against what Barghouth sees as his absurd situation. From one of the room’s windows we see the Israeli road and infrastructure, which will support the coming construction of the Wall. Out the other window we can see across the valley to the original Walaja, Jerusalem ‘suburbs’ and colonial buildings. The Green Line sits between this room and there.

Multimedia

- ▼ To watch ‘al-Walaja’ short videos, produced by BADIL’s Ongoing Nakba Education Center, please visit:
 - <http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/al-walaja/the-ongoing-nakba-in-al-walaja.html>
 - <http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/al-walaja/al-walaja-video.html>
- ▼ To view al-Walaja photos gallery
 - <http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/al-walaja/al-walaja-photo-gallery.html>

Battir, the vegetable basket of Jerusalem

The Battir eggplant is particularly well known, “found in markets from Jerusalem to Jenin”, says our tour guide Hasan Muammar. Members of the group nod their heads in quiet confirmation. Battir’s terraces are renowned for their productivity and heritage.

An old woman washes lettuce in one of the springs that is the center of Battir spatially, socially and economically. Village history has it that water running into the valley was allocated for irrigation use to each of the eight major families for one day a week, producing a unique eight-day week cycle. The practice continues until this day.

Home to almost 5,000 residents, Battir is famous for its greenery and ancient agriculture. Seven springs feed into terraces with a 4,000 year agricultural inheritance. In addition to many legacies, ruins of a Roman citadel sit atop a cliff in the center of town. A Roman-era aqueduct is splayed open, only discovered when villagers were refurbishing a road decades ago. Israel has refused excavation of the citadel and other Battir relics because they are located in Area C.

70 percent of Battir is in Area C and 30 percent, the center, is in Area B. According to the Oslo agreements,

Palestinians must apply for any planning, construction or development work in Area C through the Israeli military administration. Since the military does not authorize such requests in the vast majority of cases, Israel effectively bans ‘legitimate’ growth in Battir isolating the community from improving roads, electricity or other services that must cross through the Area C ring composing the majority of the village.

At the time of our tour, the village was awaiting the meeting of UNESCO in Cambodia during the last week of June. The village worked to compile an application to UNESCO applying for recognition of Battir as a World Heritage Site. With much effort, the community submitted the completed application to the Palestinian Authority in January 2013. As a final step in the process, President Mahmoud Abbas signed the application and Palestinians expected it to be submitted to UNESCO by the February deadline.

Recognition from UNESCO would increase the political difficulty for Israel to build the Annexation Wall in Battir, which residents are also attempting to challenge through the Israeli legal system. The plan for the Wall earmarks some 30 percent of Battir lands for confiscation.



Battir Village, near Bethlehem 2013 (© RWBADL)

On 16 June 2013, Ma’an News Agency revealed in an expose that the Palestinian Authority never filed the finalized application with UNESCO. Anonymously citing Palestinian officials, the expose described a backroom deal between the Palestinian Authority and Israel in which the Palestinian Authority agreed to drop the bid in exchange for Israel to permit an UNESCO investigation in al-Aqsa Mosque and Jerusalem’s old city. However, on 20 May 2013 Israel refused the entry of UNESCO investigators to Jerusalem. In the expose, Israeli Foreign Ministry Spokesman Yigal Palmor denied that shelving the Battir vote was part of their deal. Regardless, Battir’s application may have been a tough pill to swallow for the Palestinian Authority even before Israel’s potential renege.

Battir’s application to UNESCO included all of Battir’s territory for a heritage site, putting the Palestinian Authority in a difficult position since Battir’s territory does not conform to the 1967 ceasefire line on which the dominant discourse about a ‘negotiated solution’ is based. Israel has annexed and colonized well past the 1967 borders while the Palestinian political regime has indicated that it would accept border adjustments in the case of a ‘two-state solution.’

Before 1948, the village served as a major produce hub for Jerusalem with a constant human flow between the locales. Battir’s intended UNESCO bid covering village territory that traversed the 1967 ceasefire line poses a challenge to the increasing fragmentation of Palestinian territory.

Multimedia

▼ To watch ‘Villagers on the Line’ video, produced by BADIL’s Ongoing Nakba Education Center, please visit:

<http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/battir/battir-v1.html>

▼ To view al-Walaja photos gallery

<http://www.ongoingnakba.org/en/west-bank/jerusalem-district-wb/battir/photo-gallery.html>

al-Tuwani resists ongoing displacement

Hafez Bulbul leads us, a group of 10, from our bus towards his house in the sunbaked village of al-Tuwani. The village is located in Area C of the South Hebron Hills and functions as a center for the surrounding communities. The Israeli Civil Administration, the bureaucratic entity managing colonization of the West Bank, intends to turn the land into a military-only training area. al-Tuwani is one of 13 villages in the area, eight of which are targeted by Israel in the Firing Zone 918 displacement plan that declared 30,000 dunums a restricted military zone in the 1970s. Since then, the communities live with the threat of demolition and expulsion.

In 1999, 700 residents of villages in Firing Zone 918 were forcibly evicted and their homes demolished. The residents resisted by filing legal challenges, returning despite active persecution and often living in natural shelters such as caves. In accordance with Defense Minister Ehud Barak’s 19 July 2012 decision, al-Tuwani is among the five villages from the community not immediately at risk to eviction, but Bulbul foresees the same eventual fate for his village. The Israeli Civil Administration’s strategy for acquisition of territory is progressive, he tells us.

Under military occupation since 1967, the residents of the South Hebron Hills were victims to confiscation of and displacement from their land, along with violence from the adjacent Havat Maon colony. A young father, the long history of colonization has encompassed Bulbul’s life and that of his toddler’s. In response, he and other residents coordinate popular resistance with villages in the area.

Bulbul who has an intimate familiarity with Israel’s intentions for him and his land said, “the Occupation’s plan is to connect settlements at the expense of Palestinian towns, villages and hamlets.” After attempts at raising electricity poles were thwarted by Israeli-commissioned bulldozers the nearby village of Susya now runs its electricity on European Union donated solar panels. The Israeli Civil Administration raided Susya on 27 June 2013 and issued stop-work orders to the solar panels among other infrastructure, a procedure preceding demolition.



al-Tuwane village, near Hebron 2013 (© RW/BADL)

Furthermore, residents face near constant impediment to their freedom of movement through the implementation of checkpoints, roadblocks and closures, and the threat of violence from Israeli Jewish colonists. Children from neighboring villages are under court orders to accompanied by an Israeli military jeep on their daily walk to primary school in al-Tuwani. However, the implementation of the supposed ‘facilitation’ are not always adhered to, residents reported. Furthermore, Operation Dove, an Italian organization with a 24-hour documentation presence in the Firing Zone, reported that:

In Firing Zone 918, helicopters landed three times on May 6, 7 and 8 close to the school of Al Fakheit; two vehicles of the Palestinian Ministry of Agriculture were confiscated and seven people were detained on May 9; military trainings were held by the army in the area of Mirkez and Jinba, damaging local fields with heavy vehicles and preventing shepherds from grazing their flocks.

Israel facilitates settler violence and implements military violence while applying 'legal' justification as a means of guaranteeing impunity for encouraging Palestinian displacement to already concentrated urban centers, such as the nearby city of Yatta.¹

The strategy works. The Havat Maon colony extends into Kharura and Sarura, two small villages whose residents were forcibly removed and refused return as a result of settler violence. International volunteers with Operation Dove present in the hamlets have documented colonists from Havat Maon attacking the village of al-Tuwani, Palestinian shepherds, killing a Palestinian's donkey, and throwing rocks at children. The communities in the South Hebron Hills are under threat, but Israel employs similar expulsion tactics in other areas under its control, including Sheikh Jarrah in Jerusalem, the Jordan Valley, Nazareth and the Naqab.

The Israeli Supreme Court has scheduled a decision on the expulsion of the 8 villages in Firing Zone 918 for 2 September 2013. The Association for Civil Rights in Israel is coordinating the law-based resistance to this case. The community organizes popular resistance through the venue of the South Hebron Hills Popular Committee.

Multimedia

Um Fagarah

▼ To watch 'Um Fagarah' short video, produced by BADIL's Ongoing Nakba Education Center, please visit: <http://www.ongoingnakba.org/en/west-bank/jordan-valley/umm-fagarah/umm-fagarah-video.html>

▼ To view 'Um Fagarah' photo gallery, produced by BADIL's Ongoing Nakba Education Center, please visit: <http://www.ongoingnakba.org/en/west-bank/jordan-valley/umm-fagarah/umm-fagarah-video.html>

Susya

▼ To watch 'susya' short video, produced by BADIL's Ongoing Nakba Education Center, please visit: <http://www.ongoingnakba.org/en/west-bank/hebron-district-wb/susya/susiyav1.html>

▼ To view 'Susya' short video, produced by Adalah, please visit: <http://www.ongoingnakba.org/en/west-bank/hebron-district-wb/susya/susiyav2.html>

Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities

BADIL's Handbook seeks to assist Palestinian organizations, municipalities and individuals in understanding the Israeli system of disenfranchisement while suggesting some proactive measures. The Handbook offers recommendations to those sectors as well as to the Palestine Liberation Organization, Palestinian Authority and international community. The following are recommendations to the international community and civil society:²

- Study and address the root causes of the ongoing forcible displacement of Palestinians by Israel. After 65 years of a protracted Nakba, civil society and influencers continue to bear the duty of promoting awareness of and effective responses to Israel's system of occupation, apartheid and colonialism that prevents Palestinian self-determination and constitutes the root cause of Israel's policy of population transfer;
- Develop mechanisms and take effective measures to bring Israel into compliance with

international law. Responsibility and accountability for injuries, loss of life and property should be pursued through investigations, ensuring reparations and prosecuting those guilty of serious international human rights and humanitarian law violations;

- Improve response mechanisms in the occupied Palestinian territory through short-term emergency aid within the framework of filling medium and long-term protection gaps, a central requirement of which is preventing institutionalized forced displacement;
- Lobby governments to cease diplomatic, military and economic support of, and cooperation with, the state of Israel;
- To the degree possible, reject limitations on interventions based on Israeli political and legal requirements;
- Ensure reparations and remedies for Palestinian victims. Practical measures to facilitate housing and property restitution and compensation by Israel include comprehensively documenting

BADIL's Handbook and brochures on forced population transfer (© BADIL)



damages incurred by Israel's violations of international human rights and humanitarian law, and allocating compensation funds such as through activating and developing the UN register of Damages caused by the Wall;

- Update the compilation work begun in the Handbook with changes in Israeli legislation, court decisions and state practices. Expand on the Handbook's preliminary research particularly on forcible population transfer in the Gaza Strip. Elaborate on all issues illustrated in the Handbook with further detail.

* Endnotes: See online version at: <http://www.BADIL.org/al-majdal>

BADIL Written submission to the 23rd Human Rights Council Session, 27 May-14 June.

Written statement submitted by Badil Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization with special consultative status.

Land Confiscation by means of declaring land as state land

Land confiscation is pursued through a manipulation of the relevant land laws in place in the occupied Palestinian territory. For example, the declaration of land as 'state land' is a prime method of land confiscation. As Abu Kishk writes: "during the Mandate, the British government suggested that all uncultivable land should be registered in the name of the High Commissioner of Palestine, under the provision that the said land be utilized for the good of the community."¹

After 1948, Israel 'inherited' all the land that was registered in the High Commissioner's name from the British government, which thus became Israeli state land.² After 1967, Israel also claimed all the 'state land' that Jordan had designated as such under its rule in the West Bank. This was achieved through the application of a 1967-adopted military order, the Order Concerning Government Property (No. 59).³ This defines state land as property that, on the "relevant date" (7 June 1967, the day Israel occupied the West Bank), belonged to an enemy state and/or corporation of which an enemy state had control or rights or that was registered at that time in its name.⁴ Furthermore, the Order bestows administration of state land to the Custodian who is appointed by the Israeli Military Commander and empowered, "to take possession of government property and to take any measure he deems necessary to that end".⁵ The Order also allows for the custodian to deem any lands as state lands, even if they are retroactively shown not to be state lands, provided he held "good faith" that they were state lands.⁶ This Order was since amended.

Parallel to that in 1968 the Israeli military commander passed the Order concerning Land and Water Settlement (Judea and Samaria) (No. 291) – an order which forbade any further land settlement/registration for Palestinians and put a halt to any settlements, or registrations which were at that time being processed. Historically, land registration in the West Bank has been low for a number of reasons: most importantly efforts to avoid taxation and traditionally the non-importance of registration to exercise land rights. Since Israel stopped almost any form of registration in 1968, only 33% of all West Bank land has been registered.⁷

Following the 11 November 1979 verdict of the Elon Moreh Case, the government issued a decision, "to expand the settlement in Judea, Samaria, the Jordan Valley, the Gaza Strip and the Golan Heights by adding population to the existing communities and by establishing new communities on state-owned land".⁸ The term 'state land' was not defined therein, however, the settlement enterprise actually expanded following this measure, with approximately "ninety percent" of the settlements established on land declared as state land.⁹

Establishing illegal Israeli settlements on state land was achieved through a manipulation of the previous laws already in place. To begin with, Israel conducted a survey to ascertain which land fell under the 'state land' criteria as designated so by the Jordanian and previous legal systems. Initial investigations discovered that approximately 527,000 dunums (527 km²) of such land existed as registered by the Jordanian Government.¹⁰ Following further investigation of Ottoman and British state lands it was revealed that an additional 160,000 dunums (160 km²) were eligible for declaration.

In 1969 a provision was added to the Order Concerning Government Property stating that, "if the Custodian confirms in a written document with his signature that a given property is government property, that property will be considered government property unless proven otherwise".¹¹ This transferred the burden of proof from the State to the individual.

In 1984, the military commander amended the Order Concerning Government Property to expand the types of land that could fall under its control. The amendment defines government property as, "property that on the relevant date or thereafter belongs, is registered in the name of or is imparted to an enemy state or a corporation in which an enemy state has rights".¹² The use of the word "thereafter" offers scope to expand upon a previously static definition of state land.

Declaration process

The declaration (of state land) process is not anchored in the law or in military legislation, but rather in the procedures of the Israeli Civil Administration alone.¹³ Among their requirements is that the Custodian must sign a certificate specifying the location of the land for declaration accompanied by a map demonstrating the plot's total area.

Various petitions filed by Palestinians against the declaration process and against the appeals committee (whereby individuals can oppose declarations) failed before the Israeli Supreme Court.¹⁴ The Court upheld the legality of the declaration mechanism and rejected the petitioners' right to object: as they could not prove personal injury on non-private, 'state land'.

In conclusion, Israel's policy regarding the declaration of state lands is just one part of a wider strategy towards de-facto annexation of Area C of the West Bank within the occupied Palestinian territory; that is, to implement control over the maximum area of Palestinian land, whilst reducing the number of Palestinian residents to a minimum.

Within this context, the array of hardships faced by Palestinians are intentional products of the Israeli administration of the occupied Palestinian territory and should not be seen as isolated incidents. Rather, systemic discrimination of Palestinians by the occupying power seeks to increase the difficulty of life until they are left with little option but to relocate to other parts of the West Bank. This forced population transfer constitutes a direct contravention of multiple international laws including Article 49 of the Fourth Geneva Convention and Article 7 of the Rome Statute of the International Criminal Court. Nonetheless, the international community has allocated little attention to these contraventions and developed even fewer steps to satisfactorily redress the situation and uphold Palestinian rights. While such a status quo is maintained, the State of Israel will continue to erode Palestinians' quality of life.

We, therefore, urge the Human Rights Council to:

- Condemn Israel's practices and policies concerning the declaration of state land;
- Charge Israel's acquisition of Palestinian land under whichever alleged reason or purpose as illegal and ensure that the international community will provide no form of recognition or support from Third States to the situation created by illegal acquisition of land;
- Investigate Israel's policy of forced population transfer of the Palestinian people through direct and indirect means and practices, which possibly amount to international crimes (Art. 49 (1), Art. 147 of GCIV, Art. 85 of its additional protocol and Art. 7 of the Rome Statute);
- Study and address the root causes of the ongoing forcible displacement of Palestinians by Israel;
- Develop and implement effective mechanisms and measures to bring Israel into compliance with international law.

* *Endnotes: See online version at: <http://www.BADIL.org/al-majdal>*

Palestinian NGOs Joint Written submission to the 22nd Human Rights Council Session

Firing Zones

BADIL, on behalf of nine Palestinian human rights organisations¹, would like to address the pressing issue of firing zones and the subsequently deteriorated living conditions of the Palestinians residing in these areas.

Beginning in the 1970s, firing zones, a form of closed military zones, have been extensively designated throughout the West Bank, as one of many means of land appropriation. The majority of these closed zones are located in the Jordan Valley and the South Hebron hills. The Israeli military employs Military Order 1651 to designate large swathes of land as closed zones under such auspices as 'military training', for example, as justification for this 'necessary' requisition of land.

Under Article 318 of Military Order 1651:

"A military commander is empowered to declare that an area or place are closed"²

Since 1967, this Order has allowed for the extensive requisition of approximately 18 per cent of West Bank land as a 'closed military zone' for training, or 'firing zones.'³ The UN OCHA has reported that Israeli authorities prohibit construction in these zones and that Palestinian residents are routinely issued demolition and eviction orders.⁴ Further, in 2010 alone, some 65 per cent of Area C demolitions took place in areas defined as 'firing zones.'⁵ Currently there are 10 illegal Israeli outposts located in 'firing zones' while, as of August 2012, 5,000 Palestinians, in 38 villages, reside within these zones – mostly Bedouins and herders.⁶ 90 per cent of these communities are water scarce while food insecurity reaches 34 per cent among herders, many of whom live in firing zones.⁷ As such, residents of firing zones face institutionalized discrimination on a multitude of levels including: home demolitions; demolition of dwellings; eviction orders; herding and grazing limitations; restriction of movement and to access to education, health services and water; settler violence; harassment by soldiers; and poverty and a drastically sub-standard quality of living in general.

These actions have been acknowledged to be in direct violation of a number of international provisions,⁸ namely: Article 46 and 55 of the Hague Regulations concerning the protection of private property and treatment of public property, respectively; Article 53 of the IV Geneva Convention concerning property destruction; Art 49(1) of the same Convention concerning 'forcible transfer;' Article 27 of the same Convention that guarantees personal rights, including the protected persons' right to 'freedom of movement;' and Article 11 ICESCR concerning rights attached to pursuit of livelihood.

Firing Zone 918

Firing Zone 918 is located in the Masafer-Yatta area of the south Hebron hills where the Israeli military designated about 30,000 dunams (3000 hectares), including 12 Palestinian villages, as a firing zone in the 1980s. The residents of these villages maintain a unique way of life with many living in caves and relying on farming for their livelihood.⁹ In November 1999 the Israeli military expelled over 700 villagers, confiscated their cisterns and destroyed their property.¹⁰ As of January 2013, 1,300 Palestinians were living in these villages and have been living in the area for several decades.¹¹

Following the expulsion, residents petitioned the Israel's High Court (HC)¹² after which that Court issued an interim order allowing the residents to return to their homes pending a final ruling. The Association for Civil Rights in Israel (ACRI) notes that mediation between the State and the villagers failed in 2005 and that the case essentially lay dormant until last year.¹³

Parallel to the HC proceedings 1199/99 and 517/00, another petition was made on behalf of Palestinian residents of Sfai, Jinba and Majaz, Hebron governorate, in 2005 (HCJ 805/05) against the demolition of 15 cisterns and a series of 19 restrooms, which include cesspools. These structures serve 18 families (approximately 320 persons), the majority of whom reside in Sfai.¹⁴

Israel, in its response dated 19 July 2012, asserted that the establishment of these cisterns and cesspools were “all in violation of the status quo”¹⁵ and a violation of the Court’s order of 29 March 2000 (HCJ 1199/99 and 517/00).

The Israeli HC in essence ordered to freeze the status quo, which maintains a situation depriving the population of their basic needs and rights. This is largely connected to Israeli policies aiming at forcible displacement and which is not limited to physical force or subject to whether or not persons are relocated elsewhere. The creation of such conditions jointly with such judicial decisions does not leave any choice for people than to leave the area. This amounts to a violation of Article 49(1) of the IV Geneva Convention.

Lacking from the State’s reply, however, was an explanation as to under which military law the firing zone had been declared as such, or any justification to this extent. As an occupying power, Israel is obliged to comply with international humanitarian law and to adhere to the restrictions provided for by this body of law. The designation of the firing zone 918 is in blatant disregard for those restrictions and represents a serious violation of Israel’s obligations under international law.

The occupying State is prohibited from using the land for its military needs in a ‘broad sense’¹⁶ such as general military training, and it is certainly not authorized to expel residents from their homes, destroy their property and/or harm their livelihood for such purposes.¹⁷

On 16 January 2013, the petitioners filed their renewed petition.¹⁸ The recent petitions and responses are currently awaiting the adjudication of the Israeli HC. However, in the meantime, the Israeli military are predictably carrying out continued violations by commencing drills using live ammunition in several villages, thereby creating an atmosphere of fear and violence.¹⁹

Next to this, severe restrictions on Palestinian movement in and out of firing zones serves to control all aspects of life for those affected and stringent controls applied to constructions have a direct impact on the Palestinian people’s ability to attain an adequate standard of living and to maintain the family unit.

Firing zone land has been requisitioned by the Israeli authorities on unjustified grounds of ‘security’ or for general military purposes. In addition to this express requisition, Israel utilizes other methods to illegally appropriate Palestinian land with the aim of forcing Palestinians from their land and ultimately annexing it.

In conclusion, Israel’s policy regarding firing zones is just one part of a wider system; that is, to exert control over the maximum area of Palestinian land, whilst keeping the number of Palestinian residents to an absolute minimum. It severely hinders Palestinians’ access and use of their land, creating extremely severe living conditions for the Palestinians living therein.

We, the undersigned organizations urge the Human Rights Council to:

- Condemn Israel’s practices and policies concerning firing zones;
- Assert that the appropriation of Palestinian land by Israel, for the ostensible reason or purpose of firing zones, be declared illegal; and that the international community refuses to recognize or assist such illegal activity;
- Investigate Israel’s policy of forced population transfer of the Palestinian people by direct and indirect means and practices, which possibly amounts to international crimes (Art. 49 (1), Art. 147 of GCIV, Art. 85 of its additional protocol and Art. 7 of the Rome Statute).

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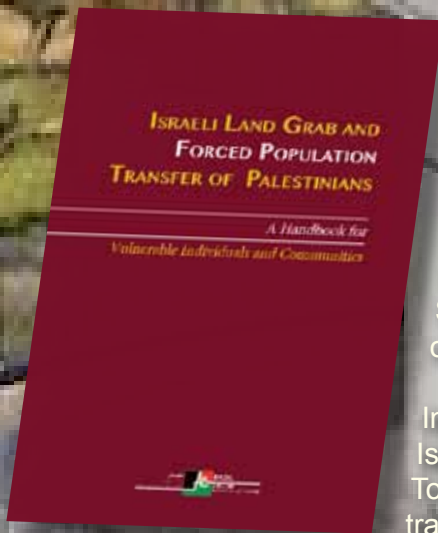
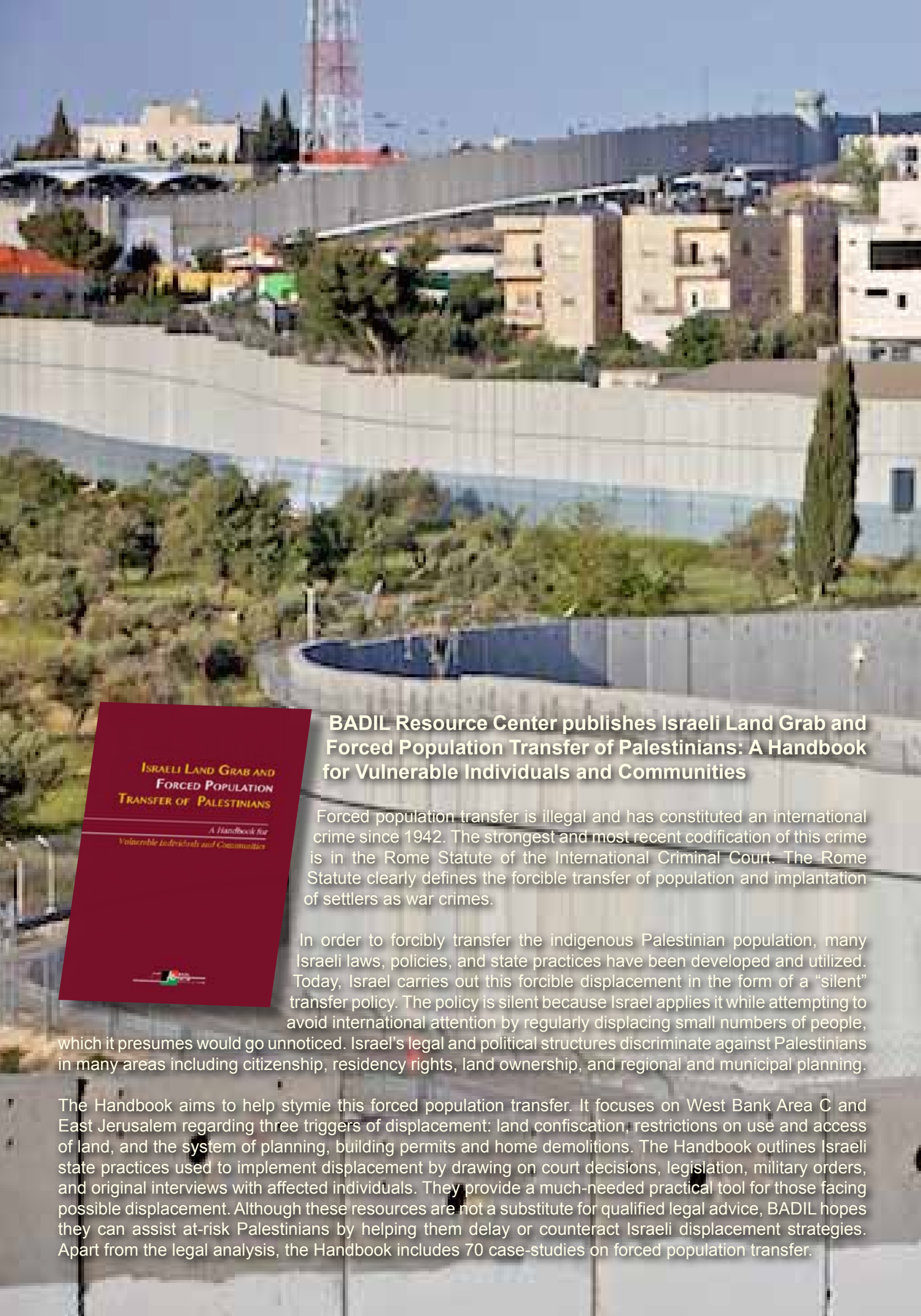
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ABOUT THE MEANING OF AL-MAJDAL

al-Majdal is an Aramaic word meaning fortress. The town was known as Majdal Jad during the Canaanite period for the god of luck. Located in the south of Palestine, al-Majdal was a thriving Palestinian city with some 11,496 residents on the eve of the 1948 Nakba. Majdalawis produced a wide variety of crops including oranges, grapes, olives and vegetables. Palestinian residents of the town owned 43,680 dunums of land. The town itself was built on 1,346 dunums.

The town of al-Majdal suffered heavy air and sea attacks during the latter half of the 1948 war in Palestine. Israeli military operations (Operation Yoav, also known as "10 Plagues") aimed to secure control over the south of Palestine and force out the predominant Palestinian population. By November 1948, more than three-quarters of the city's residents had fled to the Gaza Strip. Israel subsequently approved the resettlement of 3,000 Jews in Palestinian refugee homes in the town. In late 1949 Israel began to drive out the remaining Palestinian population using a combination of military force and administrative measures. The process was completed by 1951. Israel continues to employ similar measures in the 1967 occupied West Bank, including eastern Jerusalem, and the Gaza Strip.

Palestinian refugees from al-Majdal now number over 71,000 persons, and Israel has Hebraized the name of their town as "Ashkelon." Like millions of other Palestinian refugees, Majdalawis are not allowed to return to their homes of origin. Israel opposes the return of the refugees due to their ethnic, national and religious origins. al-Majdal, BADIL's quarterly magazine, reports about and promotes initiatives aimed at achieving durable solutions for Palestinian refugees and displaced persons based on international law and relevant resolutions of the United Nations.



BADIL Resource Center publishes Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities

Forced population transfer is illegal and has constituted an international crime since 1942. The strongest and most recent codification of this crime is in the Rome Statute of the International Criminal Court. The Rome Statute clearly defines the forcible transfer of population and implantation of settlers as war crimes.

In order to forcibly transfer the indigenous Palestinian population, many Israeli laws, policies, and state practices have been developed and utilized. Today, Israel carries out this forcible displacement in the form of a “silent” transfer policy. The policy is silent because Israel applies it while attempting to avoid international attention by regularly displacing small numbers of people, which it presumes would go unnoticed. Israel’s legal and political structures discriminate against Palestinians in many areas including citizenship, residency rights, land ownership, and regional and municipal planning.

The Handbook aims to help stymie this forced population transfer. It focuses on West Bank Area C and East Jerusalem regarding three triggers of displacement: land confiscation, restrictions on use and access of land, and the system of planning, building permits and home demolitions. The Handbook outlines Israeli state practices used to implement displacement by drawing on court decisions, legislation, military orders, and original interviews with affected individuals. They provide a much-needed practical tool for those facing possible displacement. Although these resources are not a substitute for qualified legal advice, BADIL hopes they can assist at-risk Palestinians by helping them delay or counteract Israeli displacement strategies. Apart from the legal analysis, the Handbook includes 70 case-studies on forced population transfer.