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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

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

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

[16 May 2011]

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

Israel's institutionalized discriminatory practices persist ten years since Durban Declaration and Programme of Action

The Durban Declaration and Programme of Action (DDPA) lays out those principles intended to guide a global campaign against racism, racial discrimination, xenophobia, and related intolerance based on international law including human rights treaties and the Convention to End All Forms of Racial Discrimination (ICERD) in particular. While this conceptual framework also identifies Palestinian people as victims of racism and racial discrimination, it does not recognize how racism and racial discrimination function as the root causes of the plight of the Palestinian people. Instead, the DDPA reiterates long-standing principles of UN resolutions on Palestinian rights and the peace process.

Herein, BADIL provides a brief description of how racism and racial discrimination are root causes of the plight of the Palestinian people, how it perpetuates their condition of dispossession and forced displacement, and how addressing these root causes can enable finding a just, comprehensive, and lasting solution of the protracted colonial conflict over, and occupation of, Palestine.

Israel's dual legal system amounts to a regime of Apartheid.

Palestinians living inside Israel and in the Occupied Palestinian Territory (OPT) are subjected to a regime of institutionalized discrimination. Palestinians are subject to different laws than Jewish Israelis both inside Israel and in the OPT.¹ Further, Palestinians are discriminated against in virtually all aspects of public life inside Israel, including access to education, healthcare, and work. Further, the systematic discrimination and Jewish preference inside Israel and in the OPT meet the definition of a regime of apartheid.²

Palestinian refugees living in the OPT and throughout the world have been denied the right to return to Israel since 1948, in violation of international human rights law, international humanitarian law, and customary refugee law.³ While Palestinians world-wide are denied the right to return to Israel, The 1950 Law of Return grants Jews living *worldwide* the preferential "Jewish nationality," granting them the full rights, privileges and protections of the Israeli political and legal system.⁴ Palestinian Israelis have Israeli citizenship, but have no "Palestinian nationality" and are excluded from the "Jewish nationality."⁵ The Jewish nationality creates a two-tiered legal system in Israel that grants full benefits to Jewish Israelis, and a second-class status to Palestinian Israelis.⁶ Inside the OPT Palestinians are subjected to Israeli military law while Israeli Settlers enjoy the full protection of Israel's domestic law.⁷

This dual legal system is applied in a discriminatory manner based on ethnicity, religion and nationality. Accordingly, it constitutes the crime of apartheid, because Israel has instituted a dual system of laws to institutionalize Jewish dominance over the Palestinian population in the OPT.⁸

Israel's racially discriminatory practices persist.

¹ BADIL, *Dignity & Justice for the Palestinian People*, (March 2009).

² *Id.*

³ Badil, Survey of Palestinian Refugees and Internally Displaced Persons (2008-2009) 95, available at www.badil.org [hereinafter Badil Survey 2008-2009].

⁴ *Id.* at 18.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 27.

⁸ See *Supra* note 1.

Israel's apartheid policies are systemic and ongoing. Ten years since the adoption of the DDPA, those practices have worsened against Palestinian citizens of Israel, Palestinians living under occupation in the OPT, and continue to deny Palestinian refugees the right of return. These racially discriminatory policies undermine finding a comprehensive, just, and durable resolution to the Palestinian-Israel conflict.

Since the elections of 2009, Israel has been governed by one of most right-wing government coalitions in its history.⁹ It has introduced a series of discriminatory legislation directly targeting Palestinian citizens of Israel. Several of these laws specifically undermine Palestinian land rights and work to entrench the historic dispossession of Palestinian refugees and/or to forcibly displace Palestinians today.

The Land Acquisition for Public Purposes Ordinance (1943) is a British-mandate era law that authorizes the Finance Minister to confiscate Palestinian lands for "public purposes" in perpetuity.¹⁰ In February 2010, the Knesset amended the law to prevent Palestinian landowners to restore land confiscated pursuant to the ordinance even if it was never used for the alleged public purpose for which it was originally confiscated. The Amendment allows the state not to use the land for the original intended purpose for 17 years and it prevents landowners from demanding restoration if the land has been transferred to a third party or if more than 25 years has lapsed since the confiscation.¹¹ This impacts Palestinians collectively as Israel confiscated significant portions of their lands over 25 years ago and has since transferred them to third parties.

The Admissions Committee Law, passed in February 2011, is a mechanism that excludes Palestinians from owning and using lands in Israel. The legislation institutionalizes hitherto informal practices that filter out Palestinian applicants from living in particular neighborhoods thereby institutionalizing racially segregated villages and towns. Admissions Committees are bodies that select applicants for housing units in agricultural and community towns that sit on state land based on "social suitability."¹² The policy, which impacts 68.5% of all towns and 85% of all villages in Israel intends to bypass the landmark Supreme Court decision, *Qa'dan*, which held that the exclusion of Arabs from state land constituted discrimination based on nationality and rendered the practice illegal.¹³

Within the OPT, Israel's racially discriminatory practices have undermined the peace process and exacerbated the conflict. Israel's discriminatory residency practices have systematically reduced the Palestinian population in the West Bank. A new document obtained by Ha'aretz from Israel's Ministry of Justice reveals that Israel stripped 140,000 Palestinians of their residency rights in a covert policy between 1967 and 1994.¹⁴ The Central Bureau of Statistics comments that but for the discriminatory policy, the Palestinian population would be greater by 14 percent.¹⁵

This policy mirrors an ongoing policy in East Jerusalem where Palestinians must demonstrate their continued residency for seven years or face revocation of their residency status.¹⁶ Palestinians must demonstrate that Jerusalem is their "center of life" regardless of whether they live in adjacent areas in the West Bank or abroad, and even if they do not hold

⁹ Adalah, New Discriminatory Laws and Bills in Israel (29 November 2010).

¹⁰ Adalah, The Inequality Report: The Palestinian Arab Minority in Israel (March 2011), page 32.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Eldar, Akiva, "Israel admits it covertly canceled residency status of 140,000 Palestinians," Ha'aretz (11 May 2011) available at <http://www.haaretz.com/print-edition/news/israel-admits-it-covertly-canceled-residency-status-of-140-000-palestinians-1.360935>.

¹⁵ *Id.*

¹⁶ *Id.*

foreign passports or permanent residency elsewhere.¹⁷ In 2008 alone, Israel revoked the residency permits of 4,577 Palestinian Jerusalemites.¹⁸ This policy, which amounts to "quiet deportation," has significantly altered the demographic composition of Jerusalem and is indicative of an ongoing forced population transfer policy.

In Gaza, Israel continues to impose a debilitating blockade that amounts to the collective punishment of 1.5 million Palestinians in contravention of Article 33 of the Fourth Geneva Convention. Moreover, Israel has yet to be held to account for its war crimes and crimes against humanity committed against the Palestinians in Gaza during its Winter 2008/09 offensive. The lack of accountability and ongoing siege contravene Article 82 of the DDPA, which notes that "impunity for violations of human rights and international humanitarian law is a serious obstacle to a fair and equitable justice system and, ultimately, reconciliation and stability."

Recommendations to Member States of the Human Rights Council:

1. Apply the conceptual framework of the DDPA to the Palestinian people and recognize racism and racial discrimination as the root causes of the plight of the Palestinian people;

2. Recognize and condemn Israel's coalition government that was brought to power in 2009 as one that exacerbates the stigmatization of the Palestinian people and call on its members to refrain from producing legislation that incites racism, racial discrimination, xenophobia and related intolerance;

3. Condemn Israel's recent legislation concerning the Amendment to Ordinance 1943 as well as the Admissions Committee Law as racially discriminatory practices intended to forcibly displace Palestinians and to institutionalize racially segregated towns and villages. Urge Israel to amend these laws pursuant to recommendation 48 of the DDPA which calls upon States "to recognize the effect that discrimination, marginalization and social exclusion have had and continue to have on many racial groups living in a numerically based minority situation within a State, and to ensure that persons in such groups can exercise, as individual members of such groups, fully and effectively, all human rights and fundamental freedoms without distinction and in full equality before the law..."

4. Condemn Israel's racially motivated residency policies and practices which amount to a policy of forced population transfer in contravention of Article 49 of the Fourth Geneva Convention that prohibits the "individual or mass forcible transfer, as well as the deportations of protected persons," and constitutes a grave breach of the Convention or a war crime.

5. Demand that Israel end its blockade of Gaza and urge the UN Security Council to implement the recommendations set forth in the Goldstone Report pursuant to article 82 of the DDPA.

6. Recognize that Israel's racially discriminatory policies meet the definition of Apartheid pursuant to the International Convention on the Suppression of the Crime of Apartheid.

¹⁷ Human Rights Watch, "Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories," (December 2010: 48).

¹⁸ *Id.*